

PORTFOLIO HOLDER DECISION RECORD SHEET

Name of decision maker: Councillor Margaret Griffiths

Portfolio: Housing

Date of Portfolio Holder Decision: 24 January 2013

Title of Decision:

Appointment of Consultants

Decision made and reasons:

- 1. To appoint Bevan Brittan LLP to provide external legal advice associated with the delivery of the Housing Repairs re-procurement project.**
- 2. To appoint Eversheds LLP to provide the external legal advice for the New Build programme.**
3. To authorise the suspension of the Council's Procurement Standing Orders and exempt the letting of these contracts from the requirement to formally tender the services.

The Housing Repairs re-procurement project commenced in December 2011 to ensure sufficient time was allowed for the development of a project board and to enable a full options appraisal to be undertaken. It is essential that the Council does not cede control to external consultants and therefore the majority of the project will be delivered by the project team.

A resource plan has been developed to ascertain the required level of resources required at each stage of the project and this includes the requirement for the use of external consultants to support the project.

Cameron Consulting are providing the procurement and project management support to assist with the project plan and delivery and it has been identified that external legal and financial support will need to be provided to provide the required skills and current knowledge of the sector.

The financial support will be provided by Stradia who have delivered the Open Book training and from that have a good understanding of the financial mechanisms the Council currently use on the existing contracts and the benefits of an open book approach for the Total Asset Management contract. The cost of this is within the designated allowance under standing orders and therefore is provided in this report for information only and not as a recommendation.

The estimated value of the appointment of legal consultants for the Housing Repairs re-procurement will exceed the Council's Procurement Standing Orders threshold, which require the contract to be advertised. However, it is recommended to appoint Bevan Brittan without a formal tendering procedure for the reasons set out in the following paragraph.

It is recommended that Bevan Brittan is appointed to undertake the legal work to support the Section 20 leaseholder consultation, draft the required contract documentation and provide TUPE, pensions and procurement advice. The rationale behind this recommendation is that they have been employed to work on the CSU project and have already provided a comprehensive legal view of the pension and TUPE implications. This work can be used for the procurement project and therefore enables some of the fees to be reduced for this element of work. Additionally Bevan Brittan have a good working knowledge of the Council and the current approach and thinking behind the procurement projects, having been involved in the CSU project and providing advice upon the Carillion Gas Servicing contract. Bevan Brittan's fees have been compared against the

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fees submitted by legal firms as part of the PSQ tender process and they are comparable to other legal providers in the market.

It should be noted that the total value of the contract with Bevan Brittan LLP must not breach the OJEU threshold which is currently £173,934.

2. In order to sufficiently resource for the New Build programme, the Council needs to procure a legal firm to act on its behalf in negotiating major contracts with a range of different firms. Eversheds LLP have been appointed via a competitive tendering process as the Council's legal representative for the Public Service Quarter. Through this work they have and will obtain a thorough working knowledge of the Council's policies, procedures and working practices. This existing working relationship will reduce the time required to build up a working relationship, which translates into a cost saving for the Council. Eversheds LLP have significant experience in negotiating build contracts with a wide range of firms and can fulfil the Council's legal requirements for the new build programme.

Given the firm's knowledge and the significant crossover between the Public Service Quarter project and the Council house new build project, it is recommended that Eversheds LLP is also appointed as the legal representative for the New Build project

It should be noted that the total value of the contract with Eversheds LLP must not breach the OJEU threshold which is currently £173,934.

In respect of points 1 and 2 above; authorise the suspension of the Council's Procurement Standing Orders and exempt the letting of these contracts from the requirement to formally tender the services. Section 3 of the Council's Procurement Standing Orders allows, if special circumstances exist, for Procurement Standing Orders to be suspended. The special circumstances relied upon in both cases are the costs savings which will be made by using solicitors who are already engaged on similar Council projects and thus save the duplication of work on key issues which have recently been addressed. Furthermore, the market has recently been tested on the PSQ project so officers know that the rates offered by both firms are market competitive.

Reports considered: (here reference can be made to specific documents)

Procurement Strategy Report for the future procurement of repairs, maintenance and improvements to the Council's housing and related assets dated September 2012

Officers/Councillors/Ward Councillors/Stakeholders Consulted:

Elliott Brooks – Assistant Director Housing
Mark Brookes – Group Manager Legal Governance
Ben Hosier – Group Manager Commissioning, Procurement and Compliance
James Deane – Assistant Director Financial Services
Jack Burnham – Strategy and Development Team Leader

Monitoring Officer comments:

Section 3 of the Council's Procurement Standing Orders allows, if special circumstances exist, for Procurement Standing Orders to be suspended. In the cases highlighted above it is deemed that special circumstances exist in terms of potential cost and efficiency savings for the Council. It has been demonstrated that the fees quotes are competitive as they have been compared against legal firms

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submissions in respect of the PSQ project.

The appointment of legal firms with specialist knowledge and market experience is essential to enable the Council's position to be fully protected on these priority Council projects.

Deputy S151 Officer comments:

Funding for both the Housing Repairs re-procurement project and the New Build project has been approved by Cabinet and is reflected within the HRA business plan. Additional costs relating to the legal advice sought via this decision are estimated to be around £100,000, although it is difficult to be precise at this stage until further work has been done on the specification for the New Build project. There is forecast to be sufficient surplus within HRA revenue balances over the next two years to accommodate these costs without risk of dipping below the approved minimum balance.

Implications:

Risk:

1. Failure to agree these proposals will result in the Council not adhering to the procurement guidelines, set out in Procurement Standing Orders; currently the contract award is not recorded correctly on the contract register.
2. Failure to appoint Bevan Brittan and Eversheds LLP may incur additional costs and is likely to incur delays to the project delivery which for both the Housing Repairs re-procurement Project and New Build Programme are critical.

Value for Money:

The Council has undertaken a review of the necessary resources and skills that are required to deliver procurement projects of this size and complexity and have identified the need to commission external consultants to provide support. There are robust and documented reviews of the work produced by Bevan Brittan and Eversheds to ensure on-going value for money is delivered. The outputs from the assignments are closely monitored against agreed work and project plans. The finance and legal sub-group of the procurement projects meets fortnightly and monthly Project Board meetings are held to monitor progress and expenditure. The Corporate Director and Assistant Director are members of Project Board and updates are provided to the Portfolio Holder Cllr Griffiths.

Options Considered and reasons for rejection:

1. The Council could go back to the market to recruit an expert to deliver the projects outlined above but this will take time and impact on project milestones and any new post holder will take time to understand the current and future operating arrangements. It would not be possible to resource this post internally. In order to ensure the project plan is adhered to these options have been rejected.

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Portfolio Holders Signature:

Date:

Details of any interests declared and any dispensations given by the Standards Committee:
None

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Date Decision Record Sheet received from portfolio holder: 22/01/13

Date Decision Published: 24/01/13

Decision No:PH/005/13

Date of Expiry of Call-In Period: 31/01/13

Date any Call-In received or decision implemented:

BACKGROUND

Details included in the information above.