

Report of Head of Asset Management

Report to Director of City Development

Date: 2nd March 2018

Subject: Procurement of legal advice in support of the Leeds City Region HS2 Growth Strategy

Are specific electoral wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If yes, name(s) of ward(s):		
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for call-in?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, access to information procedure rule number:		
Appendix number:		

Summary of main issues

1. Leeds has the ambition to be the best city in the UK, with a strong economy in a compassionate city. Leeds City Council has a key role to play in driving forward economic growth and regeneration in the city, and in providing quality infrastructure for its residents, to deliver this ambition.
2. The arrival of HS2 will be substantial, offering an enormous opportunity for the city region to provide: a step change in connectivity; a range of employment and training opportunities for its workforce; an increased capacity on existing lines; new benefits for businesses and their supply chains, and; a transformed city centre and Leeds Station. Design work is now progressing by HS2 on the hybrid Bill design railway in Leeds and a new station to merge with the existing station.
3. As part of planning to make the most of the opportunity HS2 offers and in response to the HS2 Task Force recommendations, Leeds City Council and WYCA have developed the Leeds City Region HS2 Growth Strategy.
4. HS2 is a once in a generation opportunity for our city, and to deliver the projects and proposals of the Growth Strategy that will maximise the benefits which it brings, external legal services are required to provide comprehensive and wide ranging advice on HS2, the station more generally and the HS2 Growth Strategy.
5. These services are required to provide advice to the council across multi-faceted and complex projects covering a range of multidisciplinary areas including but not

exclusive to Property and Land, Compulsory Purchase, Planning and Delivery, hybrid Bill processes, Local Government Law, and State Aid. In particular, with the Hybrid Bill design now progressing, there is greater urgency to the Council having a clear legal understanding of the process across a number of areas. In addition, the proposal to procure a single advisor framework will provide the opportunity to call-off services as and when required, and provide resilience during periods when internal council resource may be stretched.

6. In accordance with contract procedure rules, this paper seeks approval to procure legal services whilst justifying the procurement route chosen, and for the evaluation methodology to be applied.

Recommendations

The Director of City Development is recommended to:

- a) Agree that the Council waives CPR 3.1.6 for the reasons set out in this report, and progresses an open tender exercise to select an external organisation to provide the Council with multi-disciplinary legal advice from a single advisor framework, in order to support on the scoping, planning, delivery and implementation of projects proposed by the Leeds City Region HS2 Growth Strategy.
- b) In accordance with Contract Procedure Rule 3.1.8, agree to the procurement methodology and, under Contract Procedure Rule 15.1, the evaluation criteria headlines as set out at paragraph 3.15 for the evaluation of legal firms through an open tender exercise.
- c) Note that given the scale and speciality of the legal services required they could not be provided in their entirety by Internal Service Providers, and that a market sounding exercise did not provide confidence that the most effective/best value provider was available from an approved framework.
- d) Note that the Principal Regeneration Officer will be responsible for implementing these actions.

1. Purpose of this report

- 1.1 In accordance with Contract Procedure Rule 3.1.8, this report seeks Director of City Development approval to undertake a procurement exercise for the procurement of external Legal Advisers to support the work proposed by the LCR HS2 Growth Strategy.

2. Background information

- 2.1 HS2 represents one of the largest national infrastructure projects in the UK. It will act as a catalyst for regeneration and growth, stimulating connectivity to towns and cities across the Leeds City Region and the North, improving the skills and job opportunities for our workforce, and creating opportunities for our businesses and supply chain. Delivery of HS2 is anticipated to generate an extra £54bn to the region's economy and create 41,000 jobs through interventions proposed by the LCR HS2 Growth Strategy alone, whilst contributing directly to a number of Best Council Plan objectives and breakthrough projects.
- 2.2 As part of the work surrounding HS2, the LCR HS2 Growth Strategy has been developed by the council and WYCA and is currently going through a period of engagement. Executive Board on 18th October 2017 agreed to support the principles of the strategy and requested a final version of the document is brought to Executive Board after a period of engagement has taken place. This strategy proposes a number of projects across a variety of disciplines. Multi-disciplinary legal advice and input is required for the council to participate in the Hybrid Bill process, whilst it is also required to assist with the significant number of Growth Strategy projects that will be undertaken.
- 2.3 High quality legal advice is required across a range of multi-disciplinary areas, to deliver on timescales. There is a requirement that the legal advice needs a strong join up and consistency across these areas.

3. Main issues

Legal Advice Required: Scope

- 3.1 The legal advice in support of the Leeds City Region HS2 Growth Strategy and associated projects commission is to provide multi-disciplinary legal support to the Council. This is a complex programme requiring advice across a number of areas. While the Council's internal legal services and commercial team are able to provide support in respect of most aspects, there will be occasions when resource pressures mean the full, necessary support is not available and there will also be advice (e.g. in respect of the hybrid Bill) where specialist external advice is essential. Consequently, the ability to call off advice and support from a single advisor framework is essential to ensure that the council is able to effectively deliver this programme and take full advantage of the opportunities that present themselves now and which emerge in future. As part of this external resource, the Council will require a senior level of resource (at Partner level) to be provided to deliver the services in order to provide the necessary experience and gravitas when dealing with other stakeholders, whilst also requiring an organisation who can respond quickly to a range of complex areas and issues.
- 3.2 Support will be needed to establish the Council's role in the Hybrid Bill and Leeds Station, whilst there needs to be further advice on the delivery of projects

associated with the LCR HS2 Growth Strategy, particularly in relation to those which may emerge in South Bank, and in helping to facilitate development and investment at Leeds Station. Whilst the extent of services required cannot be defined in full, and the quantum of work required cannot be guaranteed, the expected areas of legal expertise that the Council expect to draw upon include:

- Hybrid Bill Processes (including Roll A parliamentary agency services, though this aspect may be sub-contracted subject to above);
- Compulsory Purchase Orders and Land Assembly;
- Highways and TROs;
- Grant Agreements and State Aid;
- Planning Law and Delivery;
- Property and Land;
- General Commercial and Contract;
- Construction;
- Local Government Law;
- Landlord & Tenant Act 1954;
- Litigation;
- Funding and Financing;
- European Regulations;
- Insurance and VAT;
- Real Estate Partnerships.

3.3 This list is not exhaustive and additional legal services not listed may be required arising from the direction the projects take and any issues that may arise as they progress. It is proposed that the services outlined above are included in the scope of the procurement but with sufficient flexibility for the Council to seek additional services should it be required. In the first instance, there will be advice required on two packages of work: advice on the hybrid Bill and commercial advice on funding/financing solutions for Leeds Station.

3.4 In accordance with the Contract Procedure Rules 3.1.4, it was explored whether there is an Internal Service Provider (ISP) who could undertake the work required. It has been agreed with the ISP that while it will be used to the extent that there is capacity, there will not be sufficient capacity for this whole programme and that external specialist advice will also be required. Legal Services and the commercial team have confirmed this approach, but there will be close partnership working with the internal services as we move forward with the work and council officers from the commercial team will be directly involved in the coordination of the work.

- 3.5 As per Contract Procedure Rule (CPR) 3.1.5, it was explored if there was an exclusive supplier arrangement for the services required and there is not.
- 3.6 CPR 3.1.6 states that the authorised officer will, if there is no ISP or exclusive supplier arrangement, consider whether the procurement is subject to existing provider arrangements (frameworks) and will ensure that use of this arrangement is always considered.
- 3.7 The WYLA Framework is one the council's approved route for procurement of external legal services. In accordance with CPR 3.1.6, there has been considerable assessment of the legal firms on this framework by Asset Management and Regeneration, Legal Services and PPPU. A market sounding exercise was carried out, contacting all firms on Lot 7 of the framework (Major and Complex Procurements) as an assessment of their interest in the work and ability to carry it out.
- 3.8 Responses were limited (only 5 in total), and questions remained as to the capability and/or conflicts of interest in relation to the majority of responses received. Consequently, the responses did not provide confidence that the WYLA framework would deliver a competitive procurement process, and consequently that WYLA may not provide the most effective/best value service provider.
- 3.9 It was also noted that the Crown Commercial Services framework is (from January 2018) unavailable for call-off by local authorities.
- 3.10 As a result it was felt that the most effective procurement option would be to undertake an open tender exercise. While this approach may result in additional cost and delay, it is not considered that this is material.
- 3.11 As the value of this procurement is anticipated to be below £615,278 there is no requirement to follow OJEU procedures for the procurement of the legal services required (which would otherwise be the "Light Touch Regime"), or indeed to follow a framework procured through an OJEU procedure.
- 3.12 Following consultation with both Legal Services and the Projects, Programmes and Procurement Unit (PPPU), and considering the points raised at 3.4, 3.5, 3.7, 3.8 and 3.9, it is proposed to undertake an open tender exercise to award a single advisor framework. This is the most appropriate method to appoint a suitable organisation on the basis of a detailed specification and scope setting out the council's requirements.
- 3.13 This proposed route for procurement requires approval under the Council's Contract Procedure Rules. In accordance with CPR 3.1.8 approval is sought for both the progression of a procurement exercise and the procurement exercise route to appoint an external legal firm to provide the advice required.
- 3.14 It is proposed that the term of appointment would be for up to 5 years (an initial 3 year term, plus up to 2 years of extensions). The hybrid Bill and station design process will continue until 2023. HS2 Ltd.'s aim is for Royal Assent for the Bill to be obtained in late 2022, but finishes and details not fixed in the Bill will then have to be approved by local planning authorities on a case-by-case basis throughout 2023. For this reason it is felt the Council should maintain the option to extend this commission beyond its initial 3 year term, to continue to be provided with legal advice until the conclusion of the hybrid Bill and station design process, should it be required.
- 3.15 The proposed competition methodology is as follows:

- The Principal Regeneration Officer and the Executive Commercial Solicitor will manage the procurement process, answer enquiries from bidders and will work with Legal Services and PPPU in doing so.
- The selected bidders will be invited to tender through the YORtender system, in accordance with Contract Procedure Rules for a procurement of this value.
- Bidders will be issued with relevant information, including the Executive Board paper from October 2017, the Growth Strategy Summary Document and the suite of supporting documents relating to the Growth Strategy workstreams which were submitted to HMG in December 2017. This will outline the breadth and depth of work achieved so far and the projects and proposals which support will be required on moving forward.
- Bidders will be asked to ensure they review any potential conflicts of interest prior to submitting a tender.
- Organisations will be invited to tender through an open tender exercise. It is no longer a requirement to undertake a Pre-qualification stage for a procurement of this value, and a PQQ will not be used as an initial vetting method.
- Approved terms and conditions will be attached to the tender documents for this procurement, and will set out the terms by which the Council requires the services and how work will be instructed.
- The evaluation panel will be comprised of officers from Asset Management and Regeneration, Legal Services and PPPU commercial team.
- Bidders will be invited to tender and members of the evaluation panel will evaluate and score the information which is submitted.
- The evaluation will be weighted **55%** on quality and **45%** on price. This is the permitted allowance within the CPRs.
- The evaluation method is in accordance with the method set out within the CPRs.
- The evaluation criteria will be used to form a preliminary list of 3 bidders who have achieved the highest combined scores in price and quality, plus any other bidders scoring within 2% of the third placed bidder.
- This preliminary list of 5 bidders will be invited to an interview to present their method statements. The interview will not be scored as a criterion in its own right but will be used as a method of moderating the provisional scores given by the evaluation panel.
- The proposed Method Statement Criteria are outlined below and there will be a quality threshold for each criterion. Bidders will be required to score at least 7 out of 10 in each of the criteria and score at least 70% of marks overall or their bids will be discounted.

	Method Statement Criteria	Assessment Method	Maximum Points Available	Minimum Score Threshold	Maximum Word Count/Page Limit
1	Hybrid Bill Set out how you will provide multidisciplinary advice to Leeds City Council on the hybrid Bill, with regard to the legal issues, risks and opportunities the council need to consider both prior to	Scoring	75	7 (out of 10)	2 pages A4/Arial 10

	and after the deposit of the Bill.				
2	Roll A Parliamentary Agency Services Set out your proposals for provision of Roll A Parliamentary Agency services in relation to the hybrid Bill, which may either be providing them in-house or sub-contracting. If you are proposing to sub-contract Roll A Parliamentary Agency services please describe how you would propose to procure these services (with input and approval from the Council), manage this relationship and ensure a smooth and efficient overall service provision.	Scoring	75	7	2 pages A4/Arial 10
3	Hybrid Bill Input Confirm that your proposals and proposed resourcing will allow the council to fully input into the hybrid Bill process in accordance with the specification by 2022 when the Bill obtains Royal Assent or such other date as may be prescribed by Government and/or HS2 from time to time.	Pass/Fail	N/A	Pass	2 pages A4/Arial 10
4	Multi-Disciplinary Legal Advice – Set out how you will provide a comprehensive and multidisciplinary legal service to mitigate against what you consider to be the principal issues and risks, to capitalize on what you consider to be the key opportunities which the Council need to be aware of, to respond to specific land and local planning issues relating to the services, and to otherwise achieve the outcomes required pursuant to the specification.	Scoring	150	7	4 pages A4/Arial 10
5	Resource Plan Detail your resource plan for the provision of this service (detailing composition, leadership and management of the team, the range of legal disciplines and expertise to be provided, proposed personnel aligned	Scoring	150	7	4 pages A4/Arial 10, plus a maximum of 5 A4 pages of CVs of Key Personnel in Arial 10.

	to each of the job roles identified in the pricing schedule at appendix 2, and identifying Key Personnel) and how your organisation's expertise will be coordinated and applied to the commission. Set out how this will meet the outcomes required pursuant to the specification.				
6	Commercial and financing Set out how you would assist the Council in developing and delivering innovative solutions for the funding and financing of major infrastructure, detailing the factors you feel are relevant in this area.	Scoring	50	7	4 pages A4/Arial 10
7	Local Responsiveness Set out how you would ensure an available and flexible resource at all levels of seniority to inform and service the council's programme and project teams, its internal and executive decision making process, and interfaces with other stakeholders and landowners.	Scoring	50	7	4 pages A4/Arial 10
8	Interview Confirmation that at least 2 key personnel are able to attend an interview on xx April 2018.	Pass/Fail	N/A	Pass	1 Page A4 Arial 10
	Total Points Available		550		

- 3.16 A fixed tender sum will not be invited at this stage, as this is a fluid and fast moving commission whereby the extent of advice required cannot be fully defined at this stage. Rather, as the Council has done for recent legal commissions including for East Leeds Extension and South Bank Regeneration Project, bidders will be asked to provide capped hourly rates for services for the following: Partner, Senior Solicitor, Solicitor, Junior Solicitor, Trainee and Para Legal. The price aspect of the evaluation will be judged based on the **total** hourly rate across each of these roles, though they will be adjusted to give weighting on a scale from most senior role to least senior role i.e. the greatest weighting will be given to the Partner and the lowest weighting will be given to the Trainee and Para Legal roles. The tenderer with the lowest total adjusted price will achieve the highest score available for price and the other tenders a reduced score based on calculating the percentage difference between them and the lowest price, and deducting this percentage from the maximum score available.

3.17 The scope will be set up as such that the Council will 'commission' the selected organisation for bespoke workstreams, as per the tendered hourly rates.

3.18 The timetable for procurement can be summarised as follows;

- Tenderers to be invited – 7th March to 30th March 2018
- Tenders in – 30th March 2018
- Evaluation, interviews and final decision – 2nd April to 10th April 2018
- Commission commences – 18th April 2018

4. Corporate considerations

4.1 Consultation and engagement

4.1.1 The proposal to commission external legal advisers has been subject to consultation with the Director of City Development and relevant heads of services in Asset Management & Regeneration, and Legal Services. The proposed route for procurement has gained the support of all of these senior officers. Meetings discussing the procurement have involved PPPU officers who have also been supportive of the proposal and have provided input into the best route forward that is proposed in this report.

4.2 Equality and diversity / cohesion and integration

4.2.1 There are no implications for Equality and Diversity / Cohesion and Integration.

4.3 Council policies and best council plan

4.3.1 The LCR HS2 Growth Strategy and its associated projects will contribute to a number of Best Council Plan priorities and breakthrough projects. Ensuring the Council is supported by legal advice of the appropriate quality is essential to bringing forward the planning, scoping, delivery and implementation of these proposals and in turn delivering the below Best Council Plan priorities:

- Transport & Infrastructure – Connecting people and places
- Good Growth – Growing the economy, creating jobs, improving skills, promoting a vibrant city
- Child-Friendly City
- Health & Wellbeing
- Resilient Communities

4.3.2 And the following breakthrough projects:

- More jobs, better jobs
- World class events and a vibrant city centre
- Housing growth and high standards in all sectors
- Strong communities benefiting from a strong city

4.4 Resources and value for money

4.4.1 In the absence of sufficient internal resources and the assessment of the WYLA framework not meeting the Council's requirements for this complex programme of work, the use of an open tender exercise will enable the procurement of high calibre

and specialised legal advice required for the delivery of a high profile and multi-faceted project.

- 4.4.2 Bidders will be evaluated on their cost proposals and undertaking a competition for services will help to achieve best Value for Money.
- 4.4.3 A fixed tender sum will not be invited but once tenders are received the value of the procurement will be known. Final authorisation for the spend of this received sum will be sought in accordance with Financial Procedure Rules.
- 4.4.4 The appointment of a service provider through this procurement exercise will not commit the Council to any level of fees other than those incurred in response to detailed instructions and orders placed (there will be no minimum order obligations, and the arrangement will not be exclusive). As such the Council will remain in control of expenditure through regular monitoring and client liaison as the work progresses. The continuation of this commission will be regularly reviewed to ensure Value for Money is being delivered, and any need for additional budget provision in future years will be fed into department budget setting.

4.5 Legal implications, access to information, and call-in

- 4.5.1 This is not a Key Decision as defined under Article 13 of the Council's constitution due to the value of professional fees that may be incurred in a single year being less than £250k. It is also not envisaged that the value of the fees incurred in a single year will exceed £100k, however in accordance with CPR 27 and the waiver of CPR 3.1.6, this will be a significant operational decision.
- 4.5.2 This decision is not subject to call-in.

4.6 Risk management

- 4.6.1 There is a risk that insufficient interest from organisations to provide the required services is raised. However, this is considered a low risk due to the high profile of the work involved.

5. Conclusions

- 5.1 The Leeds City Region HS2 Growth Strategy and its associated projects are a major, multi-faceted, high profile and complex areas of work that will require significant multi-disciplinary legal support. After assessment, it has been concluded that this support is not available through an internal service provider or existing approved frameworks. Approval to use the proposed open tender exercise will ensure the Council is provided with the opportunity to call-off high quality legal advice and resource capable of quickly responding to complex areas and issues, which is necessary to drive forward this programme and support the Council in achieving its aims for the work, whilst meeting challenging and exacting timescales in a way that mitigates risks, achieves Value for Money and makes a significant contribution to the Best Council Plan.

6. Recommendations

- a) Agree that the Council waives CPR 3.1.6 for the reasons set out in this report, and progresses an open tender exercise to select an external organisation to provide the Council with multi-disciplinary legal advice from a single advisor framework, in

order to support on the scoping, planning, delivery and implementation of projects proposed by the Leeds City Region HS2 Growth Strategy.

- b) In accordance with Contract Procedure Rule 3.1.8, agree to the procurement methodology and, under Contract Procedure Rule 15.1, the evaluation criteria headlines as set out at paragraph 3.15 for the evaluation of legal firms through an open tender exercise.
- c) Note that given the scale and speciality of the legal services required they could not be provided in their entirety by Internal Service Providers, and that a market sounding exercise did not provide confidence that the most effective/best value provider was available from an approved framework.
- d) Note that the Principal Regeneration Officer will be responsible for implementing these actions.

7. Background documents¹

7.1 x

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.