

Agenda Item 13
Report PR21/22-24

Report to	Policy & Resources Committee
Date	25 November 2021
By	Head of Business Services
Title of Report (Decision)	Legal Services and Monitoring Officer Contracts – 2022 onwards

Recommendation: The Committee is recommended to;

- 1) Approve the commencement of a procurement process leading to the appointment of a contractor or contractors to provide Legal Services and Monitoring Officer Services to SDNPA for a period of 3 years (and up to 5 with extensions) from 27 June 2022**
- 2) Approve delegation of Authority to the Chief Executive to award contracts for the above, following a competitive process carried out under the terms of the Public Contracts Regulations 2015**

I. Summary and Background

1.1 The current Legal Services and Monitoring Officer contracts were awarded to West Sussex County Council and Hampshire County Council respectively, in 2017. Both contracts have now reached the point where no further extensions to the contracts can be awarded. The contracts therefore need to be re-tendered and replacement contracts in place to allow for a hand over of duties in June 2022, should this be required.

1.2 Individually both contracts provide value for money and good quality service to SDNPA.

2. Contract Proposals

2.1 There is inevitably some element of duplication in the Legal and Monitoring Officer roles and it is to the credit of staff from West Sussex and Hampshire County Councils, and the ease of a long-term relationship, that allows this to be kept to a minimum.

2.2 In tendering the service, it makes sense to allow for the option of a single supplier of both functions, on the grounds that this may provide a seamless service and save on overall cost. However, we would not wish to remove the opportunity of any organisation or person from bidding just for one part of the service.

2.3 The recommendation therefore is that as we did in 2016, a single Invitation to Tender to be issued, encompassing both services but in separate lots. Price and quality will be assessed separately for each lot, with the offers being assessed on the basis of Most Economic Advantageous Tender (MEAT) criteria.

2.4 The award will be based on a quality / price ratio of 60/40, following a rigorous selection process to assess capability to fulfil the role.

2.5 The intention is to use the open process and publish the full tender documents through SDNPA's In-tend portal. The contract will be advertised on the 'Find a Tender' website (the replacement for OJEU), on the SDNPA website and through England's Contract Finder National website. Legal and associated services are not viewed as being highly transferrable

across the different countries, (English law is pretty much exclusive to England and Wales) and therefore what is called the “light touch” regime will apply in the case of this tender. As the Monitoring Officer is a Chief Officer of the Authority, as defined by the Local Authorities (Standing Orders) Regulations 1993, if it is proposed to change the individual appointed to this role a paper will be brought to the relevant decision making body in due course.

3. Evaluation of the tenders

- 3.1 Tender evaluation for SDNPA contracts is carried out in two main stages; Selection and Award.
- 3.2 An SDNPA tender carries a detailed questionnaire, which each bidder must complete, giving details of the organisation, their structure, legal and business history, technical capacity, experience (with references) and financial capacity. They are required to meet minimum requirements on several of those in order to Pass to the next phase of the evaluation. Organisations not meeting the minimum criteria, or triggering any of the mandatory exclusion criteria, will be excluded at this point.
- 3.3 SDNPA use the MEAT criteria for awarding the contract, using a combination of quality factors, such as Approach to the Contract, Project Resourcing etc. and price based on lifetime costs.
- 3.4 Evaluation is carried out by several officers scoring independently, before meeting on a panel basis. This approach ensures fairness throughout the scoring process. The evaluation process will also allow for a process of clarification on all aspects of bids and due diligence before Intention to Award.

4. Outline Timetable

- 4.1 With Committee Approval, it is intended to publish the Contract Notice and release the documents in early January 2022.
- 4.2 The tenders will remain open for a period of around six weeks, allowing for questions from bidders, with a tender deadline in late February 2022.
- 4.3 Evaluation of the tenders, including clarification and due diligence will take place during March, with the Intention to Award being issued at the start of April 2022.
- 4.4 This contract will be subject to a Mandatory Standstill Period and award will therefore take place in mid-April, thereby allowing two and a half months for any required induction before the first contract goes live on 27 June 2022.

5. Other Implications

Implication	Yes*/No
Will further decisions be required by another committee/full authority?	Should there be a change in the individual recommended for the role of Monitoring Officer a decision will be needed.
Does the proposal raise any Resource implications?	SDNPA has sufficient resources in place to carry out the procurement exercise and as this is a recurring contract, the work is programmed
How does the proposal represent Value for Money?	Carrying out the procurement exercise ensures that key back-office functions in SDNPA are subject to open competition.
Are there any Social Value implications arising from the proposal?	There is limited scope for the inclusion of social value in the tender proposed
Have you taken regard of the South Downs National Park Authority’s equality duty as contained within the Equality Act 2010?	Yes. Equalities issues identified are addressed within the terms of the Invitation to Tender
Are there any Human Rights	No

implications arising from the proposal?	
Are there any Crime & Disorder implications arising from the proposal?	No
Are there any Health & Safety implications arising from the proposal?	No
Are there any Data Protection implications?	No
Are there any Sustainability implications based on the 5 principles set out in the SDNPA Sustainability Strategy	No

6. Risks Associated with the Proposed Decision

- 6.1 There are four well-documented risks with any procurement and those are listed as follows;
- 6.2 Commercial Risk – That either the price objectives aren't achieved up front or there are other costs that arise during the contract that diminish the overall benefits. The easiest way to mitigate this risk is to use an outcome-based specification, which will prove more resilient to changes brought about by legal (tax regime, legislation et.) or technical changes. An outcome specification is also easier for organisations to bid for and therefore should encourage more competition, which is the key to achieving price objectives.
- 6.3 Technical Risk – This concerns the difficulty in being able to specify the desired outcome and on the market being able to deliver to the specification. There is no difficulty in specifying the outcome in what is substantially a re-buy situation and the approach to tendering in lots allows maximum flexibility to bidders.
- 6.4 Performance Risk – This concerns the ability of suppliers to perform consistently over the life of the contract to deliver the planned benefits. The use of key performance indicators to measure the contractors' performance and to set targets for improvement are critical to the success of a term contract of this nature.
- 6.5 Contractual Risk – This covers factors such as the ability to remedy the shortcomings in the contractors' performance, without severely damaging the contract. Further, it can help to avoid the reliance on the contracted supplier as the contract develops. It is impossible not to rely on a contracted supplier in a contract such as this and it is important that the evaluation at the outset, in both stages, capability and award, is thorough.
- 6.6 With any Public Procurement, there are Legal Risks that must be considered and mitigated, wherever possible. Any breach of the public procurement rules, would have serious consequences, as would any possible challenge to the procurement. Independence at evaluation stage is critical to ensuring the scoring process is fair. Further, involving legal services at critical points throughout the procurement process helps to ensure procurement rules and regulations are adhered to and the risk of challenge is mitigated.

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SDNPA Consultees Chief Executive; Director of Countryside Policy and Management; Director of Planning; Chief Finance Officer; Monitoring Officer; Legal Services

External Consultees None

