

OFFICER DECISION RECORD

For staff restructures, please also complete an RA1 form to update the HR Portal. This is attached at Annex 2.

Decision Ref. No:

RE17 0060

Box 1

DIRECTORATE: Regeneration and Environment

DATE: 16/03/17

Contact Name: Richard J Smith

Tel. No.: 01302 862514

Subject Matter: Funding required to procure external legal support for the recruitment and contracting with an energy company partner who will deliver the Council's new energy supply offer to residents and businesses.

Box 2

DECISION TAKEN:

To allocate £17k from the Service Transformation Fund for external legal support to procure and contract with an energy company to deliver a white label energy supply offer to Doncaster residents and businesses and for advice in relation to the retail energy market.

The Council has its own framework for the appointment of external legal support.

Box 3

REASON FOR THE DECISION:

Give relevant background information

A decision was taken by Cabinet in June 2016 for the Council to procure the services of a fully licenced energy company who could provide the Council with an opportunity to operate a 'white label' partnership.

The objectives of the partnership would help the Council:

- a) Provide a better energy deal for residents
- b) Make sure the energy deal is suitable for residents
- c) Help residents understand their energy usage
- d) Help residents reduce their energy usage
- e) Understand our residents are better off as a result

External legal support was required for the following reasons:

- a) a) For specialist advice relating to the retail energy market and the Concessions Regulations 2016
- b) Assistance with contract negotiations
- c) Drafting and final production of the contract between Doncaster Council and Robin Hood Energy Limited

As per the recommendations of the cabinet report, an open tender process was undertaken for which a single compliant bid was received. The tender and contracting negotiations would be supported by Trowers and Hamblins solicitors.

Trowers and Hamlin were chosen, from the Council's legal framework, as the most suitable company to support the procurement and contracting process. They were one of three companies the Council sought quotes from.

The quote from Trowers was deemed to be the best in terms of price and provided a flexible approach to tailor the advice to the needs of the Council, taking into account some work would also be undertaken by our own procurement team and in-house solicitors.

The advice and support would include:

- Review of the tendered contract and production of a report on compliance with the Minimum Requirements. This also includes the production of the Minimum Requirements document
- Negotiation with the preferred bidder. This involves reviewing comments and making amendments to the contract.
- Finalising the contract

Box 4

OPTIONS CONSIDERED & REASONS FOR RECOMMENDED OPTION:

If other options were considered, please specify and give reasons for recommended option

Option 1 – Use in-house solicitors

Although this option would almost always be the first choice, the Council does not employ solicitors who specialise in the retail energy market. If the Council did not consider these matters to their full extent, there could be a risk of challenge to the procurement process and the resulting contract.

Option 2 – Use external solicitors

The requirement to consider the concessions regulations 2016 and retail energy market rules around white label contracts necessitated the need to procure specialist advice.

The use of external solicitors enables the Council to acquire a stronger position contractually and enables the process to be fast tracked, which benefits both the customer (the Council) and the bidder, reducing what could have resulted in a lengthy and more expensive procurement process.

Box 5

LEGAL IMPLICATIONS:

Section 1 of the Localism Act 2011 provides the Council with a general power of competence, allowing the Council to do anything that individuals generally may do. Section 111 of the Local Government Act 1972 gives the Council the power to purchase goods and services.

The report author has advised that the appointment will be made using the Council's framework for legal services. Frameworks are arrangements set up in accordance with EU procurement rules, which will allow the Council to purchase the services without the need to run a separate tender.

The Council must adhere to strict compliance with the rules of the framework if this procurement is to be compliant with EU Regulations.

Following contract signature, the project manager should be completely familiar with the contractual terms in order to protect the interests of the Council and enforce any terms as and when necessary.

Name: Nicky Dobson Signature: Date: 19th April 2017
Signature of Assistant Director of Legal and Democratic Services (or representative)

Box 6
FINANCIAL IMPLICATIONS:

The Energy Team are projected to overspend in 16/17 by around £100k and are not expecting the situation to change in 17/18.

It is envisaged that the cost of £17k for the procurement of legal support to set up the energy company partnership is funded from the Services Transformation Fund due to the overspend position.

Approval will need to be sought from both the Mayor and the Director of Finance & Corporate Services.

Name: Lynn Morrison Signature: Date: 11/04/17
Signature of Chief Financial Officer & Assistant Director - Finance
(or representative)

Box 7
HUMAN RESOURCE IMPLICATIONS:

There are no HR related IMPS for this ODR proposal.

Name: J Carter Signature: Date: 05/04/17
Signature of Assistant Director of Human Resources and Communications (or representative)

Box 8
PROCUREMENT IMPLICATIONS:

The appointment of the external solicitors was commissioned through the Councils existing framework agreement for the provision of external legal consultants.
The use of this agreement meets the Councils contract procedure rules and therefore offered a compliant route to market.

Name: S Duffield Signature: Date: 19/04/17
Signature of Assistant Director of Finance & Performance
(or representative)

Box 9

ICT IMPLICATIONS:

There are no direct ICT implications in relation to the allocation of funding to procure external legal support. ICT implications relating to the delivery of a white label energy supply offer to Doncaster residents and businesses have been previously provided, together with contract wording in relation to the provision of online portals to be embedded in the DMBC website.

Name: Peter Ward (ICT Strategy Programme Manager)

Signature: P. Ward

Date: 06/04/17

Signature of Assistant Director of Customers, Digital & ICT (or representative)

Box 10

ASSET IMPLICATIONS:

There are no implications arising from the recommendations of this report that impact on the use of DMBC assets.

Name: Gillian Fairbrother (Assets Manager, Project Co-ordinator)

Signature: By email

Date: 5th April, 2017

**Signature of Assistant Director of Trading Services and Assets
(or representative)**

Box 11

RISK IMPLICATIONS:

To be completed by the report author

- The Council does not employ solicitors who specialise in concession regulations or the retail energy market. If the Council did not consider these matters to their full extent, there could be a risk of challenge to the procurement process and the resulting contract.
 - External solicitors will therefore be recruited to support the procurement and contracting process.

(Explain the impact of not taking this decision and in the case of capital schemes, any risks associated with the delivery of the project)

Box 12

EQUALITY IMPLICATIONS:

To be completed by the report author

There are no equality implications associated with taking this decision.

Name: Richard J Smith
(Report author)

Signature: Richard J Smith

Date: 31/3/2017

Box 13

CONSULTATION

Officers

(In addition to Finance, Legal and Human Resource implications and Procurement implications where necessary, please list below any other teams consulted on this decision, together with their comments)

Adrian Pickersgill – Head of Commercial Services

Dave Wilkinson – Assistant Director of Traded Services and Assets

Steve Mawson – Chief Financial Officer & Assistant Director - Finance

Scott Fawcus – Assistant Director – Legal & Democratic Services

Members

Under the Scheme of delegation, officers are responsible for day to day operational matters as well as implementing decisions that have been taken by Council, Cabinet, Committee or individual Cabinet members. Further consultation with Members is not ordinarily required. However, where an ODR relates to a matter which has significant policy, service or operational implications or is known to be politically sensitive, the officer shall first consult with the appropriate Cabinet Member before exercising the delegated powers. In appropriate cases, officers will also need to consult with the Chair of Council, Committee Chairs or the Chair of an Overview and Scrutiny Panel as required. Officers shall also ensure that local Members are kept informed of matters affecting their Wards.

Please list any comments from Members below:

Box 14

INFORMATION NOT FOR PUBLICATION:

It is in the public's interest to be aware of this decision record under the Freedom of Information Act 2000, therefore this decision will be published in full, redacting only signatures.

Name: Joan L'Amie

Signature: Joan L'Amie

Date: 19th April 2017

Signature of FOI Lead Officer for service area where ODR originates

Box 15

Signed: D Wilkinson
Director/Assistant Director

Date: 25 April 2017

Signed: S Mawson
Additional Signature of Chief Financial Officer or nominated representative for
Capital decisions.

Date: 20 April 2017

Signed: R Jones
Signature of Mayor or relevant Cabinet Member consulted on the above decision
(if required).

Date: 19 April 2017

- **This decision can be implemented immediately unless it relates to a Capital Scheme that requires the approval of Cabinet. All Cabinet decisions are subject to call in.**
- **A record of this decision should be kept by the relevant Director's PA for accountability and published on the Council's website.**
- **A copy of this decision should be sent to the originating Directorate's FOI Lead Officer to consider 'information not for publication' prior to being published on the Council's website.**
- **A PDF copy of the signed decision record should be e-mailed to the LA Democratic Services mailbox**