

CABINET

18 September 2018

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| Title: Procurement of Electricity and Gas Supply Contract | |
| Report of the Cabinet Member for Finance, Performance and Core Services | |
| Open Report | For Decision: Yes |
| Wards Affected: None | Key Decision: No |
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| Accountable Director: Robert Overall – Director of My Place | |
| Accountable Strategic Leadership Director: Claire Symonds, Chief Operating Officer | |
| Summary: This report seeks approval to appoint a specialist energy procurement broker to provide expert, independent advice to help the Council procure gas and electricity on terms that are the most economically advantageous and support the Council's renewable energy opportunities. The Council currently purchases its gas and electricity through LASER (a company owned by Kent County Council, which procures energy on behalf of local authorities). LASER has negotiated a new energy supply contract which will come into effect on 1 st October 2020. Existing customers of LASER are required to confirm their intention to renew their contract before 30 th September 2018, as the current agreement with LASER requires 24 months' notice of termination. | |
| Recommendation(s) The Cabinet is recommended to: (i) Approve the appointment of LASER as the Council's broker to procure gas and electricity supplies in accordance with the procurement strategy set out in the report; and (ii) Authorise the Chief Operating Officer, in consultation with the Cabinet Member for Finance, Performance and Core Services and the Director of Law and Governance, to finalise any specific terms of the contract, choose the appropriate framework with LASER, enter into the call-off contract under the framework agreement, and do all things necessary to facilitate the execution, implementation and operation of the contract, including any extension agreement to comply with the Authority's agreed procurement and management. | |

Reason(s)

To assist the Council in achieving its corporate priorities by securing cost effective energy supplies on terms that will support the Council's economic development and renewable energy generation objectives.

1. Introduction and Background

- 1.1 Gas and electricity market prices are highly volatile. Market price movements of more than 10% in a week are not unprecedented. Purchasing all energy requirements on a single day therefore carries the risk of buying when energy market prices are high, with a potentially significant associated budget risk. To spread market price risk and to avoid buying during periods of peak market pricing, the Pan Government Energy Project recommended that "all public-sector organisations adopt aggregated, flexible and risk-managed energy procurement" as provided by LASER.
- 1.2 To maintain an effective risk-management approach, LASER recommend a minimum of a two-year window to complete future flexible energy purchases.
- 1.3 Currently the contract for the supply of electricity and gas (including associated services) is with LASER (a company wholly owned by Kent County Council that procures energy on behalf of local authorities). The current annual value of this contract is £6.8m. Unless renewed by the Council the contract will expire on 30th September 2020.
- 1.4 LASER have procured a new gas and electricity supply Framework under which they will supply energy to customers for the period 1st October 2020 to 30th September 2024. LASER require existing customers to confirm their intention to renew their contract by 30th September 2018. This will allow LASER to purchase energy supplies from October 2018 (potentially locking in relatively low energy costs) in advance of supplying energy to customers from October 2020.
- 1.5 Under this contract, the Council's gas and electricity is bought through a Purchase within Advance mechanism for defined service periods. This means that LASER procures all of the Council's gas and electricity requirements before the service period, potentially enabling cost savings to be made.

2. Proposed Procurement Strategy

- 2.1 **Outline specification of the works, goods or services being procured**
The preferred solution is to appointment LASER as the Council's energy broker. Such an appointment will provide the Council with expertise required to procure the Council's energy supplies on the most economically advantageous terms.
- 2.2 **Estimated Contract Value, including the value of any uplift or extension period**
The annual value of the overall contact is approximately £6,800,000 (based on 2017-18 October prices).

Initial term (2 years) - £13,600,000

Initial term + 1-year extension period - £20,400,000

Full term 2 years + 2-year extension period - £27,200,000

2.3 Duration of the contract, including any options for extension

The initial term is for a period of two years with the potential to extend by a further two years in a 12-month period. The maximum contract term would be four years.

2.4 Recommended procurement procedure and reasons for the recommendation

The recommendation is that we procure the LASER Fully Managed Purchase in Advance option. This offering has consistently performed well during our current contact and provides the lowest risk option for the Council.

2.5 The contract delivery methodology and documentation to be adopted.

Appointment of LASER as the Council's energy broker and utilise their purchasing frameworks procure energy at the most commercially advantageous price.

2.6 Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract

The main objectives of the procurement process are to ensure that the Council obtains:

- Market leading expertise: The Council has access to expertise to support the procurement and purchase of energy on competitive terms;
- External energy purchase processes: are supported by robust Contract and Customer management tools and processes to ensure the service is provided and maintained to the standards required by the Council;
- Utilities savings: proposals are supported by clear energy cost price mitigation strategy making full use of the mechanisms available within energy markets.

2.7 Criteria against which the tenderers are to be selected and contract is to be awarded

An options appraisal has been undertaken and the most cost-effective and lowest risk option to the Council is to procure the LASER Fully Managed Purchase in Advance contract. This will be procured through the LASER Framework.

2.8 How the procurement will address and implement the Council's Social Value policies

The procurement proposals in this report are intended to secure the procurement and purchase of electricity and gas supplies on terms that will help support long-term financial sustainability and economic development.

If the procurement objectives are achieved, then LASER will supply the Council with energy on cost effective terms, they will also help support development of the Council's energy efficiency and renewable energy opportunities for the economic benefit of the area.

3. Options Appraisal

3.1 The table below summarises the options that have been considered to achieve the objectives set out above. The preferred option is indicated.

| Option | Description | Assessment |
|---|--|--|
| LASER – Fully Managed <i>(continue existing contract arrangements)</i> <u>This is the Preferred Option</u> | <ul style="list-style-type: none"> • EU Compliant • Reduces time spent on procurement process • Pre-agreed terms and conditions | <ul style="list-style-type: none"> • No onboarding time as they are fully conversant with the Councils energy requirements and portfolio • Current framework has delivered savings by purchasing energy at well below the market average |
| LASER Procurement only (POSO) | <ul style="list-style-type: none"> • EU Compliant • Reduces time spent on procurement process • Pre-agreed terms and conditions | <ul style="list-style-type: none"> • Procurement only service would mean we would need to recruit more staff internally to deliver the service |
| Crown Commercial Services POSO only <i>(tender to the Government framework)</i> | <ul style="list-style-type: none"> • EU Compliant • Single Supplier for Gas • Single Supplier for Electricity • Reduces time spent on procurement process • Pre-agreed terms and conditions | <ul style="list-style-type: none"> • Lower management fees than LASER • No managed service provision so more staff would need to be recruited internally |
| Direct to Big 6 POSO only <i>(tender to main UK energy suppliers)</i> | <ul style="list-style-type: none"> • Single Supplier for Gas • Single Supplier for Electricity • Non-Compliant with EU Legislation • Restrictive Market that may not yield the required financial benefits | <ul style="list-style-type: none"> • As above |
| Collaborate with another organisation or authority (not LASER or CCS) | <ul style="list-style-type: none"> • Increased procurement time • Multiple Suppliers available • Need to agree terms and conditions | <ul style="list-style-type: none"> • All other London Authorities purchase through existing frameworks • In-house skills gap is a high-risk element |
| Open Tender Process to appoint a Broker | <ul style="list-style-type: none"> • EU Compliant • Varying and Multiple risk profiles available • Broker procures on behalf of the Council | <ul style="list-style-type: none"> • In-house skills gap is a high-risk element |

4. Waiver

4.1 Not applicable.

5 Equalities and other Customer Impact

5.1 Successful re-procurement of the Council's energy supplies will help to protect services by constraining energy cost price increases.

- 5.2 Due the complexities of buying energy on the open market the Council has been unable to complete a Section 20 consultation which is required as part of the Landlord and Tenant Act 1985.
- 5.3 To mitigate this risk, it has been agreed that the Landlord Customer Services team will bear the cost for any leaseholders that breach the £100.00 threshold for a period of two years. During this period Council would seek to obtain a dispensation and would then look to enter into a new contract. The Council will seek to recover the appropriate uncapped proportion of the cost from leaseholders for their utilities from thereon in.
- 5.4 The consultation process with schools has already begun.

6. Other Considerations and Implications

6.1 Risk and Risk Management

Do Nothing

- 6.1.1 In the event that the Council was to do nothing and let the service contract expire, from 1st October 2020 the Council would transfer from contracted market rates to out of contract rates. This would have a significant financial impact on the Council due to the out of contract rates being heavily inflated when compared to the contracted market rates.
- 6.1.2 To mitigate this risk, it is proposed that the Council will contract with LASER for the provision of the service in line with the recommendations as set out in this paper.

Not to agree or award the recommended route to market until expiry.

- 6.1.3 In the event that the Council does not award or agree the route to market until, or until close to the expiry of the existing service period, the risk to the Council is that the market rates at which gas and electricity would have to be purchased may be higher than those available if an early decision had been made. The wholesale market price has risen steadily since 2012 and the forecast is that the costs will further increase. Energy prices are dependent on any disruptions in the supply chain such as adverse weather or conflict.

7. Consultation

- 7.1 All relevant officers have been consulted and authorisation obtained. The proposals within this report were also endorsed by the Procurement Board at its meeting on 20 August 2018.

8. Corporate Procurement

Implications completed by: Euan Beales, Head of Procurement

- 8.1 The report recommends using a framework as the route to market, under EU Legislation this would be a compliant route as the main process would have been compliantly procured.

- 8.2 The second part of the process would be to mini compete the Councils requirements with the suppliers who have been awarded onto the framework, at the time of this report it is not known if this will be directly with KCC LASER or the London Energy Project, both parties would conduct this process on the Councils behalf, again this mitigates the risk to the Council in terms of non-compliance with process.
- 8.3 The recommendations made offer the Council value in terms of achieving below average market costs and ensures the staffing levels required by the Council comply to the structures.

9. Financial Implications

Implications completed by: Katherine Heffernan, Group Manager – Service Finance

- 9.1 The Council consumes significant amounts of energy. The costs of gas and electricity are predicted to continue to rise significantly above the level of general inflation.
- 9.2 It is important that the Council adopts a robust energy procurement strategy as set out in this report. This should provide the Council with the mechanisms and expertise to secure energy on acceptable terms by adopting an appropriate balance between forward purchasing (to achieve price certainty) and the potential to take advantage of short-term energy price movements where this is in the Council's financial interest. To achieve this the Council will need to be supported by expert external advice, purchasing expertise and skills transfer
- 9.3 It is considered that the preferred recommendation in this report meets these objectives and is consistent with decisions around energy procurement strategy taken over the past decade.
- 9.4 It is worth noting that the total annual value of the recommended LASER Fully Managed Service contact is expected to cost the Council approximately £6.80m (compared to £6.48m in 2015) or £27.2m over the 4-year contract period. These are paid for from premises budgets across the Council's departments and are currently fully funded.
- 9.5 The procurement only options are only estimated to cost the Council £60k-£80k per annum less, meaning the additional staff costs to support this would make the whole energy strategy more expensive. Furthermore, this would be a departure from LBBB's current commissioning strategy.

10. Legal Implications

Implications completed by: Ian Chisnell, Lawyer

- 10.1 The Power to enter into these arrangements is contained in s1 of the Localism Act 2011 (the general power of competence).
- 10.2 As the services to be procured are valued at over £6m the Council is required to comply with the Public Contracts Regulations 2015 and procure through a tender

advertised in OJEU or procure from an OJEU compliant framework, which is what is proposed in the report.

- 10.3 The value of the contract means that under the Council's constitution this is a Key Decision.
- 10.4 In respect of leaseholders of the Council there is a requirement to consult them where the Council enters into a long-term qualifying agreement for the provision of services under the provisions of s20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003. This agreement will qualify as it is intended to award a contract with a potential duration of more than 12 months. If the Council does not consult it cannot recover more than £100 per leaseholder for the provision of the service. The Council can apply to the First Tier Tribunal to waive these requirements under the legislation and it is proposed to do so for the next procurement. The current timeframes do not permit the Council to make the application to the First Tier Tribunal and get a decision.

Public Background Papers Used in the Preparation of the Report: None

List of appendices: None