

## REPORT TO THE CHIEF EXECUTIVE

29 March 2012

<b>Title:</b> Procurement of Electricity and Gas Supplies	
<b>Report of the Corporate Director of Finance and Resources</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> None	<b>Key Decision:</b> No
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<b>Accountable Divisional Director:</b> Not Applicable	
<b>Accountable Director:</b> Tracie Evans, Corporate Director of Finance and Resources	
<p><b>Summary:</b></p> <p>The current contract for the provision of management and purchase of Electricity and Gas will expire on 30 September 2012 and upon expiration will leave the Council without contractual coverage, and open to potential commercial and financial risk.</p> <p>This report details the required actions to ensure a compliant route to market is provided for the purchase of the Council's Electricity and Gas services and to also appoint a professional management and procurement service.</p> <p>Key Timelines are:</p> <ul style="list-style-type: none"> <li>• Procurement route to market is required by 31 March 2012.</li> <li>• Access agreement for LASER to conduct the procurement by 31 March 2012 (to become effective 1 October 2012 to 30 September 2016).</li> <li>• Commencement of Utilities supplies agreements with LASER 1 October 2012 to 30 September 2016.</li> <li>• Commencement of Service Level Agreement with LASER 1 October 2012 to 30 September 2016.</li> </ul>	
<p><b>Recommendation(s)</b></p> <p>The urgent action required is to agree:</p> <ol style="list-style-type: none"> <li>(i) The appointment of LASER (Kent County Council's Utilities division) as the Council's professional Electricity and Gas procurement provider / broker;</li> <li>(ii) To enter into a four year agreement with LASER for the provision of the management</li> </ol>	

and procurement services for Electricity and Gas to become effective on the 1 October 2012;

- (iii) To adopt the Purchase Within Period (PWP) procurement route to market, which would provide the Council with value for money in a fluctuating market; and
- (iv) That a bill validation audit is conducted in relation to the previous utilities service to ensure the Council had paid the correct amounts; and
- (v) That an application for dispensation from the Section 20 consultation requirements be made to the Leasehold Valuation Tribunal.

### **Reason(s)**

To ensure the provision of the services are compliant with EU Procurement legislation and the Council's procurement rules.

To enable the Council to access market competitive prices throughout the purchasing period, with the ability to hedge the volumes purchased on a daily basis.

## **1. Introduction and Background**

1.1 On 10 March 2009 a report was submitted by the then Head of Procurement) requesting Members to approve:-

- The appointment of LASER to continue as the Council's agent for the purchase of its energy supplies.
- The adoption of a "fully flexible purchasing with variable price" for all its gas and electricity energy requirements for the next four years, subject to officers agreeing a risk management strategy and service level agreement with LASER.
- The delegation of authority to LASER to make day to day energy buying decisions on the Council's behalf in line with the agreed risk management strategy.

All of the above recommendations were approved at the Cabinet Meeting held on the 10 March 2009.

1.2 Due to a Council oversight, the actual expiry date of the Kent County Council (LASER) and the Utilities contract is 30 September 2012 and not the 30 September 2013 as expected.

1.3 In addition the procurement route to market currently being conducted on behalf of the Council is PIA ('Price In Advance' or fixed annual pricing) not PWP ('Purchase Within Period' or fully flexible purchase) as previously approved.

## **2. Proposal and Issues**

2.1 It is proposed that the Council agrees to the implementation of the following:

### **Procurement Process for Utilities**

There are two options for the purchase (route to market) of the Council's utilities as follows:

#### **1. PWP (Purchase Within Period) or Fully Flexible Purchasing:**

The Council's utilities would be purchased in two segments. Firstly in advance of the supply period (the exact percentage would be determined by LASER) and secondly throughout the supply period. At the end of the supply period (or 2 x 6 month periods) a reconciliation of the account would be conducted and either a credit or debit raised at the end of the supply period. Utilities could also be forward purchased at this stage for periods up to 2016. This is the recommended route for the Council to approve.

#### **2. PIA (Price In Advance):**

The Council's utilities would be purchased by LASER from 1 April until 31 August, the price obtained would then be fixed for the annual period of supply. This option allows the Council to set its budget for the following 12 month period, however as the price is fixed the Council would not benefit if during the 12 month supply period the costs decreased, this is also the case if the costs rise during the supply period. Utilities could also be forward purchased at this stage for periods up to 2016.

### **Preferred Broker/Agent**

Kent County Council via LASER has provided a high level of service for a number of years and it is recommended that the continuance of service is maintained.

To change Brokers/Agents at this stage would potentially expose the Council to financial and commercial risk, due to the scale of information required to be transferred and interpreted. It is recommended that the service provision continues with LASER.

### **Contract Period**

The contract period for the Service Level Agreement with LASER and the Tripartite agreements with the utilities suppliers will be from 1 October 2012 until 30 September 2016.

The Bill Validation Audit would be initiated early May 2012 to validate sums paid for the services provided under the previous 3 year agreement.

## **3. Options Appraisal**

3.1 Three options have been identified as potential routes to market for the Council, which are as follows:

- (i) Eastern Shires Purchasing Organisation (ESPO) Framework. The current framework expires 30 September 2012, and is in the process of being re-tendered. It is expected that a new framework will be in place, but this would not allow the Council to conduct a process and obtain indicative pricing to enable a comparison.
- (ii) Government Procurement Service (GPS) offers a utilities procurement service. Again, the timescales would not allow the Council sufficient time to agree on its preferred route to market as for October purchases would only be allowed on a fixed price tariff. In addition a vast amount of data will need to be issued, validated and approved by both the GPS and their energy providers.
- (iii) Kent County Council (LASER). This route to market is open and accessible, with a minimum of disruption and risk. The framework allows for the Council to continue its service provision as part of a complaint process.

#### **4. Consultation**

- 4.1 Discussions have been ongoing with representatives of LASER and Council Officers.

#### **5. Financial Implications**

Implications completed by: Jo Moore, Finance Group Manager

- 5.1 The Authority spends around £3.5m per year on gas and electricity consumption and therefore a stable and predictable pricing structure for energy procurement is essential.
- 5.2 Time constraints have meant that a full procurement exercise could not be undertaken. There a number of different energy brokers/agents in the market place, however, a full procurement process would take around 9 months and this would mean that the existing agreement with LASER would expire before any new agreement could be put in place.
- 5.3 We will not be able to test whether of the three options, the LASER route represents the best value for money for the Authority in terms of a brokerage cost, however, under the circumstances, it will maintain compliance with EU Procurement Rules and give protection against the considerable energy price increases which would be incurred if the current flexible price agreement is allowed to expire.

#### **6. Legal Implications**

Implications completed by: Antonia Asielue on behalf of Eldred Taylor-Camara, Legal Group Manager

- 6.1 The Council's electricity and gas requirements are currently procured via a Framework Agreement established by Kent County Council's Energy buying Group (LASER) and Eastern Shires Purchasing Organisation (ESPO) on behalf of other UK public bodies.

- 6.2 The current arrangement, and indeed the overarching Framework Agreement, are due to expire on 30 September 2012.
- 6.3 In anticipation of expiry of the Framework Agreement, LASER and ESPO have tendered a replacement Framework Agreement in Europe, on behalf of UK public bodies.
- 6.4 Public bodies intending to procure their electricity and gas requirements via the new Framework Agreement will however need to confirm this intention to LASER/ ESPO by 31 March 2012.
- 6.5 This report is therefore seeking urgent approval of the proposal to procure the Council's its electricity and gas requirements via the new Framework Agreement tendered LASER and ESPO, upon expiry of the current contract.
- 6.6 The Legal Practice has been involved in the review of the proposed Framework Terms and Conditions and other related contractual documentation and confirms that the proposed procurement via the Framework Agreement complies with the Council's Contract Rules and with the EU public procurement regulations.
- 6.7 Fresh consultation under Section 20 of the Landlord and Tenant Act 1985 will be required to be undertaken with leaseholders if the Council is to be able to legally recover contributions towards electricity and gas costs from leaseholders.
- 6.8 However, officers have indicated that due to time constraints, it will not be possible to meet the notice periods required under Section 20, and it has been proposed that an application for dispensation from the Section 20 consultation requirements will be made to the Leasehold Valuation Tribunal.
- 6.9 The Leasehold Valuation Tribunal has the power to determine to grant a dispensation in respect of section 20 consultation requirements, in appropriate cases.

## **7. Other Implications**

- 7.1 **Risk Management** - There are a number of risks associated with this project as follows:
- The Council fails to agree its utilities procurement route prior to 31 March 2012, which would lead to the Council being placed on standard tariffs from the 1 October 2012 for its Gas and Electricity Non Half Hourly and unmetered supplies (increase and fluctuating cost) and from 1 November 2012 for its Electricity Half Hourly supply (increased and fluctuating cost).
  - Utilities costs increase (by default to standard tariffs) on expiry of the current contract (30 September 2012).
  - The Council fails to agree to access the Kent County Council (LASER) utilities framework, which would leave the Council in breach of EU Procurement Rules. The minimum timescales required to conduct a full OJEU procurement would be 9 months (December 2012 as a minimum).  
(Note: The above would also impact on the Council's leaseholders.

To mitigate this risk it is advised that the Council enters into a new four year agreement with Kent County Council (LASER), which will enable to Council to access competitive market rates.

- 7.2 **Contractual Issues** - The services will be covered by tripartite agreements between Kent County Council (LASER), London Borough of Barking and Dagenham and the Utilities provider
- 7.3 **Customer Impact** - There should be minimal impact in the provision of this service on the Councils customers, but it should be noted that a Section 20 Ruling Dispensation application should be made to the Leasehold Valuation Tribunal.
- 7.4 **Property / Asset Issues** - It will be the responsibility of the Council to keep the utilities providers and Kent County Council (LASER) up to date with all changes which affect the ownership of premises i.e. the Council builds or purchases new property or sells or relinquishes ownership of land. Failure to do so may result in Council having to pay for services it or its residents have not received.

**Background Papers Used in the Preparation of the Report:**

“Procurement of Electricity and Gas Supplies” report, Cabinet 10 March 2009 (Minute 152)

**List of appendices:**

None