

## CABINET

18 December 2019

<b>Title:</b> Supply of Electricity through Cyclo Meters to Residential Properties	
<b>Report of the Cabinet Member for Regeneration and Social Housing</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> No
<b>Report Author:</b> Victoria Lawal Senior Contracts & Procurement Officer	<b>Contact Details:</b> Tel: 0208 7243492 E-mail: <a href="mailto:Victoria.lawal@lbbd.gov.uk">Victoria.lawal@lbbd.gov.uk</a>
<b>Accountable Director:</b> Robert Overall, Director, My Place	
<b>Accountable Strategic Leadership Director:</b> Claire Symonds, Chief Operating Officer	
<b>Summary:</b> <p>The Council currently purchases its electricity from EDF Energy for those Council high-rise flats that are served by Cyclo heating known as "Cyclocontrol". The meters were the only option available at that time (circa 1990's) which met fire regulations. Due to the age and makeup of the Cyclo meters and the control panels, EDF energy is relied upon as competition is absent in the market.</p> <p>The previous contract with EDF Energy ended on 30 September 2019. A six-month waiver arrangement was agreed to allow EDF to continue to provide the service at a contracted rate. That arrangement will end on 31 March 2020.</p> <p>The market is deemed to be serviced by a single provider and as such unless you commission the services directly you will need to pay a third party to procure and contract manage the requirements.</p> <p>An assessment has been carried out to identify if there are any suitable and accessible frameworks, if an open market procurement or to keep the status quo.</p> <p>The report seeks Cabinet approval to enter into an agreement with the North East Purchasing Organisation (NEPO) as the Council's Managing Agent and to use their Energy framework to procure EDF directly on a fixed term fixed costs basis.</p>	
<b>Recommendation(s)</b>	
The Cabinet is recommended to:	
(i) Agree that the Council proceeds with the procurement of a direct contract with EDF for the supply of electricity through Cyclo meters to relevant LBBD residential properties, via the North East Purchasing Organisation (NEPO) framework, in accordance with the strategy set out in the report; and	

- (ii) Delegate authority to the Chief Operating Officer, in consultation with the Cabinet Member for Regeneration and Social Housing, the Director of Law and Governance and Director of My Place, to enter into the contract(s) and all other necessary or ancillary agreements with the appointed supplier.

**Reason(s)**

The main driver is to ensure that the residents receive and continue to receive heat in the outlined properties including support from the provider and to assist in achieving the Council priority of “A New Kind of Council” through achieving best value through procurement.

**1. Introduction and Background**

- 1.1 The Council currently has Cyclo heating (also known as 'Cyclo-control') supplies installed at various blocks across the borough. Cyclo meters were installed in estate blocks which were within the old London Electricity Board region.
- 1.2 The meters were installed by EDF when the blocks were built. EDF systems are used to provide heating and hot water to each flat; the leaseholders and tenants are then recharged for the energy that they have used.
- 1.3 The last contract with EDF ended on 30th September 2019. A waiver has been put in place for 6 months from the 1 October 2019 to 31 March 2020 to enable a view of the market to be formed.
- 1.4 EDF as the current provider offers LBBB a contract with fully fixed prices over an agreed fixed period of supply and no volume tolerance restrictions, EDF charge LBBB the same unit rate for all energy used in the properties.
- 1.5 As EDF is the current sole provider in the market, it will be necessary to award through a compliant process in terms of the Councils Contract Rules and EU Legislation.
- 1.6 Soft market testing has outlined that although there are a number of accessible frameworks such as Crown Commercial Services (CCS), Yorkshire Purchasing Organisation (YPO) and Eastern Shires Purchasing Organisation (ESPO), the only one that could provide the Councils requirements was NEPO.
- 1.7 The other main route to market would be to procure in the open market through an Open process under EU Legislation, although this route would enable access directly to EDF, the number of ancillary brokers that would look to exploit the lack of supply options and would look to act as the managing agent. The risks would be that this market is fairly uncensored and there would not be a guarantee that the service will meet the Councils requirements or the cost requirements to support this route to market.

## **2. Proposed Procurement Strategy**

### **2.1 Outline specification of the works, goods or services being procured**

2.1.1 We are looking to procure for electricity supply for LBBD high tower blocks that has cyclo system installed. We are unable to change the system as these tower blocks are due to be demolished with current regeneration programme and to do so would not be economical for the Council or the Tenants.

2.1.2 As part of the service the Council will require the Managing Agent to offer:

- Consolidated Billing including upload files

### **2.2 Estimated Contract Value, including the value of any uplift or extension period**

2.2.1 The forecasted annual spend for the service is circa £711,000, this is based on existing data provided by EDF. The cost for the initial term of 12 months would be £711,000 and to an estimated full contract lifecycle cost of £2.2m (over the full 3 years) (Note: this may reduce in the event that the Capital Programme removes the service requirements through regeneration or demolition of the agreed properties).

### **2.3 Duration of the contract, including any options for extension**

2.3.1 Three years (1 + 1 + 1)

Initial term – 1 year

Extension period – 1 + 1

2.4 **Is the contract subject to (a) the (EU) Public Contracts Regulations 2015 or (b) Concession Contracts Regulations 2016? If Yes to (a) and contract is for services, are the services for social, health, education or other services subject to the Light Touch Regime?**

2.4.1 Yes, this is covered by the (EU) Public Contracts Regulations 2015

### **2.5 Recommended procurement procedure and reasons for the recommendation**

2.5.1 The recommended route to market is a direct award from the NEPO Framework reference NEPO301, the summary is as follows:

REFERENCE: NEPO301

START DATE: 01/04/2019

CURRENT END DATE: 31/03/2023

FINAL END DATE SUBJECT TO EXTENSION(S): 31/03/2025

CONTRACT AWARD NOTICE: 2018/S 145-331752

SUPPLIERS: EDF Energy

The framework allows for the Council to request the supply of Electricity on a fixed period and fixed cost basis.

The reason for this route to market is as follows:

- Allows access to Local Government bodies
- Allows for fixed cost and fixed term models
- Offers EDF as the provider of the service, which reduces risk to the Council as NEPO are a recognized Public Sector Body
- The Managing Agents costs are built into the final utilities costs and are competitive and offer the Council non cashable benefit against the costs of procuring in the open market
- Allows for consolidated billing and upload files, which will enable resource efficiencies in the back-office operation
- Allows for continuation of support from EDF to the blocks with an age increasing heating system
- Offers an EU compliant route to market

## **2.6 The contract delivery methodology and documentation to be adopted**

2.6.1 The terms and conditions of engagement will be those as set out by NEPO as part of the onboarding and price offer process. To ensure commercial risk is mitigated terms and conditions will be reviewed by LBBD's legal team.

## **2.7 Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract**

2.7.1 There are 2 main efficiencies that will be expected through this contract they are as follows:

- Consolidated billing and upload files, will reduce the time taken in the back office to review, validate, process and pay the monthly invoices, and will give greater transparency with the consolidated view.
- Price certainty for the Council and the Tenants on an annual basis, which will enable more accurate forecasting of income and expenditure.

2.7.2 By agreeing a fixed price for a fixed 12-month period may offer a small cashable benefit, but this will not be able to be calculated until the end of each service period.

## **2.8 Criteria against which the tenderers are to be selected and contract is to be awarded**

2.8.1 There will not be any selection criteria as the service will be contracted directly to EDF under the terms of service as outlined by NEPO

## **2.9 How the procurement will address and implement the Council's Social Value policies**

2.9.1 The procurement proposals in this report are intended to secure the provision of electricity supplies through Cyclo meters on terms that will help support long-term financial sustainability. If the procurement objectives are achieved, the appointed supplier will continue to supply energy to the Council's 682 supplies on cost effective terms.

## 2.10 Contract Management methodology to be adopted

2.10.1 It is proposed to conduct Weekly contact with EDF during the implementation stage, and Monthly with NEPO.

After the implementation the meetings with EDF can revert to monthly and NEPO to Quarterly unless any urgent requirements arise.

## 3. Options Appraisal

3.1 **Option one:** Do nothing – This option has been rejected as if nothing is done after the expiry of the waiver, the Authority will no longer be in contract, which will result in market rates being applied, these are normally significantly higher than the contracted rates, and this process would also be non-compliant with current EU legislation

3.2 **Option two** - To procure a new contract via open market tender process. This option has been rejected as although the most likely supplier will be EDF, the credibility of the Managing Agent cannot be guaranteed. In addition, the fees level may exceed the financial budget of the Council as the quality cost ratio may mean that the costs increase

3.3 **Options three** – Alternative frameworks which may be able to meet the Council's requirement. This option has been rejected as there are no suitable alternative frameworks that offer the Council's requirements at the time of this report.

The following frameworks were reviewed and discounted;

- Crown Commercial Services RM3791 Electricity framework – they have a single provider in British Gas with the contract being valid from 31/07/2017 to 30/07/2020
- ESPO 191\_20 Electricity framework for supplies 2020-2024 – This is a single provider framework and is serviced by Total Gas and Power
- YPO 791 Framework for Electricity – This is a single provider service which is provided by nPower and could potentially offer a fixed period price
- NEPO can offer fixed term contracts with single provider, which is EDF, this route should be investigated fully.

## Outline timetable

Procurement Strategy Report to Procurement Board	18 November 2019
Options Appraisal / Market analysis	4 – 18 November 2019
Cabinet approval	18 December 2019
Specifications agreed	December 2019
Publish tender opportunity in OJEU, BRAVO, Contracts Finder and the LBBB website	30 December 2019

Tenders returned	27 January 2020
Tender Evaluation completed by	3 February 2020
Standstill period	21 February 2020
Possible direct award	February 2020
Award Report approved	28 February 2020
Draft and sign contract	March 2020
Contract commencement	1 April 2020

#### **4. Waiver**

- 4.1 Not applicable as the use of a pre-procured open framework is permissible under the Councils Contract Rules and EU Legislation

#### **5. Consultation**

- 5.1 Consultation has been held with the stakeholders within My Place. Also, approval has been sought from Corporate Procurement, Finance department and Legal services.
- 5.2 Report was submitted to the Director of My Place, Robert Overall. It was presented to Procurement Board sub-group on 4<sup>th</sup> November 2019 and for the approval of Procurement Board on 18<sup>th</sup> November 2019. The report is on Cabinet forward plan to be presented on 18<sup>th</sup> December 2019
- 5.3 Following consultation with the Leasehold and section 20 team, it was agreed that we will be seeking to obtain a section 20 dispensation for this contract.

#### **6. Corporate Procurement**

Implications completed by Euan Beales, Head of Procurement

- 6.1 The Councils Contract Rules require all tenders with a value in excess of £50,000 should be tendered
- 6.2 The paper has outlined that EDF is potentially the only provider in the market that can perform the service, the proposed procurement through the NEPO framework (NEPO301) complies with the Councils Contract Rules and EU legislation, and also allows continuity of supply to the designated properties.
- 6.3 The NEPO framework offers a fixed cost, fixed period solution which will give budget certainty to the Council and its Tenants.
- 6.4 The Managing Agent costs are added directly to the cost per kWh and for a managed service represent VfM against the costs to procure in the open market.
- 6.5 Based on the detail contained in this report I cannot see any valid reason not to approve the recommendations as made

## 7. Financial Implications

Implications completed by Tony McNamara, Finance Business Partner

- 7.1 It is essential that a contract is in place to protect LBBB from significant additional costs, particularly as these costs will eventually be recharged to tenants and leaseholders.
- 7.2 The cost of this will be met from the electricity budget held within My Place.

## 8. Legal Implications

Implications completed by Kayleigh Eaton, Senior Contracts and Procurement Solicitor, Law & Governance

- 8.1 This report is seeking approval to carry out market testing for the provision of electricity through Cyclo meters to LBBB residential properties. The proposed procurement being considered is estimated to have a total value above the EU threshold for supplies and service contracts. This report sets out that officers will investigate the use of available frameworks plus potentially carry out an open tender exercise. Should the market testing confirm that there are no other suppliers capable of providing the service then, the Council will look to enter into an agreement directly with EDF. Whilst the Public Contract Regulations 2015 (the "Regulations") generally require contracting authorities to put out their above-threshold contracts to advertisement and competition, there are certain instances where the Regulations entitle the Council to procure directly with providers using the negotiated procedure without publication procedure.
- 8.2 If the responsible directorate does discover an available framework or decide to conduct an open tender then the process must be conducted in accordance with the framework terms and/or the Regulations, as applicable plus the Council's Contract Rules.
- 8.3 If, following market testing, officers decide that it is necessary to enter into a direct arrangement with EDF then officers should seek advice from the legal team on which ground of the negotiated procedure without prior publication is most suitable.
- 8.4 The report author and responsible directorate are advised to keep the Law & Governance team fully informed at every stage of the process.

## 9. Other Implications

- 9.1 **Risk and Risk Management** - Risk of not having a contract will lead to non-compliance with the Council Rules, and possible financial implications. To minimize the risk, we are seeking approval to consider wider options appraisal and in the absence of competition, award the contract to EDF before expiry of the existing contract on 31<sup>st</sup> March 2020.

Risks are further mitigated by ensuring the correct levels of insurance and liability cover are held by the contractor and that Key performance indicators encourage good performance. Legal shall ensure the contract documents do not make the council liable for any issues that may arise from this service.

- 9.2 **Corporate Policy and Equality Impact** - As part of the process, supplier will be assessed for adherence to the necessary legislation and regulations. Their equality policies will be assessed to ensure they meet council requirements. Consideration will be measured regarding potential impacts of the decision/proposal in relation to the Equality Act 2010 protected characteristics.
- 9.3 **Corporate Policy and Customer Impact** – Following consultation with section 20 team, section 20 dispensation will be applicable to procure EDF. This will be on a fixed term fixed costs basis using the NEPO Energy framework. This will guarantee price certainty for the Council as well as the tenants.
- 9.4 **Property / Asset Issues** – Blocks that are due to demolished will be decommissioned by Be First in order to avoid LBBB being charged if properties are not decommissioned.

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

**List of appendices:** None