

CABINET

19 October 2021

Title: Procurement of Water Services for Corporate and Non-Domestic Council Buildings	
Report of the Cabinet Member for Finance, Performance and Core Services	
Open Report	For Decision
Wards Affected: None	Key Decision: No
Report Author: Leeann Kenny, Energy Officer	Contact Details: Tel: 07772 221550 E-mail: leeann.kenny@lbbd.gov.uk
Accountable Strategic Leadership Director: Lisa Keating, Strategic Director, My Place	
Summary: <p>The water retail market for business customers was deregulated in England from April 2017 and, to comply with Public Contracts Regulations 2015, the Council will have to procure a new water contract when our current contract expires on 30 April 2022.</p> <p>The London Energy Project (LEP) has now closed, and local authorities are having to procure new water contracts on their own. Barking and Dagenham Council is seeking to lead on a joint procurement exercise with four other local authorities to collaboratively procure a new water contract. The benefits of this are shared resources during the procurement process and approaching a framework provider as a collective to run a joint mini tender on the authorities' behalf.</p> <p>The contract term is for two years with an option to extend for a further two years, giving a total contract value of c.£2,450,000 (this is the value of the wholesale and retail costs). The water retailer purchases the water from the wholesaler and then sells this onto to the Council. The value of the wholesale component of the contract is c.£2,303,000 approximately 94% of the total contract value. These wholesale costs are passed on directly to the Council by the retailer. The value of the retail component of the contract is c.£147,000 over the term of the four-year period, which is approximately 6% of the total contract value. These are the costs that may differ from retailer to retailer and are the main subject of the proposed tender process.</p>	
Recommendation(s) <p>The Cabinet is recommended to:</p> <ul style="list-style-type: none">(i) Approve the Council's participation in the mini competition process, to be carried out by LASER, to procure a supplier to meet the Council's retail water requirements with effect from 1 May 2022, in accordance with the strategy set out in the report; and(ii) Authorise the Strategic Director, My Place, in consultation with the Cabinet Member for Finance, Performance and Core Services and the Strategic Director, Law and Governance, to finalise any specific terms of the contract with the	

preferred bidder and award and enter into the contract(s) and all other necessary or ancillary agreements to facilitate the execution, implementation, and operation of the contract, including any extension agreement.

Reason(s)

To assist the Council in meetings its priority of a “well run organisation”.

1. Introduction and Background

- 1.1 Deregulation of the retail water market aimed to introduce competition into the marketplace to encourage improvement and innovation to products and services and better value for money for the customer.
- 1.2 Retail suppliers can compete for the custom of all eligible customers. These licensed retailers are responsible for primarily invoicing, customer services and meter reading. These elements can be contracted separately or through a single retailer who will package these services along with other products such as water efficiency advice, leak detection, advanced metering etc. The value of the retail service is on average 6% of the overall water and wastewater contract value.
- 1.3 Barking & Dagenham Council are proposing a joint procurement exercise with four other local authorities through the LASER Framework Y16045. The group’s principal purpose is to use authorities’ combined spending power to minimise risk; reduce procurement, contract operation and back-office costs and achieve better commercial outcomes.
- 1.4 Conclusions are:
 - While the water retail market has been deregulated for nearly four years, the market is still very immature.
 - The Council is eligible to choose its supplier of retail services. This is on average only 6% of the overall contract value. The rest of the contract value (94%) can be linked to the wholesalers.
 - A collaborative approach with four other local authorities with a mini competition to call off from the LASER Y16045 Framework for Potable Water, Sewerage and Ancillary Services.
- 1.5 For Members’ information, the domestic water market is currently not de-regulated. However, a review is taking place in 2025 and it is possible that it will be deregulated at this point. Should this be the case, it is likely that the Council would seek to utilise the LASER Framework to procure a water supplier for these domestic supplies. A further report for the procurement of domestic water supplies would be submitted to Cabinet for approval at the appropriate time setting out the detailed procurement proposals and arrangements for consultations.

2. Proposed Procurement Strategy

2.1 That we procure through the LASER Y16045 Framework which is fully compliant with the Public Contracts Regulations 2015 and OJEU requirements. LASER's mini tender service will help simplify the procurement process and help us reduce our internal procurement costs.

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

2.1.1 The procurement of water and sewage services; and ancillary services from a single water supplier. LASER will tailor the mini tender weightings which will be agreed by the participating local authorities to the specific requirements around price, quality, social value, and additional services.

2.1.2 LASER will run a mini competition for the tender of drinking water and sewerage services under a single retailer, Key performance indicators and poor performance remedies included within the framework will help to protect customers.

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

2.2.1 The total value of the LBB contact is approximately c.£2,450,000 (£612,500 per annum). This is for a total of four years, a two-year contract with a possible two-year extension.

2.2.2 The total contract costs of approximately £2,450,000 is for both corporate and schools' buildings. The projected split is as follows:

- Corporate costs £770,000 (£192,500 per annum)
- Schools costs £1,680,000 (£420,000 per annum)

2.2.3 A full breakdown of the contract costs can be found in Appendix A.

2.3 Duration of the contract, including any options for extension

2.3.1 At this stage, the optimal contract duration appears to be two years with the option to extend for a further period of up to two years. This is because a contract of less than two years will not represent value for money for the authority due to the cost of procurement and onboarding of supplies with a potential new supplier. The water industry price review will take effect in 2025 and its impact will need to be considered as part of any future water procurement from 2026 onwards.

2.4 Is the contract subject to (a) the 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 subject to Public Contract Regulations, this contract is not for services for social health, education, or other services subject to Light Touch Regime.

2.5 Recommended procurement procedure and reasons for the recommendation

2.5.1 The recommended route is to utilise the LASER Framework as part of the collaboration with four other local authorities, with LASER managing the procurement process on our behalf. The Council has been notified that this framework has been extended by LASER to 3 June 2022.

2.6 The contract delivery methodology and documentation to be adopted

2.6.1 Water Supply and Sewerage Services, led by LASER a division of Kent Commercial Services Ltd, Contracting Authority Kent County Council (OJEU Award notice – 2017S132-269790)

2.6.2 Where possible we will seek to re-use as many of the Terms and Conditions that were agreed by the London Energy Project (LEP) as part of our current contract. These would be considered “Best Practice” and give the Council the best legal protection.

2.6.3 Terms and Conditions will be identified as part of the pre-planning for the mini competition, this will be in consultation with the four other local authorities and LASER to ensure that we get the best value.

2.6.4 Framework and contract KPIs and SLAs will be agreed with LASER as part of confirming the Statement of Requirements (SoR). LASER will then manage the Framework contract between the successful bidder the Council. The Council will manage their own contract with agreed and contractual KPIs and SLA with the supplier. Reporting formats, frequency and escalation routes will all be included in the SoR and the contract.

2.6.3 Social Value reporting will also be included as part of the contractual reporting from the supplier to the Council. Frequency and format will be agreed directly with the supplier.

2.6.4 The contract will be financed through existing budgets and budget holders already have budget for their existing water supplies, so there is no additional funding required other than inflationary costs which is standard practice for utilities. A 2% inflationary cost has already been included within the contract values stated, this the standard annual price increase for water service contracts.

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

2.7.1 The Council has already realised efficiency gains in back-office savings through consolidated billing. There is still an opportunity for improved contract and account management which is why the recommendation is to procure through the LASER Framework for this contract. The opportunity to make significant cashable savings against the total invoiced water contact price is low, because the non-competitive (wholesaler) element rarely makes up more than 90% of the overall value.

2.7.2 Compliance with Public Contract Regulations 2015 is required; Cabinet Office guidance suggests that a competitive process should be followed from April 2018 onwards. Therefore, at the very least, a competitively tendered joint approach with

four other local authorities enables all authorities to achieve a low-cost/low-resource route to compliance.

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

2.8.1 The following criteria will be used to evaluate tenders:

- Quality
- Cost
- 10% Social Value

The exact weighting for Quality and Cost are yet to be determined as we are still in the early stages of dialogue with LASER however, they are likely to be approximately 55% cost and 35% Quality. This is closely aligned to the scorings that were used as part of the previous water procurement exercise managed by the London Energy Project (LEP).

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

2.9.1 As part of the mini competition process being managed by LASER we will seek to include our Social Value requirement as part of the SoR. 10% scoring criteria will be used as standard to evaluate all tender responses.

2.9.2 We are seeking to appoint to a supplier who shares our Social Value aspirations and goals and one who will commit to delivery of projects and activities against our five key themes:

- Investing in local people
- Investing in our local economy
- Environment sustainability
- Community participation and engagement
- People, independence, and resilience

2.9.3 All Social Value targets that are agreed with the successful supplier will be contractually binding and these will be managed and reported on as apart to the Contract Management reporting.

2.9.4 The delivery of agreed Social Value Targets/projects will be included the contract management of this contract. The council will track progress of the agreed targets/projects, and these will be reviewed at the supplier meetings. Frequency of these meetings and reporting is yet to be defined as we are still working with LASER to define the SoR that will be used for the tender for the mini competition.

2.10 Contract Management methodology to be adopted

2.10.1 My Place are responsible for the procurement and contract management of this contract.

2.10.2 The frequency of supplier meetings and reporting is currently being defined as part of the SoR but as a minimum it will include the following:

- Supplier meetings
- Annual spend report
- Billed report
- Unbilled report
- Meter read report
- Query management report
- Carbon report

3. Options Appraisal

3.1 Do Nothing

This is not an option as part of Public Contracts Regulations 2015 the Council is required to procure a new water contract when our current contract ends on 30 April 2022.

3.2 Conduct our own open market procurement

Given that the water market is still relatively new and that we have no experience in procuring water we felt that this option was a higher risk option and for that reason it was discounted. We would also not benefit from any increased purchasing power by entering into an agreement on our own. A review of other Frameworks has been undertaken as part of the options appraisal.

3.3 LASER Procurement Only Service (POSO)

This is our preferred option of using The LASER Potable Water, Sewerage and Ancillary Services, Y16045. Following the mini competition, a sole water provider will be appointed for the delivery of both water, waste, and ancillary services. We will be working collaboratively with four other local authorities to reduce procurement costs and leverage any possible discounts are a result of increased spend as a collaborative.

The current LASER Framework runs from 26 April 2017 to 25 April 2021, this Framework has been extended until 3 June 2022 This means we can procure a contract for the full 4-years starting with a contract start date of 1 May 2022 and an end date of 30 April 2026. The cost for using this framework is 1% the total contract spend and 1% for ancillary services.

LASER will manage the end-to-end procurement process on behalf of the participating local authorities, this includes LASER providing additional assistance during the scoping of requirements stage to ensure that all local authorities receive a service that is fit for purpose and delivers value for money.

3.4 YPO Framework

A review of the current YPO Framework runs from 11 December 2020 - 26 October 2024, using this framework would mean that we would need re-procure another contract in two years' time as no call off can go beyond the end of the framework. This would mean additional procurement costs and potential onboarding costs if the supplier were to change. Since the closure of the LEP our visibility of the management of this framework by YPO has not been visible. Charges for using this framework are 0.5% total cost of the contract and 1% for ancillary services. For these reasons this option has been discounted.

3.5 **Crown Commercial Service (CCS) Framework**

The current CCS Framework RM6178 runs from 1 December 2020 - 30 November 2024. Charges for using this framework are 1% of the total contact cost. These charges are the same as the LASER framework; participating local authorities would need to prepare their own procurement documents themselves if using this framework. Due to our lack of experience with procuring water services this was seen as a higher risk option and for this reason this option was discounted.

3.6 **NEPO Framework**

The current NEPO Framework NEPO311 runs from 1 April 2021 - 31 March 2023 (with an option to extend until 31 March 2025, using this framework would mean that we would need to re-procure another contract in two years' time. This would mean additional procurement costs and potential onboarding costs if the supplier were to change. Charges for using this framework are 5% of the retail water charges. There is only one supplier on the current NEPO Framework, so in essence this would be a direct award contract as there are no other suppliers. For this reason and the need to reprocure in two years' time this option was discounted.

4. **Waiver**

4.1 Not applicable.

5. **Consultation**

5.1 This contract is for the supply of water and waste for corporate buildings and non-domestic buildings, all key stakeholders within the Council have been consulted as part of the internal sign off process.

5.2 As part of the member sign off process Councillor Twomey and Councillor Ashraf were consulted on the draft paper.

5.3 The proposals in this report were considered and endorsed by the following:

Sub-Procurement Board - 6 September 2021

Procurement Board - 20 September 2021

6. **Corporate Procurement**

Implications completed by: Euan Beales, Head of Procurement

6.1 The Council's Contract Rules require all spend over £50,000 to be tendered in the open market, this requirement can also be satisfied through the use of an open and accessible framework.

6.2 LASER is a recognised framework owner and has been in the Local Authority Utilities market for a substantial amount of time and is affiliated to Kent County Council, and as such they understand Local Authorities and their priorities.

6.3 The paper proposes a collaboration with other local authorities to exercise economies of scale and pooling of resources during the procurement process, which should drive a good competition. It is noted that each Local Authority will enter into its own contract and will be responsible for its own service.

- 6.4 It should be noted that the wholesale elements of the costs cannot be separated out and the total cost of the water both inward and outward would be billed as a completed package, the element this procurement will impact is the retail element which accounts for circa 6% of the total cost. The best outcome is to have a single provider conducting the retail elements for both service provisions.
- 6.5 Based on the detail contained in this report I cannot see any reason not to approve the recommendations as made.

7. Financial Implications

Implications completed by: Joel Gandy, Finance Business Partner

- 7.1 The report recommends that the Council join four other Councils in utilising an existing LASER framework to procure a contract for corporate and non-domestic buildings. The estimated value of the contract is approximately £2.5m over a four-year period, although there is an option to cease after year 2.
- 7.2 The value of the contract will fluctuate and be dependent on factors like price inflation, competition, and Council non-domestic stock levels. Schools have the choice of whether to use the framework approach and therefore this will be another factor.
- 7.3 The majority of the value relates to the wholesale price of water, including infrastructure, which is approximately 90 to 94% of the overall cost of water supply. The remainder is the deregulated retail element which is where competition can be utilised to deliver value for money. However, the market is in its infancy still having deregulated only in 2017.
- 7.4 The contract value is estimated based on actual expenditure incurred by the council currently, with an uplift, therefore is within the overall budget envelope. The commitments are spread mostly across corporate buildings (e.g. Town Hall), schools and housing. Any domestic elements of housing are not included in this contract.
- 7.5 It is unlikely that savings can be made from the contract, although the approach should support mitigation of expected inflationary increases in the wholesale price over the life of the contract.

8. Legal Implications

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

- 8.1 Under the Water Act 2014 the water market for business consumers was deregulated in April 2017, at which point the Council is allowed to switch its current water provider at any time but must do so in compliance with the Public Contract Regulations 2015.
- 8.2 This report sets out the recommendation that the Council jointly procures a contract with four other local authorities through the LASER Framework Y16045 from 1 May

2022 for 2 years with a 2-year extension option. The Council has been notified by LASER that its framework has been extended for use to 3 June 2022.

- 8.3 The nature and value of these services are such that they are subject to the full tendering requirements of the Public Contract Regulations 2015 (PCR15). The PCR 2015 permit contracting authorities to call off valid frameworks in order to procure goods, services, works, as required. In compliance with the principles of the Regulations the call-off process must be transparent, non-discriminatory and fair.
- 8.4 The requirements for competitive tendering, as contained within the Council's Contracts Rules, are met as Rule 5.1 (a) advises that it is not necessary for officers to embark upon a separate procurement exercise when using a Framework Agreement providing the Framework being used has been properly procured in accordance with the law and the call-off is made in line with the Framework terms and conditions.
- 8.5 In line with Contract Rule 50.15, Cabinet can indicate whether it is content for the Chief Officer to award the contract following the procurement process with the approval of Corporate Finance.
- 8.6 In view of the proposed contract value for the supply/service exceeding £100,000 the contract must be under seal.

9. Other Implications

9.1 Risk and Risk Management

The best value and lowest financial risk option for the council is to procure with four other local authorities. This joint authority approach will minimise procurement costs, reduce risk through collaboratively working and allow the council to capitalise on the best deal possible through combined purchasing power. However, it is worth noting that the retailer component of the contract is only 6% of the total cost so there are limited opportunities for cost savings.

- 9.2 **Corporate Policy and Equality Impact** - The procurement of single contract for water, waste water and ancillary services for corporate buildings will deliver operational efficiencies that help support the delivery of the Council's Strategic Priorities that are outlined in the Council's Corporate Plan; as well as supporting the delivery of specific strategies and policies such as the Environment Strategy and Social Value Policy. There are no anticipated equality impacts associated with this procurement.

- 9.3 **Well Run Organisation** - The current water contract has already delivered back-office savings in terms of staff time in both My Place and Accounts Payable through the implementation of consolidated billing. The Council would seek to continue to operate a consolidated billing model as part of the new contract; and are seeking to include service innovation to deliver savings or operational efficiencies as part of the Council's Statement of Requirements for the new contract.

- 9.4 **Environment Strategy** - Leak detection is a new service that has been included in the current contract and will be requirement for the new contract. The ability to identify leaks quickly and get them resolved saves money, water, and carbon. As part of the contract the successful bidder will be expected to innovate around

service offerings that will help to council to reduce both its water and carbon consumption, this requirement is being include in the Statement of Requirements (SoR).

9.5 **Social Value Policy** - We are seeking to appoint a supplier who shares our Social Value aspirations and one who will contractually commit to delivering activities and projects that support the delivery of our five key themes:

- Investing in local people
- Investing in our local economy
- Environment sustainability
- Community participation and engagement
- People, independence, and resilience

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

List of appendices:

Appendix A – breakdown of contract costs