MUNICIPAL YEAR 2015/2016

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY	**Agenda - Part: 1** **Item:**
	Subject: London Borough of Enfield Pension Fund – Investment Consultancy Services Procurement **Wards:** N/A **Key Decision No:** KD4216
REPORT OF: Director of Finance Resources & Customer Services Contact officer and telephone number: E mail: Liam Preston, 020 8379 5760 liam.preston@enfield.gov.uk	**Cabinet Member consulted -** Cllr Terry Neville, Cllr Toby Simon, Cllr Doug Taylor, Cllr Derek Levy and Cllr Daniel Pearce

1. EXECUTIVE SUMMARY

1.1 This is a Key Decision and is on the Key Decision List. Reference – KD4216

1.2 Enfield Council as the administering authority of the London Borough of Enfield Pension Fund (the Fund) is required to procure investment consultancy services.

1.3 Enfield Council's Pensions, Policy and Investment Committee (PPIC) have recommended the use of the London Borough of Croydon's framework for the provision of pension fund investment consultancy services (Croydon Framework).

1.4 In order to join the framework the Council is required to enter into a tri-partite access agreement with the London Borough of Croydon and the Contractor.

1.5 The Contractor is the only provider on the Croydon Framework. The PPIC and Treasury Management would like to make a direct call-off and appoint the Contractor as the Council's provider of investment consultancy services.

2. RECOMMENDATIONS

2.1 It is recommended that the Director of Finance, Resources & Customer Services:

- Approves the use of the London Borough of Croydon Framework for the provision of pension fund investment consultancy services.

- Authorises the application of the common seal to the investment consultancy services access agreement.
- Approves the direct call-off of investment consultancy services from the framework and the appointment of the Contractor.

3. BACKGROUND

3.1 All Local Government Pension Scheme (LGPS) funds are required to procure Investment Consultancy Services.

3.2 After taking advice from Corporate Procurement, Enfield Council's Pensions, Policy and Investment Committee (PPIC) have recommended the use of the Croydon Framework for the provision of pension fund investment consultancy services.

3.3 The Croydon Framework is available to all local authorities and is administered by the London Borough of Croydon. The Framework ran from 2011-2015 with an optional two year extension. The Framework extension has been confirmed, enabling the Fund to procure investment consultancy services.

3.4 In order to join the framework the Council is required to enter into a tri-partite access agreement with the London Borough of Croydon and the Contractor.

3.5 The Contractor is the only provider on the framework. The PPIC and Treasury Management would like to make a direct call-off and appoint the Contractor as the Council's provider of investment consultancy services.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 The Council considered running the procurement process without a framework. However, the costs and staff resources required proved to be prohibitive.

4.2 The Council considered using the Norfolk County Council LGPS Investment Consultancy Services framework for the procurement of investment consultancy services. However, Norfolk County Council required the payment of an access fee. Given that the PPIC has been extremely happy with the service provided by the incumbent (the Contractor) and that the Fund is performing well, it was decided to use the Croydon Framework for the procurement of investment consultancy services. The Croydon Framework does not require a joining fee and enables the Council to procure the services of the Contractor in a simple and cost effective manner.

5. REASONS FOR RECOMMENDATIONS

5.1 The incumbent (the Contractor) has consistently provided a high quality investment consultancy service to the Fund. The incumbent (the Contractor) supported the Fund in its transition to a more balanced, lower risk portfolio with a lower weighting of equities. This bucks the trend seen across the LGPS funds, as many continue to rely on equity as their main source of growth. Awarding the contract to the Contractor will ensure that the Fund continues to have access to high quality investment consultancy.

5.2 Running a full OJEU procurement process will be both time consuming and costly. The Croydon Framework offers the Council a cost effective way of procuring investment consultancy services for the pension fund.

6 COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

6.1.1 It is estimated that Investment Consultancy Services will cost the Fund £50,000-£150,000 per annum. The contract will run for three years with an option for a two year extension. The total contract value will be £250,000-£750,000, assuming that the contract runs for the full 5 years.

6.1.2 Enfield will be the 5th Council to join the Croydon Framework, securing a discount from the Contractor.

6.2 Legal Implications

6.2.1 The Council has power under section 111 of the Local Government Act 1972 to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions.

6.2.2 Throughout the engagement of the Contractor, the Council must ensure value for money in accordance with the overriding Best Value Principles under the Local Government Act 1999.

6.2.3 The Council must comply with the Public Contracts Regulations 2015 and (where still applicable) the Public Contracts Regulations 2006. A framework agreement such as the framework used in this instance can be used to ensure compliance with these regulations. The Council must also comply with its Constitution including the Contract Procedure Rules.

6.2.4 The use of this framework by the Council has been approved by its procurement department.

6.2.5 The Council is aware that there may be significant risks associated with entering into the Access Agreement un-amended, as required under this framework.

6.2.6 As the total value of the contract involved in this matter exceeds £250,000.00, the Council must follow the Key Decision Procedure.

6.2.7 Pursuant to the CPR 21, as the total contract value is in excess of £250,000, the Council is required to obtain a performance bond or a parent company guarantee from the Contractor, unless the relevant Director and the Director of Finance Resources and Customer Services consider this to be unnecessary.

6.2.8 Approval must be obtained from the Council's Director of Finance in relation to the limitation on the Contractor's liability.

6.3 Property Implications

6.3.1 None.

7 KEY RISKS

7.1 Following a legal review of the Croydon Framework, terms & conditions and access agreement, Treasury Management approached the London Borough of Croydon to enquire about the possibility of making amendments. Croydon refused to consider amendments in any form or by any method to any aspect of the framework or supporting documents.

7.2 The framework caps the Contractor's liability. No investment consultancy firm will accept unlimited liability for investment advice given in good faith. The risks of losses occurring from poor investment advice are mitigated by the fact that the investment consultant does not have the power to implement decisions. This power rests with the PPIC who are supported by an independent investment advisor, the Director of Finance and the Head of Treasury Management.

8 IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

8.1.1 Procuring investment consultancy services will help the Council to ensure that the Fund is able to continue to meet its liabilities. This is particularly important given the increase in the number of beneficiaries drawing from the Fund due to the current restructure.

8.1.2 Undertaking the procurement process will enable the Council to procure the necessary services in a cost effective and timely manner. This will contribute towards cost savings enabling money to be spent elsewhere.

8.2 Growth and Sustainability

8.2.1 The investment consultancy service provided by the incumbent (the Contractor) has contributed to a growth rate above the LGPS average. A large number of Enfield residents are in receipt of pensions from the Fund. Procuring high quality, cost effective services contributes towards the growth and sustainability of the local economy by ensuring that the Fund remains solvent and that payments to beneficiaries are regular.

8.3 Strong Communities

8.3.1 The Fund contributes to the strength of Enfield's communities by providing a large number of residents with the money they need to live comfortably in retirement; this enables many of them to take an active part in community life. The procurement of high quality, cost effective services will enable the Fund to continue to support these residents and will continue to ensure that they have the time to engage in community activities.

9 EQUALITIES IMPACT IMPLICATIONS

9.1 None.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

10.1 The Treasury Management team will agree key performance indicators with the Contractor and will make regular reports to the PPIC. The PPIC and the Head of Treasury Management will both scrutinize the Contractor's performance.

11. HEALTH AND SAFETY IMPLICATIONS

11.1 None.

12. HUMAN RESOURCES IMPLICATIONS

12.1 None.

13. PUBLIC HEALTH IMPLICATIONS

13.1 None.

Background Papers

- None.

MUNICIPAL YEAR 2015/2016 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

OPERATIONAL DECISION OF:
Director – Finance, Resources & Customer Services and Interim Chief Education Officer

Agenda – Part: 1	KD Num: 3984
Subject: Procurement of Energy (Electricity & Gas) for Corporate Buildings & Schools 2016-2020	
Wards: All	

Contact officer and telephone number:
Andrea Latter 020 8379 3089
E mail: andrea.latter@enfield.gov.uk

1. EXECUTIVE SUMMARY

1.1 Enfield Council is currently a member of LASER (Local Authorities South East Region), a Central Purchasing Body representing 115 local authorities and 45 wider publicly funded bodies. LASER has been assessed, benchmarked and approved as a best practice energy procurement provider by the London Energy Project (LEP). LASER is managed by Kent County Council and is part of the Commercial Services division.

1.2 LASER's flexible, risk-managed procurement model continues to achieve bulk-buying benefits by aggregating the energy volumes of its 160 customers.

1.3 LASER's current four year flexible procurement frameworks expire 30th September 2016. The estimated total value of Enfield's current four year LASER energy contracts (2012-2016) for the supply of gas and electricity to corporate buildings and schools is £17,800,000.

1.4 LASER has tendered new OJEU (Official Journal of the European Union) compliant four year flexible frameworks for the supply of electricity and gas for 1st October 2016 – 30th September 2020. As a LASER member, Enfield Council will be able to call-off the new frameworks with the option to secure a rolling two + two year bilateral contract, covering four years in total. In the event of poor performance, this option will enable contract termination after two years. The framework suppliers are Npower (electricity) and Total G&P (Gas).

1.5 This is seen as the best option for the Council in terms of value for money and service delivery, as LASER has performed well in the past. The preferred Rolling Two Year (two + two) option was presented to and approved by the Strategic Procurement Board on 24th June 2015.

1.6 This report seeks the approval of the Director of Finance, Resources and Customer Services and the Interim Chief Education Officer to commit to LASER's rolling two + two year bilateral electricity and gas contracts, up to a period of four years, from 1st October 2016 – 30th September 2020.

2. RECOMMENDATIONS

2.1 That the Director of Finance, Resources and Customer Services and the Interim Chief Education Officer approve the recommendation to commit to LASER's rolling two + two year bilateral electricity and gas contracts, up to a maximum period of four years, from 1st October 2016 – 30th September 2020.

3. BACKGROUND

3.1 Enfield Council is currently a member of LASER (Local Authorities South East Region) a public sector energy buying organisation and part of Kent County Council's Commercial Services division. LASER was founded in 1989 to manage the procurement opportunities created by the deregulation of the gas and electricity markets. Kent County Council (KCC) is the 'Contracting Authority' for the flexible energy supply contracts operated by LASER. The London Borough of Enfield has utilised LASER's procurement services since deregulation.

3.2 The energy supply contracts are procured through OJEU (Official Journal of the European Union) compliant tender processes. KCC is a 'Central Purchasing Body' (CPB), as specified in the Public Contract Regulations 2006. Therefore, other public sector organisations are able to use the energy supply contracts without having to run separate OJEU tender processes for either the appointment of energy suppliers or LASER's contract management services. As a public sector purchasing organisation LASER understands the budget and price drivers specifically pertaining to local authorities and the wider public sector incorporating them into their purchasing strategies accordingly.

3.3 LASER purchases energy on behalf of 115 local authorities and 45 wider public sector bodies. Current contracted volumes for both electricity and gas amount to 6.7 TWhs of energy, equating to an annual delivered spend of approximately £350 million. This equates to approximately 2.1% of the UK's non-domestic gas demand and 1.3% of non-domestic electricity demand.

3.4 LASER's current four year flexible procurement frameworks expire 30th September 2016. The estimated total value of Enfield's current four year

LASER energy contracts (2012-2016) for the supply of gas and electricity to corporate buildings and schools is £17,800,000.

3.5 LASER has tendered new OJEU compliant four year flexible frameworks for the supply of electricity and gas for 1st October 2016 – 30th September 2020. As a LASER member, Enfield Council will be able to call-off the new frameworks with the option to secure a rolling two + two year bilateral contract, covering four years in total. In the event of poor performance, this option enables contract termination after two years. The framework suppliers are Npower (electricity) and Total G&P (Gas).

3.6 In order to maintain an effective risk-managed energy procurement strategy and as the wholesale market is currently favourable, early contract settlement is recommended. A forward purchasing window allows LASER to continue buying energy on behalf of its customers in response to any potential market price changes. Energy purchases will commence from contract sign-off.

3.7 Gas and electricity market prices are highly volatile. They are complex markets, subject to market sentiments and heavily influenced by local and global weather conditions, economic fluctuations, currency exchange rates, security of supply and geopolitical situations. Market price movements of 5-10% in a week are not unprecedented. In addition to this the Electricity Market Reform has introduced further changes, whereby more electricity will be generated from less predictable sources, such as off-shore wind. This development together with the mass installation of smart metering is likely to introduce more time-of-use based energy tariffs.

3.8 Time-of-use based tariffs will necessitate a future focus on reducing energy at peak times to avoid increasing energy costs.

3.9 LASER has estimated that market increases could be as much as 70% by 2020. Therefore, it is essential to have robust, risk-managed, flexible contracts in place to mitigate the impact of a potentially rising market. It is important to note that this forecast is heavily caveated as the cost components forming delivered energy prices can be exceptionally volatile and difficult to estimate with any accuracy.

3.10 There are two main types of energy procurement:

i) Fixed Term Fixed Price
ii) Flexible

3.10.1 **Fixed Term Fixed Price** (or spot purchased).
This type of contract is settled through the retail market on a specific day for an agreed contract term. This method of buying energy is considered to carry far greater risk, as the contract may be settled when the market is unfavourable.

Advantages:

- Budget certainty. The contract price is known from the time the contract is accepted.

- Fixed Term Fixed Price contracts can be more suitable for those supplies with very low annual consumption and cost. This is because the tradable commodity may only be 20% of the total delivered price.

Disadvantages:

- The supplier will add a risk premium on contracts >12 months to cover unknown commodity and regulated pass-through costs e.g. Climate Change Levy.

- The contract prices are not transparent. The fixed charge usually encompasses the regulated pass-through costs and the suppliers' costs and profit margin. But these elements are not visible.

- There are no aggregation benefits as the contracts are let individually.

- The contract is settled on one day. This carries a significant risk, as the market may not be favourable at that time. This provides a 1-in-250 chance of purchasing at the lowest point in the market (based on 250 working days in the year).

- The contract price must usually be accepted by the customer within the day.

- Contracts are typically one or two years, which increases operational costs in terms of procurement and supplier administration/contract management.

3.10.2 **Flexible.**

With this method of procurement, the energy requirements for each authority are aggregated, thereby increasing buying power on the wholesale market. The energy commodity is risk-managed within that market. 'Clips' of energy are strategically purchased in advance and during the contract period, to minimise the risk of securing all energy contract requirements when the market could be least favourable. Therefore, market volatility is smoothed out. The Achieved Annual Purchase Price is determined by the average of the raw energy that was purchased flexibly in clips. The supplier declares its cost to serve through a competitive tender process and the regulated fees are passed through in a transparent way. The supply framework normally lasts for four years but the contract prices are adjusted annually to recover the raw (tradable) energy cost and the actual cost of regulated fees and charges. Regulated fees and charges are likely to increase significantly over the next few years, to release the substantial capital investment required to build new generation and upgrade the grid.

Advantages:

- The buying organisation has delegated authority to set the price on the customer's behalf, using an approved flexible trading strategy.

- To better manage price risk and control energy budgets, buying organisations aggregate customers' energy demand, allowing them sufficient volumes to access the wholesale market. They use specialist procurement knowledge to buy flexibly, over a defined period of time, using a risk management strategy on behalf of customers. This is important where the commodity cost makes up a significant proportion of the total cost (>50%).

- The contracts are let on a long-term, aggregated basis which reduces the suppliers' risk as all customer volumes are purchased together, effectively smoothing the consumption profile i.e. has fewer peaks and troughs. This is more attractive to suppliers. Therefore, aggregation provides additional cost benefits for the customer through improved contract terms and conditions and removal of the price-risk premia applied to >1 year Fixed Term Fixed Price contracts.

- The supplies within the contract are tendered for all customers and certain price elements are fixed, such as supplier margin. Unit rates and standing charges are adjusted annually to accurately reflect regulated pass-through costs and commodity market.

- The transparent pricing structure limits the opportunity to apply 'hidden risk' and other premiums.

- Flexible purchasing reduces the local authority's procurement, legal, operational (e.g. supplier changes) and administration costs as the frameworks are on a four year cycle.

3.11 There are two principal ways of buying energy flexibly (basket options):

- **Purchase in Advance (PIA) – LASER product.** Energy is purchased over a period of time prior to the contract supply period. When the flexible purchase (trading) window concludes, the contract price (annual budget) is set. The supplier's cost-to-serve is fixed in the contract. The annual contract price is known before the first bill of the new contract year is issued. The price changes on the anniversary of the contract start date i.e. 1st October, throughout the duration of the contract.

- **Purchase within Period (PWP) - LASER product.** Energy is purchased over a period of time prior to the contract supply period. An indicative contract price (rather than a set contract price) is provided at the start of the contract. Trading continues during the contract supply period which enables energy to be bought closer to the supply date, taking advantage of any price falls and the cheaper short-term market. The actual achieved price is reconciled every six months. The supplier's cost-to-serve is fixed in the contract.

3.12 To spread market price risk and to avoid buying during periods of peak market pricing, Crown Commercial Service's (CCS) Pan Government Energy Project (formerly Office of Government Commerce) recommends that "all public sector organisations adopt aggregated, flexible and risk-managed energy procurement".

3.13 LASER has operated flexible energy procurement frameworks on behalf of the public sector since 2008. Flexible contracts mitigate the procurement risks associated with Fixed Term Fixed Price contracts, which secure the contract price on one day. Therefore, participating authorities are protected from substantial price swings.

3.14 LASER has been assessed and approved as a best practice energy procurement provider by the London Energy Project (LEP). The LEP is a public sector shared Energy Category Management service, funded by the direct contributions of 39 participating authorities. Under this arrangement the LEP's lead contracting authority (Haringey Council) has, on behalf of all participating authorities, undertaken a series of independent and impartial technical assessments of market risk and of energy contracts as provided by LASER.

3.15 In December 2014 the LEP published its 'Energy Contracts Value for Money Assessment 2011-2014 - Achieved Prices Benchmark and Risk Assessment Report'. This report focuses on LASER's achieved commodity prices for electricity and gas between 2011 and 2014. The Achieved Price Benchmark assesses the largest competitive element of the total energy price, which is the cost of the commodity (tradable raw) gas and electricity. It demonstrates whether value for money has been delivered consistently over a period of time. A three year benchmark is used as energy volumes may be purchased up to three years in advance and because the use of a single year benchmark does not provide reliable evidence of value for money being delivered.

The LEP's Key Findings were as follows:

- "Aggregated, flexible, risk managed procurement was effective in controlling commodity costs and continues to be the most appropriate price risk management strategy currently available.
- LASER delivered good performance against the benchmark i.e. the commodity price achieved against the average market prices that were available correlated well...contract prices ranged between 4.9% and 0.4% below the market average.
- Authorities may continue using aggregated, flexible, risk-managed energy contracts as provided by LASER, as part of their wider energy strategy i.e. to utilise a strategic risk-managed approach that delivers overall best performance and value for money consistently over a period of time."

3.16 LASER's current four year flexible procurement frameworks for the supply of gas and electricity expire on 30th September 2016. The current contracts have performed well, with overall achieved energy commodity prices lower than average market prices (LEP).

3.17 The estimated total value of Enfield's current four year LASER framework electricity and gas contracts (2012-2016) is £17,800,000. This excludes housing landlords' communal electricity supplies, which are tendered separately under a Fixed Term Fixed Price arrangement.

3.18 The electricity contracts include corporate buildings and schools. Schools typically represent 52% of the annual spend and corporate supplies 48%. The gas contracts include corporate buildings, schools and approximately 20 housing landlords' supplies. Schools typically represent 59% of the annual spend, corporate supplies 22% and housing landlords' supplies 19%. Corporate buildings include public offices, parks, public conveniences, Claverings Industrial Estate, libraries, museums, theatres, car parks, cemeteries, pumping stations, residential care homes and day centres.

3.19 Schools have been updated throughout the procurement process and will be required to commit to 2016-2020 frameworks by March 31st 2016 at the latest. Schools sign up to LBE energy contracts through the Energy Management Support Schemes for Schools (Service Agreement).

3.20 The Housing Landlords' electricity supplies' portfolio comprises approximately 980 supplies, including communal heating, staircase lighting and lifts. The current estimated contract value from 1st October 2015 – 30th September 2016 is £1,319,000. The contract is tendered by LASER on an annual, Fixed Term Fixed Price basis. This type of procurement method carries greater risk as the market may not be as favourable at the time the contract is settled. The only supplies for which Fixed Term Fixed Price contracts may be more beneficial are those where the annual electricity consumption is <10,000 kWh per annum. This is because the tradable element may only be 20% of the delivered unit price.

3.21 It is possible to tender the Housing electricity portfolio as a whole or to transfer supplies to appropriate longer term flexible, risk-managed contracts according to annual consumption. Tendering contracts for longer than 12 months will require Leaseholder Dispensation. Analysis is currently underway to identify those supplies for which long-term, flexible contracts would be more advantageous. The risk-managed procurement strategy for Housing landlords' electricity supplies will be addressed in a separate report, but a final Fixed Term Fixed Rate contract has been secured from October 1st 2015 to September 30th 2016, to bring it in line with the start of LASER's four year flexible contracts.

3.22 LASER will provide two options for customers to commit to the new flexible contract frameworks from October 1st 2016:

3.22.1 **Option One: Four-Year Commitment 1st October 2016 – 30th September 2020**

- A four-year flexible supply agreement is in place between Kent County Council (KCC) and the framework supplier(s).

- LASER customers then enter into a tripartite agreement between the customer, the supplier(s) and Kent County Council for the duration of the four-year framework.

- The tripartite agreement provides authority to LASER to purchase the customer's energy requirements for the duration of the four-year agreement.

- Customer authorities are not able to issue a termination notice should they wish to exit the agreement. Changes to the portfolio, such as site disposal and change of tenancy can be accommodated during the four-year agreement.

3.22.2 **Option Two: Rolling Two-Year Commitment (two + two years) 1st October 2016 – 30th September 2020**

- A four-year flexible supply agreement is in place between KCC and the framework suppliers.

- Customer authorities enter into a bilateral agreement with KCC, which commits the customer to the suppliers' and LASER's framework terms and conditions. This permits LASER to forward purchase requirements on behalf of the customer from the framework suppliers.

- The customer can issue a termination notice should they wish to exit the agreement. The effective termination date will be the first contract anniversary after 2 years has elapsed. For example, if a customer issued a termination notice on 30th September 2016, LASER would cease to purchase the customer's energy requirements for the contract period commencing 1st October 2018 onwards.

- Customer authorities not wanting to commit to future supplier frameworks could at the point of committing to the rolling 2 year forward commitment, issue a termination notice to take effect on 30th September 2018 i.e. coterminous with the 2016-2020 framework expiry date (30th September 2020).

3.23 Within flexible purchasing, LASER provides two principal basket options for electricity and gas:

- Purchase in Advance (PIA)
- Purchase within Period (PWP)

3.24 Both baskets have performed well, as benchmarked and reported in the LEP's Energy Contracts Value for Money Assessment 2011-2014, Achieved Prices Benchmark and Risk Assessment Report. The value for money assessment focuses on the largest competitive element of the total energy contract price, which is the cost of the commodity (tradable raw) for gas (typically 75%) and electricity (typically 50%). The results are as follows:

Utility	Benchmark Period	Basket	Result	Saving
Electricity	Oct 2011 – Sept 2014	PIA	Good	1.2%
Electricity	Oct 2011 – Sept 2014	PWP	Good	4.9%
Gas	Oct 2011 – Sept 2014	PIA	Good	0.4%
Gas	Oct 2011 – Sept 2014	PWP	Good	3.1%

Good performance indicates that the price achieved by LASER is lower than the benchmark (average market price).

3.25 The majority of the LBE's current contracts are PIA, with 15 corporate electricity supplies and 3 corporate gas supplies in the PWP baskets. These basket options were selected in April 2012 when the current four year flexible contracts were secured. PWP is not deemed suitable or selected for schools, as schools have a greater need for budget certainty. The PWP baskets have performed well, as shown above, however, carry greater risk and are more suitable for larger consuming sites rather than smaller supplies.

3.26 Changing baskets requires six months' notice and the decision to implement the change should be based on the following criteria:

- Annual consumption (i.e. PWP is more appropriate for larger consuming sites).
- The LEP's independent, annual Achieved Prices Benchmark and Risk Assessment Reports.
- Appetite for risk (i.e. PWP carries more risk than PIA).
- The requirement for budget certainty.

3.27 The Energy Manager will review basket options (PIA vs PWP) in early January 2016, following receipt of the LEP's annual Achieved Prices Benchmark and Risk Assessment Report in December 2015. Basket changes will be subject to the usual Delegated Authority Reporting process. In order to implement any changes from October 1st 2016, approval will be required by March 30th 2016

3.28 It is important to note that past performance does not guarantee future performance.

3.29 LASER is currently developing a number of additional purchasing 'basket' options which are designed to support a wide spectrum of risk management strategies from pro-risk to risk-averse. Take-up will depend on appetite for risk, need for budget certainty and benchmarked performance over time.

These products will be monitored and benchmarked by the LEP and periodically reviewed by the Energy Manager.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 Do nothing. The current framework and contracts will end on September 30th 2016. If new contracts aren't secured, the supplies will be subject to 'out of contract' rates from October 1st 2016, which are significantly higher (>100%) than contract rates.

4.2 The CCS's report 'Energy buying: the effective way to manage risk' recommends that all public sector organisations adopt aggregated, flexible and risk-managed energy procurement, utilising the specialist energy procurement skills provided by Central Purchasing Bodies (CPBs). As the Public Sector Buying Organisations (PSBOs) tend to be regional, the alternative option for the London Borough of Enfield would be to procure energy through Crown Commercial Services (CCS). CCS's performance is also benchmarked by the LEP. In terms of achieved commodity price, both CCS and LASER have performed comparably. Both PSBO's offer a POSO Service (Procurement Only Service Option), whereby contracts are secured with the framework suppliers on a flexible basis and invoices are received direct from the suppliers.

4.3 There are no financial benefits in transferring to CCS. This is because:

- Achieved commodity prices are comparable to LASER's.
- The framework suppliers are different to LASER's. LASER's new framework suppliers (Npower for electricity and Total Gas & Power for gas) are the same as the current LASER framework suppliers. A transfer to CCS's framework suppliers would generate significant administrative workload plus additional costs to purchase new bespoke electronic data importing modules that are fit for purpose.
- Unlike LASER, CCS does not offer a Fully Managed Service. LASER's Fully Managed Service reduces workload and associated costs for the Energy Management Team in terms of query management and resolution, thereby increasing the time available for monitoring consumption, conserving energy and saving money.
- CCS's contract start dates are not in line with the council's current contracts. Interim contracts would, therefore, need to be secured to change the contracting period.

4.4 The energy (electricity and gas) procurement options have been considered in consultation with Corporate Procurement, the London Borough of Waltham Forest, and the London Energy Project (LEP). The preferred risk-managed procurement strategy is to commit to LASER's Option Two: Rolling Two-Year (two + two) electricity and gas contracts from October 1st 2016, for a maximum of four years, whilst retaining the current arrangements for the Fully Managed Service (large electricity and all gas supplies) and basket options (PIA and PWP). Both the Fully Managed Service and basket options will be reviewed periodically by the Energy Manager and changes implemented through the Delegated Authority reporting process.

5. REASONS FOR RECOMMENDATIONS

5.1 LASER provides risk-managed, OJEU (Office of the Journal of the European Union) compliant flexible contracts as recommended by CCS's (formerly OGC) Pan Government Energy Project which recommends that "all public sector organisations adopt aggregated, flexible and risk-managed energy procurement".

5.2 LASER has performed well in the past and continues to perform well. The LEP's annual Achieved Prices Benchmark & Risk Assessment Report demonstrates that LASER's achieved energy commodity prices are overall lower than average market prices.

5.3 LASER's Option 2: Rolling Two-Year (two + two) Commitment provides the opportunity to terminate the contract (with 2 years' notice), should the LEP's independent benchmarking reports highlight consistently poor performance or should other risk-managed strategic procurement options present a more cost effective, best value alternative. Should LASER consistently fail to achieve competitive commodity prices, the energy procurement strategy will be reviewed by the Energy Manager and reported accordingly. The timetable for contract termination is as follows:

Contract End	**Termination Date**
September 30th 2018	September 30th 2016
September 30th 2019	September 30th 2017
September 30th 2020	September 30th 2018

5.4 It should be noted that a less than 'Good' performance in one year does not necessarily suggest overall poor performance. The review will look at achieved commodity prices over 3 consecutive years.

5.5 Under LASER's Option 2: Rolling Two-Year (two + two) Commitment the electricity and gas contracts will roll-on for a maximum of 4 years until 30th September 2020 (end of the 2016-2020 frameworks). The procurement strategy will be reviewed in 2016/2017 and 2017/18 for post 2018 contracts. Any adverse findings will be reported. It is imperative that termination notice must be submitted on 30th September 2018, to ensure that the two + two year rolling contracts do not continue beyond October 1st 2020.

5.6 The preferred Rolling Two Year (two + two) option was presented to and approved by the Strategic Procurement Board on 24th June 2015.

5.7 The LEP will continue to undertake a series of independent and impartial technical assessments of market risk, energy contracts and basket options as provided by LASER and CCS on behalf of all participating authorities. The annual Achieved Prices Benchmark & Risk Assessment Report will determine LASER's performance over time.

5.8 Unlike Crown Commercial Services (CCS), LASER offers a Fully Managed Service. The LBE currently has 75 Fully Managed electricity accounts and 156 Fully Managed gas accounts. This can be quantified as generating £107,030 of added value for the LBE in 2014 alone.

5.9 LASER's Fully Managed Service (Invoice Validation, Invoicing, Query Management and Portfolio Management) offers the following benefits:

- **Invoice validation** – invoices are passed through LASER's GEMS (General Energy Management System). Invoices failing the validation criteria are not issued to the customer, but resolved by LASER direct with the supplier. Where billing cannot be issued, LASER will provide estimated costings for budgeting purposes.

- **LASER invoicing** – invoices are issued by LASER rather than by the supplier(s) i.e. LASER pays the suppliers and then invoice customers accordingly.

- **Query management** – LASER liaises direct with the supplier until the issues have been resolved and provides regular customer progress update reports. The customer will not be invoiced until the query has been successfully resolved. Most energy suppliers' contracts stipulate that customers must pay invoices regardless of their accuracy, with rectification of any errors occurring subsequently. LASER's frameworks have a specific clause to state that payment will only be made on accurate invoices, thereby avoiding overspend and the additional administrative costs associated with recovering credits.

- **Portfolio management** – this includes a nominated Customer Relationship Manager and dedicated team, a dedicated customer email inbox, regular meetings, site visits, supplier management and regular reporting.

5.10 LASER's cost recovery for the Fully Managed Service is completely transparent and applied in pence per kWh. The annual charge is approximately £58,600, which includes large electricity supplies and all contract gas supplies. The added value generated by LASER's Fully Managed service in 2014 was £165,630. This amounts to a net saving of £107,030 and can be quantified in terms of cost avoidance as follows:

Category	Explanation	Cost Avoidance £
Queries	LASER resolved 99 queries on behalf of the LBE, utilising specialist industry knowledge and query best practice. This equates to 858 hours of query work and avoided administration cost.	8,910
Erroneous Invoices	LASER's validation service identified and prevented erroneous supplier invoices with a combined value of £260,000 being released to the LBE.	
Overcharges	The saving achieved for the LBE by rectifying overcharges on these erroneous invoices.	145,420
Consolidated Savings	The LBE has reduced administration costs by utilising LASER's consolidated billing service.	11,300
Total Saved		**£165,630**

5.11 LASER's Fully Managed Service is comparable with the work carried out by the LBE's Energy Management Team, which in 2014/15 saved £277,016 on 197 non Fully Managed accounts (including water/wastewater supplies).

6. (COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES, AND OTHER DEPARTMENTS

6.1 Financial Implications

6.1.1 The estimated total value of Enfield's current four year LASER energy contracts (2012-2016) for the supply of gas and electricity to corporate buildings and schools is £17,800,000. The prices for the final contract year from 1st October 2015 – 30th September 2016 are based on LASER's market update information.

6.1.2 The estimated total value of LASER's Rolling Two-Year (two + two) electricity and gas contracts from 1st October 2016 – 30th September 2020 is £26,500,000. This figure is based on LASER's long term forecast, which is heavily caveated due to the extreme volatility in the energy wholesale markets in addition to uncertainty in the non-commodity element of the future prices, including the financial impact of the Electricity Market Reform. There is no guarantee of accuracy.

6.1.3 LASER forecasts £26.5M expenditure over four years of the new contract. It equates to an estimated average annual contract cost of £6.6M, a 49% increase on the £4.6M cost incurred in 2014/15. In view of the difficulty in the forecast of the movements of the energy market, LASER's forecast may best be viewed as an indication of the potential fluctuation of the energy market and not a scenario that need to be included in the budget planning process.

6.2 Legal Implications

6.2.1 Section 1(1) of the Localism Act permits the Council to do anything that an individual generally may do, subject to express prohibitions. In addition Section 111 of the Local Government Act 1972 further gives the Council the power to do anything ancillary to, incidental to or conductive to the discharge of its statutory functions and may enter into a contract with a provider for the services pursuant to section 1 of the Local Government (Contracts) Act 1997.

6.2.2 The Council's constitution (specifically, the Contract Procedure Rules ("CPRs")) permit the use of Framework agreements [subject to the prior approval of the Assistant Director of Procurement]. The Council must ensure that the procedure for call off under the terms of the Framework is complied with.

6.2.3 The Council must comply with its obligations with regards to obtaining best value under the Local Government (Best Value Principles) Act 1999. In considering the decision with regards the award of contract the Council can take into account costs of transition of service from one provider to another to ensure value for money in accordance with the Act.

6.2.4 The contracts which the Council will enter into must be in a form approved by the Assistant Director Legal Services and Governance.

6.2.5 LASER (Local Authorities South East Region) is one of the largest energy buying groups in the UK and acts on behalf of local authorities and other publicly funded bodies throughout the south of England. In the procurement of an energy provider LASER complies with European Union (EU) law by acting as a central purchasing body. The Council is seeking a warranty from Kent County Council (KCC) confirming compliance with EU law.

6.2.6 The proposed arrangements are structured so that the Council will enter into an access agreement with KCC for each of the gas and electricity purchase arrangements. The Council will also enter into a "side agreement" in respect of each of the gas and electricity arrangements with both KCC and the relevant supplier which means that there will be a direct contractual relationship between the Council and the supplier in respect of certain aspects of the supply of energy. The Council is seeking amendments to the access agreements to clarify certain aspects of them.

6.3 Property Implications

The implementation of energy-saving measures in corporate buildings and schools should remain the first priority for reducing energy costs, as it has direct benefits for sustainability. After that, the procurement of energy at least cost, as set out in this report, is prudent and minimises the financial cost of operating these buildings.

7. KEY RISKS

Failure to secure the contract for a start date of 1st October 2016 could potentially subject the prices to further increase. The energy market is extremely volatile and prices can fluctuate up to 5% on a given day and up to 100% in a year. A forward purchasing window of one year will allow LASER to purchase a proportion of aggregated energy requirements while the market is currently favourable.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

Through best practice procurement, competitive prices will be sought for all supplies pertaining to this contract.

8.2 Growth and Sustainability

The Energy Management Team is part of the Sustainability Service. Through the Enfield 2020 Sustainability Programme, the Sustainability Service is helping the council deliver a wide range of strategic sustainability projects, a number of which focus on 'managing your energy.'

8.3 Strong Communities - Positive

Securing value for money contracts would enhance the reputation of the Council in the local community.

9. EQUALITY IMPACT IMPLICATIONS

An equality impact assessment/analysis is not relevant or proportionate for the approval of a new two + two year rolling contract procurement strategy that will ensure value for money for all consumers.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

The contract will be managed and monitored by the Energy Manager throughout to ensure correct pricing and reviewed in conjunction with the London Energy Project (LEP) to ensure best value. The Energy Manager will also manage performance through regular meetings with LASER and the framework suppliers.

11. PUBLIC HEALTH IMPLICATIONS

An affordable and secure energy supply is fundamental to the health of the public. Enfield has a high rate of excess winter deaths caused by a combination of fuel poverty and badly insulated houses. Cold homes are also associated with a number of illnesses and diseases, in particularly heart and respiratory disease. In this sense this project will be beneficial. However, as climate change has been described as the greatest threat to public health in the 21st century it is to be regretted that recent changes in Governmental policy has meant that 'green' energy is unlikely to be used.

Background Papers

None.

MUNICIPAL YEAR 2015/2016 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

PORTFOLIO DECISION OF:
Cabinet Member for Economic Regeneration & Business Development
Cabinet Member for Finance

REPORT OF:
Director – Regeneration & Environment

Contact officer and telephone number:
Jeff Laidler; 02083793410
E mail: jeff.laider@enfield.gov.uk

Agenda – Part: 1	**KD Num: 4080**
Subject: On-Lending Agreement from the Council to Lee Valley Heat Network Ltd.	
Wards: All	

1. EXECUTIVE SUMMARY

1.1 In February 2015, the Council entered into two loan agreements - an £80 million loan facility with the European Investment Bank (EIB) for strategic infrastructure projects in Enfield (includes the Lee Valley Heat Network), and a separate £6 million loan with the London Energy Efficiency Fund (LEEF). The LEEF funding is to part fund the Lee Valley Heat Network (LVHN) to deliver capital infrastructure (energy centre and heat network) linked to the regeneration of the Lee Valley, using 50% match funding from the EIB.

1.2 The approval covered the nature of the funding, comprising a loan/loans to the Council and onward lending to LVHN. It is the onward lending agreement (the On-Loan Agreement) for which approval is now sought.

1.3 See Part 2

1.4 The Council Report of June 2015 approved the principle of the On-Lending Agreement, to enable LVHN Ltd to operate at the level envisaged in the Business Plan, and a working capital facility of up to £0.5 million to cover operating expenditure within the Business Plan but not covered by the On-Lending Agreement.

1.5 Authority is now sought for the on-lending and Loan Back Agreement. LVHN has existing authority to borrow £3.022 million. Any additional borrowing is Condition Precedent upon the Council's main investment decision in LVHN, which is scheduled for summer 2016.

1.6 See Part 2 report.

2. RECOMMENDATIONS

2.1 Approve entry into the On-Lending and a £12 million Loan Back Agreement, noting that the loan may be structured as more than one agreement to reflect the different sources of funds or may be consolidated into one agreement. This funding will only be released once both LBE and LVHN have signed the On-Lending Agreement and ancillary Loan-Back Agreement.

2.2 Approve entry into necessarily ancillary agreements to the above, for example providing a second State Aid opinion prior to any interest rate adjustment.

2.3 Delegate authority to approve upward adjustment of the interest rate payable under the On-Lending and Loan Back Agreement to both the Director of Regeneration and Environment, and the Director of Finance Resources and Customer Services, if recommended by financial advisors (to avoid being classed as State Aid) and agreed by LVHN's OpCo Board as a loan still worth taking.

2.4 Any additional borrowing over and above the £3.022 million previously authorised by Cabinet, is Condition Precedent upon the Council's main investment decision in LVHN, which is scheduled for summer 2016.

2.5 Authorise a separate £500k Working Capital Facility for LVHN, funded from the Council's general borrowing, which is separate to the On-Lending Agreement.

3. BACKGROUND

3.1 What is the On-Loan Agreement?

3.1.1 In February 2015, the Council entered into two loan agreements - an £80 million loan facility with the European Investment Bank (EIB) for strategic infrastructure projects in Enfield (includes the Lee Valley Heat Network), and a separate £6 million loan with the London Energy Efficiency Fund (LEEF). The LEEF funding is to part fund the Lee Valley Heat Network (LVHN) to deliver capital infrastructure (energy centre and heat network) linked to the regeneration of the Lee Valley, using 50% match funding from the EIB.

3.1.2 The approval covered the nature of the funding, comprising a loan/loans to the Council and onward lending to LVHN. It is the onward lending agreement (the On-Loan Agreement) for which approval is now sought.

3.1.3 See Part 2 report.

3.1.4 The Council Report of June 2015 approved the principle of the On-Lending Agreement, to enable LVHN Ltd to operate at the level envisaged in the Business Plan, and a working capital facility of up to £0.5 million to cover operating expenditure within the Business Plan but not covered by the On-Lending Agreement. Authority is now sought for the on-lending and Loan Back Agreement.

3.1.5 LVHN has authority to borrow £3.022 million. Any additional borrowing is Condition Precedent upon the Council's main investment decision in LVHN, which is scheduled for summer 2016.

3.1.6 See Part 2 report.

3.1.7 In principal approval to entering into the on-loan agreement was the subject of a Cabinet approval given in July 2015 as part of the approval of LVHN's Business Plan.

3.1.8 The On-Loan and Loan Back Agreement is substantially drafted and key terms agreed, save one element relating to State Aid. The loan may be structured as more than one agreement to reflect the different sources of funds or may be consolidated into one agreement.

3.2 What are the key On-Loan terms?

3.2.1 See Part 2 report.

3.2.2 See Part 2 report.

3.2.3 See Part 2 report.

3.2.4 See Part 2 report.

3.2.5 See Part 2 report.

3.3 Why is a loan-back agreement needed? This effectively enables LVHN to minimise the amount of loan interest capitalised under the on-loan on the £12 million loan portion it cannot immediately deploy to meet payments due under the DBO Contract (expected to be placed Q1 2016).

4. ALTERNATIVE OPTIONS CONSIDERED

Do nothing: see Part 2 report.

5. REASONS FOR RECOMMENDATIONS

Recommendations	Reasons
1. Approve entry into the On-Lending and Loan Back Agreement once finalised	To avoid breach of the LEEF loan agreement. To enable funds to be drawn by LVHN (per previous authorisation). To do so on terms compliant with the conditions of the LEEF loan agreement.
2. Approve entry into agreements ancillary to the above	If necessary, to enable implementation of the above
3. Delegate authority to approve upward adjustment of the interest rate payable under the On-Lending and Loan Back Agreement if recommended by professional advisors and agreeable to LVHN's OpCo Board	State Aid compliance is assured by default through use of an exemption. However, advice is being sought as to the interest rate that would need to be charged for the loan so as not to be considered State Aid. This would be better for LVHN. An adjustment in the interest rate under the loan may be required to ensure State Aid compliance and financial advice is being sought on the appropriate rate. An upward only adjustment would mean no risk of financial detriment to the Council resulting from any such adjustment

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

6.1.1 The on-lending agreement between the Council and LVHN will be used to finance the infrastructure requirements of LVHN, facilitating the provision of heating to local homes.

6.1.2 The rate of interest is set-out in the on-lending agreement. It may be adjusted after the loan has been drawn down by LVHN, if recommended by professional advisors that this will take the loan out of State Aid, and this is agreeable to LVHN's OpCo Board.

6.1.3 LB of Enfield will capitalise interest payments until LVHN begin to receive payments from its customers.

6.2 Legal Implications

Basis of arrangement

6.2.1 Section 1 of the Localism Act 2011 empowers the Council to do anything that individuals generally may do provided it is not prohibited by legislation, subject to pre-existing limitations and Public Law principles.

6.2.2 The On-Loan Agreement must be in a form approved by the Assistant Director of Legal Services and the Director of Finance Resources and Customer Services, and should clearly identify the various rights and obligations so that the operation of the agreement can be can be properly and regularly monitored. The Council is taking external legal advice as to the form of the On-Loan Agreement.

6.2.3 See Part 2 report.

6.3 Property Implications

None

7. KEY RISKS

7.1 **Key legal risks**

7.1.1 See Part 2 report.

7.2 **Most likely causes**

7.2.1 See Part 2 report.

7.3 **State Aid**

7.3.1 See Part 2 report.

7.3.2 See Part 2 report.

7.4 **How will these risks be mitigated?**

7.4.1 See Part 2 report.

7.4.2 See Part 2 report.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

LVHN aims to charge all of its customers a fair price for heat. LVHN Ltd is being set up as an 'ethical operator' to help protect local consumers by ensuring fair price and customer service terms.

8.2 Growth and Sustainability

8.2.1 LVHN is one of over 50 key large-scale sustainability projects in the Enfield 2020 Action Plan,. helping to deliver the Sustainability programme's 'Managing your Energy' and 'Regenerating the Borough' themes. It will also deliver significant carbon reduction, helping to meet Enfield 2020's 40% carbon reduction target for the Borough by 2020, as compared to a 2005 baseline.

8.2.3 To find out more and how this project is part of something bigger please visit www.enfield.gov.uk/enfield2020.

8.3 Strong Communities

Based on its ambition to expand to include existing buildings, LVHN has the opportunity to help reduce fuel poverty and improve public health. It is also being used to support local jobs and businesses.

9. **EQUALITIES IMPACT IMPLICATIONS**

An EQIA Assessment has been undertaken and it has identified that the recommendations for the LVHN set out in this report are unlikely to have a significant impact on the protected characteristic groups or the way that individuals access information or services. An EQIA Action Plan has been created and will be regularly reviewed and updated.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

None

11. PUBLIC HEALTH IMPLICATIONS

13.1 LVHN will deliver significant economic, environmental and social benefits.

13.2 Climate change is a major threat to public health. LVHN will help to reduce its impact:

- The carbon footprint of a home due to heating will be reduced at least 50% compared to conventional fuel.

- LVHN is hugely important for meeting London's carbon reduction targets.

13.3 LVHN will deliver competitively priced heat to new homes, and possibly, at a later stage of development to existing homes. Well heated homes help to promote the general health of the people that live in them.

Background Papers

None