

## MUNICIPAL YEAR 2017/2018 REPORT NO.

### ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

### OPERATIONAL DECISION OF:

Executive Director –  
Finance, Resources &  
Customer Services

<b>Agenda – Part: 1</b>	<b>KD Num: 3473</b>
<b>Subject:</b> <b>Housing Quarterly Electricity Contract Renewal – Landlords’ Supplies</b>	
<b>Wards: All</b>	

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### 1. EXECUTIVE SUMMARY

- 1.1 The current contract for Housing landlords’ electricity supplies ends 30<sup>th</sup> September 2017. There are 982 supplies; 78 serving communal heating and 904 serving lighting, door entry systems and lifts. 160 are large supplies (>10,000 kWh p/a) and 822 are small supplies (<10,000 kWh p/a). The estimated value of the new 12 month contract is £1,512,500. The current contract supplier is Southern Electric, Scottish and Southern Energy (SSE).
- 1.2 If a new contract is not secured on July 26<sup>th</sup> 2017 while the market is still favourable, for a start date of October 1<sup>st</sup> 2017, the process will be delayed and supplies could be subject to both market volatility and ‘out of contract rates’ costing the Council up to an additional average of £172,000 per month in the winter months and ~£1.5 million in one year.
- 1.3 There are two procurement options for contract renewal: (i) Fixed Term Fixed Price (FTFP), where the business is settled on a pre-determined date and prices known in advance of the supply period (budget certainty) or (ii) Flexible procurement where energy is purchased at strategic points ahead of the supply period and the price set at the start of each contract year. Flexible procurement can mitigate the impact of significant price swings, but is generally more suitable for larger consuming supplies, as a greater percentage (>20%) of the delivered price represents the tradable commodity. For very low value/consumption supplies (<10,000 kWh p/a), the tradable commodity may only be 20% of the total delivered price (the remaining 80% is made up of network and government charges which are fixed). Therefore, the cost of a fully risk managed, flexible procurement approach may not be justified.
- 1.4 Although a riskier strategy, FTFP procurement can afford the opportunity to secure extremely competitive rates. This depends on the wholesale market and the suppliers’ appetite for business. We have achieved excellent contract prices by employing this strategy in the past, particularly for 59 communal heating accounts (larger supplies) which represent >50% of the portfolio consumption and 33% of the total contract value (~£500,000).

- 1.5 Enfield Council is a member of LASER Energy (LASER), a Public Sector Energy Buying Group, which is a division of Kent County Council Commercial Services. LASER has an OJEU (Official Journal of the European Union) compliant FTFP contract (multiple provider) framework in place.
- 1.6 The preferred procurement strategy is to secure another one year, FTFP contract utilising LASER's framework. This recommendation is based on past performance. Should concerns regarding the volatility in the electricity market seen at the end of 2016 continue to cause concern, recommendation will be made to transfer the larger supplies (c.100) to longer term, corporate, flexible contracts from 1<sup>st</sup> October 2018. This will mitigate the impact of any large price swings. If approved, this risk managed strategy will require Leaseholder Dispensation.
- 1.7 This report seeks the approval of the Executive Director of Finance, Resources and Customer Services to award the contract for a 12 month period from October 1<sup>st</sup> 2017 - 30<sup>th</sup> September 2018 (FTFP).

## **2. RECOMMENDATIONS**

- 2.1 It is recommended that the Executive Director of Finance, Resources and Customer Services approves the award of a 12 month contract to the winning bidder, Southern Electric, for the supply of electricity to Housing sites (landlords' supplies). The winning contract offer was secured by mini competition using LASER's OJEU compliant FTFP contract (multiple provider) framework. The new contract will commence on 1<sup>st</sup> October 2017.

## **3. BACKGROUND**

- 3.1 Enfield Council is a member of LASER Energy (LASER), a Public Sector Energy Buying Group, which is a division of Kent County Council Commercial Services, representing 115 local authorities and 45 wider publicly funded bodies. LASER has been assessed and approved as a best practice energy procurement provider by the London Energy Project (LEP). The LEP is a shared Energy Category Management resource, funded through direct authority contributions. Under this arrangement the LEP 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.
- 3.2 LASER has an OJEU compliant FTFP contract (multiple providers) framework in place. The OJEU Reference is Y16021. The contract framework allows LASER to run a mini competition seeking price offers

for conventional or renewable energy (subject to supplier availability), to secure a contract on the Council's behalf, following the Council providing instruction and the relevant signed contract with the winning supplier. Mini-tenders can request pricing for any contract duration, although price premiums will typically be incurred for durations of greater than 3 years. Leaseholder dispensation (First-Tier Tribunal) will be required for contracts > 1 year.

- 3.3 LASER prepared the tender for the supply of electricity to Housing sites (landlords' quarterly billed supplies) in August 2016 and the current contract was awarded to Southern Electric on September 13<sup>th</sup> 2016. The one year contract commenced on October 1<sup>st</sup> 2016 and will end on September 30<sup>th</sup> 2017.
- 3.4 If a new contract is not secured from October 1<sup>st</sup> 2017, 'out of contract' rates will be applied, which will incur additional costs to the Council of an average £126,000 per month. However, the weighting will be greatest during the winter months increasing the additional average to £172,000 per month.
- 3.5 The contract renewal date for the supply of electricity to the non-half hourly, quarterly billed, Housing landlords' supplies is October 1<sup>st</sup> 2017.
- 3.6 The Housing landlords' electricity supplies' portfolio comprises approximately 980 supplies, including communal heating, staircase lighting, lifts and door entry systems. The supplies are billed quarterly.
- 3.7 The estimated annual value of the new contract for Housing electricity landlords' supplies is £1,512,000 based on estimated and actual annual consumption. LASER has advised that the current wholesale (commodity) market price is only very slightly higher than when the contract was last settled in September 2016. In September 2016 the commodity (energy) price was £46/MWh (winter 2016 price) and is currently £46.05/MWh (winter 2017 price). To contextualise these values, in July 2014 the wholesale energy price was £49.43/MWh. However, the wholesale or energy price only represents approximately 45% of the delivered price. The remaining uncontrollable i.e. non-competitive element (55%) represents the non-energy components e.g. transmission/distribution/taxes and government regulated fees and charges/levies such as the Feed in Tariff and Climate Change Levy. LASER anticipates a 15-20% increase in non-commodity costs. Therefore, there is an estimated increase in delivered contract price of ~10.1%. The increase represents a very slight rise in the electricity wholesale market and a 15-20% increase in the non-commodity, non-competitive element. The suppliers' risk premium is incorporated to cover unknown changes to the non-commodity elements of the prices from April 2018.

- 3.8 Wholesale energy prices are influenced by a range of factors including supply security, weather trends, European prices, geopolitical issues, market sentiments etc. This can result in price volatility of 5-10% over the course of a few days. These are external factors outside the Council's and LASER's control.
- 3.9 In the last 12 months the low electricity generation margin (the difference between electricity demand and generation) has been a significant driver of market instability. However, the generation margin has started to recover and projections have shown a marked improvement for the upcoming winter months. However, risks still remain when there are periods of sustained, low wind generation.
- 3.10 Given the volatility seen in the past 12 months in the electricity market and the continued, albeit reduced risk that poor generation margins will continue to pose, a thorough options appraisal will be undertaken to determine the best, risk managed procurement strategy for approximately 100 larger consuming supplies from October 1<sup>st</sup> 2018.
- 3.11 LASER tendered OJEU compliant four year flexible frameworks for the supply of electricity and gas for the 1<sup>st</sup> October 2016 – 30<sup>th</sup> September 2020. Therefore, the options appraisal will consider whether, in terms of price risk management, it would be prudent to transfer approximately 100 larger supplies (i.e. supplies >10,000 kWh p/a) to longer term, corporate contract arrangements in year three (from October 1<sup>st</sup> 2018). This will smooth out market volatility and mitigate the risk of a significant price increase. Transferring supplies to longer term, flexible contracts will require Leaseholder Dispensation and a supplier change. The remaining 880 housing landlords' supplies will still be tendered under the FTFP arrangements, which could also result in a supplier change.
- 3.12 The options will be considered in terms of overall value for money, risk management, Flexible vs Fixed Term Fixed Price contracts and measured against additional administrative/technical costs to the Energy Management Team for potential supplier changes and the cost of additional, bespoke EDI (Electronic Data Interchange) packages (facilitating electronic importing of invoice data).
- 3.13 The procurement/contract options will be presented to and considered in consultation with Corporate Procurement (Procurement and Commissioning Review Board), HHASC (Health, Housing and Adult Social Care) including the Assistant Director, Council Homes, FRCS (Management Accountant Enfield Homes), Home Ownership Services, Legal Services and LASER. The small supplies' electricity market is extremely complex and the LEP has undertaken a significant amount of research and analysis in order to best advise their members. This will be taken into account as part of the options appraisal.

- 3.14 Following guidance from LASER it has been agreed that securing a one year, FTFP contract from October 1<sup>st</sup> 2017 will provide sufficient time to carry out an options appraisal and Leaseholder Dispensation (First-Tier Tribunal) in order to secure long-term, flexible energy contracts for the larger consuming Housing electricity landlords' supplies if and where appropriate.
- 3.15 As the contract offer is only valid for approximately two hours on one specific day, a waiver to call-in is in place for FTFP contracts.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 Do nothing. The current contract will end on September 30<sup>th</sup> 2017. If a new contract isn't secured, the supplies will be subject to 'out of contract' rates from October 1<sup>st</sup> 2017, which are significantly higher (>100%) than contract rates. This will cost the Council an average of an additional £126,000 per month, with the greatest weighting in the winter months (~£172,000 per month).
- 4.2 The preferred option is to tender a one year FTFP contract from October 1<sup>st</sup> 2017 in order to secure competitive contract rates, particularly at a time when the market is still favourable. This will also provide sufficient time to carry out a detailed options appraisal and Leaseholder Dispensation (First-Tier Tribunal) in order to secure long-term, flexible energy contracts for the larger Housing electricity landlords' supplies from October 1<sup>st</sup> 2018, if and where appropriate.

#### **5. REASONS FOR RECOMMENDATIONS**

- 5.1 Securing one year, Fixed Term Fixed Rate contracts for the Housing Landlords' electricity supplies has been a successful procurement strategy historically, particularly in relation to the unit prices achieved for the communal heating supplies and particularly for 'Restricted Hours Tariffs' (currently 6.026p/unit). Only 59 supplies in the Housing portfolio are eligible for this tariff, but they represent > 50% of the contract consumption volume and ~£500,000. Part of the reason for the low unit rate is because the demand for electricity for these specific supplies is outside peak times. Overall, we have secured extremely competitive rates historically, however, FTFP contracts also carry far greater risk in terms of exposure to dramatic price swings year on year. Longer term, flexible contracts smooth any price spikes, thereby, mitigating the risks associated with FTFP contracts.
- 5.2 Following consultation with LASER and Home Ownership Services, it is recommended that a one year FTFP contract is the preferred option for 17/18, as it will allow sufficient time to track the wholesale market and conduct a detailed procurement options appraisal for the larger consuming supplies. It will also provide Leaseholder Services with

sufficient time to implement Leaseholder Dispensation (First-Tier Tribunal), should long term, flexible contracts be the preferred procurement route in future.

- 5.3 The LEP has undertaken a significant amount of detailed research in order to establish best procurement practice for 'small' electricity supplies (quarterly billed) and this will be taken into account as part of the appraisal.

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

### **6.1 Financial Implications**

- 6.1.1 This report seeks the approval of the Housing Quarterly Electricity Contract Renewal – Landlords' Supplies to award the contract for a 12 month period from October 1st 2017 - 30th September 2018 (FTFP). The estimated value of the new contract for Housing electricity landlords' supplies is £1,512,000 based on estimated and actual annual consumption. LASER has advised that the current wholesale (commodity) market price is only very slightly higher than when the contract was last settled in September 2016.
- 6.1.2 There are two procurement options for contract renewal: (i) Fixed Term Fixed Price (FTFP), where the business is settled on a pre-determined date and prices known in advance of the supply period (budget certainty) or (ii) Flexible procurement where energy is purchased at strategic points ahead of the supply period and the price set at the start of each contract year. Flexible procurement can mitigate the impact of significant price swings, but is generally more suitable for larger consuming supplies, as a greater percentage (>20%) of the delivered price represents the tradable commodity. The preferred option is to tender a one year FTFP contract from October 1st 2017 in order to secure competitive contract rates, particularly at a time when the market is still favourable.
- 6.1.3 If a new contract is not secured from October 1st 2017, 'out of contract' rates will be applied, which will incur additional costs to the Council of an average £126,000 per month. However, the weighting will be greatest during the winter months increasing the additional average to £172,000 per month.
- 6.1.4 The total cost of this contract is charged to Housing (HRA) – HR0399.

6.1.5 The Energy costs are recovered from tenants and leaseholders. The increase of £138.6k in the Electricity Contract will be passed on to the residents in the form of a service charge.

6.1.6 The new service charges do not come into effect until 1<sup>st</sup> April 2018, therefore the increase in contract value between October 2017 and March 2018 will be funded from the Housing Revenue Account.

## **6.2 Legal Implications**

6.2.1 The Council has a general power of competence in s.1(1) Localism Act 2011. This states that a local authority has the power to do anything that individuals generally may do provided it is not prohibited by legislation.

6.2.2 S.111 Local Government Act 1972 gives a local authority power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The services to be provided, as proposed within this Report are incidental to the functions of the Council's departments and are intended to help ensure an effective service provision to the borough of Enfield.

6.2.3 The Council must comply with its Constitution, Contract Procedure Rules ("CPRs") and, as the contract value exceeds the EU threshold, it must also comply with the Public Contracts Regulations 2015. The Council's constitution (specifically, the CPRs) permits the use of Framework agreements subject to the prior approval of the Assistant Director Procurement (CPR 8.2). The Council must ensure that the procedure for call off under the terms of the Framework is complied with along with all applicable Framework rules.

6.2.4 The Council must comply with its obligations with regards to obtaining best value under the Local Government (Best Value Principles) Act 1999. The Council must keep a clear audit trail of its decision to award to the Contractor(s) in order to demonstrate that best value has been and will continue to be obtained for the Council.

6.2.5 As this constitutes a Key Decision the Council must ensure it follows all applicable Key Decision/Governance procedures.

6.2.6 All legal agreements arising from the matters described in this report must be approved in advance of contract commencement by the Assistant Director of Legal Services and Governance.

6.2.7 As the contract value exceeds £250,000, security in the form of a performance bond / parent company guarantee will be required from the successful contractor, except where the relevant service Director

and the Executive Director of Finance, Resources and Customer Services consider this to be unnecessary.

### **6.3 Procurement Implications**

- 6.3.1 LASER will run the mini competition on behalf of the Council via their own OJEU compliant system. The OJEU Reference is Y16021.
- 6.3.2 LASER have confirmed the framework is live (running 48 months from 20 May 2016) and the Council completed due diligence to confirm that the Council can access the new framework agreement in September 2016.

## **7. KEY RISKS**

Failure to secure a contract for the start date of October 1st 2017 will subject the prices to a significant increase. If a contract is not secured from October 1st then 'out of contract rates' will be applied, which will be as much as or greater than 100% higher than current contract rates. The energy market is extremely volatile and prices can fluctuate up to 5% on a given day, therefore, it is essential to secure the contract at a time when the market is favourable. Failure to do so will cost the Council an average of an additional £126,000 per month from October 1<sup>st</sup> 2017, with the greatest weighting in the winter months (~£172,000 per month) and ~ £1.5 million for 12 months.

## **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 Sustainable Enfield, the Sustainability Service is helping the Council deliver a wide range of strategic sustainability projects, a number of which focus on 'managing your energy.' Best practice energy procurement is an integral part of this process, helping the Council save money by saving energy.

### **8.3 Strong Communities - Positive**

Securing value for money contracts will protect the Council's reputation in the local community.

## **9. EQUALITY IMPACT IMPLICATIONS**



An equality impact assessment/analysis is not relevant or proportionate for the approval of a new 12 month contract for the supply of electricity to Housing sites (landlords' supplies) that will ensure value for money for all consumers.

**10. PERFORMANCE MANAGEMENT IMPLICATIONS**

The contract will be managed by the Energy Manager throughout to ensure correct pricing.

**11. PUBLIC HEALTH IMPLICATIONS**

Through best practice procurement, competitive contract prices will benefit many Council housing residents and leaseholders by ensuring value for money for communal landlords' supplies including lighting, heating and lift supplies. This links to the fuel poverty agenda, which in turn has an impact on public health.

**Background Papers**

None

