

## London Borough of Enfield

### Operational Report

**Report of:** Dominic Millen, Head of Climate Action and Sustainability

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**Subject:** Procuring a Council Housing Electricity Supply Contract

**Executive Director:** Sarah Cary - Executive Director of Place

**Wards:** All

**Key Decision:** KD3473

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### Purpose of Report

1. To outline the proposed approach in respect of securing the supply of electricity for Enfield Council's Housing sites (heating and lighting). The provision of electricity for these sites is a corporate duty. The proposals set out offer both best value and an effective way to secure the necessary supply.

### Proposal(s)

2. That the Executive Director of Place agrees to the approach in respect of procuring a 12-month contract for the supply of electricity to Council Housing sites. The procurement will involve call-off via a mini competition using LASER's<sup>1</sup> Public Contracts Regulations (PCR) compliant Fixed Term Fixed Price (FTFP) multiple provider Framework Agreement. The new contract will commence on 1<sup>st</sup> October 2021 and run until 30<sup>th</sup> September 2022.
3. That authority for the award of the contract up to a value of £2m be delegated to the Director of Housing & Regeneration, Place Department. Should the value of the contract exceed £2m then authority will revert to an Executive Director.
4. That green electricity should be procured (ie that which is Renewable Energy Guarantees of Origin (REGO) certified) unless it is more expensive than brown electricity by a margin of 5% or more. Should this be the case, then the budget holder, the Director of Housing & Regeneration, Place Department, will determine which type of electricity should procure in line with best value principles, whilst taking into account the commitments to REGO certified electricity in the Council's Climate Action Plan.

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<sup>1</sup> LASER is an Energy Buying Group (part of Kent County Council) which the Council is part of.

## Reason for Proposal(s)

5. The proposals as set out will allow the Council to secure best value by procuring electricity for Social Housing supplies using a process which has in place for several years:

<p>That the Executive Director of Place approves the procurement of a 12-month contract for the supply of electricity to Council Housing sites. The contract will be secured by call-off via a mini competition using LASER's Public Contracts Regulations (PCR) compliant Fixed Term Fixed Price (FTFP) multiple provider Framework Agreement. LASER is an Energy Buying Group (part of Kent County Council). The new contract will commence on 1<sup>st</sup> October 2021 and run until 30<sup>th</sup> September 2022.</p>	<p>The current contract runs from 1<sup>st</sup> October 2020 to 30<sup>th</sup> September 2021. The Housing electricity supplies have been historically, successfully, purchased under a one-year Fixed Term Fixed Price (FTFP) contract to provide budget certainty and best value. This has proven to be a successful procurement strategy, particularly in relation to the unit prices achieved for the communal heating.</p>
<p>That authority for the award of the contract up to the value of £2m be delegated to Joanne Drew, Director of Housing &amp; Regeneration Place Department. Should the value of the contract exceed £2m then authority will revert to an Executive Director</p>	<p>The delegation of the authority to procure is due to the nature of the procurement process for a 12-month contract (See Background Document), which requires a decision to be made quickly to secure a supply at the stated price. By not agreeing the contract in time, the Council faces significantly higher electricity prices should it have to rely on out-of-contract rates. The level of delegation is capped at £2m to make sure that any significant increase in cost has Executive Director oversight.</p>
<p>That green electricity should be procured (ie that which is Renewable Energy Guarantees of Origin (REGO) certified) unless it is more expensive than brown electricity by a margin of 5% or more. Should this be the case, then the budget holder Joanne Drew, Director of Housing &amp; Regeneration Place Department, will determine which type of electricity should procure in line with best value principles, whilst taking into account the commitments to REGO certified electricity in the Council's Climate Action Plan.</p>	<p>The Council's Climate Action Plan commits to all corporate electricity being REGO certified and it is assumed that this is what will be procured via this contract. However, it is recognised that a significant variance in cost might not be affordable within existing budgets so there needs to be flexibility for the budget holder to make a decision if the difference exceeds a threshold of 5%.</p>

## Relevance to the Council Plan

### 6. Modern Council - Financial resilience and good governance

The proposal will support the 2020-22 Council Plan and help:

- Target resources smartly and reinvest income to deliver excellent value for money in all that we do. The recommended decision delivers value for money by using a recognised procurement framework.
- Ensure that all decisions we make will help us to become carbon neutral; create good health for local people; safeguard children and vulnerable adults; enhance equality of opportunity and tackle discrimination and inequality whilst providing value for money and not significantly increasing the financial burden for our tenants.

## Background

7. Enfield Council Housing has approximately 968 electricity meters for its Housing stock. These provide energy for 71 meters for communal heating and 897 meters for communal lighting, door entry, etc.
8. In recent years the supplier contract has been successfully purchased through a Public Contracts Regulations (PCR) compliant Framework (ref Y16021) with LASER Energy Buying Group (part of Kent County Council).
9. The Council Housing electricity supplies have previously been purchased under a one-year Fixed Term Fixed Price (FTFP) contract to provide budget certainty and best value.
10. The current contract expires on 30<sup>th</sup> September 2021. The new contract will run from 1<sup>st</sup> October 2021 to 30<sup>th</sup> September 2022 with an estimated annual cost of £1,400,000. This is based on the current contract value with an uplift of 30% - see 14. for an explanation of this increase.
11. Due to the volatility of the energy commodity market prices are only valid for 2 hours before the pricing is subject to change and renegotiation is required.
12. Following declaration of Climate Emergency Enfield Council's cabinet has approved a Climate Emergency Action Plan. In support of this Plan the assumption that 100% REGO will be purchased. However, given that any increase must be recharged to tenants and leaseholders or absorbed by the Council's Housing Revenue Account, it is recommended that if REGO is more than 5% more expensive than brown electricity, then the budget holder (in this case Joanne Drew, Director of Housing and Regeneration) is best placed to decide what should be procured.

## Main Considerations for the Council

13. The Council has a duty to supply electricity for its housing. The current contract for these electricity supplies ends on 30<sup>th</sup> September 2021. A new contract needs to be secured for a start date of 1<sup>st</sup> October 2021 to prevent the related electricity supplies being subjected to 'out of contract rates' which could double the price.

14. It should be noted that the prices for 2020/21 were subdued due to market influences such as Covid. Pricing has now increased significantly, in part reflecting the historic lows of 2020/21 pricing and the bullish market seen as we move towards the lifting of Covid restrictions. Therefore, the expectation is that costs will increase by around 30%.
15. The preference will be to secure 100% REGO certified electricity for the Housing supply. However, should there be a significant difference between the cost of REGO and brown electricity, then it will be for the budget holder (Director of Housing and Regeneration, Place Department) to decide which supply is best value taking into account possible impacts of higher costs on Council tenants, as well as the Council's commitments as set out in the Climate Action Plan.
16. The Council is using a procurement policy compliant approach, with the requirement to agree a contract "on-the-day" considered to be relatively low risk given that template terms and conditions for the likely suppliers have already been provided.

### **Safeguarding Implications**

17. No direct implications identified.

### **Public Health Implications**

18. No direct implications identified.

### **Equalities Impact of the Proposal**

19. Given that this procurement relates to electricity supplies for Council housing and that the cost is transferred to tenants and leaseholders, an EqIA has been undertaken. This identifies that providing the electricity is beneficial, however there could be a financial impact on some groups. As far as possible this will be mitigated via the proposed procurement approach, which seeks to get the price available from the market, taking into account the volatile nature of energy pricing.

### **Environmental and Climate Change Considerations**

20. The proposed procurement will include an option to purchase 100% REGO certified power. REGO provides transparency to consumers about the proportion of electricity coming from renewable sources) certified electricity which is in line with actions in the Council's Climate Action Plan. This will be subject to the pricing differential being no more than 5% higher for REGO.
21. It should be noted that securing 100% REGO certified electricity will not in itself reduce the Council's direct emissions. However, it will support decarbonisation of the grid which in the long term reduces the carbon factors associated with electricity consumption.
22. In addition, alongside securing 100% REGO certified electricity, there will be ongoing work to reduce consumption, which will have a direct positive impact on the Council's carbon emissions.

23. For context the last two years carbon figures for Council Housing are:

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2019/2020 Elec = 2,049 tCO2e  
2020/2021 Elec = 1,683 tCO2e

24. These figures show a significant drop which in part is due to the reduction of national carbon factors used to convert the usage in kilo Watt hours to carbon.

#### **Risks that may arise if the proposed decision and related work is not taken**

25. If the proposal is not approved, from 1st October 2021 'out of contract rates' will be applied, which will be as much (or greater than) 100% higher than market contracted rates incurring additional costs to the Council of approximately £1.4 million a year.

#### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

26. There is a risk that prices on the day will be higher than expected. To mitigate this:

- There will be extensive engagement with the Council's bureau provider (LASER) to identify an optimum procurement date based on long term trends and short-term market fluctuations. Any date will not be publicly announced.
- There is an option to not procure at the rates offered. There would then need to be another procurement exercise.

#### **Financial Implications**

27. The estimated £1.4m cost of the electricity supply will be met by a budget held by Housing and Regeneration. This cost is then fully recovered from tenants and leaseholders through service charges. Any increase will be reflected when setting the 2022/23 charges as part of annual rent setting.

28. Previous years have seen a decrease in electricity costs. However, the market has risen significantly so far this year. It is anticipated that the cost of the contract will increase by circa 30%, compared to last year's rates. Further information is included in the Background Paper: Housing Electricity Contract Renewal Approval of Procurement and Award of Contract using LASER Framework.

29. The table below shows the estimated impact of a 30% increase on current charges on a sample of property sizes. The potential increases in tenant heating charges are as follows:

Bedsits	£2.61 - £ 6.50 per week
1 Bedroom flats	£2.73 – £ 7.32 per week
2 Bedroom flats	£3.33 - £ 9.51 per week

30. Consideration has been given as to the potential for a supplier to fail. As the table below shows (sourced from: <https://companycheck.co.uk/>) this is unlikely given the financial stability of the suppliers that will be bidding. Even if they do fail

another supplier would be expected to take on the supply so there would not be disruption to service.

<b>Potential Bidding Suppliers</b>	<b>Net Worth</b>	<b>Total Assets</b>
Corona	£15.6 Million	£16.4 Million
Ecotricity	£14.8 Million	£95.8 Million
Npower - now part of Eon	£116 Million as Npower £92 Million as Eon	£2 Billion as Npower £1 Billion as Eon
SSE	£2.6 Billion	£3.5 Billion
Total Gas and Power	£1.5 Billion	£6.2 Billion

### **Legal Implications**

31. The Council has a duty to provide communal facilities for residents in the housing stock it manages, this includes some communal electricity supplies. The proposed approach to securing a supplier is in line with the Council's duty to secure best value.
32. The contractual arrangements are slightly unusual in that the contract is effectively agreed on the day so the usual exchanges on the details are not feasible. However, the potential bidding suppliers have provided standard Terms and Conditions (for reference they are attached in Appendix A), which are broadly similar so any related risk is significantly reduced.
33. Should any of the contract terms be deemed to be unacceptable when the procurement takes place then the Council retains the right to not proceed.

### **Workforce Implications**

34. No direct implications identified.

### **Property Implications**

35. No direct implications identified.

### **Procurement**

36. Any procurement must be undertaken in accordance with the Councils Contract Procedure Rules (CPR's) and the Public Contracts Regulations (2015).
37. The award of the contract, including evidence of authority to award, promoting to the Councils Contract Register, and the uploading of executed contracts must be undertaken on the London Tenders Portal including future management of the contract.
38. All awarded projects must be promoted to Contracts Finder to comply with the Government's transparency requirements.

39. The proposed approach to procurement follows established practice for the spot purchasing of energy for a fixed rate over a fixed term. The purchasing is managed using the Council's energy bureau (LASER) provider.
40. 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.
41. Under the CPR's this contract must have a nominated contract manager in the LTP, and show evidence via the LTP of regular contract management, and monitoring.
42. Where procurement has not taken place via the LTP, then signed contracts, call off agreements, and DAR must be sent to [procurement.support@enfield.gov.uk](mailto:procurement.support@enfield.gov.uk) for them to create a record in the corporate contracts register (LTP) and promote to contracts finder to ensure the Council meets its transparency obligations.

### **Options Considered**

43. Do nothing. The current contract will end on 30<sup>th</sup> September 2021. If a new contract isn't secured, the supplies will be subject to 'out of contract' rates from 1<sup>st</sup> October 2021, which are significantly higher (greater than 100%) than contract rates. This will incur additional costs to the Council of an approximately £1.4 million a year, taking the annual bills up to £2.8 million.
44. Transfer all Housing landlords' electricity supplies to LASERs existing Two Year Rolling flexible contract (which is currently used for corporate property energy purchases), terminating on 30<sup>th</sup> September 2024. This is not the preferred option as it is felt that better pricing can be obtained using the FTFP contract as per the attached Background Paper.
45. Discussions with LASER, as our expert support in this area, have indicated that we are unlikely to secure any greater value from looking at other routes to market given the specific challenges in respect of these supplies.
46. Remove the option to secure REGO certified electricity because it is likely to be higher cost. The Council has committed to move all of its corporate electricity supplies to REGO certified so this option has to be included. However, as noted in 15., should there be a significant difference the delegated officer can decide to opt for brown electricity.

### **Conclusions**

47. The recommended option is to Secure a one-year FTFP contract from 1<sup>st</sup> October 2021 to 30<sup>th</sup> September 2022. Previously we have been able to achieve best value using this approach and there are not any new alternatives in the market at this time.

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## **Appendices**

1. Copy of supplier Terms and Conditions SSE
2. Copy of supplier Terms and Conditions SSE Side Agreement
3. Copy of supplier Terms and Conditions Corona
4. Copy of supplier Terms and Conditions Ecotricity
5. Copy of supplier Terms and Conditions Npower
6. Copy of supplier Terms and Conditions Total Gas and Power
7. Confidential Appendix - Housing Electricity Contract Renewal Approval of Procurement and Award of Contract using LASER Framework

## **Background Papers**

None used.