

Please note Part 2 report is now confidential appendix.

London Borough of Enfield

Operational Report

Report of **Doug Wilkinson**

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

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

Ward **All**

Key Decision: **KD3473**

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) for the next four years (1st October 2022 to 30th September 2026). The provision of electricity for these sites is a corporate duty and 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 and awarding an annual 12-month contract for the supply of electricity to Council Housing sites. The procurement will involve an annual call-off via a mini competition using LASER's¹ Public Contracts Regulations (PCR) compliant Fixed Term Fixed Price (FTFP) multiple provider Framework Agreement. Each new contract will commence on 1st October and run until 30th September.
3. That authority for the award of the contract up to the value of £2.5m be delegated to the, Director of Housing & Regeneration Place Department. Should the value of the contract exceed £2.5m and not exceed £3.5m per year then authority will revert to the Executive Director of Place.
4. That green electricity should be procured (i.e. 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 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.

¹ 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 approach annual 12-month contracts for the supply of electricity to Council Housing sites. The contracts 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 first of these contracts starting 1st October 2022 ending 1st September 2023 with the final contract expiring 30th September 2026.</p>	<p>The current contract runs from 1st October 2020 to 30th 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 £2.5m be delegated to the, Director of Housing & Regeneration Place Department. Should the value of the contract exceed £2.5m and not exceed £3.5m per year then authority will revert to the Executive Director of Place.</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 supplies 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 £2.5m 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 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.</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>
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Relevance to the Council's 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 30th September 2022. The new contract will run from 1st October 2022 to 30th September 2023. The existing contract has an estimated annual cost of £2m

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 cabinet has approved a Climate Action Plan. In support of this Plan the assumption is that 100% REGO certified electricity will be purchased. However, given that any increase must be recharged to tenants and leaseholders it is recommended that if REGO is more than 5% more expensive than brown electricity, then the Director of Housing and Regeneration is best place 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 30th September 2022. A new contract needs to be secured for a start date of 1st October 2022 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 likelihood is that costs will increase by around 50%. It should be noted that the market is extremely volatile at the moment and this percentage may well change, potentially increasing.
- 15 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.
- 16 It is important to note that the current energy market is extremely volatile affected by Brexit, Covid and most recently the situation in Ukraine. The latter is causing extreme increases in gas and electricity costs. Prices have doubled across the whole industry and all suppliers. There is nothing we can do to mitigate these increases however we are confident that LASER are in the best position to obtain competitive pricing given the market.

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 necessary, however there

could be a financial impact on residents living in council housing and those who are disadvantaged due to socio-economic factors. As far as possible this will be mitigated via the proposed procurement approach, which seeks to get the best possible price available from the market, taking into account the volatile nature of energy pricing. The EqIA will also be updated once the cost to residents can be confirmed.

- 20 In terms of social value, an established framework is being utilised which predates the Council's Ethical and Sustainable Procurement Policy. This means that there is not an opportunity to secure additional benefit through this contract award. It should be noted that when the framework was originally set up suppliers were required to address social value. In terms of compliance with national legislation (for example modern slavery and equalities), it is assumed that suppliers comply as these are legal requirements.

Environmental and Climate Change Considerations

- 21 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.
- 22 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.
- 23 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.
- 24 For context the last two years carbon figures for Council Housing are:
2019/2020 Elec = 2,049 tCO₂e
2020/2021 Elec = 1,683 tCO₂e
- 25 These figures show a drop in green-house gas emissions which is primarily due to the steep trend of decarbonisation of the electrical grid in the UK. The grid is projected to continue to decarbonise with ongoing investment of renewables, and a national move away from fossil fuels such as coal. The grid carbon factor (kgCO₂e/kWh) for the upcoming reporting year has dropped by a further 9% which is expected to be reflected in the carbon emissions reporting for 2021/22. For reference below are the last 3 years UK grid carbon conversion factors (kgCO₂e/kWh) from BEIS:

2019 = 0.256
2020 = 0.233
2021 = 0.212

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

26. If the proposal is not approved, from 1st October 2022 '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 £2m a year.
27. 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

28. The estimated cost of the electricity supply for heating and lighting is estimated to be £2m. The contract will run from 1st October 2022 to 30th September 2023. This cost is fully recovered from tenants and leaseholders through service charges and changes to charges will be reflected in the annual rent setting report.
29. The market has risen significantly this year and it is anticipated that the cost of the contract will increase by circa 50%, compared to last year's rates. It should be noted that the market is extremely volatile and this percentage is an estimate at this stage.
30. The table below shows the average electricity charges to tenants, a 50% increase to the current charge increases the average charge by £7.44 per week.

	Average charge 2021-22 (per week)	Average charge 2022-23 (per week)	50% increase on 2022-23 charge (per week)
Average weekly charge all bed size	14.19	14.90	22.34

Security

31. Consideration has been given as to the potential for a supplier to fail, which is considered very low risk. LASER have confirmed that they run credit ratings for all suppliers, and in case of any of them not meeting the strict criteria our credit team would request additional information, such as parent company/ director guarantee, and others if deemed necessary by our credit control. Even if they do fail another supplier would be expected to take on the supply so there would not be disruption to service.
32. 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.

- 33 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.
- 34 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.

Legal Implications

- 35 The Council has the power to procure the supply of electricity under s.111 Local Government Act (1972) which enables the Council to carry out any activity that is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The Council also has a general power of competence under s.1(1) Localism Act (2011) to do anything that individuals may do, provided it is not prohibited by legislation and subject to Public Law principles.
- 36 The contract is a public supply contract under the Public Contracts Regulations 2015 (PCR 2015) and the estimated contract value exceeds the threshold under Part 2 of the PCR 2015 (currently £213,477 inclusive of VAT). The Council must therefore ensure compliance with the PCR 2015 and its Constitution and in particular, the Contract Procedure Rules ("CPRs"). Both the PCR 2015 and the CPRs permit the use of Framework agreements. CPR 14.4 states that Frameworks, where they exist, should be used provided Best Value can be demonstrated and managers are required to retain sufficient evidence to demonstrate compliance. A due diligence exercise must be carried out by the Procurement and Commissioning Hub (P&C Hub) prior to calling off from a Framework and the Council must be clearly identified as a contracting authority able to use the Framework when the Framework was set up.
- 37 The contract award must be in accordance with the process set out in the Framework agreement and the terms of the call off contract must be consistent with the framework terms. The Council will need to further ensure that any contract award following the mini competition proposed in this report is compliant with the PCR 2015 and the Council's Contract Procedure Rules.
- 38 As this constitutes a Key Decision the Council must ensure it follows the Key Decision process in the Constitution.
- 39 The Council must continue to comply with its obligations relating to obtaining best value under the Local Government (Best Value Principles) Act 1999.
- 40 For contracts £1,000,000+ in value, the CPRs provide that contractors must be required to provide sufficient security in one of the forms outlined in CRP 7.3. If the contractor cannot provide such security, the Executive Director of Resources must approve such a decision, with reasons and risk mitigation measures set out in the relevant authority report, prior to the contract award.
- 41 All contracts arising as a result of this report must be in a form approved by Legal Services for and on behalf of the Director of Law & Governance and must be executed under seal (if the value exceeds £500,000)

Workforce Implications

42. No direct implications identified.

Property Implications

43 No direct implications identified.

Procurement

- 44 Any procurement must be undertaken in accordance with the Councils Contract Procedure Rules (CPR's) and the Public Contracts Regulations (2015).
- 45 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.
- 46 All awarded projects must be promoted to Contracts Finder to comply with the Government's transparency requirements.
- 47 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.
- 48 LASER has a framework agreement that is compliant with the Public Contract Regulations 2015. This provides a Fixed Term Fixed Price framework agreement with multiple providers. 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.
- 49 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.
- 50 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 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

- 51 Do nothing. The current contract will end on 30th September 2022. If a new contract isn't secured, the supplies will be subject to 'out of contract' rates from 1st October 2022, which are significantly higher (greater than 100%) than contract rates. This will incur additional costs to the Council of an approximately £2 million a year, taking the annual bills up to £4 million.
- 52 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 30th 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. This also gives us more flexibility in the volumes purchased which is important as the Climate Action Plan develops Enfield will look to have more onsite generation such as solar. This would reduce our carbon footprint and our reliance on external electricity suppliers.

53 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.

Conclusions

54 The recommended option is to continue to secure annual (one-year) FTFP contract from 1st October 2022 to 30th September 2026 under delegated authority. 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 Confidential

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

Background Papers - None