

AGENDA ITEM: 16 Pages 131 – 137

Meeting	Cabinet Resources Committee
Date	4 April 2012
Subject	Extension of Heating / Fuel Oil Contract
Report of	Cabinet Member for Resources and Performance
Summary	To extend the existing Contract with Pace Fuelcare for the supply of heating / fuel oil at Corporate Buildings and Schools for a period of 18 months from 1st December 2011.

Officer Contributors	Praful Ladwa Procurement Manager (Commercial Services) Nigel Bell Energy Resource Manager (Commercial Services)
Status (public or exempt)	Public
Wards affected	All
Enclosures	Annex A – List of Establishments
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable
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1. RECOMMENDATIONS

- 1.1 That, as the value of the proposed contract extension is more than half the cost of the existing contract without the extension, the Council's Contract Procedure Rule 5.6.1.3 be waived.**
- 1.2 That, subject to 1.1 above being agreed, the Director of Commercial Services be authorised to extend the existing Contract with Pace Fuelcare for the supply of heating fuels at Corporate Buildings and Schools for a period of 18 (eighteen) months from the 1st December 2011 to 31st May 2013.**
- 1.3 The estimated value of the contract based on existing usage is approximately £182,798 per annum with an estimated overall contract value of £274,197 over the 18 month contract duration.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Acting Director of Corporate Services approved the award of Contract to Pace Fuelcare following a competitive tendering process DPR 969 16th December 2009

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Corporate Plan 2011- 2013 commits the Council to delivering 'Better services with less money'. To protect participating authorities such as the Council and to limit their exposure to significant price increases the Government Procurement Service (GPS, formerly OGC BuyingSolutions) renegotiated the existing framework agreement in order to secure greater price certainty. Reviewing and negotiating contractual arrangements supports the delivery of better services with less money.
- 3.2 The Council seeks to obtain value for money in the negotiation of contract extensions. However, the controlling of cost of fuel is not a simple matter as many global socio-economic factors that are beyond the control of the Council will influence the cost of fuel. The current cost of fuel is significantly more than the cost of fuel at the commencement of the current contract. Other contractual arrangements were explored in order to support the Corporate Plan objectives but none had been identified that would deliver an overall cost reduction and the recommendation to extend the current contract limits the cost impact to the Council.

4. RISK MANAGEMENT ISSUES

- 4.1 The contract with Pace Fuelcare expired on 30 November 2011. Unless the contract is extended the Council's corporate buildings and schools would not have a contracted oil supply and alternative arrangements would have to be sought.
- 4.2 The GPS has mitigated any risk to supply through renegotiating and extending the current call off arrangement and migrating participating authorities into the new arrangement, thus allowing the Council's corporate buildings and schools to continue ordering supplies as normal.

- 4.3 Officers will continue to ensure that Pace Fuelcare are compliant with all the service requirements detailed within the contract.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Pursuant to the Equality Act 2010, the Council and all other organisations exercising public functions on its behalf must have due regard to the need to: eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advance equality of opportunity between those with a protected characteristic and those without; promote good relations between those with a protected characteristic and those without. The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; Sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination.
- 5.2 Pace Fuelcare demonstrated that they can support the Council's equalities obligations when they submitted their tender. There have not been any negative equalities issues arising during the course of the current contract.
- 5.2 There is ongoing contract monitoring carried out by the GPS, to ensure that there is evidence of the contractor undertaking training.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 GPS continually monitor the energy markets and track the price and level of margins that suppliers apply. The continued volatility in the commodity markets in particular for oil and oil based products has led to sharp increases in both the weekly price and supplier margins.
- 6.2 GPS had two options which they could take prior to the end of the framework agreement:
- a. Undertake a Mini Competition. This was carried out, but it was found that margins had significantly increased from 2009.
 - b. Negotiate a variation to the existing framework agreement.
- 6.2 In order to protect participating authorities such as the Council and to limit their exposure to significant price increases the GPS renegotiated the existing framework agreement in order to secure greater price certainty. GPS has managed to secure supplier margins at the levels agreed in 2009. It is noted that Eastern Shires Purchasing Organisation (ESPO), which has a similar framework agreement is achieving supplier margins which are typically greater than this.
- 6.3 The GPS's Legal Department has confirmed that the approach taken to vary the term of the original two year framework agreement is lawful.
- 6.4 The term of any call off contract has also been extended until 31 May 2013, which is the termination date of the main framework agreement.

- 6.5 The estimated value of the contract based on existing usage is approximately £182,798 per annum with an estimated overall contract value of £274,197 over the 18 month contract duration.
- 6.6 Corporate sites account for approximately 19% of the annual oil usage equating to a contract value of £53k, (£47k Commercial Services and £6k Environment Planning and Regeneration) while education sites account for the remaining 81% and a contract value of £221k. The contract costs will be managed within the budgets identified.

7. LEGAL ISSUES

- 7.1 Contract Procedure Rule 5.6 sets out the Acceptance Parameters for Contract Additions, Extensions and Variations and Authorisation Parameters for Contract Novations and Assignments. These provisions include the following:

“5.6.1 In the case of an extension to a contract:

5.6.1.1 The initial contract was based on a competitive tender or quotations;

5.6.1.2 the initial contract has not been extended before; and

5.6.1.3 the value of the extension is less than half the cost of the existing contract without the extension and has a budget allocation”.

- 7.2 Procurement processes must comply with the European procurement rules and the Treaty obligations of transparency, equality of treatment and non discrimination as well as the Contract Procedure Rules (CPR's).
- 7.3 A framework is an agreement between a client and a contractor or contractors or consultant or consultants (depending upon the nature of the framework), the purpose of which is to establish the terms governing particular call-off contracts that may be awarded during the term of the framework, in particular with regard to price and quantity. The advantage of establishing framework agreements is that as long as the original framework agreement has been advertised and let in accordance with the EU procurement rules, there is no requirement to advertise any subsequent call-off contracts let under the framework agreement even where those call-off contracts exceed the stipulated financial threshold for works and services.
- 7.4 Appropriate legal documentation will need to be drawn up and executed to extend the existing contract.

8. CONSTITUTIONAL POWERS

- 8.1 Constitution, Part 3 – Responsibility for functions, section 3 – Responsibility of the Executive, paragraph 3.6 – terms of reference of the Cabinet Resources Committee
- 8.2 Constitution, Part 4 – Contract Procedure Rules - The Acceptance thresholds for contract additions, extensions and variations are as set out in Table 5-2. Where the contract value is greater than £156,422, authority of the Cabinet Committee must be sought.

8.3 Constitution, Part 4 – Contract Procedure Rules, section 5.8 - provides that a Cabinet Committee may waive the requirements of the Contract Procedure Rules if satisfied that the waiver is justified because:

“5.8.1 the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procedure Rules is justifiable; or

5.8.2 the contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or

5.8.3 the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English Law); or

5.8.4 there are other circumstances which are genuinely exceptional”

8.4 This report seeks a waiver of the Contract Procedure Rules for the extension of the Contract with Pace Fuelcare for the supply of heating fuels at Corporate Buildings and Schools for a period of 18 (eighteen) months from the 1st December 2011 to 31st May 2013 on the basis of Contract Procedure Rule 5.8.1.

9. BACKGROUND INFORMATION

9.1 The previous contract for the supply of heating fuels at Corporate Buildings and Schools was awarded following a mini tender that was managed by OGC BuyingSolutions (now GPS) and tendered during late 2009 for a fixed period of two years.

9.2 The initial contract period secured the level of supplier’s margin that would be applied to the base cost of heating fuel for which the contract price is agreed on a weekly basis. In 2009 the level of supplier margin was fixed at 2.17 pence per litre and an average weekly price of 38 pence per litre.

9.2 Heating fuel is traded on commodity markets and the price fluctuates depending upon the current political and environmental factors that can affect the certainty of supply. The estimated value of the contract based on existing usage is approximately £182,798 per annum.

9.3 The average weekly price for heating fuel for October 2011 was 53 pence per litre. The price of heating fuel increased dramatically in the winter of 2010 due to adverse weather reaching a high of 70 pence per litre and currently averages 56 pence per litre.

9.4 Budget responsibility is held by each of the service areas responsible for the establishments listed in Annex A of this report with over 80% of the usage assigned to schools. It should be noted that the number of Council establishments requiring deliveries of heating fuel has dropped as more and more convert to gas fired boilers.

9.5 Fuel oil consumption has dropped to 328,228 litres per annum for 2011 in comparison to 374,000 litres in 2009.

10. LIST OF BACKGROUND PAPERS

10.1 None.

Legal – SWS
CFO – JH

Annex A- List of Establishments

Site Name	Address 1	Address 2	Usage (litres)
Non Education Sites			
Colinhurst House	168 Station Road	Hendon	0
Edgwarebury Park Pavilion	Edgwarebury Lane	Edgware	1,200
Grahame Park Boiler House	Long Mead	Colindale	0
Mill Hill Depot	Bittacy Hill	Mill Hill	55,548
North London Business Park	Oakleigh Road South	Barnet	0
Oakhill Park Pavilion	Parkside Gardens	East Barnet	6,500
Education Sites			
All Saints CE School	Oakleigh Road North	Whetstone	17,579
Brookland Junior School	Hill Top	Hampstead Garden Suburb	6,846
Claremont Primary School	Claremont Road	Cricklewood	29,005
Danegrove Junior School	Ridgeway Ave	East Barnet	18,300
Deansbrook Junior School	Hale Drive	Mill Hill	10,000
Goldbeaters Primary School	Thirleby Road	Edgware	39,008
Sacred Heart RC Primary School	2 Oakleigh Park South	Whetstone	20,166
St Johns CE Primary School	Crescent Road	Friern Barnet	60,502
St Josephs RC Infants School	Watford Way	Hendon	14,771
St Josephs RC Junior School	Watford Way	Hendon	25,500
Summerside Primary School	Crossway	Finchley	21,503

