
Meeting	Cabinet Resources Committee
Date	17 December 2012
Subject	Contract for the Supply of Electricity & Gas
Report of	Cabinet Member for Resources and Performance
Summary	To report the decision made by Deputy Leader of the Council / Cabinet Member for Resources and Performance (on behalf of the Leader of the Council) as reported in Delegated Powers Report No. 1675, 18 May 2012 to continue participation in the LASER Energy Procurement framework and enter into a tri-partite agreement for the supply electricity and gas.

Officer Contributors	Nigel Bell – Energy Resource Manager (Commercial Services) Mope Akinbolagbe – Supplier Relationship Manager (Commercial Services)
Status (public or exempt)	Public
Wards Affected	All
Key Decision	No
Reason for urgency / exemption from call-in	Not Applicable
Function of	Executive
Enclosures	Appendix A – Electricity and Gas Contract Schedule
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1. RECOMMENDATIONS:

- 1.1 That the Committee note the decision taken by Deputy Leader of the Council / Cabinet Member for Resources and Performance (on behalf of the Leader of the Council) as reported in the Delegated Powers Report No. 1675, 18 May 2012 which approved the Council's continued participation in the LASER Energy Procurement framework and entering into a tri-partite agreement for the supply of electricity and gas. As reported in the May 2012 delegated powers report it was agreed to note the decision to Cabinet Resources Committee and update progress.**
- 1.2 That the Committee approves , subject to endorsement from the Joint Legal Service for Barnet and Harrow Councils, that the tri-partite agreement, once approved, will be executed as necessitated by the framework agreement and will be signed in accordance with Contract Procedure Rules Section 12.3.1**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Delegated Powers Report (DPR) No. 1675, 18 May 2012, Contract for the Supply of Electricity & Gas – Waiver of Contract Procedure Rules to continue Council participation in the LASER (Kent County Council) Energy Contract Framework. The Deputy Leader of the Council / Cabinet Member for Resources and Performance authorised the following action:**
 - (1) To waive Contract Procedure Rules (CPRs) pursuant to sections 5.7 and 5.8 of the CPRs and to permit the Director of Commercial Services to confirm the Council's decision to continue its participation within LASER's Flexible procurement Framework for the provision of electricity and gas from the 1 October 2012 to 30 September 2016.**
 - (2) The Council enters the tri-partite agreement for the supply of electricity and gas through the LASER Framework.**
 - (3) To report both of the above authorisations retrospectively to the Cabinet Resources Committee meeting prior to commencement of supply.**

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Corporate Plan 2012 - 2013 commits the Council to delivering 'Better services with less money'. The Council seeks to obtain value for money in the letting of its contracts. However, it is recognised that controlling the cost of energy is not straightforward as there are many factors influencing energy costs including global, political, and environmental influences which are beyond the control of the Council. The continued use of the LASER flexible framework will help limit exposure to significant price fluctuations and protect value for money as detailed in Section 6.**
- 3.2 Other contractual arrangements were considered in order to support the Corporate Plan objectives but were neither considered to deliver good market performance nor provide an appropriately managed service. The recommendation is to continue the use of the LASER Energy Procurement Framework.**

4. RISK MANAGEMENT ISSUES

- 4.1 Risk assessment as detailed in the previous DPR has been carried out, which identified the main issues summarised in the table below:

Risk	Early Warning Mechanisms/ Hazards	Residual Risk		Consequences / Mitigating Actions
		Likelihood	Impact	
Failure to commit to the framework by 18 th May 2012 will necessitate the council being offered a fixed term fixed price 12-month ??	NA	High	Medium/High	<p>Possibility of coinciding with peak in market prices when letting contract.</p> <p>Not in keeping with best practice</p> <p>Mitigating Action: Commit to LASER arrangement by 18th May 2012</p>
Failure to enter in to the LASER framework would require suitable alternative contract arrangements to be sought	NA	Low	Medium	<p>Risk of higher costs to service contract than current arrangements.</p> <p>Mitigating Action: Utilise LASER framework arrangement</p>

- 4.2 Adopting the recommendations in the previous DPR has mitigated the risks identified in 4.1 and the issues involved are unlikely to raise significant levels of public concern or give rise to policy considerations.

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 The procurement process undertaken by LASER was conducted in line with the Equality Act 2010 all bidders demonstrated that they can support the Council's equalities obligations when they submitted their tenders.

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

- 6.1 Corporate sites account for approximately 42.50% of energy usage equating to a contract value of £6.38m while Barnet Homes accounts for 8.04% (£1.21m) and school's account for the remaining 49.46% (£7.43.) The contract costs will be managed within the budgets identified.
- 6.2. The Council considered the option of competitively tendering its energy requirements and entering into standalone contracts, but this approach is unsuitable for this relatively low volume of business and is unattractive to the market. This approach would require additional specialist resource to be engaged by the Council i.e. specialist energy buyers and is considered contrary to best practice, which recognises the use of a Centralised Procurement body to deliver value for money.
- 6.3 LASER utilises a flexible, aggregated risk managed procurement strategy which enables blocks of energy to be purchased on the wholesale energy market at varying times, both before and dependant on the specific risk managed strategy within the contracted supply period.
- 6.4 A flexible approach permits the ability to follow the market more closely and make multiple purchases over a given period. It also enables a strategy to be followed to manage the risk and spread these purchases, to lock out peaks and take advantage of troughs. The arrangement limits the potential risks associated with volatile energy markets and the settling of prices on a single day together with enabling volumes to be more effectively aggregated.
- 6.5 LASER four year electricity and gas flexible framework contracts commenced on 1 October 2012 and expire on 30 September 2016. The estimated contract values based on current usage are £9.53m for electricity and £5.49m for gas, totalling £15.02m for both commodities as detailed in the table below:

2012-16 Energy Supply	Annual Consumption kWh	Annual Contract Value	Contract Consumption kWh	Contract Value
Electricity	25,501,450	£ 2,383,044	102,005,800	£ 9,532,175
Gas	45,145,049	£ 1,372,644	180,580,196	£ 5,490,576
Total	70,646,699	£ 3,755,688	282,585,996	£ 15,022,752

- 6.6 By not committing to the framework, LASER offers, certain value added activities which currently includes invoice validation; provision of electronic bill monitoring data etc will have to be resourced separately.
- 6.7 The energy contracts utilise supplies from renewable or climate change levy exempt sources where cost neutral or cheaper than conventional energy sources are generated. This supports the Council's environmental policy with regard to the efficient use of resources, CO₂ emission reduction targets and supports National emission reduction targets.
- 6.8. LASER has benchmarked its performance for its previous framework agreement 2009-12 with purchase prices which achieved 5.4% below average

market prices for electricity and 3.2% for gas. If this level of performance is maintained for the contract period 2012-16 it would provide a potential contract saving of approximately £725k to the Council (based on current usage).

7. LEGAL ISSUES

- 7.1 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).
- 7.2 The Laser Framework Agreement has been set up by Kent County Council (Commercial Services) and was procured in accordance with European procurement rules. Barnet Council is entitled to utilise the Framework. The Framework has the benefit of cheaper supplies due to the volumes of energy procured by this means.

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

- 8.1 Council Constitution Part 3 – Responsibility for Functions, section 3 – Responsibility of the Executive, paragraph 3.6 – details the terms of reference of the Cabinet Resources Committee.
- 8.2 Council Constitution, Part 4 – Contract Procedure Rules – details the acceptance thresholds for contract additions, extensions and variations are as set out in Table 5-2. Where the contract value is greater than £173,934 authority of the Cabinet Committee must be sought. As detailed in DPR 1675, the Deputy Leader / Cabinet Member for Resources and Performance (acting in the absence of the Leader of the Council) utilised urgency provisions to approve continued participation in the framework agreement. As set out in the DPR, the justification for urgency was that there were other circumstances which were genuinely exceptional in that the delays in the collaborative re-procurement exercise / evaluation, process and the timing for Cabinet Resources Committee reporting dates, the Council had no other option but to extend the existing arrangement
- 8.3 In accordance with decision 10.3 of DPR 1675, this paper provides the required reporting to the Cabinet Resources Committee of the decision taken.

9. BACKGROUND INFORMATION

- 9.1 Delays to the collaborative re-procurement exercise resulted in the timing of the decision falling outside of the Cabinet Resources Committee reporting dates. Approval was given under urgent powers to waive the Contract Procedure Rules to confirm the Council's decision to continue its participation with LASER's (Kent County Council) Flexible Energy Contract Framework from 1 October 2012 to 30 September 2016 (as detailed in Delegated Powers Report No. 1675, 18 May 2012).

- 9.2 The use of framework agreements is acknowledged to provide value for money for councils and the public sector. Procuring energy collaboratively through such frameworks provides a number of benefits including: the increased efficiency of the procurement process, reducing both time and costs; provision of market derived tariffs; improved quality of service provision, governance and management information.
- 9.3 The Council has procured its electricity and gas through the LASER Energy Buying Group (Kent County Council) since 1993. LASER is the largest local authority energy buying group in the UK acting on behalf of 26 London Council's and a total of 106 Local Authorities and other publicly funded bodies in the south of England.
- 9.4 Following the Council's participation in the London Energy Project's (LEPs) review of London public sector energy procurement, the Council together with other public sector organisations adopted aggregated flexible risk managed contracts. The previous LASER energy supply contract commenced on the 1st October 2009 and expired on 30th September 2012.
- 9.5 LEP recommends the continued use of an aggregated flexible procurement model such as provided by LASER or the Government Procurement Service (GPS). However, whilst both organisations are acknowledged to provide good market performance LASER provides an additional fully managed service more suited to the Council's requirements, while GPS offers a passive solution, requiring contracting authorities to engage and contract with multiple suppliers to obtain similar services.
- 9.6 The option to tender its own requirements on the open market is not recommended as the Council's demand is relatively low and unattractive to the energy suppliers. The Council would be unable to influence the contractual terms as the energy suppliers would enforce their terms and conditions of contract and the Council would have no option but to accept in order to secure supply.
- 9.7 The Council was required to notify LASER of its decision to participate in the framework agreement by the 18th May 2012 even though in effect the Council will be supplied energy as from 1st October 2012. This is because energy is traded as a commodity and is procured differently from common items such as stationery. In order to secure supply purchases are bought in blocks many months in advance of actual delivery.
- 9.8 By combining its requirement with that of other London Authorities and public sector organisations the Council is able to reduce the effects of price and supply volatility, in particular sharp price increases caused by factors beyond the direct control/influence of the Council. In addition, switching energy providers to other framework such as the GPS framework provides no value added benefits to the Council and it is a time consuming process which can take six months or more to implement and would deliver a reduced service provision. In this case, it is commercially beneficial for the Council to have waited for the evaluation process to have been completed before taking action to secure supply. This approach does not jeopardise the supply of energy prior to commitment being given as the previous contract secured supply in the interim months.

- 9.9 In consideration of LASER's performance in energy procurement as reported by the Cabinet Office, having outperformed its benchmark prices for both electricity and gas over a two year period; the cost avoidance provided to the Council through LASER's fully managed services and the substantial administrative burden, potential costs and risks associated with changing providers; the Council proposes to enter into a new contract with LASER procured through the OJEU process from 1 October 2012 for a period of four years.
- 9.10 Budget responsibility is held by each of the service areas responsible for the energy supply points listed in Appendix A of this report with just under 50% of the cost assigned to schools.
- 9.11 Energy is traded as a commodity and the price fluctuates depending upon the current political and environmental factors that can affect the certainty of supply. The estimated annual contract value of the based on existing usage is approximately £3.76M

10. LIST OF BACKGROUND PAPERS

- 10.1 Delegated Powers Report 1647, 18 May 2012, Contract for the Supply of Electricity & Gas – Waiver of Contract Procedure Rules to Continue Council Participation in the LASER (Kent County Council) Energy Contract Framework:
<http://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=4133>

Cleared by Finance (Officer's initials)	MC/JH
Cleared by Legal (Officer's initials)	SS