

20/11
DECISION
NOW MADE
NOT FOR
CALL IN

Notice of KEY Executive Decision

Subject Heading:	Award of energy contract - electricity unmetered
Cabinet Member:	Councillor Damian White
CMT Lead:	Jane West – Chief Operating Officer
Report Author and contact details:	Mark Butler, 01708 432947 mark.butler@onesource.gov.uk
Policy context:	Supporting the Havering Vision as an enabler via the effective procurement of energy resources
Financial summary:	The unmetered energy contract is for the supply to Highways Lighting and Street Furniture. The sufficiency of the budget would need to be considered following the procurement. Consumption and consequent expenditure is mitigated where possible by a number of energy efficiency measures.
Reason decision is Key	(a) Expenditure of £500,000 or more
Date notice given of intended decision:	3rd January 2020
Relevant OSC:	O&S
Is it an urgent decision?	Yes
Is this decision exempt from being called-in?	Yes

The subject matter of this report deals with the following Council Objectives

Key Executive Decision

Communities making Havering
Places making Havering
Opportunities making Havering
Connections making Havering

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

For the reasons set out in the report the Chief Operating Officer (as the Statutory Section 151 Officer) is asked to agree the award of a call-off contract to Npower Ltd from Pan-LEP Energy Contracts for Flexible Procurement and supply of electricity (unmetered) mainly to Highways Lighting and Street Furniture for a period of one year (April 2020 - March 2021).

AUTHORITY UNDER WHICH DECISION IS MADE

Authority for member of SLT under Section 3 of the Constitution as follows

Contract powers

(b) To award all contracts with a total contract value of between £500,000 and £5,000,000 other than Contracts covered by Contract Procedure Rule 16.3

STATEMENT OF THE REASONS FOR THE DECISION

The Council currently procures its corporate energy supplies (gas and three electricity contracts) via a framework operated by Crown Commercial Services (CCS). The contracts mainly cover energy supplies to Council buildings, schools, highways lighting, and common parts in housing schemes and are worth around £3.5m per annum. The existing arrangements for both gas and electricity are due to expire on 31st March 2020. The required six months' notice has been submitted to CCS indicating the Council's intention to re-procure its supply contract to commence at the end of the current arrangement.

The energy supplies span four contracts as follows:

Supply	Value (per annum) 18/19
Half Hourly Electricity	£1.15m
Non Half Hourly Electricity	£1.06m
Unmetered Electricity	£0.485
Gas	£1.15m

The annual value for each type of energy for 2019/20 is not known and will not be known until all the debt has been paid, and corrections for incorrect tax coding and other errors in billing are made.

It is not possible to provide an accurate forecast of what the whole life cost will be for 2020/21 as energy usage is very dependent upon weather conditions, which can be affected by unusual sea conditions, wind direction, geophysical events, etc. What can be said is that given similar weather conditions throughout the year 2020/2021 to those of 2018/19 then the annual value for each type of energy contract is likely to increase by a small sum due to the increase in non-commodity charges such as taxes, standing charge and other pass through charges.

Key Executive Decision

The purchase of energy does not follow a normal procurement process.

The LB of Havering as a long-standing member of the London Energy Project (LEP) is able to contract with the suppliers which won the mini-tenders of the LASER framework lots carried out by the LEP on behalf of its member public authorities. The relevant access agreements will be signed on behalf of the Council.

The process is that the suppliers on the LASER framework will obtain kilowatt hour rates for each of the electricity types and the gas contracts from the wholesale market. Havering will then have 24 hours to accept the offered rates. If the offers are not accepted within the time limit, which reflects the time limits imposed on the suppliers by the wholesalers, then new rates will have to be obtained and the process repeated the following day. However, there is a deadline as to the latest time that a supplier will accept a contract to ensure that they can complete the relevant switchover of the 100s of accounts from the current electricity suppliers, to the new supplier.

The London Energy Project (LEP), a public sector shared service, enables its participating authorities to achieve better value for money, process efficiencies, social value and carbon reduction through innovation, and working and buying together. The LEP has recommended its participant member authorities use an enhanced LASER framework they negotiated, to manage contracts ready for delivery of energy supplies by April 2020. LASER, a company wholly owned by Kent County Council, is a Central Purchasing Body which has specialised in the purchase of energy for the public sector for 30 years.

The proposed framework will provide cost avoidance as the LEP has negotiated a better value framework with LASER compared to the wider LASER offer and the CCS framework. By utilising the LEP/LASER framework for LB of Havering, the current gas supplier (CORONA) will remain the gas supplier and one electricity supplier (NPOWER) will be appointed to manage all HH (Half Hourly) and NHH (Non Half Hourly) electricity and unmetered supplies unlike in the previous CCS framework where different suppliers had to be managed. This will help in the transfer process for all the gas accounts to a new contract and having just one provider will help with managing the electricity accounts for all types of customers.

The contracts within the LEP framework are 'called-off' for 12 months or a two-year period at a time. It is intended to let only a one-year contract for each energy type to allow for the policy agreement and statutory consultation requirements for Housing that will allow Havering Council to procure green energy contracts at the end of this year, to commence in April 2021.

The LEP LASER 5-year single supplier framework, which Havering is accessing, expanded on the quality elements bringing further opportunities for social value and sustainability into consideration when selecting the winning suppliers for gas and electricity) as part of the mini-tender. The Council will be able to take advantage of these later in the duration of the framework.

As the quality elements have been accounted for, acceptance of the rates offered to Havering will be based on 100% price, which is normal for the procurement of the actual energy rates.

Key Executive Decision

The expenditure for the last financial year is within 3% of the threshold for a key decision. As it is not known what the rate will be until it is offered there is a possibility the new rate will take the contract value over the threshold. It was therefore considered prudent to ensure that such expenditure was correctly authorised. Hence ensuring that the Key Decision award process was followed.

Contracts with a total value of more than £150,000 are required to be executed under seal in accordance with Article 10.04 of the Constitution unless the Director of Legal and Governance approves otherwise. The Contracts provided by the suppliers will utilise the DocuSign process, so will need to be signed electronically and, accordingly, such approval is sought.

As the offer of the gas and electricity rates is included within the Contract, the signing of which signifies acceptance, a waiver of the requirement for a 5 day call-in period following the decision to accept the offer is also requested.

Whilst the original Forward Plan entry anticipated a need for delegation, the proposed award sits within the range of delegated authority for SLT members in accordance with Section 3 of the Constitution.

OTHER OPTIONS CONSIDERED AND REJECTED

Options Energy	Advantages	Disadvantages
<p>1. Buy Direct i.e. Procure from market and manage our own partner brokerage</p>	<ul style="list-style-type: none"> • Savings (Not determined as outside recommended practice) • Control of own strategy • Flexible in market • Concurrent to market • Flexible in demand 	<ul style="list-style-type: none"> • Does not conform to the Pan-London Energy Project recommendation that all Public Sector organisations adopt aggregated, flexible and risk-managed energy procurement. • Procuring the supply will require a full OJEU process • Increased staff resources required • In-House technical broker expertise becomes a single point of failure and high risk factor • Best price limited to current market • LBH would have to provide all service management • Volume tolerance is applied by providers limiting the in-contract changes allowed and they may apply penalties

Key Executive Decision

		<ul style="list-style-type: none">• Would not represent best practice as not forming part of an aggregated, flexible and risk-managed, energy procurement strategy• Low procurement volume would not drive best price model.
2. Full out-source i.e. 3rd party procurement; private broker & bureau; e.g. Capita /Buy Energy Online; or alternative E-Auction /Broker	<ul style="list-style-type: none">• We retain strategic control• Flexibility• Access to wholesale market (aggregated)• Variety of procurement tools available• Cost & hidden fees	<ul style="list-style-type: none">• Need to compliantly procure the broker• Need clarity over procurement requirements• Needs local client sign-off as new options are agreed• Missing opportunities i.e. buying during market lows, due to local sign off /availability of relevant decision-maker in line with scheme of delegation• Cost & Fees transparency• Supply tolerance

PRE-DECISION CONSULTATION

None

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Mark Butler

Designation: Director of Asset Management

Signature: 

Date: 20/02/2020

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

If a framework is not used to procure the Council's energy needs then there is a risk of non-compliance with the Public Contracts Regulations 2015 (PCR 2015). There is also risk of non-compliance with the EU Directive on energy efficiency measures like DEC, EPC, etc. The value of the contracts means that their procurement is subject to full compliance with the PCR 2015. Compliance with the Regulations is met by utilising an existing compliant framework which is accessible to the Council for call-off arrangements.

In relation to the activities which are the subject of this report the Council has powers under s111 Local Government Act 1972 to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The Council is also empowered to enter into contracts for the discharge of its powers under the Local Government (Contracts) Act 1997. These powers can be coupled with the Council's general power of competence under s1 of the Localism Act 2011 to do anything that corporate individuals generally may do as long as there are no statutory bars.

FINANCIAL IMPLICATIONS AND RISKS

The sufficiency of the relevant budgets will need to be considered as the procurement progresses. The energy budgets are due to be reviewed and necessary adjustments including expected savings relating to the new contract will be taken into account during the process.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

There are no anticipated HR issues resulting from the decision to award this contract.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

There are no equalities implications as a result of these energy contracts. The members of the energy frameworks are required to answer questions regarding their equalities policy and any adverse findings as part of their procurement of a public sector framework.

BACKGROUND PAPERS

None

Key Executive Decision

Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

Details of decision maker

Signed

Jane West

Name: Jane West

Cabinet Portfolio held:
CMT Member title: Chief Operating Officer
Head of Service title
Other manager title:

Date: 20.02.2020

Lodging this notice

The signed decision notice must be delivered to the proper officer, Andrew Beesley, Committee Administration & Interim Member Support Manager in the Town Hall.

For use by Committee Administration

This notice was lodged with me on 20/2/2020

Signed *[Signature]*