

Key Decision of the Corporate Director of Environment and Regeneration

Officer Key Decision	Date: 11.12.19	Ward(s): All
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THE APPENDIX TO THIS REPORT IS NOT FOR PUBLICATION**SUBJECT: Contract Award for 1819-0105 Gas and Electricity supply 2020-2024****1. Synopsis**

- 1.1 This report seeks approval to award contracts in respect of 1819-0151 Gas and Electricity supply – 2020-2024 in accordance with Rule 2.7 of the Council’s Procurement Rules.
- 1.2 The Council’s current gas and electricity contracts expire on 31/3/2020. The Council needs to procure supplies of Gas and Electricity for its own and external property portfolios. Such sites include, but are not limited to, housing, public buildings, libraries, parks, schools and leisure centres.
- 1.3 Pre-tender approval for the procurement strategy was agreed by the Executive Committee in January 2019 and a full OJEU compliant tender has been undertaken in order to award gas and electricity contract to replace those expiring.
- 1.4 Delegated authority to award the contracts to the Corporate Director of Environment and Regeneration in consultation with the with the Executive Member for Finance, Performance and Community Safety was agreed by Executive committee in January 2019.

2. Recommendations

- 2.1 To agree the award of 48 month contracts for the period 1st April 2020 to 31st March 2024 to the following energy suppliers:

Gas – Scottish & Southern Energy

2.2 **Date the decision is to be taken: 11.12.19**

3. Background

3.1 Nature of the service

The procurement strategy for the purchase of gas and electricity is based on flexible, aggregated purchasing of the commodity element of both gas and electricity, allied to the tendering of the supplier's profit margin. The final element that makes up the whole delivered price are "pass-through" costs for environmental taxes and the use of the electricity and gas grids. These charges are set by Central Government and other regulatory bodies, charged to energy suppliers and passed on by them to the end user.

It is generally established that the flexible purchasing of gas and electricity is economically preferable to fixed purchasing of utilities. This gives greater opportunity to purchase supplies when market prices are lower and to purchase in smaller amounts if prices are high. In addition, any trades made can be sold back to the market and re-bought at lower rates if available.

The tender focused on the fixed cost element of the gas and electricity price, as the actual cost of the gas and electricity itself would be determined by live trading. These fixed costs covered the suppliers' profit margin as the main element for analysis. Other cost elements including transportation, supply balancing, metering and other pass through costs were also included, enabling an estimated total fixed cost for each contract to be arrived at.

Suppliers were asked to provide their profit margin elemental cost for all four years of the contracts – other selected fixed costs are determined by Central Government/National Grid and are not known and have been estimated to arrive at a total fixed cost for each contract.

All suppliers were requested to confirm that they could provide renewable electricity and gas for the Council's portfolio, if required. The decision whether to procure renewable or traditional grid electricity (which uses fossil fuels for some of its generation), would be made at the time of purchasing the commodity, once contracts have been awarded. Trades (purchases of gas and electricity) are considered by the 4-person Energy Management Risk Committee (ERMC)

Following the Council's declaration of an environmental and climate emergency on 27th June 2019, and commitment to achieving a net zero carbon Islington by 2030, the proposed contracts provide a mechanism to purchase all, none or some of the Council's supplies from renewable sources, whilst factoring in financial considerations (renewable electricity traditionally attracts a premium). Consideration can also be given to the purchase of bio-methane instead of grid gas, although these markets are far less established than renewable grid electricity and prices for bio-methane are considerably higher than those for grid gas.

3.2 Estimated Value

The estimated annual value of the contracts is £8 million and for the four-year agreement proposed for 01/04/2020 to 31/03/2024, this will amount to around £32m. The overall spend is

split approximately 67% Council and 33% external clients, meaning £21.4m Council spend and £10.6 million external client spend over the contract period. As these contracts cover Housing, Councils buildings, schools, Leisure Centres and Academies, the costs are funded from various sources including the HRA.

The spend on these contracts over the last 2 years (2016/17 and 2017/18) has been approximately £9.8 million for electricity and £ 6.0 million for gas across the entire portfolio.

The breakdown of elements which make up the end delivered price can be split into Commodity and Non-Commodity costs. The Commodity costs which make up around 45% of the electricity prices and 65% of the gas price, are extremely volatile, prices are affected by various drivers such as weather, oil, coal and carbon prices as well as government regulation, geo-political conflict, market uncertainty and global demand.

A flexible, aggregated risk-managed procurement strategy allows for dips in the market to be accessed, fixing prices well ahead of delivery, it protects budgets and provides the potential to sell back surplus gas and electricity in reaction to large market moves. These features can all assist in mitigating costs and accessing opportunities to purchase commodities when markets are favourable.

Non-Commodity costs are set by Government and National Grid and in general these are rising, particularly in the electricity market and in the sharp increase in Climate Change Levy (CCL) rates. As the majority of these are charged on a consumption basis, the main method of mitigating these is the management and reduction of energy consumption.

In order to reduce administrative costs, all billing will be electronic.

3.3 Timetable

The current gas and electricity contracts expire on 31st March 2020 and new contracts must be in place no later than 29th February 2020 to allow gas and electricity purchases to be made in good time.

Dispensation has been sought from First Tier Tribunal (Property Chamber) under Section 20ZA to allow residents and leaseholders to be charged in full. The decision is due in December 2019. This has been undertaken in conjunction with Home Ownership and Legal Services.

3.4 Options appraisal

The Executive Report of January 2019 agreed the purchasing strategy of having a 4-year contract. The use of Public Buying Organisations (PBO's) was also considered as part of this report. These are used by public sector organisations who do not have the in-house resources and expertise to undertake their own energy purchasing.

The main PBO is Crown Commercial Services (CCS). If we wished to use them to undertake the sole activity of energy purchasing (they do not manage the contracts, this still has to be done in-house), based on our portfolio, the annual cost would be approximately £110,000 PA, based on their published fee structure.

PBO's offer an energy buying service from an existing framework where they purchase the gas and electricity from their preferred suppliers using their purchasing strategy - this, as with the strategy used by Islington Council is a flexible, aggregated and risk-managed procurement.

By adding external clients to the main contract we are purchasing larger aggregated volumes of both gas and electricity. This collaboration has joint benefits for the Council in terms of fee income and for the clients in terms of potentially better prices through being part of a larger contract and mitigating the costs in undertaking separate individual procurements.

An Open procedure tender was agreed upon, which allowed full exposure to the energy supply community.

3.5 Key Considerations – References to social value and impact on staff

An effective strategy to procure the supply of both Gas, and 100KW and Sub 100KW Electricity will have a direct social benefit on the amount residents and leaseholders pay in their rent/leaseholder charges.

A requirement for the payment of LLW will not be appropriate for these contracts since they are contracts for supplies that are subject to the Public Contracts Regulations 2015 and will be established with advertisement in the Official Journal of the European Union.

By competitively tendering on the fixed price element of the end delivered price and then purchasing the commodity (gas and power) from the winning gas/electricity supplier on the open commodities market as part of a flexible, aggregated procurement strategy, the Council should have access to the most advantageous prices available at any given time and can buy volume strategically (monthly, seasonally, annually over several separate years).

There are no TUPE, Pensions and Staffing implications

3.6 Evaluation

The tender was conducted in one stage, known as the Open Procedure, as the tender is 'open' to all organisations who express an interest. The Open Procedure included minimum requirements which organisations must meet before the rest of their tender is evaluated.

There were 25 expressions of interest received, which resulted in 4 tender returns:

1. Corona Energy – Gas only
2. Haven Power – Electricity only
3. Scottish & Southern Energy – Gas and Electricity
4. Total Gas and Power – Gas and Electricity

From the tenders submitted, all 4 passed the statutory compliance checks. In addition, all 4 passed suitability checks based on technical/industry-specific questions related to the supply of gas and electricity.

The evaluation criteria were based 100% on price.

The tenders were based on certain fixed cost elements such as the supplier's management fee, balancing charges and pass-through environmental and use of system charges and do not include the commodity costs which will be purchased after contract are awarded.

Tender prices and suitability questions were evaluated by a 3-person panel consisting of the following Council officers:

- Energy Management Officer
- Energy Operations Manager
- Energy Sustainability & Consulting Manager

Tender Results

Gas – three suppliers passed compliance and suitability checks. Most economically advantageous tender was received by Scottish and Southern Energy.

Price details are set out in the attached Exempt Appendix.

HH 100KW Electricity - three suppliers passed compliance and suitability checks. Most economically advantageous tender was received by Scottish and Southern Energy.

Price details are set out in the attached Exempt Appendix.

NHH Sub 100KW Electricity - three suppliers passed compliance and suitability checks. Most economically advantageous tender was received by Scottish and Southern Energy.

Price details are set out in the attached Exempt Appendix.

3.7 Business Risks

1. If contracts are not awarded with sufficient time before the expiry of existing contracts for registration of sites and purchase of gas and electricity, current suppliers will impose default "out-of-contract rates" on those supplies. These punitive rates would apply until such time as new gas/electricity contracts have been put in place.
2. Exposure to utility market volatility could lead to higher prices having to be accepted. This will be mitigated by use of trigger values being set and acted upon. These triggers will activate the purchasing strategy in order to protect budgets. Triggers will also be lowered if the market should fall. In addition, any trades made (surplus amounts of gas or electricity) can be sold back to the preferred supplier at market rates – this would only be done if there were a marked drop in the market and that this was maintained.
3. Failure to obtain Dispensation from the First Tier Tribunal (Property Chamber) under Section 20ZA in December 2019, would reduce the amount the Council can charge Leaseholders to £100 per year for gas and £100 per year for electricity.

- 3.8 The Employment Relations Act 1999 (Blacklist) Regulations 2010 explicitly prohibit the compilation, use, sale or supply of blacklists containing details of trade union members and their activities. Following a motion to full Council on 26 March 2013, all tenderers will be required to complete an anti-blacklisting declaration. Where an organisation is unable to declare that they have never blacklisted, they will be required to evidence that they have 'self-cleansed'. The Council will not award a contract to organisations found guilty of blacklisting unless they have demonstrated 'self-cleansing' and taken adequate measures to remedy past actions and prevent re-occurrences.
- 3.9 The following relevant information is required to be specifically approved by the Executive in accordance with rule 2.8 of the Procurement Rules:

Relevant information	Information/section in report
1 Nature of the service	Purchase of gas and electricity. See paragraph 3.1
2 Estimated value	The estimated value per year is £8,080,000. The agreement is proposed to run for a period of 48 months. See paragraph 3.2
3 Timetable	Exec Approval of procurement strategy – Jan 2019 Out to Tender – August 2019 Tender Evaluation – Oct 2019 Leaseholder Dispensation – Dec 19 Contract Mobilisation – Jan 2020 Contract Start – April 2020 See paragraph 3.3
4 Options appraisal for tender procedure including consideration of collaboration opportunities	Four-year contract option adopted See paragraph 3.4
5 Consideration of: Social benefit clauses; London Living Wage; Best value; TUPE, pensions and other staffing implications	Obtaining lowest possible prices through energy purchasing strategy representing best value. No LLW, TUPE, pensions or other staffing implications. See paragraph 3.5
6 Award criteria	Award criteria 100% price. See paragraph 3.6
7 Any business risks associated with entering the contract	Award of contracts with sufficient time prior to expiry of existing. Failure to obtain Leaseholder Dispensation See paragraph 3.7
8 Any other relevant financial, legal or other considerations.	None.

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4. Implications

4.1 Financial implications:

The estimated annual cost of the contract is £8 million PA, equating to £32 million over the 4 year period. The direct cost to the Council (excluding external clients such as schools and Leisure Centres who pay their own bills) is estimated to be £5.36 million per year, £21.44 million over the 4 year contract. The award criteria is 100% price, but the suppliers can provide renewable electricity and gas at a premium of c. 5% which if selected as part of the Council's declaration of an environmental and climate emergency on 27th June 2019 would be passed onto residents through rent and service charges. There are a number of unknown fixed costs and variable costs that will impact on the overall cost of the contracts.

4.2 Legal Implications:

The Council has power to procure the supply of natural gas and electricity under section 111 of the 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 power to purchase these supplies on behalf of third parties under the general power of competence set out in section 1 of the Localism Act 2011. The Council may enter into contracts for such services under section 1 of the Local Government (Contracts) Act 1997. The Executive, in January 2019, delegated authority to award the contracts to the Corporate Director of Environment and Regeneration in consultation with the Executive Member for Finance, Performance and Community Safety.

The contract is a contract for supply. The threshold in relation to supply contracts for application of the Public Contracts Regulations 2015 (the Regulations) is currently £181,302. Contracts above this threshold must be procured with advertisement in the Official Journal of the European Union (OJEU) and with full compliance of the Regulations. The council's Procurement Rules also require contracts over the value of £181,302 to be subject to competitive tender. In compliance with the requirements of the Regulations and the council's Procurement Rules a competitive tendering procedure with advertisement in OJEU has been used.

Bids were subject to evaluation in accordance with the tender evaluation model and Scottish & Southern Energy were found to have submitted the most economically advantageous tenders for all three supplies and may therefore be awarded the contracts as proposed in the report.

In deciding whether to award the contracts to the recommended supplier the Corporate Director should be satisfied as to the competence of the supplier to provide the supplies and that the tender prices represent value for money for the Council. In considering the recommendations in this report the Corporate Director must take into account the information contained in the exempt appendix to the report.

The contract is for a period in excess of 12 months and therefore will be qualifying long term agreements under section 20 of the Landlord and Tenant Act 1985. Accordingly the council will need to comply with the leaseholder consultation requirements applicable to long term

qualifying agreements set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (as amended).

In relation to the powers for charging third parties in return for purchasing gas and electricity on their behalf the council may rely on:

- A) Local Authorities (Goods and Services) Act 1970 (LAGS) if the third parties are public bodies for purposes of that act; or
- B) The charging power set out in section 93 of the Local Government Act 2003, if the third parties are not public bodies for purposes of LAGS provided that the charge levied is based on cost recovery; or
- C) The trading power set out in section 95 of the Local Government Act 2003 or section 4 of the Localism Act 2011, if the third parties are not public bodies for purposes of LAGS and the charge levied is based on making a profit for the council. In this case the trading activity would need to be conducted through the trading company established by the council, Islington Limited (trading as iCo), in order to comply with these trading powers.

4.3 Environmental Implications and contribution to achieving a net zero carbon Islington by 2030:

The purchase (and subsequent use) of electricity and gas is the council's most significant environmental impact and source of carbon emissions. In 2018/19, the emissions related to our electricity use in council buildings (excluding housing and leisure) were around 2,700 tonnes, whilst gas-related emissions were around 2,300 tonnes.

The electricity contract does not specify the type of electricity to be supplied (either from renewable sources or direct from the grid, with a mixture of gas, nuclear, coal and renewables). This will be decided at the time when actual purchases are made, once contracts are in place. However, suppliers were required in their tender submissions to confirm that they are able to provide the council with renewable electricity if requested, although this will likely come at a higher unit price than non-renewable electricity.

The vast majority of the gas supplied from the national grid is standard natural gas, with a tiny proportion of biomethane. There is not sufficient biogas production in the UK for it to be feasible to secure a renewable gas tariff. The only realistic way this can be mitigated is to reduce or eliminate gas consumption by making our buildings more energy efficient or replacing gas heating and hot water systems with electric alternatives such as heat pumps.

4.4 Resident Impact Assessment:

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A Resident Impact Assessment was completed on 31/10/18 and the summary is included below. The complete Resident Impact Assessment is appended.

Equality Impacts

- The Procurement Strategy for Gas and Electricity supply (2020-2024) is not likely to be discriminatory in any way for people with any of the protected characteristics.
- The Procurement Strategy for Gas and Electricity supply (2020-2024) is not likely to have a negative impact on equality of opportunity for people with protected characteristics.
- There is a potential positive impact for council leaseholders with the following protected characteristics: age, disability, pregnancy & maternity. This is because leaseholders pay for the amount of heat that they use and that the elderly and very young, pregnant and new mothers and disabled residents are likely to spend more time in the home, therefore require more heating. The Procurement Strategy seeks to obtain the lowest cost gas and will therefore provide a greater saving for those spending more time in the home.
- The proposal is not likely to have a negative impact on good relations between communities with protected characteristics and the rest of the population in Islington. The proposals do not provide any opportunities for fostering good relations.
- By looking to purchase gas at the lowest price, heat can be provided to council leaseholders at a lower cost. This will leave leaseholders more money for other purposes, alleviating fuel poverty for lower income households. Alternatively, low income leaseholders may choose to use cost savings to heat their homes to a higher level reducing the negative impacts of fuel poverty on physical and mental health which affect lower income households disproportionately.

Safeguarding risks and Human Rights breaches

There are no safeguarding risks for children and vulnerable adults or potential human rights breaches resulting from the proposal.

5. Reason for recommendations

- 5.1 Replacement of expiring gas and electricity contracts to suppliers offering the most economically advantageous non-commodity prices following a full open tender exercise.

Record of the decision:

I have today decided to take the decision set out in section 2 of this report for the reasons set out above.

Signed by:

Corporate Director, Environment &
Regeneration

Date

Appendices

- Exempt Appendix 1 – Tender prices/costs
- Appendix 2 – Resident Impact Assessment

Background papers: None

Final report clearance:

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