

Environment Department
Town Hall, Upper Street

Report of: Director - Climate Change and Transport
(in the absence of the Corporate Director - Environment)

Date: 1 August 2022

Ward(s): All

This decision has been taken under the urgency provisions at Procedure Rule 93 of the Council's Constitution. The reason for use of the urgency procedures is as follows:

The council needs to procure its energy (electricity and gas) for winter 2022. Global energy prices are currently highly volatile and energy trades may need to be made in the very near future to secure the best prices and to protect council funding for other vital services. Due to the sharp rise in energy prices since mid-June 2022, the current forecast costs of purchasing energy for winter 2022 would exceed the existing contract value threshold. Therefore a contract modification notice is required to raise the estimated contract value threshold in order to allow the winter 2022 purchases to proceed as soon as possible, if needed and this decision cannot therefore wait until the next meeting of the Executive on 1 September 2022, and it is not possible to convene a quorate meeting of the Executive within the necessary timescales.

Subject: Issue of a contract modification notice for the council's energy supply contracts

1. Synopsis

- 1.1. The council's energy supply contracts for the period 2020-2024, which were awarded to SSE in 2019, were initially estimated to cost £32m. The contracts are not for a fixed price, with the council trading on the energy commodity market through SSE. This means the council is exposed to changes in market prices during the contract period.
- 1.2. Due to the increases in energy prices in 2021 and 2022, it became apparent that the original estimated cost would be significantly exceeded. As a result, a contract modification notice was issued in June 2022 to raise the threshold to £48m.

- 1.3. Further increases in energy costs since June mean the potential cost will now exceed £48m, necessitating the issue of another contract modification notice in order to allow the council to purchase its energy for winter 2022 and next financial year.

2. Recommendations

- 2.1. To approve the publication of a contract modification notice regarding the increase in value of the energy supply contracts from £48m to £64m.

3. Date the decision is to be taken

- 3.1. 1 August 2022.

4. Background

- 4.1. The council purchases its energy (electricity and gas) through its contracts with SSE, which were awarded in 2019 for the April 2020 to March 2024 period.
- 4.2. Purchasing is done by making trades in the electricity and gas commodity markets through SSE. Historically, council officers choose the timing of these trades in order to obtain competitive prices, usually purchasing for a full financial year at a time in order to give budget certainty.
- 4.3. Due to the sharp rises in energy prices in the second half of 2021, continuing into 2022, the council chose not to purchase for a full year ahead for 2022/23, deciding to wait to see whether prices would come down. Purchases have subsequently been made for Q1 2022/23 and then Q2 2022/23.
- 4.4. The original contract award included an estimated cost over the four years of £32m. Due to the increase in prices, a contract modification notice was issued in June 2022 to raise the threshold to £48m. At the time this was issued, the forecast energy costs for 2022/23 were £25m, which would mean the total estimated spend over the first three years of the contract was £40m.
- 4.5. Since the notice was issued, Russian threats to reduce gas supplies to Europe through the Nordstream pipeline have led to a significant increase in prices for the forthcoming winter (October 2022 to March 2023), for which trades have not yet been made. This has resulted in the forecast cost for 2022/23 rising to £36m, and the first three years cost to £51m. This means that we cannot currently make the trades for the winter 2022 period without exceeding the threshold.

- 4.6. The council has recently appointed BiU to develop an energy purchasing strategy. The proposed strategy involves BiU advising the council on its trades in order to ride out the market volatility. The strategy will also potentially include starting to make hedging trades for 2023/24.
- 4.7. Therefore due to the recent increase in prices for winter 2022 and desire to start purchasing for 2023/24, another contract modification notice needs to be issued to raise the threshold to a level where trades can be made. The contract modification notice would increase the threshold by 50%, raising it from £48m to £64m.

5. Implications

5.1. Financial Implications

- 5.1.1. The current contract runs up until 31 March 2024 and covers energy purchases for council buildings, HRA buildings, schools and leisure centres. Whilst the forecast volumes of energy required to be purchased has not increased the price of energy has increased substantially due to global factors.
- 5.1.2. Fixed prices had been secured up until 31 March 2022 and had been favourable due to global energy prices being subdued by the Covid-19 pandemic. Since 1 April 2022 the council has been purchasing energy on a monthly or quarterly basis on authority of the Director of Environment depending upon market prices. With external advice from BiU the council is looking to secure energy for the Winter 2022 period and until the end of the current contract.
- 5.1.3. At current prices and future market outlook this will significantly exceed the original £32m total value of the contract. A contract modification notice in June 2022 raised this to £48m and this report recommends raising this to £64m.
- 5.1.4. This pressure across the council and partners is currently severely underbudgeted.

5.2. Legal Implications

- 5.2.1. By a formal Contract Award decision taken by the Corporate Director for Environment on 12th December 2019 the following three (3) energy contracts were awarded by the council (48-month contracts for the period 1st April 2020 to 31st March 2024):
- Gas – Scottish & Southern Energy
 - HH 100KW Electricity – Scottish & Southern Energy
 - NHH Sub 100KW Electricity – Scottish & Southern Energy
- 5.2.2. Both the Contract Award Report and the Contract Notice (call for competition) published in the Official Journal of the European Union (OJEU) refer to an

estimated total contract value for the three contracts of £32m over the said four-year period (ie 4 years x £8m per annum).

5.2.3. This Report identifies certain circumstances which have given rise to unforeseeable energy prices increases and the estimated total contract value over the four-year period has therefore increased from £32m and possibly up to £64m (ie from £32m plus two increments of £16m each, the first of which was approved under Regulation 72 (1) (c) by the Executive in June 2022 and the second of which is the subject of the recommendation in this Report).

5.2.4. Regulation 72 (1)(c) of the Public Contracts Regulations 2015 provides as follows:

72.—(1) Contracts and framework agreements may be modified without a new procurement

procedure in accordance with this Part in any of the following cases:—

(c) where all of the following conditions are fulfilled:—

(i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;

(ii) the modification does not alter the overall nature of the contract;

(iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.

5.2.5. The increase in the estimated total contract value above £32m and possibly up to £64m is lawful under Regulation 72(1)(c) and will require publication of a Contract Modification Notice on the Find A Tender website.

5.2.6. Paragraph 16 of the council's Procurement Rules provides:

16.1 The Executive shall:

16.1.1 approve the award or variation of contracts where the value of the contract or variation (to the Council) is estimated to exceed officers delegated authority (in the case of Revenue Spend or Capital Spend)

and

16.2 The Executive may delegate its responsibilities under this Rule 16 to Corporate Directors or the Chief Finance Officer.

5.2.7. Accordingly, the decision to vary these three contracts in relation to the increase in total estimated contract value is normally a decision for (or as delegated by) the

Executive – due to the urgency of the recommended decision the urgency procedures of the council's Constitution will need to be utilised to enable this urgent decision to be taken by the Corporate Director for Environment (or as he may delegate).

5.3. **Environmental Implications and contribution to achieving a net zero carbon Islington by 2030**

5.3.1. There are no environmental implications related to the issue of a contract modification notice.

5.4. **Equalities Impact Assessment**

5.4.1. 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.

5.4.2. An Equalities Impact Assessment is not required in relation to this report, because there are no impacts from issuing a contract modification notice.

6. **Conclusion and reasons for the decision**

6.1. A contract modification notice needs to be issued to allow the council can purchase its energy supplies for winter 2022 and 2023/24.

7. **Record of the decision**

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



Signed by:

**Director - Climate Change and Transport
In the absence of the Corporate Director - Environment**

Date: 1 August 2022

Appendices: None

Background papers: None

Related papers:

- [Executive decision to issue a contract modification notice](#) (9 June 2022)

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