

Subject:	Corporate Procurement of Energy – Half Hourly (Over 100kW) Electricity and Gas Contracts Commencing October 2012		
Date of Meeting:	10 May 2012		
Report of:	Strategic Director, Resources		
Lead Cabinet Member:	Cabinet Member for Finance & Central Services		
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Key Decision:	Yes	Forward Plan No:	
Ward(s) affected:	All		

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 To seek Cabinet approval for the re-procurement and supply of the Council's half hourly (over 100kw) electricity and gas as the current contracts expire on the 30 September 2012. The half hourly (over 100kw) electricity supply contract will be delivered from 100% renewable sources in line with the Council's sustainability and use of resources commitments. This report invites Cabinet to take two decisions in relation to the council's electricity and gas supply: firstly to appoint a specialist body to purchase these commodities on behalf of the Council, and secondly for the Council to enter into the necessary agreements for the actual supply.
- 1.2 To inform Cabinet of the urgency decision taken by the Strategic Director, Resources in consultation with the Cabinet Member for Finance & Central Services to appoint the specialist body to purchase these commodities for the first 12 months of the contract commencing 1 October 2012, in order to secure the financial benefits of the flexible contract terms.

2. RECOMMENDATIONS:

That Cabinet:

- 2.1 Note the details of the urgency decision taken by the Strategic Director, Resources on 24 April 2012 in consultation with the Cabinet Member for Finance & Central Services to:
- appoint Kent County Council's Energy Buying Group (LASER) to procure the supply of the Council's half hourly (over 100kW) electricity (from 100% renewable sources) and gas through its flexible framework agreement for the period 1 October 2012 to 30 September 2013.

- enter into an agreement with LASER, NPower Limited and Total Gas & Power Limited for the supply of half hourly (over 100kW) electricity (from 100% renewable sources) and gas to the Council for the period 1 October 2012 to 30 September 2013.
- 2.2 Appoints LASER to procure the supply of the Council's half hourly (over 100kw) electricity (from 100% renewable sources) and gas through its flexible framework agreement for the remaining three year period 1 October 2013 to 30 September 2016.
- 2.3 Grants authority to the Strategic Director, Resources to enter into agreements with LASER, NPower Limited and Total Gas & Power Limited for the supply of half hourly (over 100Kw) electricity (from 100% renewable sources) and gas to the Council for the remaining three year period 1 October 2013 to 30 September 2016.
- 2.4 Agrees a waiver of Contract Standing Order 12.6 to enable the contract to be signed as a simple contract provided that it is in a form agreed by the Head of Law.

3. RELEVANT BACKGROUND INFORMATION:

- 3.1 Historically, Brighton & Hove City Council has procured its gas and 100% renewable electricity supplies direct from the utility companies. However, in 2010 the Council moved to procure its energy through a central purchasing body ('CPB') and this has reduced the risk to the Council of the fluctuations in price within the utility market. This has been achieved through increased flexibility in purchasing as well as being part of a large bulk buying consortium.
- 3.2 The Council has three main utility contracts: one for gas supplies and two for electricity that cover the bulk of the Council's property portfolio. The electricity provision is split into two contract groups, the half hourly (over 100kw) contract relating to large sites and the sub 100kw contract relating to smaller sites. **Table 1** below identifies the duration, value and details of each contract.

Table 1

Utility	Contract Period	Value	Supplier	Example sites
Gas	01.10.2010 to 30.09.2012	£2.6m per annum	British Gas	All sites requiring Gas including schools and housing
Electricity over 100kw	01.10.2010 to 30.09.2012	£1m per annum	NPower	33 large sites including Kings House, Hove and Brighton Town Halls, Brighton Centre, King Alfred and 7 secondary schools
Electricity Sub 100kW	01.04.2010 to 31.03.2013	£2m per annum	Scottish & Southern	1330 sites - The smaller sites, majority of schools, admin buildings, libraries, sports pavilions and some housing sites

- 3.3 This report relates to the half hourly (over 100kw) electricity and gas supply contracts that end on the 30 September 2012. The electricity half hourly (over 100kw) contract covers 33 large sites, whereas the gas contract relates to all sites. In total the current value of both contracts is approximately £3.6m per annum. The electricity contract is supplied from 100% renewable sources.
- 3.4 To continue to mitigate the risk of increasing energy prices it is proposed that the Council continues to purchase its energy through a CPB that uses a flexible purchasing process allowing utilities to be bought over a period of time and in advance. The benefits of this approach are that any drops in market prices can be taken advantage of, therefore making further savings or reducing the impact of price rises and keeping overall costs lower. LASER have estimated that savings of 7% have been made over the course of the existing framework by clients opting for the flexible as opposed to the fixed contract terms. For the Council this would equate to a saving of £250,000 per annum.

Benchmarking Exercise

- 3.5 The Property & Design team together with Corporate Procurement have undertaken a 'Request for Information' (RFI) process in order to obtain information about various CPB framework agreements currently available in the market which cover the supply of electricity (half hourly over 100kw) and gas for contracting authorities. Three CPBs responded to the RFI and a benchmarking exercise has been undertaken in order to evaluate the current market and to identify the most suitable purchasing framework. A list of the RFI criteria that each CPB was required to respond to is attached as **Appendix A**. A key criteria which carried a pass / fail score was the supply of 100% renewable / green electricity for the half hourly electricity. The three CPBs who submitted a response to the RFI were ESPO, The Energy Consortium (TEC) and Kent County Council through its Energy Buying Group LASER.
- 3.6 A traditional tender exercise would evaluate the tenders received against a range of quality criteria and price. However, obtaining prices from the CPBs is not usually possible as the companies are reluctant to submit indicative prices at this stage due to the way the continually fluctuating energy market operates. During the current exercise, none of the CPBs were willing to provide costs for the time the new contracts would start. Only one CPB, LASER, provided some figures but these were existing prices and could not be used as a forward indication. It is for this reason that the quality criteria become key in differentiating and evaluating the different CPBs by assessing their respective delivery and supporting activities.
- 3.7 In order to demonstrate these delivery and supporting activities in more detail, **Table 2** illustrates the level of service that could be expected from the CPBs that responded to the Council's RFI. All three CPBs confirmed that their framework agreements provide for the necessary 100% renewable energy with respect to the supply of electricity (half hourly over 100kw) as specified by the Council. As a result, each CPB met the Council's key criteria.

Table 2

Criteria		ESPO	LASER	TEC
1	Offer 100% renewables for electricity?	Yes	Yes	Yes
2	Can Council specify length of contract	No	No	Yes
3	CPB's purchased energy values	£130m	£470m	£184m
4	Flexible Purchasing?	Yes	Yes	Yes
5	When is the flexible supply bought?	18 months in advance	6 months in advance	18 months variable
6	Buyer input required?	No	No	Yes
7	Take or Pay implemented?	Yes - but tolerance allowed	Yes - but against whole portfolio	Yes
8	If yes to 7 – what are the tolerances?	+/- 10%	N/A	None specified
9	Market forecasting reports	Quarterly	Quarterly Plus six monthly members meeting	Daily via Utiylix
10	Can provide ad hoc reports	Yes	Yes	Not specified
11	Is bill validation included?	Only on gas account	Yes	Yes at extra cost
12	If bill validation is opted out, does this affect service	No	Yes	No
13	Is bureau service available	No	At extra cost	Partial
14	Bill turnaround	48 hours	24 hours	5 Days
15	Will our choice of data collector interfere with service?	No – but utility company will specify	No – but utility company will specify	No – but they will not use data

3.8 From the information provided, each of the CPBs was considered to meet our minimum requirements. However, the information provided indicated that the risk levels to the Council would be less using LASER for the following reasons:

- The size of the current LASER framework agreements are £470m compared with the £130m and £184m of the other two CPBs. The purchasing power of Laser is therefore significantly stronger than its competition, which should offer a greater potential for the lowest unit rates and improved protection against future price rises.
- Although all CPBs levy a take or pay scheme, with LASER it is against the whole portfolio, rather than against each individual client. Therefore, LASER takes the risk and any savings/reductions achieved by the Council will not be penalised by any fines from the utility companies.
- LASER have the quickest turn around of energy bills leading to improved energy monitoring for the Council.

- LASER are our incumbent CPB for the supply of the Council's electricity (half hourly over 100kw) and gas which will avoid the need to identify additional staff resources to manage a transfer from CPB and its suppliers to others. The process will in effect simply be a continuation of service from 1 October 2012.

Following evaluation, the recommendation of the evaluation team is therefore to use LASER as the CPB for the procurement of the Council's electricity (half hourly over 100kw) and gas supplies.

- 3.9 LASER Energy Buying Group is part of Kent County Council's commercial services division specialising in the supply of gas and electricity to the public sector. LASER has recently undertaken a tender exercise to appoint electricity and gas suppliers for the period 1 October 2012 to 30 September 2016 onto its national flexible framework agreements. The successful tenderers were NPower Limited (for electricity) and Total Gas & Power Limited (for Gas).

Under the frameworks, LASER acts as the CPB buying electricity and gas on behalf of participating contracting authorities such as the Council. The Council will need to sign up to service level agreements with LASER for the procurement and management of the supplies. The Council will also need to sign up to two tripartite agreements: one with LASER and NPower Limited for the supply of half hourly (over 100Kw) electricity to the Council, and the other with LASER and Total Gas & Power Limited for the supply of gas to the Council.

Savings

- 3.10 As a result of the CPBs not being willing to send through any pence per unit rates and / or standing charge costs for the notional buildings provided in the RFI, it is not possible to calculate actual charges and saving comparisons. However, we do know that by opting for a similar flexible contract arrangement to the one that is currently employed, the impact from increases in charges can be minimised by employing a CPB arrangement.
- 3.11 The average price we currently pay using our existing utility supplier is 2.85 pence per kWh for gas and 10 pence per kWh for electricity. We are expecting under current market conditions a slight increase of approximately 5-10% for the cost of gas and electricity when the new contracts start. However, if we were to purchase directly from the utility companies we would be expecting a 10-15% increase in price.
- 3.12 It should be noted that the prices between now and the start of the new contracts can and will change, especially with problems affecting supply such as disruption in the Middle East and the ongoing economic and market conditions. Despite this and due to the benefits of procuring through a CPB, the price the Council will be able to obtain should still be lower than going direct to the utility companies.

4. URGENCY DECISION

- 4.1 The Council was recently informed by LASER that in order to be placed on the flexible contract at the commencement of the new agreement on 1 October 2012, the Council would need to commit to their framework by 30 April 2012. In the absence of this commitment LASER would be unable to procure energy on our

behalf on flexible terms between May and the start of the contract in October 2012 with the result that the Council would be placed on a fixed contract for the first twelve months of the agreement.

- 4.2 The unit price payable on a fixed contract depends on the wholesale price applicable on the date of the contract and cannot therefore be predicted in advance. However, as stated in paragraph 3.4 above, historically a fixed contract has cost an average of 7% more than the equivalent flexible contract which equates to a potential additional cost of £250,000 to the Council.
- 4.3 The Strategic Director, Resources therefore consulted with the Cabinet Member for Finance & Central Services and took the decision under urgency powers to enter a commitment with LASER to procure energy on the Council's behalf for the first 12 months of the agreement to 30 September 2013 to enable the Council to secure the flexible contract terms.
- 4.4 Urgency powers were required as, due to the timescales of the CPB framework re-tender programme, information was not available for the Council to evaluate until March resulting in an inability to report to April Cabinet. However due to the need to commit to the LASER framework by 30 April it was not possible to seek approval from May Cabinet and still secure the flexible terms. Urgency powers were therefore used in order to secure the best value for the Council.

5. CONSULTATION

- 5.1 As the new contracts will directly affect Council leasehold housing tenants, the Energy & Water Team have been liaising with Housing who are leading on the statutory notification required.
- 5.2 When carrying out the benchmarking exercise and for the purposes of the report, consultation was carried out with the three CPBs. In addition to this several key Council units were also consulted including Legal, Sustainability, Procurement and Financial. All budget holders will be advised of the new contracts and the new rates payable.

6. FINANCIAL AND OTHER IMPLICATIONS

Financial Implications:

- 6.1 The Council's annual cost of gas and half hourly (over 100kW) electricity is approximately £3.6m pa. It is anticipated that energy prices are to rise by up to 10% to 15% if purchased directly from energy companies whereas the rise associated with the current practice of purchasing through a Central Purchasing Body (CPB) is expected to be between 5% and 10% therefore offering a significant reduction in energy prices rises. Although the three main CPB's are unable to provide indications of price structures it is evident that the ability of CPB's to bulk purchase and the increased flexibility in purchasing reduces the risk of future fluctuations in energy prices being passed through to the council.

The LASER company is able to operate a much larger contract value than the other two companies therefore cost reductions associated with these bulk purchases would be passed through to clients including the Council.

The Medium Term Financial Strategy includes pressure funding to cover increased energy costs above standard inflation for the general fund. Schools will meet energy costs through the devolved budgets whilst for the Housing Revenue Account (HRA) a large part of energy costs are recharged through tenants and leaseholders and this is assumed to be the case within the HRA long term business plan.

Finance officer consulted: Rob Allen

Date: 27 March 2012

Legal Implications:

- 6.2 Cabinet has the authority to agree the recommendations set out in paragraph 2 above. The preferred CPB identified operates frameworks which the Council would be able to use in order to try to maximise value for money. These frameworks have been lawfully procured in accordance with EU and UK rules relating to public procurement.
- 6.3 In accordance with Contract Standing Order (CSO) 12.6, it would be usual to seal the agreements recommended in paragraph 2.3 as deeds. However, Laser has informed the Council that Laser, NPower Limited and Total Gas & Power Limited are not willing to execute the agreements as deeds. Laser considers that the 12 year limitation period afforded to deeds is not necessary in this instance because the energy is consumed, charged and paid for in such a short space of time. The limitation period is the period of time within which a party to a contract must bring a claim. The Limitation Act 1980 allows actions for breach of contract to be brought within a period of six years under a simple contract and twelve years if the contract is executed as a deed. The legal risk of executing these agreements as simple contracts rather than deeds is considered acceptable. Therefore, should Cabinet decide to approve the recommendation set out at paragraph 2.3, the requirement under CSO 12.6 to give contracts with an estimated total value over £75,000 under the Common Seal of the Council needs to be waived.

Lawyer consulted: Isabella Sidoli

Date: 24 April 2012

Equalities Implications:

- 6.4 None

Sustainability Implications:

- 6.5 The electricity offer is for 100% renewable energy.

Crime & Disorder Implications:

- 6.6 None

Risk and Opportunity Management Implications:

- 6.7 If the council does not pursue the recommended procurement route there is a risk that efficiencies will not be maximised.

Public Health Implications:

- 6.8 There are no public health implications.

Corporate / Citywide Implications:

- 6.9 As contained in the body of the report, ensuring value for money for the Council's energy procurement.

7. EVALUATION OF ALTERNATIVE OPTIONS

- 7.1 Due to the imminent expiry of the Council's existing over 100kw electricity and gas contracts, the Council must put in place new arrangements to take effect from the expiry date. That step is not optional, but the Council does have a choice as to its CPB for gas and electricity, and it is this that has prompted the procurement exercise detailed in this report.

8. REASONS FOR REPORT RECOMMENDATIONS

- 8.1 This report seeks approval to re-procure the Council's half hourly (over 100kW) electricity and gas contracts that end on 30 September 2012. The report outlines alternative procurement and framework options and seeks approval to award new contracts to LASER and the utility suppliers under LASER's flexible framework agreement in order to obtain value for money within the volatile energy market.

SUPPORTING DOCUMENTATION

Appendices:

Appendix A: Request for Information (RFI) questions

Documents In Members' Rooms

None

Background Documents

None