

Item No. 18.	Classification: Open	Date: 24 March 2020	Meeting Name: Cabinet
Report title:		Gateway 1 - Procurement Strategy Approval Supply of gas and electricity to Southwark Council	
Ward(s) or groups affected:		All wards	
Cabinet Member:		Councillor Richard Livingstone, Environment, Transport and the Climate Emergency	

FOREWORD – COUNCILLOR RICHARD LIVINGSTONE, CABINET MEMBER FOR ENVIRONMENT, TRANSPORT AND THE CLIMATE EMERGENCY

In our 2018 Fairer Future Promises, the council undertook to reduce its carbon emissions by 50% from its 2008 baseline by 2022. This promise was made more urgent through the council's declaration of the Climate Emergency last year.

To achieve this, the council needs to move to procuring its energy from renewable sources, rather than fossil fuels. This report will enable the council to roll out 100 percent renewable electricity across all of our operational sites through the LASER energy framework. The council currently purchases energy at an estimated annual cost of £15m through the framework and so the transition to purchasing clean energy will make a significant contribution in delivering the promised 50% reduction by 2022.

In addition to the council's own energy procurement, we will be offering schools the opportunity to be part of these arrangements. We will also be working with the Housing and Modernisation directorate to explore how our housing stock can be moved over to clean forms of energy.

RECOMMENDATIONS

1. That the cabinet approves the use of the joint London Energy Project and LASER Energy Framework Agreement to administer the purchase and supply of the council's corporate gas and electricity contracts (one gas, one electricity) for the period 1 October 2020 to 31 March 2025 under a rolling forward buying arrangement at an estimated value of £15m per annum and a total estimated value of £67.5m.
2. That the cabinet delegates authority to the Strategic Director of Environment and Leisure in conjunction with the Cabinet Member for Environment, Transport and the Climate Emergency to award the contract, and agree the subsequent purchasing options within the framework agreement. This will also include finalising any specific terms of the contract, and do all things necessary to facilitate the execution, implementation and operation of the contract, including the use of ancillary services available under the agreement (to be detailed in the gateway 2 report for the supply of gas and electricity).

BACKGROUND INFORMATION

3. On 27 March 2019 Cabinet declared a climate emergency within Southwark and committed to do all it can to make the borough carbon neutral by 2030.
4. The council is to develop a strategy, working with local stakeholders, to ensure that the borough becomes carbon neutral at a much more rapid pace than currently envisaged. This Climate Change Strategy will set out plans to show how the borough can achieve carbon neutrality by 2030 .
5. This strategy should be clear in its targets and resources required and it should also be developed in a way that is sufficiently flexible to make best use of new carbon reduction technologies as they develop.
6. Southwark has a growing population of over 300,000 residents, and there are approximately 130,000 households, with around 42% that are social housing.
7. The council is the largest social landlord in London with over 50,000 properties of which there are approximately 14,000 leaseholders.
8. The council spends approximately £15m per annum on gas and electricity to provide power, heating and hot water to the housing estates, operational estate, leisure centres, libraries, and schools across the council. A full list of sites supplied with gas and electricity is held as background papers and available on request.
9. The council currently is in contract with suppliers via the LASER framework (LASER is a not-for-profit organisation set up by Kent County Council). The existing framework started in October 2016 and runs until 30 September 2020.
10. 'Green energy' options are available within the framework contract, which, if adopted would enable the council to move to 100% renewable energy. The Gateway 2 report will present options including green energy options. The procurement of this contract can play a role in reaching the carbon reduction target for the Borough. The council should therefore consider this, but in doing so must also be mindful of the need for the council to consider value for money for its residents
11. The current contract has provided excellent value for money to the council with the cost of gas and electricity averaging around 20 to 30 per cent less than the price available in the retail market for secured contracts.
12. Recent innovation in the energy market has led to new forms of supply and customer-supplier relationship that offer public authorities new opportunities to increase efficiency and obtain greater value from their energy services, deliver quality public service, reduce energy consumption and save time and money.
13. London Energy Project (LEP) is a group of wider public sector, local and NHS authorities (primarily in London) that together spends approx. £0.5b per annum on energy and water. The shared purpose of LEP's and NHS London Procurement Partnership (LPP) is to use combined spending power to minimise risk; reduce procurement, contract operation and back-office costs and achieve better commercial, social and environmental outcomes for members and their communities.

14. The LEP Team's work programme is hosted by Haringey Council, which operates on a cost-recovery only basis under collective authority/trust-led governance. LEP is able to maintain its independent, market-neutral position through direct member contributions.
15. In order to improve on available framework agreements in place, the LEP Team conducted extensive market engagement to establish what the most appropriate route to market would be, looking at facets such as; get green energy, reduce carbon, provide greater social and economic benefit to our local communities, achieve operational efficiencies and greater overall value for money for organisations.
16. Through this, LEP's framework optimises LEP members buying power, has different price risk products than those currently available, and makes best use of new supply and service options in the energy market, i.e. a bespoke solution that can go beyond the value-for-money currently received in 'national' contracts with Central Purchasing Bodies (CPB).
17. A detailed service specification (LEP Statement of Requirements for Energy Services 2019) was drawn up by the LEP Team working with member authorities/trusts to meet the needs and manage the risk of members.
18. Following this, an EU compliant tender exercise was carried out with the tender evaluation including rigorous evaluation of quality, price, financial standing and terms and conditions. LEP members were offered opportunities to be involved in detailed specification and the tender evaluation process.

Summary of the business case/justification for the procurement

19. The council has an on-going need for gas and electricity so a new contract is needed from October 2020 to ensure continued provision.
20. This report is proposing joining a framework to ensure best value for purchasing gas and electricity for Southwark sites, with a strong focus on the need to become carbon neutral by 2030. Individual Southwark Council sites will be responsible for paying the bills under the framework agreement, of which the council will underwrite in case of dispute (e.g. schools).
21. This procurement presents the council with an opportunity to consider 100% renewable energy, cutting our carbon emissions and helping the council to meet its commitment to being carbon neutral by 2030.

Market considerations

22. The energy market is very competitive and means that consumers in Britain can select from a range of companies to provide their energy supply. The energy suppliers all use the same gas pipes and electricity wires to deliver the same physical products (gas and electricity), so instead they compete on price, service and innovation.
23. The unit (kilowatt hour – kWh) cost of gas to the customer is made up of a number of cost elements:
 - Wholesale cost of the commodity itself – gas or electricity

- Pass through charges for transporting the energy – i.e. national gas network. These charges are fixed by the energy regulator (Ofgem)
 - Meter operating, billing and administration charges
 - Government taxes – “Climate Change Levy” and VAT
 - Supplier profit.
24. The wholesale price of gas and electricity comprises around 50 per cent of the total cost paid by customers. The remaining 50 per cent is made up of the other charges listed above.
25. As the wholesale market price of gas and electricity is the dominant factor in the end price to customers, competition between suppliers usually only realises around 1 – 2 per cent difference in prices when tendered based upon previous tenders undertaken.
26. The largest impact on the end price is the amount being bought, decision when to buy, and how much future demand to buy at any one time (i.e. to cover the total demand for one or two years, or just a portion).
27. The energy market is extremely volatile. Wholesale energy prices are influenced by a range of factors including supply security, weather trends, exchange rates and geopolitical issues. Prices can vary significantly on a daily basis with dramatic rises and falls over a 12-month period. Moves of plus or minus 20 per cent in a single month are possible.
28. Gas and electricity prices are likely to increase over the proposed four year contract period. Suppliers will be accounting for infrastructure needs to supply energy, profit, administration costs, regulated fees and taxation.

KEY ISSUES FOR CONSIDERATION

Options for procurement route including procurement approach

29. Do Nothing – This would mean we would fall out of contract and experience ‘out of contracts rates’ for gas and electricity supplies, typically 100% more expensive.
30. Buy as Southwark only – The cost of an OJEU compliant tender is prohibitive as is the lack of economies of scale in procuring individually. This is explained further in sections 31 to 33.
31. Join a government recommended framework agreement – This is the option we are seeking approval for.

Proposed procurement route

32. It is estimated that the administrative cost of going through the OJEU compliant tender process is £40,000. By using an organisation that has a framework agreement in place, as recommended by the Crown Commercial Service (CCS), local authorities do not need to go through the tendering process. This will mean they do not have to closely follow the markets, or take difficult decisions over when to buy, thus saving time and money. The decision to be made ultimately is the type of purchasing strategy the council wants to secure within the framework agreement.

33. Further, managing a flexible energy contract is a specialised function, and both the CCS and LEP advise this should only be performed by market specialists with the relevant knowledge, experience and information to undertake this task. Like any other market it requires a 'trading' function, deploys tested and continuously improved buying and risk management strategies and has appropriate governance arrangements in place.
34. There are minimum size requirements for buying wholesale energy flexibly, i.e. aggregated to the size of at least ten typical London boroughs so the council would not be able to benefit from wholesale prices unless entering into a framework agreement.
35. There have historically been two organisations operating framework agreements for the supply of gas and electricity that the council can join. One is LASER and the other is Crown Commercial Service.
36. LASER is a local government purchasing consortium operating in the South East and London region. It is part of Kent County Council and has responsibility for the energy procurement for the Central Buying Consortium customers as well as for its own customers from London and the South East of England. It represents in excess of 100 authorities.
37. Crown Commercial Service is the national procurement partner for all UK public services and is part of the Efficiency and Reform Group within the Cabinet Office. They have been purchasing aggregated energy volumes via the wholesale markets for more than ten years.
38. The LEP have worked with Laser to create a new framework agreement that is tailored to Local Authorities within London and the south east and utilises their current framework with additional benefits such as improved customer/supplier relationship, potential for purchasing 100% green energy, further ancillary services available as a call off from the framework such as energy efficiency project partners.
39. The framework is compliant with the (EU) Public Contracts Regulations 2015.
40. The estimated value of this procurement meets the criteria of EU general protocol, and all reasonable steps would normally have to be taken to obtain at least five tenders following a publicly advertised competitive tendering process through OJEU.
41. This method of purchasing allows the council to access wholesale rather than the retail market prices. This method of buying has been approved and adopted by the council to avoid the risk of effectively settling all of the council's gas and electricity costs on a single day through a fixed price, which retrospectively may be a high point in the market. It is also the recognised best practice approach to energy procurement.
42. LEP and Laser will complete the evaluation and secure a supplier for gas and electricity under the framework agreement. The decision to be made by the council ultimately will be which type of purchasing strategy it wants to secure within the framework, be that fixed price, or a range of flexible purchasing options and the further options of securing renewable 'green' energy. These options will be considered as part of the Gateway 2 report.

Identified risks for the procurement

43. The greatest risk in buying gas and electricity is in deciding when, and how much volume to purchase. This report sets out how the recommended procurement approach will mitigate this risk by purchasing gas and electricity within a flexible framework agreement that spreads buying decisions across the contract period. The use of an organisation offering a framework agreement for the supply of gas and electricity is also one of the energy procurement solutions recognised as being best practice by central and regional government.
44. Identifying the purchasing method and presenting the findings and the best solution in the Gateway 2 report will ensure that the council does not risk making 'rushed' decisions without consideration of alternative options.
45. The authority needs to consider the risk in prices fluctuating during the contract periods, and the framework provider will need to show a robust methodology in its purchasing strategies. These will also be scrutinised by elected members of organisations within the framework. The selection criteria, including delegated authority for purchasing, in addition to the market analysis (all detailed in the proposed procurement route) will ensure the authority is able to select a solution that allows those risks to be managed.
46. The award of a contract through a framework agreement is a long commitment of four and a half years. There is a break clause within the framework that can be taken after two years if it is felt the performance is not as expected. This decision will be part of ongoing analysis shown in the annual performance reports and presented accordingly.

Key /non-key decisions

47. This report is a key decision.

Policy Implications

48. Please refer to sections 52-60.

Procurement Project Plan (Key Decisions)

Activity	Complete by:
Enter Gateway 1 decision on the Forward Plan	10/12/2019
DCRB Review Gateway 1	05/02/2020
CCRB Review Gateway 1	13/02/2020
Brief relevant cabinet member (over £100k)	06/02/2020
Notification of forthcoming decision - Cabinet	24/03/2020
Approval of Gateway 1: Procurement strategy report	24/03/2020
Scrutiny Call-in period and notification of implementation of Gateway 1 decision	31/03/2020

Activity	Complete by:
Completion of tender documentation	Completed by Framework provider
Publication of OJEU Notice	Completed by Framework provider
Publication of Opportunity on Contracts Finder	Completed by Framework provider
Forward Plan (if Strategic Procurement) Gateway 2	01/04/2020
DCRB Review Gateway 2:	07/05/2020
CCRB Review Gateway 2	14/05/2020
Approval of Gateway 2: Contract Award Report	21/05/2020
Contract award	21/05/2020
Add to Contract Register	21/05/2020
Place award notice in Official Journal of European (OJEU)	completed by framework provider
Place award notice on Contracts Finder	completed by framework provider
Contract start	01/10/2020
Initial contract completion date	31/03/2025
Contract completion date – (if extension(s) exercised)	31/03/2025

TUPE/Pensions implications

49. There are no TUPE implications.

Development of the tender documentation

50. As the proposal is to join a framework agreement, no tender documentation is needed.

Advertising the contract

51. This will be completed by the framework provider to be compliant with the Public Contract Regulations (2015).

Evaluation

52. This will be completed by the framework provider to deliver the best value.

Community impact statement

53. This contract covers gas and electricity supplies to central boiler systems and landlords supplies which provide heating and lighting to smaller housing estates. The estimated increase in gas prices will therefore affect tenants' service charges. However, all sections of the community are equally affected by rising energy prices, whether they have their own domestic boilers (and pay their own gas bills) or are

connected to communal systems. The aim of the recommended contract is to adopt a flexible purchasing option whereby falls in the market price for gas and electricity can be secured to minimise the overall price to the consumer. This strategy is not an option that is open to individual consumers with their own heating systems.

54. Climate change is already impacting on residents in the borough, for example, more extreme weather events. Climate change adversely affects those with the least resources and creates greater inequality. The council's commitment to tackling the climate emergency is aligned with our values to deliver a fairer future for all and reduce inequality in our borough and society. The proposals in this report give the council the option to move to an energy procurement that will reduce the impact of climate change.

Social Value considerations

55. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider social, economic and environmental benefits that may improve the well being of the local area can be secured. The details of how social value will be incorporated within the tender are set out in the following paragraphs.

Economic considerations

56. Due to the nature of the energy supply market requirements for suppliers to support local employment is unlikely to be possible.
57. Any subsidiary services within the framework will seek to support employment where possible.

Social considerations

58. The councils social value considerations for this will focus on the environmental benefits associated with the energy being provided in support of the council's commitment to being a carbon neutral borough by 2030. The London living wage is not applicable due to the supply nature of this contract.
59. Pursuant to section 149 of the Equality Act 2010 the council has a duty to have due regard in its decision making processes to the need to:
 - i. Eliminate discrimination, harassment, victimisation or other prohibited conduct
 - ii. Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not
 - iii. Foster good relations between those who share a relevant characteristic and those that do not share it.
60. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The Public Sector Equalities Duty also applies to marriage and civil partnership.
61. The council's social value considerations are not possible to include directly as the tender evaluation will be completed by the LEP.

Environmental/Sustainability considerations

62. This contract is concerned with securing natural gas and electricity. One of the tailored benefits of this framework agreement is the possibility of purchasing 100% green energy. This option and associated costs will be explored at Gateway 2.

Plans for the monitoring and management of the contract

63. The energy team within the Environment and Leisure department will act as a single point of contact with the framework provider to resolve any outstanding queries. Annual performance reviews will be undertaken by the energy team. There will also be a review panel constructed from representatives from organisations utilising the framework that will meet with the framework provider on a quarterly basis to ensure on-going best value. The LEP will also carry out annual reviews on value for money against benchmarked figures.
64. The contract and associated reports will be monitored and managed in line with the council's contract standing orders.

Staffing/procurement implications

65. Client departments are responsible for payment and monitoring of their own invoices. The energy team within environment and leisure will act as a single point of contact with the supplier to resolve any outstanding queries.

Financial implications

66. The estimated contract costs have been based on current wholesale costs and the existing sites utilising the framework agreement.
67. Some sites supplied with gas and electricity via this contract will be affected by the changes made as part of the disposals and rationalisation programme to the council estate. Predicted consumption rates for these will be accounted for in the future contract negotiations, in addition to any new sites that may come on board. These changes will be included in the calculations for the estimated contract value and will be updated into the total values prior to the Gateway 2 report.
68. It must be emphasised that this report is recommending a framework for a buying method, not a set of fixed prices resulting from a competitive tender. All predicted costs are therefore based on current market conditions. The actual billed costs will depend on the purchasing strategy taken and prices of gas secured from the wholesale market.
69. The total contract cost per annum is expected to be £15m per annum (estimated). This roughly equates to £8.5m for gas and £6.5m electricity.

Investment implications

70. There are no investment implications.

Legal implications

71. Please see concurrent from the director of law and democracy.

Consultation

72. Officers in property and regeneration managing the disposal of council offices and the Modernise Programme will be consulted prior to the contract start date in order to finalise a site listing for the contract.
73. For those schools and leisure centres included in the contract notification will be sent to those responsible for paying the bills of the intention to renew the contract and the period covered.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (EL19/088)

74. The strategic director of finance and governance notes the recommendations in this report for the approval of the use of the LASER Energy Framework Agreement to administer the purchase and supply of the council's corporate gas and electricity contracts for the period 1 October 2020 to 31 March 2025 under a rolling forward buying arrangement at an estimated value of £15m per annum and a total estimated value of £75m.
75. The strategic director of finance and governance notes the sources of funding for the contract and that there are no other financial implications arising from this contract.
76. All staffing and other related costs to be contained within existing departmental revenue budgets.

Head of Procurement

77. This report seeks the approval of cabinet for the procurement strategy to administer and supply the council's corporate gas and electricity contracts via LASER Energy Framework Agreement. The two contracts (one gas, one electricity) would be for the period 1 October 2020 to 31 March 2025 under a rolling forward buying arrangement. The contracts have an estimated annual value of £15m and a total estimated value of £67.5m.
78. The report also seeks that cabinet delegates authority to the Strategic Director of Environment and Leisure in conjunction with the Cabinet Member for Environment, Transport and the Climate Emergency the approval of the gateway 2 report to award the contract, and agree the subsequent purchasing options within the framework agreement. This will also include finalising any specific terms of the contract, and do all things necessary to facilitate the execution, implementation and operation of the contract, including the use of ancillary services available under the agreement (presented in the gateway 2 report) that are part of the utilities contracts.
79. The nature of the supply of gas and electricity means that the payment of Living Wage is not appropriate is set out in paragraph 56 of the report. Whilst not yet awarded, it is highly unlikely that local employment opportunities or support could be a result of the award of contracts under this framework for similar reasons as set out in paragraphs 55 and 56.

80. Paragraph 10 sets out that the available options from supplies on this framework agreement will provide more details during the mini competition phase on options available and associated costs in relation to green energy and carbon reduction.

Director of Law and Democracy

81. This report seeks approval of the procurement strategy for the purchase and supply of gas and electricity for the council's various housing estates, operational estate, leisure centres, libraries, and schools for a period of four and a half years from 1 October 2020.
82. The nature and estimated value of this procurement is such that the procurement process is subject to the full application of the Public Contracts Regulations 2015 ("the EU Regs"). The report advises that there are two organisations (LASER and the Crown Commercial Service) that operate a framework for the supply of gas and electricity which has been procured in compliance with the EU Regs, and since the council is eligible to use either framework it will not have to carry out its own tendering process. Paragraph 37 describes the new framework which has been developed by the London Energy Project in conjunction with LASER and tailored to fit the needs of local authorities in London and the South East.
83. This procurement is classed as a strategic procurement under the council's Contract Standing Orders ("CSOs") and therefore CSO 6.4.3 (a) reserves to the cabinet or cabinet committee the decision to authorise the proposed procurement process, after consideration of the report by the corporate contracts review board (CCRB).
84. Paragraph 52 contains the community impact statement in relation to the proposed procurement and paragraphs 56 and 57 explain how the council must have due regard to the Public Sector Equality Duty in this procurement. Cabinet should satisfy itself that this duty has been complied with when considering these recommendations. Paragraphs 70 and 71 set out the proposals for consultation in relation to the recommended procurement strategy.

Head of home ownership

85. The supply of gas and electricity to the council's housing estates impacts on homeowners on those estates through the supply of electricity to communal landlord services such as estate lighting, lifts and communal heating plant, and through the supply of gas to central boilers supplying communal heating. The cost is recovered from leaseholders and freeholders through service charges, if they benefit from these services. There is a large impact of gas costs on those homeowners who are connected to communal heating services and pay for heating and hot water through their annual service charges.
86. This contract is not considered to fall within the requirements of statutory consultation with leaseholders under S20 of the Landlord and Tenant Act, as it falls below the duration threshold as far as the purchase of energy is concerned and below the price threshold as far as the administration cost is concerned. The current contract was nevertheless referred the First-tier Property Tribunal in 2011 and in 2015 to test the council's assumptions on this and dispensation was granted against the requirement to comply with S20 on both occasions. The tribunal scrutinised the contract in detail in its determination in 2011, concluding that the procurement method, while not meeting the criteria for statutory consultation, was nonetheless

financially beneficial to the council's homeowners who were subject to charges emanating from it.

87. It is noted that the terms of this contract are the same as that which was covered by the previous decision at the First-tier Tribunal, and that this report confirms that it continues to deliver excellent value to the council, and therefore to service charge payers.

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Energy contracts schedule of sites	Sustainability and Business Development 160 Tooley Street SE1 2QH	Chris Owen 57728

AUDIT TRAIL

Cabinet Member	Councillor Richard Livingstone, Environment, Transport and the Climate Emergency	
Lead Officer	Stuart Robinson-Marshall, Head of sustainability and business development	
Report Author	Chris Owen, Sustainability and energy manager	
Version	Final	
Dated	29 January 2020	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Director of Law and Democracy	Yes	Yes
Director of Exchequer (For Housing contracts only)	Yes	Yes
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		11 March 2020

**BACKGROUND DOCUMENT – CONTRACTS REGISTER ENTRY FORM – GATEWAY
1**

Contract Name	Supply of gas and electricity to Southwark Council
Contract Description	Framework agreement for supply of gas and electricity
Contract Type	Supplies
Lead Contract Officer (name)	Chris Owen
Lead Contract Officer (phone number)	0207 5257728
Department	Environment and Leisure
Division	Sustainability and Business Development
Procurement Route	
EU CPV Code (if applicable)	
Departmental/Corporate	Corporate
Fixed Price or Call Off	Flexible
Contract Total Value	£67.5m (est)
Contract Annual Value	£15m (est)
Contract Start Date	1/10/2020
Initial Term End Date	31/03/2025
Number of Remaining Contract Extensions	n/a
Contract Review Date	1/3/2022
Revised End Date	
SME/ VCSE (If either or both include Company Registration number and/or registered charity number)	
Comments	
London Living Wage	

If your report is to be submitted to the constitutional team this document should be removed before submission and passed to the member of staff in your department who is responsible for keeping your contracts register up to date.