

Report of: Programme Manager, Procurement & Commercial Services

Report to: Director of Resources and Housing

Date: 01/11/18

Subject: Novation of BSF PFI electricity contract (schools and leisure)

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Section 3, Schedule 12A
Appendix 1 to this report has been marked as exempt under Access to Information Procedure Rules 10.4 (3) on the basis that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) which, if disclosed to the public, would, or would be likely to prejudice the commercial interests of that person or of the Council. The information is exempt if and for so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In this case the report author considers that it is in the public interest to maintain the exemption.	

Summary of main issues

Contains confidential / exempt information – see content in Appendix A

Recommendations

1. The Director of Resources & Housing is recommended to approve the decision to novate Interserve's electricity contract with Engie, to LCC with effect from 01/11/18.
2. The Director of Resources & Housing is asked to note that the Council has taken over gas purchasing for the BSF school and leisure PFI sites with effect from 01/11/18, including these in its wider supply contract arrangements with Engie.

3. Purpose of this report

- 1.1 The purpose of this report is to provide the Director of Resources & Housing with the information necessary to make a decision regarding the recommended novation of the PFI electricity contract for the BSF schools and leisure packages.

2. Background information

- 2.1.1 Interserve are the FM contractor on the BSF School and Leisure PFI contracts. Under the contract terms, the contractor is responsible for purchasing utilities on the most economically advantageous terms reasonably available.
- 2.1.2 For a number of years, the Council has had a utility supply framework agreement in place with energy provider Engie. Procurement and Commercial's PFI contract team has encouraged its contractors, including Interserve, to purchase utilities from Engie, thereby achieving greater value for money for the Council. Interserve was able to obtain the beneficial rates enjoyed by the Council by entering into a joint party framework agreement with both LCC and Engie. The preferential rates were then passed on to the Council, with no additional benefit being realised by Interserve.

3. Main issues

Contains confidential / exempt information – see content in Appendix A

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 Public consultation is not required in respect of this decision.
- 4.1.2 Key stakeholders including Children's Services, Active Leeds, the Leeds Local Education Partnership (LEP), Interserve, Engie, and the Sustainable Air & Quality team have been engaged. All are aware of the main issues and proposed course of action.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 There are no equality and diversity implications associated with this proposal.

4.3 Council policies and best council plan

- 4.3.1 Novation of the electricity contract supports the Best Council Plan by making the best use of resources and leveraging and strengthening our relationship with strategic partners. It ensures we are living the value of spending money wisely and making every pound go further.

4.4 Resources and value for money

- 4.4.1 Novation of the electricity contract represents value for money for the Council since this will ensure that we can retain the current competitive tariff rates and avoid the risk of significantly more expensive default tariffs being applied.

4.5 Legal implications, access to information, and call-in

- 4.5.1 The value associated with the remaining contract term once novated, is greater than £250k. However, the overall financial position to the Council is cost neutral as the Council will simply incur these costs directly post novation, rather than Interserve recharging these to LCC through the unitary charges. The decision could therefore potentially be considered as an Administrative one. However, following discussions with Corporate Governance, it is recommended that for transparency purposes this is treated as a Significant Operational Decision.
- 4.5.2 The Director's sub-delegation scheme (Director of Resources & Housing) states that the responsibility for procurement in relation to corporate energy is sub-delegated to the Executive Programme Manager. However, the associated Terms and Conditions stipulate that contract awards for procurements over £250k remain the responsibility of the Director.
- 4.5.3 The decision is not subject to call in.
- 4.5.4 The novation agreement has been reviewed by a Legal Manager from Procurement and Commercial Services, and no concerns were raised.
- 4.5.5 The Summary of Main issues and Section 3 of this report contain confidential information concerning commercial matters shared with the Council. It is understood that this information would also be deemed exempt in relation to section 3, Schedule 12A of the Local Government Act 1972.

4.6 Risk management

- 4.6.1 Novation of the electricity contract will mitigate the risk of significantly more expensive default tariffs being applied. It will ensure that we can retain the current competitive tariffs and achieve value for money.
- 4.6.2 The novation agreement has been reviewed by legal colleagues from within Procurement and Commercial and no risks have been identified in relation to this.
- 4.6.3 Transferring the procurement of gas and electricity supply from Interserve to LCC means that any risks resulting from bad debt would reside with LCC in future.

5. Conclusions

Contains confidential / exempt information – see content in Appendix A

6. Recommendations

- 6.1 The Director of Resources & Housing is asked to approve the decision to novate Interserve's electricity contract with Engie, to LCC with effect from 01/11/18.
- 7. The Director of Resources & Housing is asked to note that the Council has taken over gas purchasing for the BSF school and leisure PFI sites with effect from 01/11/18, including these in its wider supply contract arrangements with Engie.

8. Background documents¹

8.1 Appendix A – Confidential / exempt information – not for publication

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.