

**Report of:** Chief Officer of Sustainable Energy & Air Quality (SEAQ)

**Report to:** Director of Resources & Housing

**Date:** 07/08/2019

**Subject:** Authority to procure new contract for supply of biomass pellets – using YPO framework for solid fuels (ref. 737/lot 3)

Are specific electoral wards affected? If relevant, 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: N/A	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

### Summary of main issues

1. The purpose of this report is to seek approval to commence a new procurement exercise for the corporate supply of biomass pellets.
2. This arrangement is required because the existing contract has become untenable due to circumstances beyond the council's control.
3. The original supplier – Forever Fuels – was bought out by a company called Balcas, who have changed the parameters of the contractual provisions we put in place, namely around price and delivery timescales.
4. The initial term of the contract expired on the 2<sup>nd</sup> of August 2018. A 24 month contract extension was agreed with Forever Fuels prior to their takeover and, although they never signed the acknowledgment letter, the extension remains in effect. Subsequently, Balcas raised the prices and are unwilling to supply our sites as per the original contract.
5. The value of any procurement would be OJEU level but it has come to the council's attention that a YPO framework exists – which would allow us to source a suitably qualified pellet supplier without starting an exercise from scratch.
6. Based on anticipated consumption levels, an estimated 300 tonnes of pellets will be required per annum across 4 sites. Given our existing market knowledge, the cost of that supply should equate to around £65K annually, or £325K over a 5 year contract.

7. The new contract will be for an initial period of 3 years with an option to extend for 2 x 12 months, giving a potential contractual period of 5 years in total. Uptake of any extensions will be subject to both performance and price benchmarking.

## **Recommendations**

1. The Director of Resources and Housing is recommended to give authority to procure a new contract for the supply of biomass pellets, to replace the current contract. This procurement will be undertaken via the YPO framework if accepted as compliant, or else otherwise via a full council procurement exercise.

## 1 Purpose of this report

- 1.1 The purpose of this report is to seek approval – authority to procure – to commence a procurement exercise via an external framework for the corporate supply of biomass pellets.

## 2 Background Information

- 2.1 The original contract was awarded to Forever Fuels on the 3<sup>rd</sup> of August 2015 and the initial term expired on the 2<sup>nd</sup> of August 2018.
- 2.2 After that period, Forever Fuels technically allowed the contract to lapse, even though we had agreed to extend it prior to the termination date. However, we formally extended the contract via a retrospective contract extension letter that was issued through our e-tendering platform (i.e. YORtender). The extension **should** run until the 31<sup>st</sup> of July 2020.
- 2.3 During the extension dialogue, it was agreed by both parties – in principle – that Forever Fuels would be permitted to elevate the prices per tonne of pellets based on a 2-tiered system, aligned to how many pellets specific sites were using (when compared to original contractual promises). This was seen as equitable given that Forever Fuels had honoured fixed prices for 3 years – with no inflationary rises – and the fact that our consumption had been far lower than the contractual estimates given (for a number of reasons – all of which were within LCC’s sphere of responsibility).
- 2.4 In theory, the annual value of the contract should be £85K. However, persistent boiler issues have proven to be problematic and this has severely hampered operational efficiency. However, ‘corporate property management’ (‘CPM’) have a strategy to ensure that the reliability of the assets can be maintained.
- 2.5 This is a corporate contract and its users include ‘parks and countryside’, ‘learning for life’, ‘museums and galleries’, and Housing Leeds. There are 4 sites that rely on regular deliveries of biomass pellets and these are as follows:
- Tropical World;
  - ‘Clydes’ social housing micro district heat network;
  - Lotherton Hall; and,
  - Herd Farm Activity Centre.
- 2.6 This requirement is on-going as the biomass boilers should be in service for 25 years if all goes well. In addition, the RHI subsidy accrued from biomass use runs for 20 years (from 2015-2016 depending on the site) and the original business cases are dependent on this income stream being maximised in line with projected asset usage.

## 3 Main issues

- 3.1 The current contract – in its extended form – **was** with Forever Fuels Ltd but after the extension was agreed they stopped responding and the contract price variation discussion was paused.
- 3.2 It transpires that Forever Fuels were bought out by a company called Balcas on the 1<sup>st</sup> of September 2018. This necessitated the need for a novation agreement, although technically this has not been properly formalised. As things stand we are still accepting deliveries from 'Forever Fuels' ('FF') but in reality this is now just Balcas continuing FF as a brand, under another subsidiary called Brites.
- 3.3 Furthermore, as per the below Balcas have elevated the prices quite markedly compared to what we had formerly agreed with Forever Fuels.
- **Clydes** - £220.00 + VAT per tonne (formerly agreed £210)
  - **All other sites** - £225.00 + VAT per tonne (formerly agreed £217)
- 3.4 The other major change is that the lead-in time for deliveries could be up to 3 weeks during the peak winter demand (during periods of cold weather). This goes against what was agreed in the contract – which was 5 working days – and it has the potential to cause major operational problems as the boiler stores could easily run dry. This could cause a lot of issues as it puts undue pressure on conventional contingency boilers. In addition, such delays would reduce the subsidy income we are able to accrue.
- 3.5 Balcas are not willing to renegotiate on their prices and their service levels are fixed. They fully accept that on this basis we are left with little option but to re-engage with the market and go elsewhere for our supply requirements so as to: a) avoid paying too much for our pellets and b) mitigate the risk of service cut-outs due to potentially long lead-in times for the pellets. As things stand the council is using Balcas through the existing contractual extension, albeit an official novation is not in place.
- 3.6 It has been identified that the Yorkshire Purchasing Organisation (YPO) have a framework in place that would allow us to call off for our wood pellet needs, namely framework reference 737 (lot 3), which relates to 'solid fuels & related services'. This is considered to be the best option given the fact that it is tailor made for the very purpose we need it.
- 3.7 It should be noted that the framework allows pellets to be bought that are compliant with Ofgem's requirements with regards to 'renewable heat incentive' ('RHI') claims. All of the suppliers appear on the Biomass Supplier's List (BSL), which proves that the wood used to manufacture the pellets has full chain of custody, in relation to proving the sustainability and legality of the timber.
- 3.8 The pellets also conform to the highest quality specification, which is EN A1 plus. This is a necessary prerequisite to any arrangement we put in place.
- 3.9 Assuming the recommendations in this report are ratified, the YPO framework will be reviewed by the Procurement & Commercial Services (PACS) legal team to confirm it is compliant and available for LCC to use.
- 3.10 If the YPO framework is used, it is expected that a new contract will be awarded by November 2019.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

4.1.2 The PACS team will provide advice and guidance on the procurement process.

4.1.3 All service areas affected by this change have been consulted and have no objections.

### **4.2 Equality & Diversity / Cohesion & Integration**

4.2.1 An Equality Impact Assessment (EIA) screening tool has been undertaken for the purposes of this recommendation and has indicated that an EIA does not need to be carried out. There will be no adverse effect on any particular groups of people within the city posed by this proposed course of action.

### **4.3 Council Policies and City Priorities**

4.3.1 It is vital that any procurement process within the council is undertaken with a view to ensuring openness, transparency and fairness. As such, the contract will be procured in line with the council's procurement policies and procedures.

4.3.2 Biomass is a low carbon fuel, compared with conventional sources of commercial building heating, such as gas. Ergo, this supply arrangement fits in with the council's commitments to lower carbon dioxide emissions from both its own activities and those of the city as a whole.

### **4.4 Resources and Value for Money**

4.4.1 A procurement process will be undertaken in order to ensure that the council obtains best value for money, in terms of securing a quality service at the best price.

4.4.2 Any contract entered into as a result of the procurement exercise will be regularly reviewed to ensure continuing value for money.

4.4.3 Resources are available from the Sustainable Energy and Air Quality (SEAQ) team to meet the requirements of this procurement exercise.

4.4.4 The finance is already in place for this business-as-usual activity, as the requirement is covered by established energy budgets for each of the sites.

4.4.5 If we were to discontinue this contract, 4 sites would be unable to heat their spaces effectively. In addition, there would be a huge void in the service area finances as their prudential borrowing costs would not be covered (due to the lack of RHI income).

### **4.5 Legal Implications, Access to Information, and Call-In**

- 4.5.1 This is a significant operational decision and is not eligible for call in.
- 4.5.2 The procurement must be in line with the Procurement Regulations 2015, and if the external framework is approved by PACS, it will denote compliance with the regulations and will show that the framework has acceptable terms and conditions. Should the YPO framework agreement not be approved for use, a full procurement exercise will be undertaken by the council itself.
- 4.5.3 The current contract needs to be varied so as to change the end date from the 31<sup>st</sup> of July 2020 to the 30<sup>th</sup> of November 2019, change prices in line with previous mutual agreement, and to formalise the novation from Forever Fuels to Balcas Timber, retrospectively. We are taking this action in conjunction with PACS – and will conclude it before we go out to tender – so as to ensure that the correct procedures are followed.

## **4.6 Risk Management**

- 4.6.1 The proposal to procure a new contract will mitigate the risk of service delivery outages in the future. It will allow the council to take back control of its biomass requirements given the fact that we are currently in a grey area when it comes to the contractual arrangements, prices have been elevated to a level beyond what we are comfortable with, and delivery timescale changes are causing operational issues.

## **5 Conclusions**

- 5.1 There is a continuing need for biomass pellets, corporately, but the current 'contract' is no longer considered fit-for-purpose.
- 5.2 Subject to a contract variation being initiated (and confirmed) – in conjunction with PACS advice – the contract will expire early (30/11/2019) and a procurement exercise undertaken using the YPO framework.
- 5.3 In the interim, the variation will change the controlling entity to Balcas, who will be used to cover our pellet requirements through the Forever Fuels brand.
- 5.4 In order to put a new contract in place, a procurement process needs to be undertaken to find a suitable supplier. Accessing an external framework for this requirement – if approved by PACS in line with the 'contract procedure rules' ('CPR') – will allow a compliant and effective route to market, as would a new procurement exercise if the framework cannot be used for any reason.

## **6 Recommendations**

- 6.1 The Director of Resources and Housing is recommended to give authority to procure a new contract for the supply of biomass pellets, to replace the current contract. This procurement will be undertaken via the YPO framework if accepted as compliant, or else otherwise via a full council procurement exercise.

## **7 Background Documents**

None.

