

Proposed waiver of CPRs 8.1 and 8.2 to award a contract for detailed design work for connections to the Leeds PIPES District Heating Network

Date: 26/09/2022

Report of: Senior Project Manager, Sustainable Energy and Air Quality

Report to: Chief Officer Sustainable Energy and Air Quality

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

What is this report about?

Including how it contributes to the city's and council's ambitions

- The council's flagship Leeds PIPES District Heating Network (DHN) is operational and has been supplying heat generated at the Recycling and Energy Recovery Facility (RERF) since September 2019 to the initial customers connected to the network.
- In February 2022, the council's Executive Board, approved the recommendations of a report by the Director of Resources and Director of City Development, which detailed plans for the phase 3 extension of the DHN following the success of phases 1 and 2.
- The phase 3 extension, split into five zones of work, will see several additional customers connect into the network and be provided heat over the next four years.
- Prior to works commencing to connect these new customers onto the network, commercial Connection and Supply Agreements are entered into by the council with the customer.
- Detailed design work needs to be undertaken to fix the capital cost of connection and set the ongoing revenue charges for provision of heat to the site before these agreements can be signed. These are two critical elements of the Connection and Supply Agreements.
- This report seeks authority to waive CPRs 8.1 and 8.2, to award a Low Value Consultancy contract, drafted by the council's Procurement and Commercial Service, to Vital Energi Ltd, to undertake detailed design work at three sites to connect them onto the DHN:
 - Leonardo and Thoresby buildings
 - Rise Homes
 - Old Leeds City College Tech Campus
- Vital Energi Ltd is the Council's Principal Contractor for the DHN and has successfully delivered Phases 1 and 2 of the DHN, and is now contracted to deliver Phase 3. They will also undertake the physical building connection works for these three connections, as this forms part of their ongoing O&M contract, so are best placed to undertake design.
- Completion of detailed design allows the appropriate commercial agreements to be entered into with the customer, increasing the volumes of heat supplied by the network and in turn, improving the commercial position of the network.
- The increased demand on the network will provide a positive contribution to the council's climate emergency ambition of supporting the city to become net zero by 2030 by supplying low carbon heat to customers as opposed to using traditional gas boilers.

Recommendations

The Chief Officer Sustainable Energy and Air Quality is requested to note the contents of this report and:

- a) Approve the waiver of CPRs 8.1 and 8.2 and provide authority to enter into a contract with Vital Energi Ltd for detailed design work at Leonardo and Thoresby buildings, Rise Homes, and Leeds City College Tech Campus, noting the value of the contract is to be £34,400.

Why is the proposal being put forward?

- 1 The Leeds PIPES DHN has been successfully supplying low carbon heat generated at the RERF to the initial customers connected to the network since September 2019. Phase 1 and Phase 2 of the network are complete and the network is positioned to be able to supply heat to a range of new customers.
- 2 The council is at any one time in discussions with several potential customers across the city who express an interest in connecting. For each new potential connection onto the network, the same process is followed:
 - the council's Principal Contractor, Vital Energi, carry out a budget estimate for the works.
 - Heads of Terms are then signed between the council and prospective customer.
 - Vital undertake detailed design for the connection works.
 - Connection Agreement and/or Commercial Heat Supply Agreement are signed between the two parties.
 - Contract is awarded to Vital to undertake the connection works.
- 3 Three customers have now signed Heads of Terms with the council and as such the next stage in the process needs to commence.
- 4 This stage is the detailed design process, which determines the key elements of the connection including confirming pipework routes, identifying secondary heating system modifications/upgrades, and plate heat exchanger sizing/design. Through this work the council is able to fix the connection costs and then negotiate effectively the charges associated with providing heat to the customer.
- 5 Throughout the lifetime of the DHN project, the principal contractor, Vital Energi Ltd, have undertaken the detailed design element of the works. As the PC, Vital are responsible for the design and build of each phase of the network, including each individual customer connection and as such, it is logical that Vital have responsibility for the design of the connection.
- 6 On this basis and for the reasons outlined at the options appraisal at paragraphs 26-28, this report now seeks a waiver of CPRs 8.1 and 8.2 relating to intermediate value procurements, to award a contract to Vital Energi Ltd for detailed design work at three sites which will facilitate the future connection of the sites onto the DHN. These sites being:
 - Leonardo and Thoresby buildings
 - Rise Homes off Regent Street
 - Old Leeds City College Tech Campus
- 7 The T&Cs for the contract have been drafted by the Procurement and Commercial Services team, and the specification for the designs is based on the standard outputs for RIBA stages 3 and 4 design, in line with previous detailed design exercise undertaken by Vital Energi.
- 8 The value of the proposed contract is £34,400. The costs are broken down by site as follows:
 - Leonardo and Thoresby - £17,500

- Rise Homes - £9,600
- Tech Campus - £7,300

- 9 Note that these costs will ultimately form part of the connection fee that these customers will pay the council, once the Connection and/or Commercial Heat Supply Agreements are signed.
- 10 Upon completion of the detailed design it is anticipated that the Connection and/or Commercial Heat Supply Agreement will be entered into with the customers as follows:
- Leonardo and Thoresby buildings – October 2022
 - Rise Homes off Regent Street – October 2022
 - Old Leeds City College Tech Campus – November 2022
- 11 Following completion of detailed design and signing of Connection and/or Commercial Heat Supply Agreements, it is the intention of the council to award further Design and Build contracts to Vital Energi Ltd to carry out the connection works, identified through detailed design, at each of the three sites. Further decisions will be taken for each of these contract awards.

What impact will this proposal have?

Wards affected:

Have ward members been consulted? Yes No

- 12 Approval of the recommendations of this report will ensure the council can quickly enter into contract with Vital Energi to undertake critical detailed design work at the three sites outlined in this report. This work will allow the council to then enter into a Connection Agreement and/or Commercial Heat Sales Agreement with the customers, strengthening the financial position of the project and therefore the council by increasing the volume of heat being sold to customers.
- 13 Phases 1 and 2 of the DHN have largely focused on connections for public sector organisations and council buildings. This next phase of works, including the connection at the three sites noted in this report, is a significant step forward for the council in its aim to connect a large number of private customers onto the network. This will raise the profile of the network in the city and further prove the viability of DHN connections for private customers and demonstrate its benefits, as the council looks to continue its expansion of the network in the coming years.
- 14 Through receiving a connection, customers see a reduction in their overall energy costs for the term of the heat supply, as well as realising a significant reduction in their carbon emissions.
- 15 Equality impact assessments have been completed at various stages throughout the development of the DHN, with the last one being to support the February 2022 Executive Board report. This assessment concluded that the DHN will have a positive impact on equality as it will support the compassionate city equality objective by reducing fuel poverty, helping to increase life expectancy, improves mental health and wellbeing and reduces health inequalities.

What consultation and engagement has taken place?

- 16 The Leeds PIPES DHN project is a strategic priority for the council, and its continued expansion has been approved on several occasions by Executive Board. The latest decision to proceed with the construction of Phase 3 of the Leeds PIPES DHN was subject to extensive consultation and engagement with elected members and senior officers, which provided a range of scenarios setting out the positive impact of connecting new customers to the network. The proposals for the phase 3 extension of the network were approved by Executive Board on 9 February 2022. The detailed design work outlined in this report is a critical element of the Phase

3 business case, as without connecting these customers the council will fall short of the projected heat sales which ultimately allow the investment to break even.

- 17 Consultation has taken place with PACS regarding the appropriateness of the route to contract award outlined in this report, as well as on the T&Cs to be used to form the contract. They have confirmed that a waiver is required in line with CPR 8 – Intermediate Value Procurement, and that the rules to be waived are 8.1 and 8.2 as outlined in this report.

What are the resource implications?

- 18 Construction of the DHN was approved on the basis that the council would attract additional customers to the network.
- 19 This contract award will enable the council in future to enter into formal agreements with customers managing the three sites outlined in this report, for the provision of heat to the site, generating revenue for the council and helping to support the business case for the DHN in line with the council intention.
- 20 The works will be undertaken by Vital Energi Ltd and there are minimal resource impacts on the Sustainable Energy and Air Quality team overseeing the DHN project.

What are the legal implications?

- 21 The council's PACS team has been consulted on the award of this contract and have advised that a waiver of CPRs 8.1 and 8.2 is required following the methodology outlined at CPR 27, which this report and accompanying Delegated Decision Notification does.
- 22 The low value consultancy contract T&Cs which will be entered into with the contractor have been approved by PACS.
- 23 The proposal forming the subject of this report constitutes an 'significant operational decision' and therefore is not subject to 'Call-In'. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.
- 24 Awarding a contract directly to Vital Energi Ltd in this way could leave the Council open to a potential claim from other providers, to whom this contract could be of interest. As the opportunity is not being advertised and at least three written tenders invited.
- 25 Case law suggests that the Council should consider whether contracts of this value should be subject to a degree of advertising both within and outside the UK. It is up to the Council to decide what degree of advertising is appropriate but consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices etc.) and the geographical location of the place of performance.
- 26 The Chief Officer of SEAQ has considered this and, due to the nature of the specialist knowledge being provided and the relatively low value of the works to be undertaken, is of the view that the scope and nature of the works is such that it would not be of interest to other providers in UK or overseas.
- 27 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.
- 28 Although there is no overriding legal obstacle preventing the waiver of CPR 8.1 & 8.2, the above comments should be noted in making the final decision as to whether to award this contract and be satisfied that to do so represents best value for the Council.

What are the key risks and how are they being managed?

29 There is minimal risk associated with the recommendations of this report, however the key risk relates to quality issues with the detailed design that is completed following contract award. This is mitigated by:

- The council having a good relationship with the customers at each of the sites outlined in this report, which will ensure the prompt sharing of critical information with the contractor, as well as access to be provided when required by the contractor. Both of these will ensure no blockers on the customer side for the detailed design work to progress.
- Vital Energi Ltd being a trusted partner of the council based on its successful delivery of c£47m of DHN related works in Leeds so far, including the detailed design element for each individual connection. Vital have a proven track record in Leeds and beyond, along with an experienced and highly skilled M&E design team. The council further mitigates this risk through design meetings with the contractor and having final sign off on the design which is developed.
- The specification of the contract will be based on the standard outputs for RIBA design stages 3 and 4, in line with previous detailed design exercises undertaken by Vital Energi. These previous pieces of work have all been completed in line with the specification set out and there is no expectation that this contract will see a different outcome.

Does this proposal support the council's three Key Pillars?

Inclusive Growth

Health and Wellbeing

Climate Emergency

30 The Leeds PIPES DHN is a major strategic priority for the city and supplying heat to new customers as proposed directly support the council's three Key Pillars:

- The network will provide lower cost heating to the new connections, helping to improve competitiveness and reduce fuel costs for each customer.
- The network reduces reliance on gas boilers in dense urban areas, helping to improve air quality and improving health.
- The network directly reduces CO2 emissions from heating, which is otherwise difficult and expensive to improve, helping the city to achieve net zero ambitions.

Options, timescales and measuring success

What other options were considered?

31 Do nothing: This option is discounted as it will inhibit the continued expansion of the DHN in Leeds through failing to undertake critical design work at three major sites, significantly hindering the progress of a project which is a strategic priority for the council and causing financial loss to the council.

32 Go out to competitive tender for the detailed design work: This option is discounted for a number of reasons:

- A procurement exercise for this work will take a significant amount of time to undertake, at a time when the network is rapidly expanding and customers, including the one covered by this report, are keen to move as quickly as possible to connect their sites to the network, in line with the timescales outlined at paragraph 10.
- Other contractors will require additional time to undertake the design compared to Vital, given their unfamiliarity with the scheme. Vital's familiarity with the scheme means

their quality and price submissions are likely to be the most competitive, and as such, they are the most likely winner of a procurement exercise for these works.

- Vital is the principal contractor for the DHN project and as such is responsible for carrying out the connection works, including at the three sites outlined in this report. A design by another contractor would need to undergo quality assurance and no doubt modification by Vital in any case prior to works commencing, which would render the procurement exercise pointless.

33 Waive CPRs 8.1 and 8.2 relating to intermediate value procurements, and direct award a contract to Vital Energi Ltd for detailed design work at three sites: This option is recommended as the preferred route forward for the reasons outlined in this report, and drawbacks associated with the alternative options outlined above.

How will success be measured?

- 34 Success will be measured by the contract for detailed design work leading to a formal Connection and/or Commercial Heat Sale Agreement being entered into with the customer at each site.
- 35 The future connection of the site will increase the volume of heat supplied to customers on the DHN, help to reduce carbon emissions in the city, and further raise the profile of the DHN demonstrating to potential customers that connecting to the network can deliver a range of benefits.

What is the timetable for implementation?

- 36 The contract for detailed design work at the three sites will be entered into immediately following the approval of this report and its recommendations. Timescales for the signing of Connection and Commercial Heat Supply Agreements are outlined at paragraph 10.

Appendices

37 N/A

Background papers

38 N/A