

Gas and electricity supply contract procurement – evaluation methodology

Date: 29th March 2023

Report of: Chief Officer, Sustainable Energy & Air Quality

Report to: Director of Resources

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

This report sets out the proposed evaluation methodology for the procurement of a single contract for the Council's gas and electricity supply further to the approval to procure given by Executive Board in February 2022 and ahead of expiry of the current contracts on 31st March 2024. This new contract will ensure continuity of supply of these utilities whilst providing flexibility to adapt to the Council's evolving demand profile and facilitating the implementation of its Energy Strategy and Action Plan approved by Executive Board in February 2022.

The proposed approach involves a waiver of Contract Procedure Rules in relation to Tender Evaluation as set out within the recommendations below. Although a very high value contract, the fixed supplier costs which can be evaluated effectively within the price evaluation are only expected to represent an estimated 1-2% of the overall contract value, with the majority of costs either pass-through charges, commodity costs which are determined by the Council's purchasing strategy or variable costs based on the Council's changing energy demand profile. It is therefore recommended that the value for money of some of the wider and arguably more significant cost elements will be best assessed through the quality evaluation.

The proposed contract will be significant in facilitating the Council's ongoing transition to sourcing its energy from renewables, as well as ensuring flexibility to adapt to the Council's changing energy requirements, potentially over the next decade. This will support the achievement of the Council's net zero carbon ambitions along with the associated health benefits from a reduction in emissions and the transition to cleaner energy sources.

The contract will integrate with and support the Council's energy purchasing strategy as approved by Executive Board in March 2022. The report (including at confidential Appendix 3) also addresses the issue of how the potential for disruption in the continuity of forward purchasing will be minimised in the event of a change of supplier.

Recommendations

The Director of Resources is recommended to:

- a) Waive Contract Procedure Rule (CPR) 15.2 a) in relation to Tender Evaluation, allowing a 'combined price/quality' approach as set out in CPR 15.2 c), but also waiving the requirement for a minimum 40% price weighting in accordance with CPR 27.
- b) Approve the proposed evaluation methodology at section 8 in the main report, including the proposed 30%/70% price/quality weighting.
- c) Note that the decision to award the contract following completion of the tender evaluation process is delegated to the Chief Officer, Sustainable Energy & Air Quality.

What is this report about?

- 1 This report sets out the proposed evaluation methodology for the procurement of a single contract for the Council's gas and electricity supply further to the approval to procure given by Executive Board in February 2022 and ahead of expiry of the current contracts on 31st March 2024. This new contract will ensure continuity of supply of these utilities whilst providing flexibility to adapt to the Council's evolving demand profile and facilitating the implementation of its energy and climate related strategies and action plans.
- 2 The proposed approach to the evaluation requires a waiver in respect of Contract Procedure Rule (CPR) 15.2 (Tender Evaluation). Although a very high value contract at an estimated £300-350m (or £30-35m per annum) based on current consumption levels and energy market prices, the vast majority of the contract costs will not be fixed since either: a) third party, pass-through charges over which the Council has no influence and on which the procurement process has no bearing (e.g. transmission/distribution network costs, Government levies, etc.); b) the gas and electricity commodity costs which will primarily be determined by the Council's ongoing forward purchasing (but will also be influenced to an extent by the contractual flexibility offered by suppliers and their methodologies for reconciling forecast volumes with actuals) rather than by tendered prices, or; c) supplier risk premiums based on the Council's changing energy demand profile, which if fixed for the duration of the contract may be excessively risk-priced by bidders given the inherent difficulty in forecasting future changes with certainty.
- 3 The fixed supplier costs which can be evaluated effectively within the price evaluation are only expected to represent an estimated 1-2% of the overall contract value. It is therefore recommended that the value for money of some of the wider and arguably more significant cost elements will be best assessed through a qualitative evaluation of bidders' methodologies and processes for determining these costs throughout the contract term.
- 4 For this reason, it is not proposed that the preferred 'price/quality separated' approach set out at CPR 15.2 a) be followed, but rather the 'combined price/quality' approach provided for at CPR 15.2 c). However, it is also proposed that the requirement for a minimum 40% weighting on price in the evaluation be waived in accordance with the provisions in CPR 27. Given the relatively small proportion of overall contract costs to be assessed through the price evaluation as outlined above, it is recommended that a 30%/70% price/quality split be applied.

What impact will this proposal have?

- 5 This proposal will ensure continuity of gas and electricity supply to the Council following expiry of the current contracts on 31st March 2024, and will provide the contractual means by which the Council will continue to purchase energy in accordance with its approved energy purchasing strategy. An initial contract term of 4 years is proposed (1st April 2024 – 31st March 2028), with the option for 3 x 2 year extensions beyond this.
- 6 The decision to tender exclusively for a single, combined gas and electricity contract is in the context of the fact that, as noted above, the supplier costs to be included within the price evaluation only represent and estimated 1-2% of total contract value, but also based on the efficiencies in contract management and energy purchasing of dealing with a single supplier. Combining the two also offers the potential for dual fuel discounts to be offered by bidders. Market sounding responses have indicated sufficient market interest in tendering for this contract from organisations capable of supplying both fuels to suggest there will be a satisfactory competitive process.
- 7 The requirements to be set out within the proposed contract specification significantly strengthen the current contractual position in terms of performance requirements, suppliers' methodology for determining variable costs during the contract term, anticipation of an increasing Council portfolio of electricity export infrastructure rather than only import supplies, and facilitation of an ongoing and substantial transition to renewables for the Council's electricity consumption through local large-scale generation or corporate power purchase agreement (PPA) arrangements. The contract will also seek to ensure continuity in relation to the Council's forward purchasing of energy in the event of a change of supplier, whether at the start of this new contract or on its expiry.
- 8 Details of the proposed quality evaluation criteria, weightings and pass/fail thresholds are set out in the table below:

Method Statement	Criterion	Maximum Points Available	Pass/fail score threshold (out of 10)
1	Value for Money		
1a	Flexibility of contractual product(s)	80	7
1b	Determining variable costs	70	7
1c	Sleeving pre-purchased and PPA volumes	70	7
1d	Maximising electricity export and income	40	7
2	Brokerage service	70	7
3	Portfolio and account management		
3a	Account management team	40	7
3b	Supply changes and metering	40	7
4	Billing compatibility and compliance	60	7
5	Accuracy of billing and data		
5a	Billing accuracy and invoice presentation	40	7
5b	Data	40	7
6	KPIs	50	7
7	Continuous improvement and added value	30	6
SV	Social Value	70	N/A
	TOTAL	700	

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 9 The proposed contract will be significant in facilitating the Council's ongoing transition to sourcing its energy from renewables, as well as ensuring flexibility to adapt to the Council's changing energy requirements, potentially over the next decade. This will support the achievement of the Council's net zero carbon ambitions along with the associated health benefits from a reduction in emissions and the transition to cleaner energy sources.
- 10 The Council's gas and electricity contracts should be considered within the context of the Council's overarching Energy Strategy and Action Plan approved by the Executive Board in February 2022. The use of grid gas and electricity sits at the bottom of the strategy's hierarchy of options, which first prioritise energy reduction, increased energy efficiency of buildings, an increased proportion of energy sourced from renewables and use of low carbon technologies. The gas and electricity contract is not therefore being used in itself as the primary vehicle for delivering carbon reduction, but has been scoped to adapt to a progressively reducing energy demand (particularly in relation to gas), whilst also incorporating a progressively increasing proportion of energy from renewables expected to be sourced by the Council.
- 11 Although the services to be provided by the supplier are predominantly administrative functions, the contract will also include social value requirements. There will be an obligation for the supplier to engage with the Council's Employment and Skills team throughout the contract term to identify, support and promote any social value opportunities. There will also be Social Value obligations, with the Supplier required to work proactively in delivering Social Value initiatives within the Leeds area in relation to the contract. Whilst there will be a flexible approach to enable the Council to bring specific schemes requiring support to the supplier, there will also be a number of specific TOMs (Themes, Outputs and Measures) against which potential suppliers are required to bid back in terms of how the associated objectives will be met. Collectively this approach will provide a valuable contribution in support of inclusive growth.
- 12 An Equality, Diversity, Cohesion and Integration (EDCI) screening report has been completed and can be found at Appendix 2 to this report.

What consultation and engagement has taken place?

Wards affected:

Have ward members been consulted?

Yes

No

- 13 The Executive Member for Resources has been briefed on these proposals. No Ward Member consultation has been carried out as the proposals within this report do not affect specific Wards.
- 14 The relevant Procurement and Commercial Services Category Manager and the relevant Head of Finance have also been consulted.
- 15 External technical advice has been secured from Arup and has informed the development of the contract specification and the proposed approach to contractual pricing, tender evaluation and other key technical requirements.
- 16 Furthermore a formal market sounding exercise published on YORtender provided an indication of current market interest in tendering for the contract, as well as feedback on key issues in relation to the Council's specification which has been used to refine the Council's statement of requirements.

17 Wider consultation on the proposals beyond the above is not deemed necessary since approval to procure this contract and authority to spend was given by Executive Board in February 2022, with the decisions covered within this report flowing from this original key decision (ref. D54993).

What are the resource implications?

18 As noted above the contract value is very significant at an estimated £300-350m (or £30-35m per annum) based on current consumption levels and energy market prices. However, the award of a new contract is effectively a continuation of the current arrangements for energy supply, with this level of cost being incurred and needing to be incorporated into budget planning by the Council irrespective of this new procurement process.

19 The contract costs are obviously significantly influenced by the evolving and highly variable market prices, but since the Council has a dynamic energy purchasing strategy (approved by Executive Board in March 2022) through which it determines its own purchases on a rolling basis based on external market advice, this element of the costs is effectively passed through by the supplier. As noted earlier, the supplier costs to be fixed under the contract will be subject to competition through the price evaluation, and the value for money of and methodology for how bidders will determine any variable costs during the contract term will be assessed through the quality evaluation.

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

20 Given the critical nature of and very high costs associated with the Council's energy supply it is essential that continuity is ensured following the expiry of the current contracts on 31st March 2024. The planned commencement of this procurement process at this point in time, well in advance of a potential transition to a new supplier, will minimise the scope for any service disruption or risk of exposure to out of contract pricing.

21 The Council's current 'balanced risk' approach to energy purchasing agreed by Executive Board in March 2022, and embedded within the existing and proposed new contracts, gives the Council much greater control over gas and electricity commodity purchasing. During the recent periods of volatility in global energy market prices, this approach has been significant in hedging the Council against its exposure to the extreme short-term price increases observed.

22 Given the level of expected change in the Council's energy requirements in light of net zero targets and increased commodity costs, the new contract will require flexibility from suppliers to adapt to this changing profile, with this forming a key element of the quality evaluation.

23 Ongoing implementation of the Council's approved energy purchasing strategy in conjunction with this contract will be supported by the requirements to be included within the new contract for transferring or 'sleeving' over to a potential new supplier the volumes of energy forward purchased via the current supplier for periods from April 2024 onwards, and by provisions previously incorporated into the current contract in support of this process. The management of risks relating to this process is treated more fully in confidential Appendix 3 to this report. However, the Council is also seeking, as a fall-back position, the ability under the new contract to commence energy purchasing with a new supplier from the point of contract award, in advance of full service commencement, in order to allow a window during which currently forward purchased energy could be sold back on the wholesale market with the existing supplier and re-purchased with the new supplier on a more controlled basis than if this facility only became available from 1st April 2024.

What are the legal implications?

- 24 The proposed procurement will be conducted in accordance with Public Contracts Regulations and Council CPRs, noting the waiver in relation to CPR 15.2 (Tender Evaluation) for which approval is sought through this report.
- 25 The information contained within confidential Appendix 3 to this report is designated as exempt from publication in accordance with paragraph 10.4(3) of the Access to Information Rules and Schedule 12A(3) of the Local Government Act 1972 on the grounds that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information). It is considered that the public interest in maintaining the content of confidential Appendix 3 as exempt outweighs the public interest in disclosing the information.

This is a significant operational decision as a direct result of an Executive Board Decision taken in February 2022 and therefore not open to call-in.

Options, timescales and measuring success

What other options were considered?

- 26 With expiry of the current contracts approaching and the available extensions all now used, Public Contract Regulations and Council CPRs require that the Council's gas and electricity contract(s) now be competitively tendered. The option to 'do nothing' is therefore not viable.
- 27 Whilst the Council could tender the gas and electricity contracts separately, market sounding responses have indicated that there is sufficient market interest in a single, combined contract to ensure competition, and a single supplier provides significant benefits in terms of energy purchasing and contract management.
- 28 Options relating to sleeving of forward purchased energy volumes between suppliers are covered in confidential Appendix 3.

How will success be measured?

- 29 Success will be measured primarily through monitoring against the contractual key performance indicators, through benchmarking of purchased commodity prices and through an ongoing assessment of the value for money of the contract as it adapts to the Council's evolving energy requirements during the contract term.

What is the timetable and who will be responsible for implementation?

- 30 It is anticipated that the contract will be advertised and tender documents published by the end of March 2023, with bid submission by mid May 2023, completion of the tender evaluation process during July 2023 and contract award in August/September 2023. Full service commencement will be on 1st April 2024, but with the brokerage service which enables the Council to forward purchase energy commencing from the point of contract award.
- 31 Approval of the evaluation outcome and the decision to award the contract are delegated to the Chief Officer, Sustainable Energy & Air Quality, who will also be responsible for implementation.

Appendices

- Appendix 1 – Contract Procedure Rules Waiver Proforma
- Appendix 2 - Equality, Diversity, Cohesion and Integration Screening Form.
- Appendix 3 – Confidential Appendix – Energy Sleeving;

Background papers

- Report to Executive Board – Climate Emergency Update (including Energy Strategy) – 9th February 2022; [Council and democracy \(leeds.gov.uk\)](https://leeds.gov.uk/council-and-democracy)
- Report to Executive Board – Energy Purchasing Strategy – 16th March 2022. [Council and democracy \(leeds.gov.uk\)](https://leeds.gov.uk/council-and-democracy)