

Award of contracts for the supply of electricity and gas (including brokerage service)

Date: 12th January 2024

Report of: Chief Officer, Climate, Energy & Greenspaces

Report to: Director of Communities, Housing & Environment

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

The Council's current electricity and gas supply contracts expire on the 31st March 2024, and approval was previously given by Executive Board (key decision D54993) to procure a new contract to ensure continuity of supply of these utilities, whilst also providing flexibility to adapt to the Council's evolving energy demand profile and supporting its energy and climate related strategy and action plan.

Following conclusion of a robust and comprehensive tender evaluation process, approval is now sought from the Director of Communities, Housing & Environment to the award contracts (forming a single, integrated contractual package) to ENGIE Power Ltd for supply of electricity and to ENGIE Gas Ltd for supply of gas (with both including a brokerage service) for a period of 4 years with the option to extend for a further 3 periods of up to 24 months each.

The overall scoring process was undertaken on a consensus basis and followed the Council's approved methodology, with the process overseen by the Procurement and Commercial Services (PACS) team. Details of the evaluation outcome and scoring are contained within Confidential Appendix 1 to this report.

Recommendations

The Director of Communities, Housing & Environment is recommended to:

- a) Note the contents of this report;
- b) Approve the award of contracts to ENGIE Power Ltd for supply of electricity and to ENGIE Gas Ltd for supply of gas (both including a brokerage service) for a period of 4 years with the option to extend for a further 3 periods of up to 24 months each, noting that the estimated value of the combined contracts will be £32.5m per year based on current 2024/25 consumption forecasts (and subject to market commodity and third party price changes) and the contracts will commence on 1st April 2024.

What is this report about?

- 1 The Council's current electricity and gas supply contracts expire on the 31st March 2024, and approval was given by Executive Board in February 2022 (key decision D54993) to procure a new contract to ensure continuity of supply of these utilities, whilst also providing flexibility to adapt to the Council's evolving energy demand profile and supporting its energy and climate related strategy and action plan.
- 2 Following the approval of the evaluation approach by the Director of Communities, Housing and Environment in March 2023 (decision D56253), a competitive procurement exercise was undertaken with tender documents published in April 2023 and a submission deadline of 7th June 2023. This report provides details of the tender evaluation process and outcome and seeks approval from the Director of Communities, Housing & Environment to award a contract for the supply of electricity and gas, and the provision of brokerage services, to ENGIE (technically two linked contracts, with many of the services such as brokerage, invoicing, account management, etc. to be provided in common across both commodities). The contract term is for a period of 4 years, with the option to extend for a further 3 periods of up to 24 months each.
- 3 The tender evaluation was conducted by a panel of officers from the Energy Team within the Climate, Energy and Greenspaces service (and including a member of the Procurement and Commercial Services (PACS) team in relation to the Social Value section), with external technical input from Ove Arup Ltd acting as advisors. The overall scoring process was undertaken on a consensus basis and followed the Council's approved methodology, with the process overseen by PACS.
- 4 Fuller details of the evaluation outcome and scores are contained within Confidential Appendix 1 to this report.

What impact will this proposal have?

- 5 The award of a new energy supply and brokerage contract to ENGIE will ensure the continuity of electricity and gas supply to the Council's circa 3,000 supply points following the expiry of the current contract on 31st March 2024, and will provide the contractual means by which the Council will continue to forward purchase energy in accordance with its approved energy purchasing strategy.
- 6 The impact of the transition to the new contract will be minimised by virtue of the fact that ENGIE is the incumbent supplier, most notably in terms of providing seamless continuity of the Council's forward purchasing of energy.

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

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 7 The 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.
- 8 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 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.

- 9 Although the services to be provided by the supplier are predominantly administrative functions, the contract will also include Social Value requirements. There is 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 obligations such that the Supplier is 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 to the supplier for support, there will also be a number of specific Themes, Outputs and Measures (TOMs) against which the supplier will be monitored throughout the contract term. This approach will provide a valuable contribution in support of inclusive growth.

What consultation and engagement has taken place?

Wards affected: No individual wards will be affected.

Have ward members been consulted? Yes No

- 10 The Executive Member for Climate, Energy, Environment and Green Space has been briefed on the procurement evaluation outcome and consulted on the recommendations. No Ward Member consultation has been carried out as the proposals within this report do not affect specific Wards.

- 11 The relevant Head of Finance and PACS Category Manager have also been consulted.

What are the resource implications?

- 12 The forecast contract value is very significant at an estimated £300-350m (or £30-35m per annum) based on current consumption and energy market price forecasts. The current budget forecast for 2024/25 is £32.5m. 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 procurement process and outcome.
- 13 As noted, the contract costs are obviously significantly influenced by the evolving and potentially 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.
- 14 In terms of value for money, although only a limited number of bids was received despite formal market sounding and notification ahead of the publication of the tender documentation, ENGIE's supplier costs to be fixed under the contract, and their methodology for determining any variable costs during the contract term to ensure value for money, have been submitted under the conditions of a competitive process and assessed through both the price and quality evaluation.
- 15 The energy crisis led to the failure of a number of energy suppliers in the UK, and has naturally impacted the risk appetite of the remaining suppliers and reduced the range of contractual products now being made available to customers. This is likely to have contributed to reduced interest in the Council's procurement process, and it is understood that other public entities have also recently experienced limited participation in their energy supply procurements. The

outcome of the Council's procurement process and recommended contract award to ENGIE must therefore be considered in this context.

- 16 Furthermore, although a very high value contract as noted above, the vast majority of the contract costs are either third party pass-through charges over which the Council has no influence and the contract has no bearing or the commodity costs which will be determined by the Council's ongoing forward purchasing. Supplier costs which have been included within the price evaluation (excluding metering costs) therefore only represent around 2.9% of the overall contract value based on forecast costs for 2024/25.
- 17 In terms of financial monitoring, energy purchasing and budget updates are provided by the Energy Team to the Director of Communities, Housing and Environment and senior Finance officers on a two-monthly basis.

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

- 18 Given the critical nature of and very high costs associated with the Council's energy supply it is essential that ongoing contractual certainty is ensured following the expiry of the current contracts on 31st March 2024.
- 19 The new contract has been specified so as to provide flexibility to accommodate the level of expected change in the Council's energy requirements in light of net zero targets and increased commodity costs.
- 20 The Council's current 'balanced risk' approach to energy purchasing agreed by Executive Board in March 2022, and embedded within the proposed new contract, 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.
- 21 The award of the new contract to the incumbent supplier, ENGIE, also eliminates the risk of a potential break in continuity of the Council's forward purchasing of energy and hedging of price risk associated with a transition between two different suppliers.

What are the legal implications?

- 22 The decision to award this contract is a direct consequence of a previous Key Decision made in February 2022 (D54993), through which authority to procure and authority to spend were approved, and is therefore a Significant Operational Decision and exempt from call-in in accordance with Article 13.4.2(c) of the Constitution.
- 23 The procurement has been undertaken in accordance with the Public Contract Regulations 2015 and the Council's own Contracts Procedure Rules.
- 24 It should be noted that, by virtue of Access to Information Rules 10.4.(3), Appendix 1 to this report is restricted as confidential. This is 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."
- 25 It is considered that the public interest in maintaining this information as exempt outweighs the public interest in disclosing the information, as disclosure may prejudice the outcome of the procurement process, whilst the details of the tender proposals within the appendices also contain the financial details/business affairs of individual companies.
- 26 The Council will technically enter into separate contracts with ENGIE Power Ltd for supply of electricity and to ENGIE Gas Ltd for supply of gas (both including brokerage services), with both legal entities part of the ENGIE group. These arrangements and the interaction between

ENGIE's and the Council's terms and conditions and the Council's other contractual requirements have been established through the tender evaluation process and will be explicitly set out and drawn together within contractual side letters which will have precedence over all other contractual documents.

Options, timescales and measuring success

What other options were considered?

- 27 The option to do nothing and not award a contract is untenable as this would put at risk the Council's ability to implement its energy purchasing strategy and would leave it at significant risk of out-of-contract pricing for the supply of electricity and gas.
- 28 Although the procurement process yielded only two bidders, the current market context as outlined earlier in this report must be noted. ENGIE's tender submission was submitted under the conditions of a competitive procurement process, and a decision to test the market again would expose the Council to the risk of additional costs in extending with the current supplier given the current contract expiry date, with the potential risk that the new procurement produced no bidders.

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 Full service commencement will be on 1st April 2024.
- 31 The Chief Officer, Climate, Energy and Greenspaces, will be responsible for implementation.

Appendices

- Confidential Appendix 1 – Tender Evaluation Matrix.

Background papers

- Report to Executive Board – 9th February 2022 – Climate Emergency Update (including Energy Strategy & Action Plan) (decision ref. D54993) [Council and democracy \(leeds.gov.uk\)](https://leeds.gov.uk/council-and-democracy)
- Delegated decision report - 6th April 2023 - Gas and electricity supply contract procurement evaluation methodology (decision ref. D56253) [Council and democracy \(leeds.gov.uk\)](https://leeds.gov.uk/council-and-democracy)