

To: Cabinet
Date: 18 October 2023
Report of: Head of Corporate Strategy
Title of Report: Utilities Procurement 2024 - 2028

Summary and recommendations	
Purpose of report:	To seek delegated authority for the Head of Corporate Strategy, in consultation with the Head of Financial Services / Section 151 Officer, to approve contracts for gas and electricity and agree to extend the current contract for water utilities.
Key decision:	Yes
Cabinet Member:	Cllr Anna Railton, Cabinet Member for Zero Carbon Oxford and Climate Justice
Corporate Priority:	Pursue a Zero Carbon Oxford
Policy Framework:	Corporate Strategy 2020 - 2024

Recommendations: That Cabinet resolves to:	
1.	Delegate authority to the Head of Corporate Strategy, in consultation with the Head of Financial Services / Section 151 Officer, to: - decide the procurement route for purchasing the supply of gas and electricity from October 2024 - agree to enter into contracts for gas and electricity, subject to a maximum term of four years from October 2024;
2.	Approve the extension of the Council's water contract with Wave for a further two years; and
3	Note the proposal to undertake an Energy Procurement Review to inform the Council's longer-term approach (from 2027 onwards).

Appendices	
Appendix 1	The LGA's list of Public Buying Organisations offering energy service frameworks
Appendix 2	Risk Register

Introduction and background

1. Since 2004, LASER (Local Authority South East Region), has provided energy procurement services for the Council. LASER is a Public Buying Organisation offering energy services and is part of Kent County Council. Since 2017 the Council has also accessed LASER's Water Framework to secure contracts for water and wastewater services.
2. The Council utilises LASER's services through a compliant framework via an access agreement. In the last financial year (22 – 23) the Council spent £2.8m on electricity, gas and water. Taking into account increases to unit rates in October 2022, it is estimated that this will increase to £3.7m in this financial year (2023 – 2024). Expenditure (for 23-24) is split approximately as follows:
 - Gas: £1.1m
 - Electricity: £2.4m
 - Water: £0.2m
3. The current energy framework agreement with LASER runs from 1 October 2020 until 30 September 2024. The Council's water contract runs from 15 September 2021 until 14 September 2024, with the option of a 2-year extension.
4. In order to benefit from a hedged approach involving forward purchasing to mitigate against high energy prices and volatile markets, the Council is considering using a new framework agreement with a Public Buying Organisation, to provide as long as possible a window for energy procurement prior to the contract delivery date (1 October 2024).

Energy procurement options

5. The energy market is a highly specialised field of procurement. The complexity of the procurement options can create a risk if not appropriately managed. The Pan Government Energy Project recommends that all public sector organisations adopt aggregated, flexible and risk-managed energy procurement.¹
6. In seeking to review and renew the Council's energy contracts the following options are presented:
 - a. Do nothing (which means do not re-procure and allow the current utilities contracts to run over at higher rates)
 - b. Run a procurement process in-house
 - c. Use a Public Buying Organisation (PBO) or Third Party Intermediary (TPI).

¹ <https://www.gov.uk/guidance/buying-energy-options-for-public-sector-buyers>

7. Doing nothing is problematic in terms of cost as this would mean that once the current contracts expire, the council would pay expensive and volatile deemed rates with its energy suppliers without an energy contract in place.
8. Running a procurement process in-house, with a collective procurement value of ca.£3.7m per annum, would be time-consuming and expensive, requiring specialist energy purchasing expertise to run a compliant tendered process. Further, the Council does not have sufficient volume or buying power itself to purchase in advance on the wholesale energy market and effectively negotiate supplier management fees.
9. Entering into contract with a TPI (i.e., an energy broker) would be time consuming and resource intensive. There are c.2000 brokers operating in the UK market primarily serving small- and medium-sized organisations and some councils. A procurement process would need to be run by the Council to select the broker, requiring significant resource and expertise.
10. Procuring energy through a PBO is currently considered best practice. A PBO is a distinct organisation or part of an existing public body set up to facilitate the procurement of items, goods or services commonly purchased by local authorities. Due to the potential aggregated volume of their users, PBOs are normally able to secure preferential rates. Use of a PBO for utilities procurement is regarded as a best practice approach to mitigate energy price risk in a volatile and complex energy market. PBOs often take delegated authority to purchase gas and electricity on behalf of public sector organisations, creating an aggregated committed volume to take to the wholesale market. By aggregating customers' energy volumes into procurement rounds, PBOs are able to purchase energy on the wholesale market. PBOs offer a low-risk procurement compliant route to market. For information, the LGA's list of PBOs offering energy service frameworks is provided in Appendix 1.

Statutory consultation with leaseholders and shared owners

11. Under Section 20 of the Landlord and Tenant Act 1985 (amended by section 151 of the Commonhold and Leasehold Reform Act 2002) the Council has an obligation to consult with leaseholders who pay a service charge where:
 - a. The Council is looking to contract for the supply of services included in the service charge; and
 - b. The contract will be for more than 12 months; and
 - c. The cost to any one leaseholder is greater than £100 a year
12. The Council is currently in the consultation period and letters have been sent to the relevant leaseholders setting out the preferred option (see below) of using a PBO. The final decision taken on the procurement route will need to take account of any responses received from the consultation (the first phase closes on 21 October 2023).

Preferred option and procurement review

13. Currently the preferred option is to use a PBO for the reasons set out in paragraph 10.
14. Due to the ongoing S20 consultation and the need to review and prepare documentation for the chosen procurement route, it is recommended the decision

on how to procure and the subsequent contract award is delegated to the Head of Corporate Strategy in consultation with the Section 151 Officer.

15. Due to the volatility of the energy market and the need to have as long as possible a purchasing window to secure lower rates, decisions will need to be taken quickly following the conclusion of the S20 consultation, requiring delegation as set out above.

Renewable energy procurement

16. Following Cabinet decision in December 2021, the Council does not purchase green gas and directs this funding to the Net Zero Transition Fund, which funds additional decarbonisation projects. This decision was in line with advice from the Council's Scientific Advisor.
17. The Council is not currently purchasing green electricity due to high premiums and similarly this funding is best used to deliver projects that decarbonise the Council's operations.

Longer term energy procurement

18. It is proposed that the Council undertake an Energy Procurement Review to conclude by June 2025 - to enable the development of a longer-term procurement strategy.
19. As set out in the Carbon Management Plan the Council is currently exploring potential opportunities to secure Power Purchase Agreements (PPAs). PPAs are long term contracts between a generator and a buyer of that electricity.² Many organisations sign PPAs to benefit from price certainty over the long term and to purchase energy from a specific renewable energy project, which is regarded as a good practice approach to green electricity procurement. If it proves possible to negotiate a PPA on attractive terms for the Council, then this may provide a significant proportion of its energy needs, requiring adjustments to the contracts placed through a PBO
20. If the new provider of the Council's Leisure Services can demonstrate it can access energy at more competitive rates than the Council, then this may provide another procurement option for a significant proportion of the Council's energy needs and may also require adjustments to the contracts placed through a PBO.
21. Any such future decisions would look at overall value to the Council – including total cost and price certainty – and would be subject to further Cabinet approval.

Water procurement

22. Since April 2017, businesses, charities and public sector organisations in England have been able to switch suppliers for water services. Since 2017, the Council has accessed LASER's Water Framework to secure contracts for water and wastewater services
23. The Council's current Water and Wastewater Retail Services contract with Wave runs from 15 September 2021 to 14 September 2024, with the option to extend to 14 September 2026.

² <https://www.local.gov.uk/publications/national-energy-category-strategy-local-government-2022-energising-procurement>

24. Wave were selected via a mini competition carried out by LASER for the Council in 2020, where they ranked highest overall. Wave's response showed a good level of customer service and they scored well in the added value section.
25. The options available to the Council are to:
- a. Extend the current contract for two years
 - b. Sign a separate access agreement with LASER to:
 - i. Run a mini competition, to assess all suppliers on LASER's framework to respond with quality service offerings and pricing to meet the Council's requirements. The process for a mini competition from initial draft of the tender pack to awarding the winning retailer will take around 3 months.
 - ii. Direct award another supplier under LASER's LOT 1 route based upon the rationale of either Overall Top Scorer, Price, Quality of Services, Added Value Services and Social Value
26. It is recommended that the Council extend the current water contract for a further two years (total value ca.£416,000). This is because:
- a. The contract was only recently agreed via a mini-competition (2020), where Wave ranked highest overall.
 - b. The current retail uplift applied by WAVE and LASER's fees would continue with the 2-year extension. If the Council did not extend and decided to run a mini competition or direct award to an alternative supplier, based on current market conditions this uplift would increase by ca.3% (inclusive of LASER fees), likely increasing overall costs to the Council.
 - c. Re-procurement is a time and resource intensive process, for little likely benefit (due to the current market conditions).

Financial implications

27. Energy is a volatile market and energy prices have risen significantly in the last 18 months. Preferential rates are most likely to be secured by purchasing as far as possible in advance as part of an aggregated volume.
28. In the last financial year (22 – 23) the Council spent £2.8m on electricity, gas and water. Taking into account increases to unit rates in October 2022, it is estimated that this will increase to £3.7m in this financial year (23 – 24). Expenditure (for 23-24) is estimated to be split approximately as follows:
- Gas: £1.1m
 - Electricity: £2.4m
 - Water: £0.2m
29. If the Council decides to run a mini competition or direct award to an alternative water services supplier, based on current market conditions the retail uplift would increase by ca.3% (ca.10k) per annum.

Legal issues

30. Under Parts 4.5(10) 4.5 (11) and 19 (22) of the Constitution Cabinet is empowered to take the decisions set out in the recommendation. Under section 9E (3) (c) of the Local Government Act 2000 Cabinet is empowered to delegate its functions to officers.
31. The procurement of any contracts to be awarded under the officer delegations will need to be comply with the Council's Constitution and the Public Contract Regulations 2015. Following a procurement any decision to award a contract of £1 million or greater will be Key Decision and will need to comply with the procedure for taking Key Decision set out in the Council's Constitution.
32. The Council's current contract for water does provide for the recommended extension period and to agree the proposed extension is lawful.

Level of risk

33. A risk register is attached in Appendix 2. The main risk is that Cabinet decides not to delegate powers (as set out above) to the Head of Corporate Strategy, which would delay the Council entering into contracts by a month.

Equalities impact

34. There are no equalities impact issues with this decision.

Carbon and Environmental Considerations

35. The Council's Carbon Management Plan sets out how the Council will achieve net Zero by 2030 for scope 1 and scope 2 greenhouse gas emissions as well as scope 3 emissions associated with the transmission and distribution of standard grid electricity, business travel and water use.
36. The Council's procurement of electricity, gas and water will have minimal positive or negative impact on this target. In December 2021, Cabinet took a decision – advised by the Council's Scientific Advisor – to reverse the previous Council commitment to purchase “green” gas. The rationale was to prioritise expenditure according to the following hierarchy:
- a. 'Additional' emissions reduction by the Council from its own activities
 - b. Insetting (i.e. support for emissions reduction by others in Oxford).
 - c. Offsetting actions outside the City, including the purchase of green gas credits
37. As a result, a Net Zero Transition Fund was established, which receives funds annually that would otherwise be sent on offsetting, green gas (RGGOs) and green electricity (REGOs). These funds are used to support additional carbon reduction projects in the City.
38. The Council's approach to offsetting and renewable energy purchase is in line with best practice advice and supports the Council's 2040 and 2030 net zero goals.

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Background Papers: None

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