

Commissioning and Procurement Executive Committee – 14 February 2023

Subject:	Options for utilities procurement from 23/24 onwards		
Corporate Director: Director:	Frank Jordan - Communities, Environment, and Resident Services Wayne Bexton - Environment & Sustainability		
Portfolio Holder:	Councillor Sally Longford – Energy, Environment & Waste Services		
Report author and contact details:	Andy Whitley, Utilities Manager andy.whitley@nottinghamcity.gov.uk		
Other colleagues who have provided input:	Alison Bennett – Financial Anthony Heath – Legal Paul Ritchie – Procurement		
Key Decision	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Subject to call-in
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Reasons:	<input checked="" type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £750,000 or more		<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
taking account of the overall impact of the decision			
Significant impact on communities living or working in two or more wards in the City			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Type of expenditure:	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital		
Total value of the decision: Up to £13m			
Wards affected: All			
Date of consultation with Portfolio Holder: 25 January 2023			
Relevant Council Plan Key Outcome:			
Clean and Connected Communities	<input type="checkbox"/>		
Keeping Nottingham Working	<input type="checkbox"/>		
Carbon Neutral by 2028	<input checked="" type="checkbox"/>		
Safer Nottingham	<input type="checkbox"/>		
Child-Friendly Nottingham	<input type="checkbox"/>		
Healthy and Inclusive	<input type="checkbox"/>		
Keeping Nottingham Moving	<input type="checkbox"/>		
Improve the City Centre	<input type="checkbox"/>		
Better Housing	<input type="checkbox"/>		
Financial Stability	<input type="checkbox"/>		
Serving People Well	<input type="checkbox"/>		
Summary of issues (including benefits to citizens/service users):			
Our current supplier for electricity and gas announced in August 2022 they intend to withdraw from the supply market to large scale commercial users, of which Nottingham City Council are categorized.			
Our current contract with the supplier will finish on the 31 March 2024, and they would honour this contract. However, during discussions with the supplier, the opportunity for a one-year early cancellation of the contract on the 31 March 2023 has been offered. This provides the Council the opportunity to undertake a soft market test by inviting pricing from ESPO via their energy supply frameworks for electricity and gas.			
The current contract that Enviroenergy has for export of electricity to grid is due to finish on the 31 March 2023, and a new contract is required to be in place by then, so that the Council continues to receive income for the electricity that it generates and sells to an off taker. The report additionally seeks approval to procure a new export contract.			

Exempt information:

An appendix to the report is exempt from publication under paragraph 3 of Schedule 12A to the Local Government Act 1972 because it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) and, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

It is not in the public interest to disclose the information because it may offer a competitive advantage to other companies tendering for future Council contracts.

Recommendations:

1. To delegate authority to the Director of Environment and Sustainability, in consultation with the Head of Procurement, to identify the best procurement option available to secure electricity and gas supplies for the Council.
2. To delegate authority to the Director of Environment and Sustainability to approve the outcome of any procurement process and award contracts based on the most economically advantageous offer available at the time of renewal.
3. To delegate authority to the Director of Environment and Sustainability in consultation with the Head of Procurement to identify the best procurement option available in securing the sale of electricity generated by the Council for export to grid.
4. To delegate authority to the Director of Environment and Sustainability to approve the outcome of any procurement process and award contracts, including but not limited to any secondary value delivered by low carbon generation, based on the most economically advantageous offer available at the time of renewal.
5. To approve spend and income related to the above contracts.

1. Reasons for recommendations

- 1.1 The opportunity to refresh the current electricity and gas supply contract is available due to the incumbent supplier, decision to withdraw from the large-scale commercial user's energy supply market.
- 1.2 The energy wholesale market has changed at pace during this current contract which commenced in April 2020, with unprecedented volatility in the wholesale commodity costs for electricity and gas. The current contract allows for fixed price, fixed term unit rates for 100% grid supplied electricity and gas, with no option to procure green gas.
- 1.3 Entering into new utility supply contracts will also provide opportunity to reduce 3rd party liabilities currently held by the Council in respect of partner organisations which obtain their Utilities through our current contracts.
- 1.4 After directly supplying their own requirements and the requirements of their private wire customers, Enviroenergy currently export any surplus electricity generated to the grid and receive an income for this volume, along with income for the sale of the associated ROCs (Renewable Obligation Certificates) and REGOs (Renewable Energy Guarantee of Origin).

2. Background (including outcomes of consultation)

2.1 As per reasons for the recommendations above

3. Other options considered in making recommendations

3.1 For the Council to combine its export and import requirements into a single contract to take advantage of the generated export from Enviroenergy. This option would mean developing a bespoke flexible export and import contract, requiring a risk management approach to buying and selling power volumes and additional resource to manage and be responsible for a hedging strategy. Whilst this option may provide the most economically advantageous outcome for the Council, it is not currently resourced to deliver this arrangement within the timescales required for renewal. However, by entering into short term supply and sale arrangements, the option can be further explored, and the right procurement strategy can be developed.

4. Consideration of Risk

4.1 Buying and selling energy exposes the Council to considerable risk, due to current wholesale price market volatility and refusal of the market to offer long term pricing certainty at reasonable mark-ups. The ability to maximise flexibility in our Procurement approach will therefore contribute to managing risk and potential cost exposure.

4.2 Prices provided by potential suppliers in any tender exercise are only ever indicative and can only be locked in when preferred suppliers or buyers are identified and volumes are agreed. To ensure the best value for the Council, delegated authority is required for officers to determine the right time to lock in on price and volume as prices will fluctuate based on prevailing trading activity, alongside demand and supply availability. Single issues such as weather conditions, international affairs, gas storage volumes, and the financial performance of individual energy supply companies can have huge impacts on wholesale trading confidence.

4.3 Setting up a compliant route to trading energy is therefore the solution which affords the greatest flexibility to deliver best value for the Council.

5. Best Value Considerations

5.1 By having multiple procurement options, we are demonstrating best value by:

- Do it yourself. We need a fully licensed energy supplier to legally supply the NCC estate with power and gas;
- Buy it yourself. / buy it with others. This is the current method of procurement of our power and gas requirements, by doing a market test against framework prices we can demonstrate which option will provide us with best value;
- Do it for Others. We currently provide the facility for schools, and community centres to join in with our procurement;
- Reduce / Stop. Not applicable in this instance, power and heat are required for NCC assets, to provide a service to all residents.

6. Finance colleague comments

- 6.1 Pressure funding for anticipated increased utility costs is being included in the MTFP, as part of the budget setting process, based on the government guidance for its energy support measures. The early exit of the gas and electricity supply contracts with Centrica, is not expected to result in any additional cost to the Council in 2023/24 so will not impact on the level of additional funding already requested.
- 6.2 The early exit from the contract, coupled with the benefits of utilising the ESPO energy supply framework, could provide an opportunity to reduce costs. However, any potential cost reduction cannot be quantified until the terms of any new contract are agreed.

Alison Bennett, Senior Commercial Business Partner - 13 January 2023

7. Legal colleague comments

- 7.1 This report seeks a decision to terminate, one year early, the contract for the supply of gas and electricity that the Council has with Centrica PLC and for the Council to enter into a new arrangement for the supply of gas and electricity using the ESPO framework.
- 7.2 Notwithstanding the agreement of Centrica PLC, the early termination of the contract must still be undertaken in accordance with the existing contractual terms and conditions. Legal Services have not had sight of these to offer a view but have advised that it may be necessary to vary the termination provisions or create a process for early termination using the contract variation process in order to allow for the contract to be terminated early, depending on the existing terms and conditions.
- 7.3 Securing an alternative supply of gas and electricity using the ESPO framework should provide a route to market that is compliant with the Public Contract Regulations 2015 as long as any requirements of ESPO are complied with. The Council must also continue to comply with its constitution in awarding contracts.
- 7.4 Legal Services understands that 3rd parties who did not have their own direct debits were given notice that the Council required them to pay for their gas and electricity directly at the end of this financial year rather than as part of the arrangement the Council had for the supply of gas and electricity to the Council. Legal Services are not aware of whether that notice, or the process adopted, is in accordance with any agreements in place between the Council and the 3rd parties; the provision of at least 3 months' notice is likely to meet requirements but without confirmation by a review, a risk remains. Whilst the need to remove the potential liability is understood, the process adopted should comply with any arrangements set out in the agreements between the Council and the 3rd parties.

Anthony Heath, Senior Solicitor, Contracts & Commercial - 24 January 2023.

8. Other relevant comments

- 8.1 The proposal involves using a framework to enter into a contract. The framework has specific call-off terms for awarding contracts. Provided the framework process is followed, the award of contract would be compliant with procurement law and therefore there would be no significant Procurement concerns.

Advice provided by Paul Ritchie (Procurement Manager) – 11 January 2023.

9. Crime and Disorder Implications (If Applicable)

9.1 N/A

10. Social value considerations (If Applicable)

10.1 N/A

11. Regard to the NHS Constitution (If Applicable)

11.1 N/A

12. Equality Impact Assessment (EIA)

12.1 An EIA is not required because there is no impact on equalities.

13. Data Protection Impact Assessment (DPIA)

13.1 A DPIA is not required because there are no data protection impacts.

14. Carbon Impact Assessment (CIA)

14.1 A CIA is not required as we are procuring green electricity as part of this procurement exercise.

15. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

15.1 Utilities Contract: 2020 to 2024 – Commissioning and Procurement Sub-Committee, 14 January 2020

16. Published documents referred to in this report

16.1 None.