

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:	3220
Author:	Andrew Whitley
Department:	Commercial and Operations
Contact:	Andrew Whitley (Job Title: City Energy Manager, Email: andy.whitley@nottinghamcity.gov.uk, Phone: 01158765650)
Subject:	Advance Electricity Payment - NCC Operational Portfolio
Total Value:	£140,000 net (Type: Revenue)
Decision Being Taken:	To agree a payment in advance to Robin Hood Energy to the value of 80% of the total contract value for Nottingham City Council only buildings within financial year 2018/19, to achieve a net saving of £140,000 on electricity costs after deducting treasury management costs. This payment is based on estimates however the final payment will be adjusted to reflect actual usage. The approval for the contract award and associated spend was gained in a Leaders Key decision reference 2486.
Reasons for the Decision(s)	Since 2016 the electricity wholesale market has risen by 64% due to the result of the UK EU referendum and political situations in the USA and Russia. This has resulted in pressure on the electricity budgets that are currently held within the city council. The council's corporate electricity supplier Robin Hood Energy have come forward with a proposal to secure against continuing price increases and assist the City with its current forecasted budget pressure. The proposal is to pay 80% of the current electricity budget held by the city council in advance, with the remaining 20% to be paid on balance, reconciled each quarter. As part of this Robin Hood Energy shall guarantee a gross saving of a maximum of £181,000 on the city council budget as they will be able to purchase on the wholesale market in advance. The pre payment value is based on rates confirmed for 2018/19 which are set out in the exempt Finance appendices.
Briefing notes documents:	Background Information - DDN.docx

Other Options Considered: To continue under the current arrangement of paying monthly in arrears for electricity supply. This would mean the city council would be open to further risk due to market forces of the predicted price increases. For this reason, this option has been rejected

Background Papers: None

Published Works: Leaders Key Decision 2486 June 2016

Affected Wards: Citywide

Colleague / Councillor Interests: None

Any Information Exempt from publication: Yes

Dispensation from Financial Regulations: Yes

Exempt Information:

Description of what is exempt: The Financial Table enclosed in the reasons for the decision

An appendix (or appendices) to this decision is exempt from publication under the following paragraph(s) of Schedule 12A of the Local Government Act 1972

3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information). The public interest in maintaining the exemption outweighs the public interest in disclosing the information because it contains financial information with regards to the Councils energy spend. The information contains detailed financial breakdown of the Councils spend on electricity, and therefore reveals our budget for electricity which could be used as a competitive advantage to other energy suppliers in the next procurement stage for electricity post 2020

Documents exempt from publication: DDM comments updated 19.7.18.doc

Consultations:	Those not consulted are not directly affected by the decision.
Crime and Disorder Implications:	None
Equality:	EIA not required. Reasons: There is no impact on equalities as part of this decision
Social Value Considerations:	n/a
Decision Type:	Portfolio Holder
Subject to Call In:	Yes
Call In Expiry date:	03/08/2018
Advice Sought:	Legal, Finance, Procurement
Legal Advice:	<p>The City Council's Financial Regulations provide (at Regulation D.7) that payments are not to be made in advance of goods and services being supplied without the approval of the Chief Finance Officer. This report seeks approval to change the payment arrangements with Robin Hood Energy Limited (RHE) which currently provide for payment in arrears to make an advance payment. As this is a significant change external advice has been sought on the procurement and state aid implications. The advice has confirmed that the change is lawful as follows. Procurement - the contract with RHE does not provide for changes to be made to the payment arrangements. However the Public Contracts Regulations 2015 (which govern the award of this type of contract) permit modifications to contracts to be made in specified cases without the need for a new procurement procedure to be undertaken. One case permits modifications where the value is below certain financial thresholds. The advice received is that the thresholds should be applied to both increases and savings. On that basis a saving as a reduction in the contract price of £180K is a permissible modification to the contract. State Aid - changing the payment arrangements would be considered a financial advantage to RHE which could be an unlawful state aid. A financial advantage is not unlawful state aid where the market would have operated in the same way - this is referred to as the Market Operator Economic Principle ('MEOP'). It is permissible to apply MEOP in this case on the basis it is reasonable to argue that any other business in the City Council's position would agree the change to the contract as it provides a financial saving under the contract. That statement is subject to the City Council being satisfied that there is no real likelihood RHE will be unable to provide the energy supplies for which the City Council has made the advance payment.</p> <p>Advice provided by Andrew James, Solicitor, on 12/07/2018</p>

Finance Advice:

The financial advice aligns to the legal advice given to Nottingham City Council with the net impact to the organisation being after the impact of any treasury management costs. The advance amount is £3.346m less any amounts paid to date; this contract and the spend associated with it has already been through a formal approval process and is included for reference.

In accordance with financial regulations the Chief Finance Officer's approval is required to make an advance payment.

Advice provided by Ceri Walters (Finance Business Partner) on 12/07/2018.

Advice documents: Finance Comments Electricity Procurement.docx, Leaders Key Decision 2486.pdf

Procurement Advice:

The RHE contract was procured in line with Public Contract Regulations 2015 and in line with the legal advice the modification of the contract as proposed is permissible within the regulations.

Advice provided by Steve Oakley (Head of Contracting and Procurement) on 05/07/2018.

Signatures

Graham Chapman (PH for Finance, Resources and Commercial Services)

SIGNED and Dated: 26/07/2018

Andrew Vaughan (Corporate Director Commercial and Operations)

SIGNED and Dated: 26/07/2018

Laura Pattman (Strategic Director of Finance) - Dispensation from Financial Regulations

SIGNED and Dated: 19/07/2018

Chief Finance Officer's Comments: