ITEM NO. 15

BRENT COUNCIL	**Executive** 16th February 2009 **Report from the Director of Finance and Corporate Resources**
	Wards Affected: None

Authority to award contract for supply of energy to the Council

Forward plan Ref: F&CR-08/09-19

1.0 Summary

1.1 This report relates to the procurement of both gas and electricity across the Council. The report requests approval to award two call-off contracts under a flexible energy procurement framework operated by Kent County Council as required by Contract Standing Orders 88 and 89.

1.2 Kent County Council procures energy for over 70 local authorities through a procurement body, Laser. The Council currently uses Laser to run mini competitions on an annual basis between pre-approved suppliers for each of the five current energy contracts. This leaves the Council susceptible to fluctuations in the market and these new contracts represent an improved approach to energy procurement.

2.0 Recommendations

2.1 That Members award a call-off contract from the Laser Framework for the Supply of Gas via flexible procurement to British Gas Limited and Kent County Council for 3 years from 1st September 2009 requiring Laser to spot purchase gas on the Council's behalf.

2.2 That Members award a call-off contract from the Laser Framework for the Supply of Electricity via flexible procurement to N Power Limited and Kent County Council for 3 years from 1st September 2009 requiring Laser to spot purchase electricity on the Council's behalf.

3.0 Detail

Background

3.1 The Council currently procures its energy requirements through the Local Authorities South East Region Energy Buying Group (“Laser”) whereby energy contracts are let by Laser on a fixed term fixed price (FTFP) basis. Laser has a framework agreement, fully compliant with EU Regulations, with a number of pre approved suppliers and following a mini competition, the lowest cost supplier on the day is selected in advance of the contract period. This method contracts the entire energy volume required in one transaction and sets a price to be applied for the duration of the contract. Tendering takes place on a chosen day and the price obtained is specific to the market conditions on that day. The tender date is selected on the basis of market intelligence and consultant advice to coincide with when prices are considered most favourable (although this can only ever be determined with hindsight). As energy markets are so volatile the Council has only hours to decide whether to accept the price or decline and go back to the market on another occasion.

3.2 Brent currently spends in the region of £5.85 million per annum through Laser at current contract values, it is proposed that £3.5 million of this spend will be via the flexible procurement option. The £3.5 million is spread across three contracts, £1.5 million each for Gas for Schools and Council offices, £1.5 million for Half Hourly Metered Electricity, which are the highest consuming sites and £500,000 on Monthly Electricity. The remaining £2.3 million consists of £1.2 million for street lighting under a separate contract and £1.1 million for sites billed directly by the supplier.

3.3 In a relatively stable market, the method detailed in paragraph 3.1, has been effective in securing best value. However, over recent years energy markets have been volatile with wholesale prices fluctuating in excess of 100% over a two year period.

3.4 The Office of Government and Commerce (OGC), together with the London Centre of Excellence (LCE) now Capital Ambition, a procurement centre of excellence for London, led the Pan Government Energy Review Project. The key recommendation from the OGC project is that public sector groups should use approved professional buying organisations operating flexible procurement models to buy their energy.

3.5 In view of the likely advantages for the Council of flexible energy procurement, officers have been looking into the option available. Individually, no one local authority has sufficient spend levels, or indeed the in house expertise, to enter the futures market. Typically the minimum transaction volume for Electricity is 400 GWH, four times average consumption levels for most local authorities, however the aggregated spend of a number of authorities is sufficient to achieve competitive prices. As a result, it was considered purchasing from a framework set up by a professional buying organisation provided best value.

3.6 Capital Ambition recommend Laser or OGC’s Buying Solutions frameworks and suggested that existing Laser members should remain with Laser and move over to flexible and risk managed products. Brent has purchased all energy requirements through Laser for the previous four years. Rather than relying on this guidance, officers independently reviewed the two frameworks established by OGC Buying Solutions as well as two flexible procurement frameworks set up by Laser, one for the purchase of gas and the other for electricity.

3.7 The main difference between the OGC and the Laser Frameworks is that OGC Buying Solutions do not have an integrated service. Billing is sent direct from suppliers to an external validation service that checks the bills before passing them to the Boroughs. Laser however operate a fully integrated service (see paragraph 3.14). Laser also has a much larger existing user base which allows them to purchase greater volumes of energy and thus achieve lower prices than the OGC frameworks. The national Collaborative Energy Review Project led by the OGC established a set of criteria for energy supply contracts which are recommended as best practice for public sector organisations. The Laser flexible model was the first to receive compliance status as assessed by the OGC review project. 51 Authorities including 15 within London are already included in the Laser flexible portfolio.

3.8 The Laser frameworks for gas and electricity procurement allow for a wholesale flexible procurement model. Wholesale flexible procurement arrangements enable the buyer to purchase blocks of energy at varying times both before and within the contracted supply period. The arrangement removes the risk and volatility of settling a requirement on a single day and gives protection from the uncertainty of future market trends. Aggregating the volumes of members within the arrangement enables effective market hedging.

3.9 Officers are of the view that the Laser frameworks provide best value for the Council and wish to call-off contracts under the gas and electricity flexible procurement frameworks.

Purchasing Process

3.10 Rather than the Council, on advice from Laser, making individual decisions to purchase energy from a supplier at a fixed rate for a fixed period as is the current arrangement, under the new Laser flexible procurement frameworks the Council will rely on Laser’s expertise and Laser will act as the Council’s agent and make the decision as to the actual point at which a block of energy will be purchased.

3.11 The change in approach outlined in paragraph 3.10 is due to the fact that all Laser members demand for electricity and gas is aggregated. Laser then execute energy purchases of differing volumes across differing time periods in response to market conditions, risk factors (production outages, weather/news events etc.) and in accordance with a risk management strategy. The Council has seen and approved Laser’s risk management strategy.

3.12 The decision as to the exact point at which to purchase energy is made by the Laser Manager and three Purchasing Managers within Laser. A quorum of two is required to execute a purchasing instruction. A full audit trail of purchases and decision rationale is maintained.

3.13 There is a three monthly governance panel review to review purchasing decisions made on behalf of the Laser members included in the flexible portfolio and the purchasing / risk management strategies, reporting to the Commercial Services Director. This will comprise:

Laser Manager

Laser Purchasing Managers (3)

Head of Finance – Commercial Services

Laser Group members – one from each of the following Authorities:

County Council

London Borough

Borough / District / City / Unitary Authority

Independent Industry Consultant

3.14 In addition to setting up the Framework and making ongoing purchasing decisions, Laser provide an integrated tendering and contract management service. Laser's bespoke GEMS software enables a supplier's bills to be checked for accuracy and consumption details recorded for future tender information. Laser pay all the supplier's bills after validation and then recharge their clients by paper or electronically. Laser transfer sites between suppliers when contracts end and in the case of the flexible method oversee all purchasing activity. Laser charge a fee for this ongoing service. This fee is based on the number of sites the Council has and the consumption per site. This will normally work out to between 1% and 1.3% of contract value. A schedule setting out the fees and billing arrangements will be attached to the Tripartite agreement.

3.15 As energy is continually purchased over the contract period, delivered prices vary. To manage this variation sites are billed throughout the year at an agreed 'billing rate', which is then reconciled at the year end in line with the weighted average of prices secured over that year. Delivered prices are site specific according to the site's consumption volumes, so there is no cross subsidy between sites or authorities.

3.16 Future developments may see new competitors enter the market, at present only two suppliers are approved by Capital Ambition being Laser and the OGC. The proposed contracts are for three years only and will not therefore tie us to one supplier for a lengthy contract and during the contract term we will have an opportunity to gather data around usage and trends which will better position us for a possible wider market.

4.0 Financial Implications

4.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works contracts exceeding £1million shall be referred to the Executive for approval of the award of the contract.

4.2 The Council is spending around £6m per annum of gas and electricity. The proposals in the report seek to reduce the volatility in pricing and offer more certainty for budgeting and monitoring purposes. This strategy is a coupled with a variety of initiatives to reduce energy usage. This will provide better value for money particularly when the Carbon Trading Scheme is introduced. There will also be potential efficiencies from rationalising the current billing process.

4.3 In the budget report on tonight's agenda the Executive is recommending growth of £155k from 2009/10 to support the delivery of reducing the carbon footprint across the Council.

5.0 Legal Implications

5.1 There are two Laser frameworks which the council wishes to call off from, one is for the supply of electricity and one is for the supply of gas ("the frameworks").

5.2 Under the Public Contracts Regulations ("the EU Regulations") the procurement of energy is a supply contract. Laser advertised the frameworks in accordance with the EU Regulations. The OJEU notice stated that the value of the framework agreements is £435,000,000 and that they would be used by Local Authorities Public Bodies, Police, Fire Services, Third Sector Organisations and other Executive Agencies across London and the South of England." The Borough of Brent is a Local Authority and as such is entitled to access the Laser Frameworks. Accessing a framework already set up in compliance with the EU Regulations means that the Council does not have to run its own tender exercise in compliance with the EU Regulations.

5.3 Contractors were appointed to the Laser Frameworks on 1st September 2008 with the duration of the agreement being four years. The expiry date of the call-off contracts will accordingly be the same as the expiry date of the frameworks.

5.4 As the framework were established by Kent County Council and not Brent the approval of both the Director of Finance and Corporate Resources and the Borough Solicitor to the use of the frameworks is required under the Standing Orders paragraph 86 (d) The approvals of both the Borough Solicitor and Director of Finance to participation in the frameworks have been given.

5.5 It is anticipated that both contracts called-off under the frameworks will be high value under the Council's Standing Orders. Normally the award of a high value contract under a framework agreement would require Executive approval. There is however a specific exception in the delegated powers for the supply of energy through the Laser Framework and the Director of Finance and Corporate Resources has delegated authority to approve an award under the Laser Framework. This delegation was originally designed to deal with the current arrangement with Laser, where purchasing decisions have to be made within a three hour window. The new frameworks adopt a new approach to energy procurement with the Council entering into tripartite agreements with both Kent County Council and NPower (for electricity) and British Gas (for gas) with Laser acting as the Council's agent to make the decision as to the actual point at which a block of energy will be purchased from NPower or British Gas. In view of the new approach it was decided that it would be more appropriate to obtain Executive approval to this award rather than award under delegated powers. The award of these two call off contracts accordingly requires Executive approval.

5.6 Both Laser Frameworks are single supplier frameworks. As detailed above, to access the frameworks the Council needs to enter into a tripartite agreement with the electricity/gas supplier, and Kent County Council. This agreement is a tripartite agreement as Laser has an ongoing role in the contract, not only in terms of the purchase of energy, but also the on going administration. This agreement records that the supplier will supply the electricity/gas purchased by Laser to the Council and will send the invoices to Kent County Council who operate a billing system and will invoice the Council. The duration of the Tripartite agreement will be three years.

5.7 Members should note that this arrangement differs from a standard framework as Laser have an ongoing role in the contract, both in regards to purchasing the electricity on behalf of the Council throughout the life of the contract and in receiving and paying the invoices on the Council's behalf. Laser receives a fee for these ongoing services. The legal status of these services provided by Laser is unclear. The preferred approach is that the services are a separate component to the proposed call-offs, and entering into the services contract with Laser is a condition precedent to Brent being able to contract with each supplier. As such this contract with Laser would be subject to the EU procurement regulations and the provisions of the Council's Standing Orders. These services would be part B services under the EU Procurement Regulations being "other services" not expressly listed. The procurement of these services would therefore not be subject to the full requirements of the EU Regulations but would be subject to the overriding requirements of transparency and openness. These services would also be medium value services under the Council's Standing Orders. However as the framework cannot be entered into without these services being provided by Laser these services would be covered by an exemption in paragraph 86(e) of the Councils Standing Orders about provides that no competitive tender process is required where there is only one provider. Therefore a competitive procurement process would not need to be followed. The alternative view is that the services provided by Laser are an integral part of the framework and would therefore not be subject to any separate procurement requirement. For the purpose of this report the unclear legal basis of the relationship with Laser is immaterial, and the recommendations to Members allow for both bases.

6.0 Diversity Implications

6.1 There are no diversity issues resulting from this tender process.

7.0 Staffing/Accommodation Implications

7.1 This services are currently provided by external contractors and there are no implications for Council staff arising from the tendering of the services.

8.0 Sustainability Issues

8.1 Approximately 4% of total electricity generated is considered ‘green’, however supply levels are volatile and despite increased costs, there is no guarantee the actual electricity supplied and consumed is ‘green’. There are no current plans for Laser to incorporate ‘green’ energy procurement into the flexible portfolio.

8.2 Effective management of the Council’s utilities helps to meet two high priority objectives. These are to reduce the use of gas and electricity and hence the carbon footprint and consequently reduce costs. The new proposed contracts will provide far more data on energy consumption (KWH) and this will be through a single point. The Councils carbon footprint from its buildings and street lighting is about 33,000 tonnes per annum. Set in the national context reductions of 80% are required by 2050. Early work suggests that by ensuring education of staff and changes in behaviour, together with upgrades to plant and machinery, low energy equipment and control of IT a reduction of 30-40% is achievable but this will only be possible if the Council puts these targets at the centre of its strategy and builds appropriate investment measures into its medium term asset management and financial strategy. The proposed Civic Centre will make a large contribution to a future reduction. The Council is also currently in the process of recruiting an Energy Manager who will work across all departments in helping to achieve reductions.

8.3 It is also proposed, that with the increased accuracy of data coming through from suppliers, monitoring and targeting software will be utilised to highlight problem areas and take appropriate action. It will also go some way to satisfying the audit requirements under NI 185 (Reducing CO2 emissions from Local Authority operations) and also in ensuring that the data will be available for the Carbon Reduction Commitment being introduced on 1st April 2010. This is effectively the start of a process whereby large users of energy will have to purchase carbon credits at the start of each year. The cost of this is likely to be £12 per tonne in the first year. The Council will therefore have to pay around £400k in the first year. Theoretically it will receive all this back if its emissions are no higher than the credits it has purchased. The scheme has not yet been finalised but it is very probably that those organisations that are unable to produce accurate auditable figures will be effectively fined and will not receive the full credit back.

9.0 Background Papers

9.1 None

10.0 Contact Officers

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