



**Cabinet**  
10 November 2014

**Report from the Chief Finance Officer**

For Action

Wards Affected:  
ALL

**Authority to award contracts for the supply of gas and electricity**

**Appendix 1 is Not for Publication**

**1.0 Summary**

- 1.1 This report requests authority to award contracts as required by Contract Standing Order No 88. This report summarises the process undertaken in procuring these contracts and recommends to whom the contracts should be awarded.

**2.0 Recommendations**

- 2.1 That Cabinet award the contract for the Supply of Electricity to Npower Limited and Kent County Council for four years from 1<sup>st</sup> October 2016 via a call-off from the LASER framework.
- 2.2 That Cabinet award the contract for the Supply of Gas to Total Gas and Power Limited and Kent County Council for four years from 1<sup>st</sup> October 2016 via a call-off from the LASER framework.

**3.0 Detail**

***Background***

- 3.1 The council currently buys its gas and electricity through the "LASER" framework, established by Kent County Council. The current contracts commenced on 1<sup>st</sup> October 2012, and expire on 30<sup>th</sup> September 2016.

3.2 The council's corporate buildings, streetlighting, and housing properties are included in the contract. Many of Brent's schools also opt in to the arrangement.

3.3 The current spend per annum is shown in the table below:

Energy	Annual Spend
Brent buildings gas	£733,000
Brent buildings electricity	£1,003,000
Streetlighting electricity	£1,314,000
Schools electricity	£950,000
Schools gas	£650,000
Housing electricity	£841,000
<b>Total</b>	<b>£5,491,000</b>

3.4 There are currently 39 schools who buy gas through the council's contract, and 51 who buy their electricity. Officers have presented to school bursars the benefits of using the council's contract with LASER for their energy buying with the aim of encouraging further schools to opt in to the arrangements. The council charges an administration fee to the schools of approximately 1% of the consumption element of invoices. This equated to approximately £50,000 in 2013/2014.

3.5 Given the expiry of existing gas and electricity contracts in 2016, Officers have been considering procurement options available to the council. In selecting the procurement method for the council's energy from 1<sup>st</sup> October 2016, the option of carrying out a stand alone procurement, either to contract directly with suppliers or through a broker was considered. It was decided that procuring through a framework agreement established by a Public Sector Buying Organisation (PSBO) would be preferable for the following reasons:

- PSBO frameworks are used by multiple organisations, and the aggregation of volumes enables:

- o strong competition at the point of procurement due to the attractiveness of the large amount of business
  - o the elimination of “take or pay”<sup>1</sup> clauses
  - o the appointed supplier to go to market frequently thereby taking advantage of falling prices and minimising the risk of increasing prices in a volatile market.
- PSBOs bring expertise to the process that is not available within the council. PSBOs have their own specialist buyers, and most offer flexible contracts.
  - The costs to the council of the procurement process are minimised.
  - The costs to the council of contract management are minimised.
  - There is transparency around the activities of PSBOs.
  - PSBO frameworks are used by publicly funded organisations, and therefore the contracting arrangements have an appropriate level of risk for a local authority.

3.6 There are several PSBOs that have and will continue to have frameworks in place for the purchasing of gas and electricity. These are:

CCS	Crown Commercial Service (formerly Government Procurement Service GPS)
ESPO	Eastern Shires Purchasing Organisation
LASER	Kent County Council
NEPO	North Eastern Purchasing Organisation
YPO	Yorkshire Purchasing Organisation

3.7 Of these, NEPO and YPO buy significantly smaller aggregated volumes, and therefore do not go to market as frequently and are not as well resourced in energy buying as other PSBOs. Smaller PSBOs do not necessarily buy sufficient volume for the employment of independent buying advisors to be viable, and as a result tend to be supplier led. They may also have less separation of the buying and audit functions.

3.8 ESPO customers buy their gas through the same framework as LASER customers, and their electricity contracts also use LASER’s buying

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<sup>1</sup> Clauses that restrict the customer’s ability to reduce demand below a committed level. These are usually set at 10%, and if demand falls below this, the customer is still required to pay for 90% of the commitment.

service and therefore there would appear to be little advantage to using ESPO in preference to LASER.

### **The London Energy Project**

- 3.9 The London Energy Project (LEP) is funded by 4 regional authorities and 30 boroughs, including Brent, and has the aim of achieving value for money and efficiencies through smarter energy buying, improved administration process and carbon reduction.
- 3.10 LEP authorities currently use either the CCS or the LASER framework. In January 2012, the LEP evaluated the services provided by these two organisations against a Statement of Requirements, to ensure that they provide their customers with effective price risk management and value for money energy supply contracts consistently over a period of time. They looked in particular at their capability to deliver aggregated, flexible, risk managed (FLEX) contracts, and found that both organisations' contracts provide access to benefits which would not otherwise be available to customers if they were to operate as individual or small groups of authorities or via a private sector energy broker, namely:
- Financial benefits of volume aggregation;
  - Favourable terms and conditions;
  - Transparency of fees and charges.
- 3.11 The contracts provide access to specialist expertise and processes and are OJEU compliant. Both CCS and LASER have robust energy buying and risk management governance procedures providing the necessary controls over operations.
- 3.12 Substantial research, detailed analysis and assessment of the entire public sector energy spend through the Pan Government Energy Project (PGE) and through LEP demonstrated that FLEX contracts delivered best value for the public purse.

### **Comparing CCS and LASER frameworks**

- 3.13 Kent County Council procures energy on behalf of public bodies through framework agreements established by a procurement body that it established, known as LASER. LASER has recently tendered and awarded on behalf of Kent County Council new single supplier frameworks for gas and electricity, to run from 1<sup>st</sup> October 2016 to 30<sup>th</sup> September 2020. The gas supply contract has been awarded to Total Gas and Power Limited, and the electricity contract to Npower Limited.
- 3.14 The service provided by LASER can be a fully managed service, including bill validation and supporting customer services operations.

LASER does offer a procurement only service, but the majority of their customers opt for the fully managed service. Brent currently has some properties in the fully managed service.

- 3.15 The London Energy Project has produced a benchmark report for the performance of the LASER contracts from 2010-2013, and it found that LASER delivered effective to very good performance, i.e. the commodity price achieved against the average market prices that were available correlated well.
- 3.16 A benchmark report has also been produced for the CCS contracts, but this is not available to non-CCS customers for reasons of commercial confidentiality.
- 3.17 The benchmark report also found that:
- Aggregated, flexible, risk managed (Flex) procurement has been effective in controlling commodity costs and remains the most appropriate price risk management strategy currently available.
  - Spot purchased gas and electricity contracts (the principle alternative to Flex contracts) was not effective in controlling commodity costs. With the exception of very small/low consuming supplies, the use of fixed term fixed price contracts presents a significant risk.
- 3.18 The statements in paragraph 3.17 reinforce those made earlier in this report about the advantages of flexible contracts over fixed term fixed price for the procurement of energy.
- 3.19 Paragraphs 3.5 – 3.12 support the proposed use of one of the two major public frameworks, CCS and LASER. It is proposed that the new LASER framework is used for the procurement of the council's gas and electricity from October 2016. Appraisal of the options indicates that either CCS or LASER frameworks will deliver the best value for money for the council, and of these LASER is the preferred option for the following reasons:
- LASER has performed well to date (2013 Benchmark Report attached at Appendix 1);
  - CCS do not provide the managed service that Brent currently uses;
  - There would be a cost of change in moving from one organisation to another.
- 3.20 A decision relating to the council's award of call off contracts is required now, nearly two years in advance of the supply, because the energy is

purchased “flexibly” in advance, in order to achieve the best market prices. In this context, “flexibly” means that energy is purchased by the supplier from the markets at varying prices during the term of the contract, and the price is passed on to the council. Flexible contracts on average deliver a contract nearer the market price over time than non-flexible ones.

#### **4.0 Financial Implications**

- 4.1 The Council’s Contract Standing Orders state that contracts for supplies and services exceeding £250k or works contracts exceeding £500k shall be referred to the Cabinet for approval of the award of the contract.
- 4.2 The estimated value of this contract, based on current consumption levels, is £5,491,000 per annum, The actual annual value will be subject to price changes in the energy markets, the actual energy rates secured under the contract, and increases/decreases in consumption levels.
- 4.3 The cost of these contracts will be funded from the relevant departmental budgets.

#### **5.0 Legal Implications**

- 5.1 The Laser frameworks (the “Frameworks”) are single supplier frameworks. Whilst the Frameworks have been awarded (to NPower Limited for the supply of electricity and to Total Gas & Power Limited for the supply of gas), organisations will only be able to call off their energy supply from the Frameworks from 1<sup>st</sup> October 2016 for a four year term.
- 5.2 Under the Public Contracts Regulations 2006 (“the EU Regulations”) the procurement of energy is a supply contract. Laser advertised the Frameworks in accordance with the EU Regulations. The OJEU notices stated that the Frameworks would be available to be used by a range of public bodies including local authorities. The council is therefore entitled to access the 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 For frameworks established by another contracting authority and not Brent, Standing Orders 86 (d) provides that the Director of Legal and Procurement must advise that participation in the Framework Agreement is legally permissible. From information provided by

LASER, the Director of Legal and Procurement confirms that participation in the Frameworks is legally permissible

- 5.4 The estimated value of both contracts called-off under the Frameworks is such that they will be classed as High Value Contracts under the Council's Standing Orders and Financial Regulations. Ordinarily the award of a High Value Contract under a framework agreement would require Cabinet approval but the Chief Finance Officer has delegated authority under the Constitution to approve an award under LASER frameworks even where the value of such award is in excess of £250k. This delegation was originally designed to deal with a non-flexible procurement method where energy procurements had to be made within a three hour window. The current flexible procurement approach which will also apply to the new Frameworks require the council to enter into tripartite agreements with both Kent County Council and NPower (for electricity) and Total 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 Total Gas. In view of this different purchasing approach, it is considered more appropriate to obtain Cabinet approval to the proposed call-off contracts rather than relying on delegated powers.
- 5.5 As detailed in paragraph 5.4, to access the Frameworks the Council will need 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 four years.
- 5.6 Members should note that this arrangement differs from a standard framework as Kent County Council through 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 view is that the services are a separate component to the proposed call-offs, and entering into the services contract with Kent County Council is a condition precedent to Brent being able to contract with each supplier. As such, the contract with Kent County Council 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 Contract 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 Council's Standing Orders which 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 Frameworks and would therefore not be subject to any separate procurement requirement. For the purpose of this report, the lack of clarity as to the legal basis of the relationship with LASER is immaterial as no procurement of this element is required whichever view is taken.

## **6.0 Diversity Implications**

- 1.1. There are no diversity issues resulting from this procurement process.

## **7.0 Staffing/Accommodation Implications**

- 7.1 None.

## **8.0 Sustainability Implications**

- 8.1 Renewable electricity – LASER's electricity contract contains a provision of cost-neutral renewable electricity for a portion of their total customer requirements. This is allocated out to customers as part of their supply but is not charged at a higher rate. In addition, the contract permits customers to buy additional renewable electricity should they require.
- 8.2 The new LASER contracts will provide customers with the ability to purchase Green Gas.

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## **Appendix 1 is Not for Publication**

### **NOT FOR PUBLICATION**

This part of this report is not for publication as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)"

The pdf document "Appendix 1 2013 LEP VFM Benchmark Report LASER" is the body of Appendix 1.

