	Executive 23 May 2011 **Report from the Director of Finance and Corporate Services**
	Wards Affected: None

Authority to award contract for supply of energy (Gas and Electricity) to the Council

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 flexible energy procurement frameworks operated by Kent County Council in accordance with Contract Standing Orders 88.

1.2 Kent County Council procures energy for over 70 local authorities through framework agreements established by a procurement body, Laser. The Council currently uses Laser frameworks to procure both gas and electricity their flexible energy portfolios. Current framework agreements expire in September 2012 and approval to award contracts is sought under the replacement framework agreements.

2.0 Recommendations

Subject to <u>the formal awarded of the Laser Framework and the Director of Legal and Procurement subsequently confirming that participation in the Laser Framework is legally permissible</u>

2.1 That the Executive delegate to the Director of Finance and Corporate Services authority to award a call-off contract from the Laser Framework for the Supply of Gas via flexible procurement to **Total Gas & Power Limited** and Kent County Council for 4 years from 1st October 2012.

2.2 That the Executive delegate to the Director of Finance and Corporate Services authority to award a call-off contract from the Laser Framework for the Supply of Electricity via flexible procurement to **NPower Limited** and Kent County Council for 4 years from 1st October 2012.

3.0 Detail

Background

3.1 The Council moved to procuring its energy requirements via flexible energy procurement through framework agreements established by the Local Authorities South East Region Energy Buying Group ("Laser") after receiving Executive approval in February 2009.

3.2 The council currently spends in the region of £2.4 million per annum through Laser for both gas and electricity with £2 million of this spend via the flexible contracts as per the first four entries in the table below.

Contract	Contract Cost
Brent Gas PIA	£601,423.02
Brent Schools Gas PIA	£478,520.29
Brent HH Elec PIA	£634,312.59
Brent NHH Monthly Elec PIA	£298,196.70
Brent NHH Monthly Elec FTFP	£15,569.25
Brent NHH Quarterly Elec Eastern	£160,882.25
Brent NHH Quarterly Elec London	£155,442.44
	£2,344,346.54

3.3 The council's total spend on energy is £3.8 million with the remaining £1.5 million consisting of £1.2 million for street lighting (this is under a separate contract) and £315,000 for sites billed directly by the supplier (listed as NHH Quarterly in the above table). It is proposed that the current expenditure of £1.2 million for street lighting be included with the flexible contracts from 1st October 2011, taking total spend for flexible energy to £3.2 million each year.

3.4 The council's Property and Asset Management Unit have worked over the last 2 years to encourage schools to procure their energy through the Laser contract. Many schools have joined however there are still about 55% of schools procuring independently. However the larger schools are more likely to be on the Laser framework. Other, non corporate sites who wish to be billed directly account for the remainder of the non flexible spend.

3.5 The Office of Government and Commerce (OGC), together with the London Centre of Excellence (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, such as LASER, operating flexible procurement models to buy their energy.

3.6 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.

3.7 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. The council has purchased all energy requirements through Laser for the previous six years and has purchased flexible energy via Laser for the last two years and will continue to purchase under the existing frameworks for a further year to October 2012.

3.8 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 operates a fully integrated service. 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.

3.9 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.

3.10 The Cabinet Office, via the European Regulators Group, has reviewed the prices achieved by LASER over the previous 24 months of trading on the futures market by comparing to the market average price. The report concluded that LASER has outperformed this benchmark price by 30% for gas and 20% for electricity on average over the 24 months.

3.11 The existing Laser frameworks are due to expire at the end of September 2012. Kent County Council, in association with Eastern Shires Purchasing Organisation (ESPO), is in the process of procuring further Laser frameworks that will commence on 1 October 2012. Tenders for the new framework s have been received and evaluated and Total Gas & Power Limited has been named as preferred tenderer for the supply of gas whilst NPower Limited has been named as the preferred provider for electricity. There is an intention to formally award the frameworks in late June / early July 2011. Laser require confirmation of Brent's intention to participate within the flexible procurement under these new framework agreements 18 months in advance of 1 October 2012 in order to effectively organise their portfolio, evaluate the aggregate total demand and to commence procurement of gas and electricity up to 12 months in advance.

Purchasing Process

3.12 In the past 2 years, the council has moved away from previous arrangements where, on advice from Laser, individual decisions were made to purchase energy from a supplier at a fixed rate for a fixed period. More recently the council has relied on Laser's expertise, with Laser acting as the Council's agent and making the decision as to the actual point at which a block of energy is purchased.

3.13 The approach outlined in paragraph 3.12 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.

3.14 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.

3.15 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

3.16 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 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 is attached to the tripartite agreement that the council signs with Laser and the organisation providing the gas or electricity.

3.17 As energy is continually purchased up until the annual 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.

3.18 Future developments may see new competitors enter the market, but at present only two suppliers are approved by Capital Ambition being Laser and the OGC.

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. There is however specific delegation of powers for the supply of energy through the Laser Framework and the Director of Finance and Corporate Services has delegated authority to approve an award under the Laser frameworks even where the value of such award is in excess of £500k. As detailed at paragraph 5.5, the Director of Finance and Corporate Services' delegated authority under the Constitution was originally for purchasing decisions of a different type to that currently envisaged. In view of this and the significant value of the proposed contracts, the Director of Finance and Corporate Services considers that the Executive should be aware of the procurement and confirm the decision to accept Officer's recommendations to award call-off contracts.

4.2 The Council is currently spending around £3.8m 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 with the Carbon Trading Scheme.

5.0 Legal Implications

5.1 There are two Laser frameworks which are in the process of being procured that 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 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 value of the framework agreements for the purchase of gas is £511,000,000 and for the purchase of electricity is £730,000,000 and 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 once established. 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 As detailed at paragraph 3.11, tenders for the new frameworks have been received and evaluated and Total Gas & Power Limited has been named as preferred tenderer for the supply of gas whilst NPower Limited has been named as the preferred provider for electricity. There is an intention to formally award the frameworks in late June / early July 2011. The duration of the framework agreements will be four years. The expiry date of the call-off contracts will be the same as the expiry date of the frameworks.

5.4 For frameworks established by another contracting authority and not Brent, Standing Orders 86 (d) provides that the Director of Finance and Corporate Services must approve the award, but this is subject to the Director of Legal and Procurement advising that participation in the framework agreement is legally permissible. Until the formal award of the frameworks in late June / early July 2011, the Director of Legal and Procurement will not be able to confirm that participation in the framework agreement is legally permissible and therefore delegation to the Director of Finance and Corporate Services to award call-off contracts is sought subject to the award of the frameworks and confirmation that participation in the framework agreement is legally permissible.

5.5 It is anticipated that both contracts called-off under the frameworks will be High Value Contracts under the Council's Standing Orders. As detailed at paragraph 4.1, normally the award of a High Value Contract under a framework agreement would require Executive approval but the Director of Finance and Corporate Services has delegated authority under the Constitution to approve an award under the Laser frameworks even where the value of such award is in excess of £500k. 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 that commence on 1 October 2012 requires 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 procurement approach it is considered more appropriate to obtain Executive approval to the specific delegation of powers in relation to the proposed call-off contracts.

5.6 Both Laser Frameworks will be single supplier frameworks. As detailed above, 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.

5.7 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 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 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’. Currently less than 5% of Laser customers request green energy; this is because ‘Brown energy’ can be purchased for approximately a third of the price. The Council’s Environmental Policy, adopted in October 2009, states that renewable energy will be used in order to mitigate climate change. Therefore it would be expected that the Council will encourage Laser to purchase renewable energy whenever practical and at reasonable cost.

8.2 LASER' have said that their Flexible Procurement for Electricity provides 100% CHP (Combined Heat and Power). This form of energy production is exempt from the (CCL) Climate Change Levy (government tax) so is 'cleaner' than 'normal' energy. The cost of CHP is the equivalent to CCL; therefore making buying this "cleaner" energy for no cost (cost neutral). This is a benefit provided by Npower due to the size of the Flexible portfolio.

8.3 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 contracts will provide far more data on energy consumption (kWh) and this will be through a single point. The Council’s carbon footprint from its buildings and street lighting including schools is about 35,000 tonnes per annum. Set in the national context reductions of 80% are required by 2050 and at a Local level, the Council has set a target of 25% reduction in CO2 by 2014. Early work suggests that upgrades to plant and machinery, low energy equipment, control of IT, Street lighting dimming and upgrades and ensuring education of staff and changes in behaviour can achieve a reduction of 15-25%. 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 and building closures will make a large contribution to future CO_2 reductions; however the full effects of the annual reductions will not be fully felt until reporting year 2014/15. This could mean that the Council will miss its 25% CO_2 reduction target by March 2014.

8.4 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 CO_2 emissions from Local Authority operations), if reintroduced and also in ensuring that the data will be available for the Carbon Reduction Commitment 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 scheme was originally intended to be budget neutral with the payments being recycled it has subsequently become a straight additional tax which will add about 6-8% to energy costs. The cost of this is to be £12 per tonne in the first year. The Council (including schools) will therefore have to pay around £420k in the first year. It is expected that those organisations that are unable to produce accurate auditable figures will be effectively fined and may pay more.

9.0 Background Papers

9.1 None

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