



Cabinet
28 May 2020

Report from the Director of Finance

Authority to Award Contracts for the Purchase of Gas and Electricity (October 2020 to September 2022)

Wards Affected:	All
Key or Non-Key Decision:	Key Decision
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	One Appendix 1: Equality Analysis
Background Papers:	None
Contact Officer(s): (Name, Title, Contact Details)	Olga Bennet Head of Finance Tel: 0208 937 3337 E-mail: olga.bennet@brent.gov.uk

1 Purpose of the Report

- 1.1 This report requests authority to award contracts as required by Contract Standing Order 88. This report describes the reasons for the award of those contracts as referred to within paragraphs 2.1, 2.2 and 2.3 of this report, and for the Council's entry into the Access Agreement referred to at paragraph 2.4. The report also summarises the process required to procure and award those contracts.

2 Recommendation(s)

Cabinet is asked to:

- 2.1 approve the award of a contract for the supply of electricity to NPower Limited for two years as from 1st October 2020 via a call-off from LASER Framework Y18003, and
- 2.2 approve the award of a contract for the supply of gas to Total Gas and Power for two years from 1st October 2020 via a call-off from the LASER Framework Y18002; and

- 2.3 that alternatively to the recommendations at paragraphs 2.1 and 2.2, Cabinet approves the award of contracts for gas and electricity to the next ranked Suppliers on Lot 1 of each of the Frameworks referred to at paragraph 5, if NPower Limited or Total Gas and Power cannot, or do not accept the offer of a Council contract. Such award shall be in accordance with the offer and award process described in Section 5 of this report; and
- 2.4 that Cabinet approves the Council's entry into an Access Agreement with Kent County Council referred to in section 5 below, to enable its participation and purchase of gas and electricity from the Frameworks referred to at paragraphs 2.1 and 2.2 above.

3 Summary

- 3.1 Brent Council's current energy contract expires in Sept 2020. Officers are proposing to call off from the LASER framework again, but this time for two rather than four years.
- 3.2 This shorter time frame is in order to give Brent the opportunity to make substantial changes to its purchase of energy sooner. In particular, the Council's energy procurement will be part of the plan to achieve net zero carbon for the Council's own estate and operations by 2030.
- 3.3 The Council's own estate and operations, including Council buildings, street lighting and fleet, makes up 1% of overall borough carbon emissions. The Council is committed to playing its part and leading the way on the climate emergency. We will do everything we can to reduce carbon emissions from our own buildings and fleet.
- 3.4 It is suggested that calling off from the LASER framework again for a short period is preferable to making large changes at this point:
 - (i) to provide continuity at a time of global uncertainty due to the coronavirus pandemic and uncertainty in local government funding;
 - (ii) to fit in with the wider work of Brent's Climate and Ecological Emergency; and
 - (iii) to allow time to see the results of the first local authority investments in green Power Purchase Agreements which look promising as a potential way of affordably purchasing green energy.
- 3.5 In these two years, the Council will:
 - (i) focus on further reducing its energy usage in order to reduce its carbon footprint, and make it possible to potentially pay higher unit costs for better green credentials at the next reprocurement of energy;
 - (ii) explore innovative ways of reducing our energy's carbon footprint and closely follow developments in the energy market;

- (iii) potentially switch to a Power Purchase Agreement mid-way through the contract (the Laser Framework allows this) once the market is more established.
- 3.6 This staged approach of first focusing on reducing the Council's consumption will support the opportunity to introduce green energy within the next two years, which may be more expensive.
- 3.7 Energy price is not guaranteed, and it is notoriously difficult to compare different supplier energy prices. However, there is evidence that this framework achieves value for money (see section 6). Firstly, the framework providers have won through a thorough competitive procurement process. Secondly, historic data shows that prices have so far been competitive in the market as a whole.

4 Background

- 4.1 The Council has purchased its gas and electricity since 2016 through call off contracts placed under two LASER framework agreements previously established by Kent County Council. Those contracts will expire on 30th September 2020.
- 4.2 New LASER Frameworks Y18002 (Gas Supply and Services) and Y18003 (Electricity Supply and Services) were let by Kent County Council in 2018. Supply of gas and electricity under these Frameworks commences on 1 October 2020 and ends on 20 September 2024.
- 4.3 However, the Council only seeks to order gas and electricity supply and services under these new LASER Frameworks between 1 October 2020 and 30 September 2022 (i.e. for a period of two rather than four years).
- 4.4 The energy market is rapidly changing and the Council is exploring other potential alternative routes for the purchase of gas and the purchase and/generation of electricity and heat in the medium to long-term.
- 4.5 This will allow the Council to explore the alternative routes referred to above, for the purchase of energy from the changed energy market, from 2022 onwards.
- 4.6 The Council will continue to review the arrangements recommended within this report and explore the emerging markets and technology (particularly focusing on Brent Council's carbon neutral commitment). Power Purchase Agreements (PPAs) are a new development in the energy market, which have the potential to help the Council to move towards zero carbon.

Power Purchase agreements come in various forms. A PPA could supply some of the energy requirement directly, from an energy provider such as a solar farm or wind farm owner, which would guarantee green energy supply. Alternatively, PPAs can also encompass the Council's own green generation of its own energy-using infrastructure supplied by an external company that sells the energy

generated to the National Grid or other Customers and the profits are split between the Council and the external Company. There are other forms of PPA.

PPAs are seen as a means to achieve real net zero carbon, since they offer 'additionality', i.e. it is an investment in a new green energy source that would not otherwise be built.

PPAs are currently rare, but seen by nearly all London Boroughs (and many outside of London authorities) as a desirable investment within the next 2-3 years, especially in the public sector.

- 4.7 The City of London Corporation has recently tendered for a PPA, so it is recommended that the Council verify whether that arrangement is successful before considering whether to embark on this route or any other. This and other alternative energy technologies and markets are only just emerging and it is recommended that the Council wait until 2022 when they are better established.

In parallel, Brent Council is participating in the West London Waste Authority-hosted climate partnership, which is considering ways in which West London boroughs can collaborate, with PPAs identified as a possible area for joint working.

- 4.8 The flexibility offered by the LASER Framework Agreement does however allow the Council to benefit from the rapidly changing market, in the form of PPAs, earlier than would otherwise be possible under a conventional two year contract - if this proves to be the best purchasing option for the Council in the next two years.

- 4.9 The award of the Call Off Contracts referred to in this report will help maintain continuity of supply on a procurement-compliant and best value basis for the Council during the next two years, whilst these options are explored and planned.

- 4.10 The main factors that drive the choice of the new LASER Frameworks include:

- a) the benefit of continuity in the short term;
- b) the limited time left until October 2020 for a full standalone tender by the Council and the speed offered by the Framework's ordering processes;
- c) the Procurement Regulations-compliant nature of this consortium procurement process;
- d) the flexibility and benefits of the buying sub-options detailed below;
- e) the benefits offered because of the economies of scale offered from consortium bulk purchasing;
- f) help maximise the beneficial associated services included in the price that enable good practice energy management i.e. to achieve further energy and financial savings, and

- g) help achieve the Councils environmental objectives, including consideration of how to move towards procuring zero carbon energy (to meet Brent's 2030 Climate Emergency zero carbon pledge)
 - h) allow a level of flexibility in terms of energy purchasing which allows the Council to change its purchasing arrangements to benefit from emerging technology in the form of PPAs, if these prove to be the best available option for the Council the next two years, sooner than might otherwise be possible.
- 4.11 The gas and electricity supplied under the new frameworks will serve the Council's corporate buildings, street lighting, and housing properties. Many of Brent's schools also opt in to receive supply under these arrangements.
- 4.12 The receipt of the delegated authority approval referred to at paragraph 9.1 of this report, has enabled implementation of the process set out in the new LASER Frameworks for choosing of Suppliers to each of the contract awards for which approval is sought in paragraphs 2.1 and 2.2 of this report.

5 Description of the LASER Framework

- 5.1 Each Framework Agreement is divided into two Lots (Lots 1 and 2). It is proposed that the Council only purchase gas and electricity under Lot 1 of each of the relevant Framework Agreements.
- 5.2 Therefore, this report seeks approval for the award a contract under Lot 1 of the new LASER electricity Framework Y18003, for flexible procurement and supply of electricity the new Framework Agreements referred to at paragraphs 2.1 and 2.2 of this report for half hourly, non-half hourly metered and unmetered supply electricity with meter operations and additional services. This Lot allows for the purchase of optional additional services in respect of renewable energy, AMR, data aggregation, data collection, demand side response, power purchase agreements, battery storage, electric vehicle facilities and energy services if required.
- 5.3 In respect of gas supply and services, the Council is seeking permission to award a contract under Lot 1 of the LASER gas supply and services framework Y18002 for flexible procurement and supply of gas for daily metered and non-daily metered including product class 1, 2, 3 and 4 with additional services. This Lot allows for the purchase of optional additional services such as green gas, AMR, gas purchase agreements, and energy services, if required.
- 5.4 The Suppliers appointed to Lot 1 of Electricity Framework No Y18003 were NPower, Total GP, and EDF Energy. The Suppliers appointed to Lot 1 of Gas Framework Y18002 were Total GP and Corona Energy.
- 5.5 The new LASER Frameworks allow the Council to enter into contracts with one of the Suppliers on each Lot 1 in one of two ways. The Council can either:-

- a) place a contract directly with one of the multiple Suppliers without holding a mini-competition (“direct award process”) between them.

The direct award procedure requires that the Council first offers a Contract to the Supplier whose tender was judged the most economically advantageous in terms of quality and price criteria and ranked first (amongst all those Bidders who bid for appointment as Supplier to these Framework Agreements) when the new Frameworks were let in 2018.

If that Supplier is unable to accept the Council’s direct offer of a Contract, then, the next-ranked Supplier qualifies for direct award.

or,

- b) a Supplier may be chosen after a mini-tender competition between all of the Suppliers to each Lot for the Council’s contract (“mini-competition”).

5.6 This report proposes the award of contracts using the direct award process.

- a) The direct award route is more expeditious than mini-competition.
- b) As represented in the new Frameworks, it is procurement-compliant.
- c) The suppliers to whom contracts are offered directly first, such as NPower and Total GP, have already proven themselves as the best bidder in terms of quality and price amongst those chosen as supplier for each Lot. If they are unable to accept the offer, the Council is assured that the contract will be offered to the next best-ranked bidder. So price and quality remain factors that govern which supplier is offered the Council’s contracts, even in the absence of competition between the suppliers on each of the Lots that the Council is purchasing from directly.

5.7 If the recommendations in this report are approved, NPower will first be offered a new electricity supply and services contract with the Council and TOTAL GP will first be offered a new gas supply and services contract.

5.8 The next ranked Suppliers on Lot 1 of the new electricity Framework are Total GP, then EDF Energy. The next ranked Supplier on Lot 1 of the new gas Framework is Corona Energy.

5.9 All those offered contracts will receive the Council’s service requirements and will agree the price payable for that service in accordance with the prices set within the new Framework Agreements.

5.10 The estimated total value of the Call Off Contracts for which approval is sought is an estimated £8.6m for electricity, and £1.4m for gas, over the two-year supply period referred to above. A breakdown of the total amount of Council spend in 2019-2020 is shown in paragraph 6.1 below.

5.11 In order to participate in the consortium and framework-buying arrangements referred to in this report; the Council is required to enter into an Access Agreement with Kent County Council acting as LASER. The Access Agreement will permit the Council to access those gas and electricity supplies and services referred to in this report. It also records those obligations that this Council and Kent County Council will owe each other for the duration of the Call Off Contracts or Order referred to in this report, and the services that Kent County Council, acting as LASER, will provide to this Council in respect of the flexible procurement options referred to in this report.

6 Achieving best value

6.1 The contractors have gone through a thorough procurement process. The award process ensures that those suppliers that have ranked highest in offering the most economically advantageous tender in terms of quality and price when the Framework Agreement was let, are offered a contract first by the Council. If they are unable to accept the offer, the Council is able to offer the contract to the Contractor who offered the next best such tender.

6.2 Bulk purchasing by LASER on behalf of many local authorities is thought to achieve better prices than if an individual local authority went through their own procurement process due to the substantially smaller volume being purchased.

6.3 Prices of electricity fluctuate. For example, they vary according to seasons and the time of day. So benchmarking is difficult. LASER is a member of the MEUC (Major Energy Users Council). This independently benchmarks large-scale energy buyers against each other and against the average market price. The data provided by LASER shows that for 2018/19 LASER's

- a) electricity commodity cost was on average 8.9% below the average of other Major Energy User Forum member prices and
- b) gas commodity cost was on average 5.3% below the average of other Major Energy User Forum member prices.

6.4 The frameworks have flexible purchasing options. This flexibility allows the Council to design its requirement and its purchasing more closely to what is required by those using the electricity and gas supplies and services purchased.

6.5 The table below illustrates the sub-options that Officers consider should be used as the best means of balancing price risk with budget certainty.

	Corporate	Street lights	Housing	Schools
Purchasing method	Flexible - Purchase Within Period	Flexible - Purchase In Advance	Flexible - Purchase In Advance	Flexible - Purchase In Advance
Management method	Fully Managed	Fully Managed	Procurement Only	Fully Managed / Procurement Only (Maintain current options)

- 6.6 LASER has generally performed well to date, and provides a managed service that Brent currently does not have in-house, and the award would maintain continuity of service and save the Council, the costs associated with moving from one supplier to another.
- 6.7 It is noted that the Street Lighting service experienced significant problems with the level of customer service and standard of billing offered by LASER in the past, in particular to bills being assigned the wrong Purchase Order numbers, thereby charging Street Lighting for other services' electricity, and duplicate bills submitted by Laser for February and March 2019. However since April 2019 Brent's Energy Manager and a Support Officer have worked to rationalise the Corporate billing in cooperation with the LASER Customer Service Manager and Customer Service Advisor. Single PO numbers are now used for consolidated electricity and gas corporate meters, likewise for Streetlights, so going forward the problem of POs being used for the wrong meters and other clear billing errors should not occur (and would be easy to see if they did).

7 Alternative options considered

- 7.1 Officers have reviewed a range of alternative purchasing options to these LASER Frameworks for the procurement of energy as listed below.

The options examined were:

- a) LASER consortium purchasing body-let frameworks
 - b) Crown Commercial Service (CCS) framework
 - c) Pan-LEP framework, delivered by LASER
 - d) Fixed-Term Fixed Price (FTFP) provider
 - e) Power Purchase Agreement (PPA)
- 7.2 For the reasons stated in paragraph 4.10 of this report, the LASER frameworks were regarded as the best procurement route for the Council in relation to the Call Off Contracts referred to at paragraphs 2.1 and 2.2 of this Report.

8 Financial Implications

- 8.1 The total Brent LASER energy contract spend 2019-20 was £5.0m and the breakdown was as follows:

Type	Spend 2019/20	Two year aggregated value
Corporate	1.2m	2.4m
Street lighting	1.3m	2.6m
Housing	0.9m*	1.8m
Schools	1.6m*	3.2m
TOTAL	5.0m	10.0m

*estimated

- 8.2 Additionally, there is a project looking at communal energy supplies in Housing; a number of meters are not on the bulk contract and it is estimated that there is £0.25m-£0.5m per annum currently with other suppliers which will be brought into the bulk contract over the next two years.
- 8.3 The cost of energy procured through this framework will be funded from existing budgets in the relevant departments or by individual schools.
- 8.4 Energy prices are by their nature variable and the exact cost of energy for 2020/21 is not known at this point. It is expected that energy prices are likely to increase by around 5% compared to 2019/20.
- 8.5 The price payable by Brent Council under the new LASER contracts is not fixed or guaranteed because its prices reflect fluctuations on the wholesale energy markets at the time of purchase.
- 8.6 Section 6 of the report (above) describes the assurances around value for money.

9 Legal Implications

- 9.1 Due approval was given to commence dialogue with Kent County Council regarding procurement from the Laser frameworks under delegated authority by the Director of Finance on 20 April 2020 in accordance with paragraph 9.5.3 of the Scheme of Delegation (Part 3 of the Constitution) and, as required by Contract Standing Order 88 (Authority to Go Out to Tender).
- 9.2 That approval was preceded by the receipt of permission from the Director of HR, Legal and Audit and Investigations for the Council's use of these third party-let frameworks as required under Contract Standing Order, 86(e) (ii) (Contracts not Subject to Full Tendering Requirements).
- 9.3 Because of Contract Standing Order 86 (e), the Council does not need to conduct a tendering exercise in its own name before placing the call off contracts referred to in the Recommendations in this report.
- 9.4 According to Regulation 86, and Regulation 33 of the Public Contract Regulations 2015, the Council is nevertheless required to follow the award procedures set out within a framework agreement for the award of a Call off Contract.
- 9.5 The direct award procedure described at paragraph 5.5 (a) and proposed at paragraph 5.6, complies with Regulation 86 in that it reflects the award procedures set out in the new LASER Framework Agreements referred to in this report. It also complies with the requirements of Regulation 33 for direct awards on a multiple supplier Framework. Therefore, any direct award made as proposed in this report will be compliant with procurement law and the Council's internal Standing Orders.

- 9.6 As detailed in paragraph 5.10, the estimated total value of the Call Off Contracts for which approval is sought is an estimated £8.6m for electricity, and £1.4m for gas, over the two-year supply period referred to above. The Call Off Contract for electricity is thus classed as a High Value Contract under the Council's Contract Standing Orders.

Pursuant to Contract Standing Order 86, Cabinet approval is required for the award of any Call Off Contract from the Frameworks.

The Call Off Contract for gas is classed as a Medium Value Contract and whilst it could be awarded using Officer delegated powers, it is considered appropriate to seek Cabinet approval given the link between the gas and electricity procurements.

- 9.7 If Cabinet approves the contract award decisions sought in this report, then the appropriate period must be allowed to elapse for a Call In of the Cabinet Decision by the Overview and Scrutiny Committee, before any award decision is implemented in accordance with Contract Standing Order 14.

10 Equality Implications

- 10.1 The Council must, in the exercise of its functions, have due regard to the need to:

- a) eliminate discrimination, harassment and victimisation
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it,

pursuant to s149 Equality Act 2010. This is known as the Public Sector Equality Duty.

- 10.2 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 10.3 The purpose of the duty is to enquire into whether a proposed decision disproportionately affects people with a protected characteristic. In other words, the indirect discriminatory effects of a proposed decision. Due regard is the regard that is appropriate in all the circumstances.

- 10.4 For a full assessment please refer to the Equality Analysis in Appendix 1.

- 10.5 Energy procurement could potentially have an equalities impact on housing if Right to Buy leaseholders are recharged the cost of the purchase of gas and electricity purchased under these LASER arrangements referred to in this report and the electricity and gas supplied does not reflect the cheapest price available

at any given time on the wholesale energy market for the reasons explained in this report. This would affect to Right to Buy Leaseholders who own their properties, as only they are recharged for communal energy use via their service charges.

- 10.6 Because of the demographic profile of Council tenants and consequently Right to Buy Leaseholders in Brent, the fact that the cheapest price is not always payable under the LASER arrangements may affect those Right to Buy Leaseholders who fall within those groups of people with “protected” characteristics under the Equality Act 2020 such as age, disability, race, religion or belief.
- 10.7 However, those Right to Buy Leaseholders in Brent with these protected characteristics will not be treated less favourably than other Right to Buy Leaseholders without these characteristics, in breach of the Equalities Act 2010, because they will be charged the same service charge as all other Right to Buy Leaseholders in Brent. They will not be charged more than those without the same characteristics will have to pay for gas and electricity supply to communal areas as part of their service charge
- 10.8 The Council has also taken steps to ensure that the risk to all Right to Buy Leaseholders of having to pay higher service charges is mitigated because LASER is the best value option as far as we can ascertain.
- 10.9 The risk that all Right to Buy Leaseholders might be overcharged due to billing errors will be mitigated by the employment from a new Housing Energy Officer, who with support of the Energy Manager, will closely monitor energy bills to ensure no billing errors or over payments.
- 10.10 Equality implications will continue to be considered throughout the supply period.

11 Environmental Sustainability Implications (where appropriate)

- 11.1 Brent Council has committed to do all reasonably in its gift to aim for carbon neutrality by 2030 and has agreed in its Interim Climate & Ecological Emergency Action Plan (Winter 2019/20) to “develop a plan to achieve net zero carbon for the Council’s own estate and operations by 2030”, which is currently in development.
- 11.2 Section 3 of this report outlines commitments to reduce the carbon footprint of the Council’s estate and operations and additionally to explore the introduction of PPAs for purchasing green energy. Both these approaches will be necessary for the Council to achieve its carbon neutral commitment for its own estate and operations.

12 Consultation with Ward Members and Stakeholders

- 12.1 Consultation/involvement of schools has so far been minimal in terms of the procurement round for the contracts referred to in this report but it is intended

that schools will be consulted on the formation of a 2022 energy procurement engagement plan, with the aim of ensuring representation from a broad spectrum of Brent schools to reflect the diverse needs, circumstances and priorities within the wider school community.

- 12.2 That group will inform the Council's review of the working of the contracts referred to in this report and will inform the Council's exploration of the rapidly changing energy market and technology.

13 Human Resources/Property Implications (if appropriate)

13.1 There are no staffing implications including TUPE and Pensions.

13.2 There are no property implications.

14 Public Services (Social Value) Act 2012

- 14.1 The Council is under duty pursuant to the Public Services (Social Value) Act 2012 ("the Social Value Act") to consider how services being procured might improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the Council might act with a view to securing that improvement; and whether the Council should undertake consultation. This duty does not strictly apply to the proposed contract as it is not a services contract. Nevertheless, Officers have had regard to considerations contained in the Social Value Act in relation to the procurement and in selecting the Laser frameworks, Officers noted that Kent County Council was able to secure social value innovations when setting up the frameworks.

Report sign off:

MINESH PATEL
Director of Finance.