

Guildford Borough Council

Report to: Leader

Date: 28 June 2024

Ward(s) affected: All

Report of Strategic Director: Place

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Report Status: Open report with Exempt appendix 1

Energy Procurement at Guildford Borough Council

1. Executive Summary

- 1.1 The Council has two contracts with LASER energy for the supply of Gas and Electricity which are due to expire in October 2024.
- 1.2 It is common practice to complete energy procurement before March of each calendar year to commence supply the following October. This is because many energy customers fix their purchases before March, which guarantees suppliers volumes to purchase in advance, rather than buying energy at prices on the spot market.
- 1.3 The recommended procurement route is that we use LASER energy's framework to complete a direct award to Npower for Electricity, and Total Energies for Gas. LASER's historic performance – with the caveat that past performance is no guide to future performance is demonstrated between 2020 and 2022, LASER's prices for wholesale

- energy alone (accounting for less than half of the delivered energy costs) was 50 – 85% lower than the peak market prices at the time.
- 1.4 The other option that exists at this time available to the Council is that we consider spot buying – leaving the Council open to significantly exposure of the energy market which, could fluctuate considerably.
 - 1.5 Our incumbent, LASER energy, currently procures energy for over 200 public bodies in the UK, collectively purchasing over £1.5 billion of gas, electricity, and water in 2022 on behalf of 8,500 end users. LASER have offered the Council the opportunity to join its flexible pricing framework, as long as the Council enter into contracts with LASER before the end of June.
 - 1.6 If the Council does not contract with LASER before the end of June there are limited procurement options available due to time taken to switch suppliers. It is likely that the Council will see costs rise and be exposed to volatility on the energy markets when trying to procure energy at spot rates. This is because of the nature of energy buying – which is forward bought many months or years in advance – and usually no later than end of March for the following winter period. This means that the Council would not have the right to access LASER’s forward purchases (as we will not have committed to LASER by their deadline of 28 June).
 - 1.7 The recommendation for a two-year contract, with an option to extend for another year, enables the Council to:
 - i) have assurance for supply without exposure to potentially highly volatile pricing for the 2024 winter; and
 - ii) have assurance for supply for 2025 winter whilst the Council develop an overarching energy strategy for the longer term. Energy procurement for the 2025 winter season will be commencing in October 2024 – so there will be limited time develop a full strategy before then.

2. Recommendation to the Leader

That the Leader resolves to:

- 2.1. Award a contract for the supply of Electricity to the Council via the LASER consortium, for a two-year contract with the option to extend for one further year, worth up to £9,000,000 in total for 3 years. This will be to the top ranked supplier on the Electricity framework – Npower.
- 2.2. Award of a contract for the supply of Gas to the Council via the LASER consortium, for a two-year contract with the option to extend for one further year, worth up to £2,655,000 in total for three years. This will be to the top ranked supplier on the Gas framework – Total Energies.
- 2.3. Delegate authority to the Strategic Director of Place to enter into contractual arrangements on behalf of the Council, in consultation with the Legal Services Manager.
- 2.4. The prices above are consistent with the prices we currently pay, and have been budgeted for. There will therefore be no impact on the current budget expectation.

3. Reason(s) for Recommendation:

- 3.1. The rates secured by LASER have been competitively purchased in the market and reduce the risk of the Council having to make spot purchases at inflated costs (as seen in 2022).
- 3.2. The alternative of trying to switch energy suppliers is too late at this point to be considered viable without exposing the Council to significant price changes.
- 3.3. The Council does not have the necessary expertise or resources in energy to procure its own utilities.
- 3.4. The alternative would be to purchase energy at spot prices. The projected energy costs for the year from October for the Council under this option will be £4.75m (increase of £800k pa).

4. Exemption from publication

- 4.1. Appendix 1 to this report is to be treated as exempt from publication in accordance with the Access to Information Procedure Rules and Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972, because of information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 4.2. The exemption should be maintained if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

5. Purpose of Report

- 5.1. To approve the appointment of LASER as the supplier of Gas and Electricity to the Council.

6. Strategic Priorities

- 6.1. The recommended option will fulfil the criteria of the Council's Corporate Plan 2021 – 2025 delivering value for money for the Council.

7. Background

- 7.1. The Council has contracted with LASER for a number of years.
- 7.2. As a Public Buying Organisation (PBO), LASER combine all their partners' electricity and gas volumes in an Energy Basket. LASER conduct a competitive process to award the Baskets to an energy supplier with the winning supplier being appointed based on delivering the lowest supply management fees, best social value initiatives and flexibility of trading.
- 7.3. Should there be a spike in energy prices then there is the risk that increases may be significantly above this. The aggregated approach means the volumes of all partners equate to £1.5 billion in annual spend (approximately 2% of the UK's non-domestic energy demand)

as opposed to if partners were to operate a standalone approach to the market to a relatively low spend (example spend being each of the two councils). By aggregating all its partners' energy requirements into Baskets, LASER provides economies of scale which mean they can negotiate much lower supplier management fees. In addition, with such high volumes of energy, LASER can access the wholesale market directly, bringing significant further savings on the commodity (estimated £2.9m annualised savings vs average market prices). This approach is compliant with public procurement legislation.

- 7.4. The Council's current annual usage and current spend is contained in Exempt Appendix 1, which have been multiplied by 3 for the contract values stated above.
- 7.5. A small number of alternative PBOs provide a similar framework to LASER, adhering to Government guidance for public bodies. The main alternatives being Crown Commercial Services (CCS), West Mercia Energy (WME), Eastern Shires Purchasing Organisations (ESPO), Yorkshire Purchasing Organisations (YPO), and North Eastern Purchasing Organisation (NEPO), all providing a compliant route. The majority of these are, however, smaller than LASER, buying significant lower aggregated volumes and therefore not going to market as frequently. They are not as well-resourced in energy buying and service delivery in comparison to LASER having a dedicated team of approximately 130 employees delivering energy procurement, contract management, and associated services. Smaller PBOs 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 which increases the risk of having less separation of the buying and audit functions. Furthermore, contract length varies between PBOs, LASER's new framework (below) provides flexibility to pre-select a contract duration between 1 and 4 years.
- 7.6. With the caveat that past performance is no guide to future performance, between 2020 and 2022, LASER's prices for wholesale energy alone (accounting for less than half of the delivered energy costs) was 50 – 85% lower than the peak market prices at the time. It

is worth noting that use of a non-risk managed procurement approach such as standard spot pricing does leave an energy user vulnerable to the highest end of market pricing if its procurement decisions are forced to be made at market peaks in absence of forward buying. Worth also highlighting that at the time of the Government's introduction of Energy Bill Relief Scheme (EBRS) for electricity, the LASER pricing in place at the time was below the threshold of the Bill for electricity (the pricing was competitive in relative terms there could not benefit for the EBRS). Equally gas pricing at the time was on average marginally above the price cap. This means end-users of LASER achieved excellent value in an extremely evaluated and volatile market, which is not reliant on central Government bail-out, and therefore does not face the risk of such temporary bail out schemes now being absent.

- 7.7. LASER, working with their partners, monitors overall performance of their suppliers. Service Level Agreements (SLAs) are in place, with Key Performance Indicators (KPIs) to monitor performance. Regular reviews of supplier operation are carried out during throughout the lifespan of a framework through reporting and regular meetings, as part of the supplier management program. If a supplier fails in any respect to perform in accordance with the SLA, LASER applies poor performance remedies.
- 7.8. Since 2020, over twenty energy suppliers have ceased trading. LASER's frameworks include a financial stability test to minimise the risk of a framework supplier failing during the term of the agreement. Furthermore, given what has been unprecedented market conditions of the energy sector LASER has identified the need to develop new trading and risk management strategies in line with customer requirements in a rapidly changing market. LASER's new framework (below) permit LASER to vary or introduce new trading strategies, include customer specific strategies were requirement, during the term of the agreement without charge from the supplier.
- 7.9. LASER's framework terms and conditions are written with public sector bodies in mind and contain all key terms that should be

included as standard, such as Freedom of Information and Modern Slavery designed to maximise the level of protection to its partners.

8. Consultations

8.1. Not applicable

9. Key Risks

9.1. As the Council has not put in place an energy provision for the autumn winter 2024 period, there are limited options available to the Council:

- **Do nothing** – and buy at a spot rate on the market, with significant cost increases expected – potentially unlimited. Current projected energy costs for the year from October for the Council under this option would be £4.75m (increase of £800k pa).
- **Switch suppliers** – not an option due to the time it takes to transition suppliers.

10. Financial Implications

10.1. The risk is that if the Council does not sign up to the LASER Flexible Procurement frameworks for Gas and Electricity, then the projected energy costs for the year from October for the Council will be £4.75m (increase of £800k pa).

11. Legal Implications

11.1. Given the time restraint, the Council needed to consider which options were available for a competitive procurement process. The decision to go ahead with the Direct Award under the LASER framework agreement balances the risk of potential future energy and gas price increase.

11.2. The Council has the authority to procure these services by virtue of section 1 of the Localism Act 2011, which empowers the Council to undertake any activity that an individual can. None of the restrictions in sections 2 – 4 of the Act apply.

- 11.3. Contracts for services that exceed public procurement financial thresholds are subject to the Public Contracts Regulations 2015 (PCRs) and must comply with the relevant procedural requirements.
- 11.4. The maximum total value of the proposed contracts, at £11,655,000, is above the relevant thresholds and the procurement process needs to be compliant with the PCR as well as the Council's own Contracts Procedure Rules. The Direct Award under the flexible framework agreement will be a compliant route.
- 11.5. Due to the total value of the proposed contracts, a key decision is required in order to award these contracts under the Council's Constitution. This obligation has been met by using the General Exception Procedure as set out in Access to Information Procedure Rules and Regulation 10 of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, where it has not been possible to provide the usual 28 days' notice of the making of a key decision.

12. Human Resource Implications

- 12.1. There are no Human Resources implications arising from this report.

13. Equality and Diversity Implications

- 13.1. The Equality, Diversity and Inclusion duty has been considered in the context of this report and it has been concluded that there are no equality and diversity implications arising directly from this report.

14. Climate Change/Sustainability Implications

- 14.1. As the Council has declared a climate emergency to be carbon neutral by 2030, these contracts offer 40% of the energy supplied from renewable sources. There is the option to consider a 100% certified renewal energy which should be considered as part of future contract management.

15. Summary of Options

- 15.1 To award two contracts for gas and electricity via the LASER framework to their top ranked suppliers, Npower and Total Energies
- 15.2 To do nothing and procure energy on the spot market.

16. Conclusion

- 16.1 It is recommended to award a two-year contract with the option to extend for a further year to Npower for Electricity and Total Energies for Gas.

17. Background Papers

None

18. Appendices

Appendix 1 – Usage (Not for publication)