

Report to Cabinet

Thursday, 28 September 2023

By the Cabinet Member for Local Economy and Place

DECISION REQUIRED



**Horsham
District
Council**

Not Exempt

Electricity and Gas Procurement Contract

Executive Summary

The Council has participated in a flexible energy procurement arrangement since 2015 under a Framework contract with LASER (a Public Sector Buying Organisation). This contract is now due for renewal and it is proposed that this arrangement should continue.

LASER provides the aggregated, flexible and risk-managed approach route to procurement in line with the Government's guidelines for energy-buying by local authorities. LASER effectively acts as a buying club whereby the Council joins together with other authorities and optimum prices are achieved by pooling their energy requirements.

This report proposes the Council's continued participation with LASER over the next contract period running from 1 October 2024 to 30 September 2028 but it does not commit the Council to a particular energy supplier or tariff.

The contractual arrangements cover the supply of gas and electricity to the Council's operational buildings and have achieved significant savings for the Council.

Recommendations

That the Cabinet is recommended:

- i) To note the expiry of the existing LASER framework agreement on 30 September 2024;
- ii) To note that a new LASER framework agreement will be put in place for a four year period from 1 October 2024 to 30 September 2028;
- iii) To approve that the Council (a) accesses, and, (b) calls off from (contracts with any of the listed suppliers in the framework agreement for the supply of electricity and gas to the Council) the new LASER framework agreement;
- iv) To delegate authority to the Director of Resources, in consultation with the Cabinet Member for Local Economy and Place, to complete all necessary legal documentation to give effect to the recommendation above-noted.

Reasons for Recommendations

- i) To allow the Council to access and call off from the new LASER Framework Agreement;
- ii) To delegate authority to the relevant Director and Cabinet Member to complete all legal documentation required to give effect to the recommendations contained in this report;
- iii) LASER benchmarks its purchasing performance each year and shares this information with its customers. This benchmarking exercise indicates that LASER has been able to deliver prices to customers up to 50% below the market average over the last 4 years
- iv) Government policy recommends that to spread market risk, and avoid buying during periods of peak market pricing, “all public sector organisations adopt aggregated, flexible and risk-managed energy procurement” as provided under the LASER framework.
- v) LASER offers full flexibility to secure energy in line with the Council’s policy to reduce its carbon footprint.

Background Papers

None

Wards affected: (All Wards);

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Background Information

1 Introduction and Background

- 1.1 The Council has had a long standing arrangement with LASER (Local Authority Energy Buying Group) as it has previously accessed and called off from the existing LASER Framework Agreement. This Agreement is due to expire in September 2024 and, as such, this report seeks authority to access and call off from the new LASER Framework Agreement which will be put in place for a four year period from 1 October 2024 to 30 September 2028.
- 1.2 LASER purchases energy on the Council's behalf under the existing LASER Framework Agreement. LASER currently manages the energy procurement for over 200 public bodies including the West Sussex County Council, with a total annual spend of £1.5 billion on gas, electricity and water.
- 1.3 Historically these energy contracts were tendered under fixed price arrangements which, in a relatively stable market, secured best value for the Council. However, wholesale energy price volatility over short periods in recent years made this an increasingly high risk strategy and therefore the Council switched to a system of flexible energy procurement as per Government guidance.
- 1.4 A wholesale flexible procurement arrangement enables the buyer to purchase blocks of energy at varying times both before and within the contracted supply period. The arrangement removes the risk of settling a LASER Member's requirement on a single day. Aggregating the volumes of members within the arrangement enables effective market hedging.

2 Relevant Council policy

- 2.1 The appointment is consistent with 5.3 of the Corporate Plan to provide quality, value for money services.
- 2.2 The contract arrangements provide for use of a green tariff, which supports 4.1 of the Corporate Plan to prioritise protection of the environment and increased biodiversity.

3 Details

- 3.1 LASER is a part of the Commercial Services Group, wholly owned by Kent County Council. It is fully Public Contract Regulations 2015 compliant, and LASER undertakes this role on behalf of 200 public sector organisations including over 160 local authorities throughout the UK with an annual spend of £1.5bn.
- 3.2 A small number of alternative Public Sector Buying Organisations (PBOs) provide a similar framework to LASER. Independent benchmarking of LASER's performance has been carried out by Cornwall Insight – an independent consumer organisation representing large energy users in the public sector, industry and commerce. Based on the Cornwall Insight benchmark figures for the 2022/23 period, LASER delivered an outturn price 30% below the market average for gas and 50% below the market

average for electricity. Analysis of other PBOs shows a high degree of variability in customer service – with LASER scoring well.

3.3 LASER has now completed the tender process for the next flexible energy framework agreements for gas and electricity which will run from 1st October 2024 to 30th September 2028 and requires confirmation from its Member authorities that they wish to participate in the new contract. LASER has selected Bidder A - Npower and Bidder B – Total Energy as the most advantageous options for the Council under the energy framework agreement.

3.4 The framework contract covers electricity and gas supplies to the Council's operational sites which includes a total of 195 supplies. The estimated Council Expenditure on Energy in the current year is as follows:

- Electricity £723,900
- Gas £191,300
- Total **£915,200**

3.5 Based on these current Oct22-Sep23 energy spend figures, LASER's fees work out around 1.7% of our overall energy spend p/a.

3.6 The Council has a green REGO tariff under the existing contract with LASER. This is a green tariff where the energy that the Council buys is matched by purchases of renewable energy that the energy supplier (Npower) makes. These can come from a variety of energy sources including wind and solar.

3.7 If the Council decides, we can buy from a specific energy provider, such as a local wind farm, using the Green Basket whereby smaller businesses can join together to support a project when usually they would not have high enough use to enter into an individual Power Purchase Agreement.

3.8 An early commitment to LASER by authorities wishing to participate in the new contract involves energy purchasing on the wholesale market 12 months or more prior to the contract start date. LASER cannot commence forward purchase on behalf of Council sites until a commitment to join the framework contract has been received. To obtain the best pricing it is recommended that Council commit to the framework as soon as possible.

4 Next Steps

4.1 To complete all necessary legal documentation to facilitate the Council accessing and calling off from the new LASER Framework Agreement.

5 Views of the Policy Development Advisory Group and Outcome of Consultations

5.1 The Policy and Development Advisory Group for Local Economy and Place were briefed on the proposal and were supportive of using the LASER framework.

- 5.2 The Monitoring Officer and Director of Resources comments are incorporated in the report.

6 Other Courses of Action Considered but Rejected

- 6.1 Market testing of other public sector energy buying groups and procurement methods such as fixed pricing was undertaken prior to the original move to flexible energy contracts with LASER. No financial or other benefits were identified by our shared procurement service which would have resulted from a switch from LASER and their procurement performance since then has been better or in line with that of other energy buying groups. They have the best market research and due to the energy market being highly volatile, the risk appetite for moving away from LASER is low on all fronts. It is also more efficient to continue utilising our existing brokerage without having to setup a new commercial relationship.

7 Resource Consequences

- 7.1 There are no adverse financial consequences, this is a renewal of an existing contract. The appointment provides a resource that the Council does not have and supports the Council in managing billing.
- 7.2 The decision to continue with the current arrangement twelve months in advance will help obtain the best pricing and enable the 2024/25 budget to be set in advance with known terms and conditions.
- 7.3 There will be no impact on officer resource.

8 Legal Considerations and Implications

- 8.1 The framework agreement is being reviewed by our in house legal team.
- 8.1 A Framework Agreement is a contract which has been officially tendered for by another local authority, public sector organisation, purchasing consortium or central Government.
- 8.2 A Framework Agreement may be used by the Council as an alternative to the procurement routes identified in the Council's Procurement Code ("the Code") as provided for in the Code.
- 8.3 A Framework Agreement should only be used where the benefits justify its use. In this instance it is accepted that the Council does not have the requisite expertise to procure electricity and gas in the related markets. In addition, the procurement team has confirmed that it has undertaken due diligence when assessing this framework against others in the market.
- 8.4 Council lawyers will ensure that (i) the Council can legally access the Framework Agreement, (ii) all legal documentation will be completed to give effect to the recommendations contained in this report, and, (iii) the Council complies with the rules of the Framework.

8.5 Otherwise, the legal implications are as noted under the heading “Procurement Implications” post.

9 Risk Assessment

9.1 The intention of the appointment of LASER is to reduce the risk of the Council purchasing energy direct because the Council does not have this expertise.

10 Procurement implications

10.1 The frameworks have been procured in accordance with the Public Contracts Regulations 2015, as amended (PCR2015). Kent County Council remains the Contracting Authority for all LASER contracts. This permits a public body to access LASER’s frameworks and services without the need to run a separate procurement process.

11. Equalities and Human Rights implications / Public Sector Equality Duty

11.1 Utilising the Laser framework does not have a particular impact on any protected groups.

11.2 A social value plan is to be delivered by each supplier in January 2024. In addition, up to £130k per annum will be available to spend across initiatives nominated by LASER customers.

12 Environmental Implications

12.1 Energy is currently procured on a REGO (Renewable Energy Guarantee of Origin) tariff which supports sustainable energy practices.

12.2 LASER has developed a ‘green basket’ option where the council could move away from a conventional (brown) energy tariff and purchase directly from renewable generators within the suppliers portfolio. We could commit a proportion of our portfolio already within the LASER flexible basket to be procured through this route. The length of the commitment can be flexible.

12.3 LASER can support us in our net-zero journey to reduce, monitor and report on our ongoing consumption of energy and related carbon emissions.

13 Other Considerations

13.1 Other enhancements available include more stringent supplier Service Level Agreements and KPIs and clauses about Poor Performance.

13.2 The CSG data policy is in place to ensure Commercial Services Group as both a ‘Data Controller’ and ‘Data Processor’ is able to demonstrate compliance with all applicable legislative requirements, including but not limited to GDPR, to minimise and manage any data breaches which may occur when collecting, processing and

storing personal data. All staff must adhere to this policy. Associated with this policy is the data breach policy.