

Waverley Borough Council

Report to: Leader of the Council

Date: 20 June 2024

Ward(s) affected: All

Report of Strategic Director: Place

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Report Status: Part Exempt (Exempt Appendix)

Key Decision: Yes

Gas and Electricity Procurement at Waverley Borough Council.

1. Executive Summary

- 1.1 The Council have contracted with LASER energy for the supply of Gas and Electricity which is due to expire in October 2024.
- 1.2 It is common practice to procure energy contracts in the March of each calendar year to commence the following October. This enables buyers to fix prices and have the widest choice of options to procure energy including forward purchases, hedging and fixing strategies to reduce exposure and fluctuations within market pricing.
- 1.3 The recommended procurement route is that the Council 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 are that we consider spot buying – leaving the Council open to significant 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 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).
- 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 for the 2024 winter
 - ii) have assurance for supply for 2025 winter whilst we develop our overarching energy strategy for the longer term. Energy procurement for the 2025 winter season will be commencing later in 2024.
- 1.8 The exact spend on Gas and Electricity will depend on the volumes used (for example – warm winters v cold winters) and the price paid

per unit. The estimated values of the contracts – over three years - are below, and essentially matches current cost and usage, all of which we have budgeted for:

Electricity – £1,185,000 in total

Gas - £1,167,000 in total

2. Recommendation to Leader

That the Leader approves:

- 2.1. The award of 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 £1,185,000 in total. This will be to the top ranked supplier on the Electricity framework – Npower.
- 2.2. The 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 £1,167,000 in total. This will be to the top ranked supplier on the Gas framework – Total Energies.
- 2.3. To delegate to the Strategic Director of Place, in consultation with the Borough Solicitor, to enter into contractual arrangements on behalf of the Council to implement these decisions

3. Reason(s) for Recommendation:

- 3.1. The rates secured by LASER have been competitively purchased in the market, reducing 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 volatility.
- 3.3. The Council does not have the necessary resources in energy to procure its own utilities at a competitive price.

4. Exemption from publication

- 4.1. Appendix One of the report exempt from the Access to Information publication rules because it contains Information relating to the financial or business affairs of any particular person (including the authority holding that information) and the public interest in maintaining that 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 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 Organization (PBO), LASER combine all their partner's 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 £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 LASER aggregating all its partners energy requirements into Baskets, 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 Councils usage and current spend is contained in Appendix One.
- 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; attract to local authorities whose assets estimate flex type here
- 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 just came in 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.

7.10. The current LASER energy mix is that 40% of our supplies will be from renewable energy. There is also the possibility in the future for the Council to use a 100% certified renewal energy (based on scope 2 emissions) however this does incur an estimated additional cost of 1p per kwh.

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 both councils:

- **Do nothing** – and buy at a spot rate on the market, with significant cost increases expected – potentially unlimited.
- **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 do 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 £975k (increase of £190k pa).

10.2. If the Council signs up to the LASER Flexible Procurement framework for Gas and Electricity our projected energy costs will fall within the budgeted amount for the next three years.

11. Legal Implications

11.1. Given the time restraint, the Council did not get enough time to consider all available service providers on the market via 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, , 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 discharged by the publication of a Notice of General Exception.

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. One of the actions in the Carbon Neutrality Action Plan is to switch to a "green" tariff (ideally 100% renewable energy) at the end of the current energy contract. So that would be the preferred option for Waverley and if we delay this, it will impact on Waverley's ability to become carbon neutral by 2030.

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 with no certainty as to those future costs, which exposes the Council to risk. The projected energy costs for the year from October for the Council will be £975k (increase of £190k pa) if we rely on spot rates.

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

- 17.1 None

18. Appendices

- 18.1 EXEMPT Appendix One – Usage

Report signed off by Joint Chief Executive – 20 June 2024.