

CORPORATE SERVICES DEPARTMENT
Director – Caroline Holland



**Democracy Services
London Borough of Merton
Merton Civic Centre
London Road
Morden SM4 5DX**

**Direct Line: 0208 545 3357
Email:
democratic.services@merton.gov.uk**

Date: 18 October 2021

Dear Councillor

Notification of a Decision taken by the **Chief Executive and Director of Corporate Services**

The attached **Key decision** has been taken by the **Chief Executive and Director of Corporate Services**, with regards to the **Award of Call-off Contract for the Supply of Gas** and will be implemented at **noon on Thursday 21 October 2021** unless a call-in request is received.

The [call-in](#) form is attached for your use if needed and refers to the relevant sections of the constitution.

Yours sincerely

Democracy Services

KEY DECISION TAKEN BY AN OFFICER UNDER DELEGATED AUTHORITY

See over for instructions on how to use this form – all parts of this form must be completed. Type all information in the boxes. The boxes will expand to accommodate extra lines where needed.

1. Title of report

Award of Call-off Contract for the Supply of Gas

2. Reason for exemption (if any)

N/A

3. Decision maker

Chief Executive and Director of Corporate Services

4. Date of Decision

18/10/2021

5. Date report made available to decision maker

08/10/2021

6. Decision

That a call-off contract for the supply of gas be awarded to Gazprom Marketing and trading Ltd via the Countess of Chester Hospital NHS Foundation Trust Commercial Procurement Service (hereafter 'COCH-CPS') Framework Agreement for the Provision of Natural Gas.

7. Reason for decision

Please refer to the officer report

8. Alternative options considered and why rejected

Please refer to the officer report

9. Documents relied on in addition to officer report

None

10. Declarations of Interest

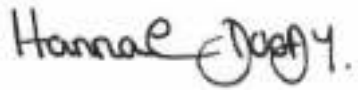
None

11. Signature

Chief Executive


Signature

Date: 14 October 2021

Handwritten signature of Hannah Deary in black ink.

Director of Corporate Services

Signature

Handwritten signature in black ink, appearing to be a stylized name.

Date: 13/10/21

Chief Officer Key Decision Report

Date: 24th September 2021

Wards: All

Subject: Award of Call-off Contract for the Supply of Gas

Lead officer: Mark Humphries - Assistant Director, Infrastructure and Technology

Lead member: Cabinet Member for Finance

Contact officer: Richard Neal – Energy and Sustainability Manager

Recommendations:

-
1. That the Council directly award a 1-year contract, via the Countess of Chester Hospital NHS Foundation Trust Commercial Procurement Service (hereafter 'COCH-CPS') Framework Agreement for the Provision of Natural Gas.
-

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The Council's contract for the supply of Gas to its buildings is due to expire on 31st March 2022. This report seeks approval to directly award a one year contract to the Council's incumbent supplier, Gazprom Marketing and Trading Ltd via the COCH-CPS Framework Agreement for the Provision of Natural Gas.
- 1.2. The report also outlines the reasoning for seeking to award a contract of only 1 year and how this aligns with the Council's Climate Emergency 2030 aspirations.

2 DETAILS

- 2.1. The Council's Procurement board originally approved the re-procurement of the Council's Gas Supply contract on the basis of seeking a 4+1 year term in 2019. However, the Council's Declaration of a Climate Emergency has cast some doubt over the volumes required on the proposed Gas contract over the next 4-5 years.
- 2.2. With the full delivery plan for the Council's 2030 net zero carbon target not yet agreed, and the likelihood that a recommendation to undertake degasification of heating across the operational building portfolio will be included, there is the potential for gas consumption on the proposed new supply contract to fall significantly. The Civic Centre boiler replacement project, also likely to complete within the lifetime of the new contract, also has the potential to significantly impact gas volumes.
- 2.3. This considerable volume uncertainty means the Council would either have to tender the contract in such a way that suppliers are pricing in the volume risk (leading to an increased management fee paid by the council) or for the council to take on this risk and potentially pay for gas it doesn't use and/or lose the economies of scale associated with a larger portfolio.

- 2.4. In order to mitigate this risk Officers intend to defer full re-procurement for 12 months, until such a time that the Council is better able to assess its likely gas usage.
- 2.5. In order to cover the Council for the intervening period the following approach is proposed. Inspired Energy, who are the Council's contracted Energy Consultant, are also the managing agent on a single supplier gas framework let by COCH-CPS. The single supplier on the framework is Gazprom, who are also the Council's incumbent gas supplier. A call off of 1 year from this framework for the period 1st April 2022 – 31st March 2023 would ensure the Council has a supplier in place until such a time that a better determination can be made of its likely gas requirement for the following 5 years.
- 2.6. As Inspired Energy are the managing agent on this framework they would be able to manage our gas portfolio in much the same way they do under our current contracts, and have also confirmed that they will waive their management fee through the framework given we contract with them directly for these services.
- 2.7. The proposed approach also has the advantage that in continuing with our current supplier for an additional year, under what are very similar terms, avoids the risk of having to switch suppliers for a short period, and the significant administrative workload transferring the portfolio would create

3 ALTERNATIVE OPTIONS

- 3.1. Supply contracts are essential due to the excess cost of 'out of contract' rates offered by energy suppliers, in some cases these can be more than double the unit rates that would be expected on a well-managed flexible supply contract. The implication of taking Merton's electricity portfolio onto non-contract rates would likely be an increase in cost of around £500,000 per annum (though these figures may change significantly given the current uncertainty in the Energy Markets).
- 3.2. Extending the existing contract with Gazprom is not considered to be an option as this is considered to be non-compliant with Public Contract Regulations.
- 3.3. Conducting a full bespoke procurement exercise for a 1-year contract is thought to be unlikely to generate much interest from the market, especially given the high levels of uncertainty surrounding energy markets at present.
- 3.4. While conducting a full procurement of a 4+1 year contract would be expected to attract significant interest from the market, the Council would be taking on the volume risks outlined above in relation to probable reductions in its gas consumption in the future. Such a situation is likely to mean the Council being forced to "take or pay" and also pay higher management fees on such a contract.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. The approach outlined in this report has been approved by the Corporate Services OPG and the Council's Procurement Board.

5 TIMETABLE

Milestone	Target Date
Forward Plan Report	September-21
Award	October-21
Contract Start	1 st April 2022

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. Procurement support for a flexible gas supply contract is written into the terms of Merton's agreement with Inspired Energy. A fee of £860 may be payable if Merton request significant technical input from Inspired when calling off of the recommended framework. Inspired would not charge a management fee for their role in managing purchasing for Merton's portfolio via the framework.
- 6.2. Based on the Council's current volumes the fee payable to the framework provider (taken as a small element incorporated into the unit rate on bills) would be around £2,450 over 12 months. The total spend on the contract is estimated to be £750,000 - £1,000,000 given current consumption and expected market conditions – given both of these elements are subject to change there is a degree of uncertainty around what actual spend on the contract will be.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. A contract for gas in the forecast amounts must be compliant with the Public Contracts Regulations 2015. The proposed framework provides a lawful route to procure the gas.
- 7.2. In order to procure via direct award, the Council must ensure that it retains written evidence that the supplier provides the council with best value and meets the requirements set down in the framework.
- 7.3. Once the contract is awarded the Council must place it on the relevant directorate contract register and place a relevant notice in Contracts Finder.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. None identified

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None identified

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. None identified

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- None

12 BACKGROUND PAPERS

12.1. None



Name of Procurement/Contract: Gas Supply

Date of Report	26/05/2021		
Department and Division	Corporate Services, Facilities Management		
Contract Manager	Richard Neal		
Project Manager (if different from contract manager)			
Project Sponsor (HoS or AD or Director)	Edwin O'Donnell		
Commercial Services Lead Contact	Tom Davis/Kara Chacksfield		
Description of Services/Goods/Works:	Supply of Gas		
Value of Current Contract: £5,000,000	Date of expiry: 31/03/2022		
	Length of expiring contract (including breakdown of extensions): 4 + 1 years		
Estimated Value of New Contract: £1,000,000	Envisaged length of new contract: 1 year (with a 3+1+1 year contract procured to follow on from this)		
	Estimated savings / value of cost avoidance over the life of new the contract (if none, please state why): No direct savings but the contract will reduce the risk of being tied into a long-term contract before the Climate Emergency response is agreed. Please refer to section 2 for more information.		

1. RECOMMENDATIONS FOR THE BOARD TO CONSIDER

- a. That the Council directly award a 1-year contract, via the Countess of Chester Hospital NHS Foundation Trust Commercial Procurement Service (hereafter 'COCH-CPS') Framework Agreement for the Provision of Natural Gas;
- b. That a full 3+1+1 year flexible gas supply contract be procured to follow on from this contract in 2023.



2. PROJECT DESCRIPTION

Procurement board approved the re-procurement of the Council's Energy Third Party Intermediary (TPI), electricity supply, and gas supply contracts on¹ 17/09/2019. Subsequently Inspired Energy Ltd have been appointed as the Council's TPI after an open tender process.

The existing business case, as previously approved, proposed re-procurement of the Council's Electricity and Gas contracts via a full Open OJEU process with contract terms of 4+1 years. However, the Council's Declaration of a Climate Emergency has cast some doubt over the volumes required on the proposed Gas contract over the next 4-5 years.

With the full delivery plan for the Council's 2030 net zero carbon target not yet been agreed, and the likelihood that a recommendation to undertake degasification of heating across the operational building portfolio will be included, there is the potential for gas consumption on the proposed new supply contract to fall significantly. The Civic Centre boiler replacement project, also likely to complete within the lifetime of the new contract, also has the potential to significantly impact gas volumes.

This considerable volume uncertainty means the Council would either have to tender the contract in such a way that suppliers are pricing in the volume risk (leading to an increased management fee paid by the council) or for the council to take on this risk and potentially pay for gas it doesn't use and/or lose the economies of scale associated with a larger portfolio.

In order to mitigate these risk it is proposed to defer full re-procurement for 12 months, until such a time that the Council is better able to assess its likely gas usage.

In order to cover the Council for the intervening period the following approach is proposed.

Inspired Energy are the managing agent (effectively the TPI) on a single supplier gas framework let by COCH-CPS. The single supplier on the framework is Gazprom, who are also the Council's incumbent gas supplier. A call off of 1 year from this framework for the period 1st April 2022 – 31st March 2023 would ensure the Council has a supplier in place until such a time that a better determination can be made of its likely gas requirement for the following 5 years.

The Council's Energy Third Party Intermediary (TPI), Inspired Energy, is also the managing agent on this framework. This means that they would manage our gas portfolio in much the same way they do under our current contracts, and have also confirmed that they will waive their management fee through the framework.

The proposed approach also has the advantage that in continuing with our current supplier for an additional year, under what are very similar terms, avoids the risk of having to switch suppliers for a short period, and the significant administrative workload transferring the portfolio would create

3. STRATEGIC LINKS

The approach outlined in this Business Case is consistent with the requirement to generate budgetary savings and internal efficiency laid out in the Corporate Services (Internal Facing) TOM.

¹ See Gateway 1 report: Energy TPI and Related Services, Electricity supply including street lighting, Gas Supply (06/08/2019)



4. BUSINESS NEED

The council purchases its energy via Flexible supply contracts through which electricity and gas purchased on the wholesale market by the council's TPI ahead of time are delivered. Contracts of this type are considered to be the best way to manage the inherent risk of fluctuating energy prices, while also providing a degree of budget certainty.

Supply contracts are essential due to the excess cost of 'out of contract' rates offered by energy suppliers, in some cases these can be more than double the unit rates that would be expected on a well-managed flexible supply contract. The implication of taking Merton's electricity portfolio onto non-contract rates would likely be an increase in cost of around £500,000 per annum.

The declaration of a Climate Emergency requires the council to embed decarbonisation into our energy purchasing arrangements, and this approach is consistent with this.

5. BENEFIT SUMMARY

Benefit name	Category	Benefit owner
Mitigation of Volume Risks on new supply contract	Improved efficiency (savings)	Council wide
Contributes to decarbonisation agenda	Improved sustainability	Borough wide
Avoids risk of having to transfer the gas supply portfolio for a short duration	Improved efficiency (savings)	Facilities Management

6. ENVIRONMENTAL CONSIDERATIONS

Given the Council's declaration of a Climate Emergency in 2019, and subsequent adoption of an aspiration to work towards being Carbon Neutral in its own operations by 2030, the Council is in the process of assessing the strategy it will use in order to meet this target. It is thought that a key element of the decarbonisation agenda will be the removal of gas infrastructure and equipment from buildings throughout the portfolio, most importantly gas boilers. This will provide significant Carbon savings as it progresses, but also significantly reduce the Council's demand for gas.

7. MARKET / PROVIDER ASSESSMENT

The most recent OJEU supplier tender exercise for gas generated only a single response. It is considered there were two main reasons for this;

- The Merton portfolio is relatively small for contracts of this kind
- Key dates within the tender exercise fell over the Christmas/New Year period and when a number of other organisations had similar tenders out. Several bidders pointed to a lack of resource as a reason for not submitting a bid.

Given the Council's decarbonisation agenda is likely to reduce the demand for gas, providing some degree of confidence in our future requirements is likely to be an important factor in generating more interest in any further tender exercise.



There are a number of public sector frameworks which could be used for a short term call off (e.g. LASER, CCS), with some allowing for a direct award. The COCH-CPS framework is however the only framework identified that allows a direct award to the Council's incumbent supplier, avoiding the potential risks involved with transferring the portfolio to a new supplier for a short time.

8. ENGAGEMENT OF STAKEHOLDERS / INTERESTED PARTIES

This proposal was presented to the Council's Energy Risk Management Committee with no objections being raised.

9. PROCUREMENT APPROACH

A direct award to Gazprom via the COCH-CPS framework F/005/EST/17/MH is proposed.

Timetable:

Milestone	Target Date
Prepare Tender Award Documentation	July-21
Evaluate Proposal	August-21
Gateway 2 Report	August-21
Forward Plan Report	September-21
Award	October-21
Contract Start	1 April 2022

10. OPTIONS CONSIDERED

Option	Advantages	Disadvantages
1. Do not enter into a contract / withdraw service	None	Significant financial cost to the council from 'out of contract rates'. Non-compliance with Public Contracts Regulations.
2. Roll-on existing contract without going out to the market	Mitigation of volume risk on new contract. Avoidance of portfolio transfer risk and workload. Continuation of service from supplier and Inspired.	Non-compliance with Public Contracts Regulations.
3. Direct award via the COCH-CPS framework.	Mitigation of volume risk on new contract. Avoidance of portfolio transfer risk and workload. Continuation of service from supplier and Inspired. Supplier has been pre-selected by the framework operator.	Proposal only obtained from a single bidder.



Option	Advantages	Disadvantages
4. Undertake a bespoke tender exercise for a short term contract	Wide range of potential bidders.	Risk of transferring the portfolio to a new supplier for a short time. Unlikely to generate much interest from the market. Short term contract likely to mean increased management fees
5. Proceed with procurement of 4+1 year flexible gas contract via a bespoke tender exercise as previously agreed	Wide range of potential bidders. Puts a long term contract in place.	Volume risk on contract, potentially leading to high management fees or "take or pay".

Recommended option (and reason why)

It is recommended that Option 3 is selected, as this gives the Council the best opportunity to provide the market with a degree of volume certainty for subsequent gas supply contracts, and ensures that any such contract is aligned with the Council's strategy for meeting its 2030 carbon net zero target.

11. RESOURCES

Personnel

Project Team

Richard Neal, Energy & Sustainability Manager – Project Lead

Corin Freshwater-Turner, Energy Project Officer – Project Support

Tom Davis, Category Manager (Corporate Services) – Commercial Services support

Georgina Penfold – Director: Regulated Services (Inspired Energy Plc) – External Technical & Procurement Support

Hal Chapman-Daws – Account Manager (Inspired Energy) – External Technical and Portfolio Support

Financial resources

Procurement support for a flexible gas supply contract is written into the terms of Merton's agreement with Inspired Energy. A fee of £860 may be payable if Merton request significant technical input from Inspired when calling off of the recommended framework. Inspired would not charge a management fee for their role in managing purchasing for Merton's portfolio via the framework.

Based on the Council's current volumes the fee payable to the framework provider (taken as a small element incorporated into the unit rate on bills) would be around £2,450 over 12 months. The total spend on the contract is estimated to be £750,000 - £1,000,000 given current consumption and prevailing market conditions – given both of these elements are subject to change there is a degree of uncertainty around what actual spend on the contract will be.



12. COMMENTS AND SIGN OFF

Department	Comments	Date	Signed
Commercial Services	Comments incorporated into the report. This is a single supplier framework, direct award is permitted, and it is prudent to secure the gas supply for the short term while the Council formulates its response to the Climate Emergency declaration.	28 May 2021	Tom Davis
Service Financial Adviser	One year contract allows time to review required levels of gas supply in the medium to longer term whilst minimising risk of excess costs being incurred in the meantime.	06/06/2021	Ellis Kelly
Legal	<p>A contract for gas in the forecast amounts must be compliant with the Public Contracts Regulations 2015. The proposed framework provides a lawful route to procure the gas.</p> <p>In order to procure via direct award, the Council must ensure that it retains written evidence that the supplier provides the council with best value and meets the requirements set down in the framework.</p> <p>Once the contract is awarded the Council must place it on the relevant directorate contract register and place a relevant notice in Contracts Finder.</p>	06/07/2021	Jonathan Miller
Operational Procurement Group	Approved – the group agreed that this course of action is the best option in the circumstances.	03/06/2021	Meeting chaired by Edwin O'Donnell

REPORT AUTHOR'S DETAILS:

Name:	Richard Neal
Job Title:	Energy & Sustainability Manager
Department:	Facilities Management
Email address:	richard.neal@merton.gov.uk
Telephone No.:	020 8545 3359

Merton Council - call-in request form

1. Decision to be called in: (required)

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2. Which of the principles of decision making in Article 13 of the constitution has not been applied? (required)

Required by part 4E Section 16(c)(a)(ii) of the constitution - tick all that apply:

(a) proportionality (i.e. the action must be proportionate to the desired outcome);	
(b) due consultation and the taking of professional advice from officers;	
(c) respect for human rights and equalities;	
(d) a presumption in favour of openness;	
(e) clarity of aims and desired outcomes;	
(f) consideration and evaluation of alternatives;	
(g) irrelevant matters must be ignored.	

3. Desired outcome

Part 4E Section 16(f) of the constitution- select one:

(a) The Panel/Commission to refer the decision back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns.	
(b) To refer the matter to full Council where the Commission/Panel determines that the decision is contrary to the Policy and/or Budget Framework	
(c) The Panel/Commission to decide not to refer the matter back to the decision making person or body *	
* If you select (c) please explain the purpose of calling in the decision.	

4. Evidence which demonstrates the alleged breach(es) indicated in 2 above (required)

Required by part 4E Section 16(c)(a)(ii) of the constitution:

5. Documents requested

6. Witnesses requested

7. Signed (not required if sent by email):

8. Notes – see part 4E section 16 of the constitution

Call-ins must be supported by at least three members of the Council.

The call in form and supporting requests must be received by 12 Noon on the third working day following the publication of the decision.

The form and/or supporting requests must be sent:

- **EITHER** by email from a Councillor’s email account (no signature required) to democratic.services@merton.gov.uk
- **OR** as a signed paper copy to the Head of Democracy and Electoral Services, 1st floor, Civic Centre, London Road, Morden SM4 5DX.

For further information or advice contact the Head of Democracy and Electoral Services on 020 8545 3409