

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet **DATE:** 22nd February 2021
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WARD(S): All Wards
PORTFOLIO: Lead Member for sustainable transport and environmental services, Councillor Anderson

PART I **KEY DECISION**

COUNCIL ENERGY CONTRACT 2021-22 TO BE TENDERED VALUE ABOVE £180K

1 Purpose of Report

To advise the Cabinet that the corporate energy contracts, and associated energy management services with an estimated revenue value of £2 million per annum, is proposed to be tendered in the 2021/22 financial year. The existing contracts expire on 31st March 2021. The new contract will start on 1st April and will be a fixed 12-month contract.

2 Recommendation(s)/Proposed Action

The Cabinet is requested to:

- a) Delegate authority to the AD of Place Operations to access a legally compliant framework, award call-off contracts and agree and finalise terms and conditions with suppliers, for a 12-month fixed price corporate energy contract .
- b) Note that this is an urgent key decision and in line with Part 4.2 Rule 16.1 – Special Urgency Access to Information Procedure of the Council’s Constitution, the approval of the chair of the Overview and Scrutiny Committee has been obtained that the making of the decision cannot be reasonably deferred.
- c) Note that the Chief Executive exercised her powers under rule 1.4 part 3.6 of the Constitution (Urgency Provisions) to approve the commencement of the procurement process.
- d) Note that the AD of Place Operations will initiate and execute an energy procurement strategy for the period 2022-2025 for report and approval by no later than July 2021, for execution by no later than October 2021.

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

The corporate energy contracts, by nature enables staff to contribute to all of the priorities of both the Wellbeing Strategy and the Five-Year Plan and enables residents to use Council assets, i.e. community facilities.

4. **Joint Strategic Needs Assessment (JSNA)**

The JSNA will be considered at the time of letting each contract.

5. **Other Implications**

(a) Financial

The energy contracts outlined in Appendix A will be procured by an external broker service on behalf of the Council via a legally compliant framework agreement to ensure the best market rate is obtained at the time of tendering. The Council will be entering into 12-month fixed price energy contracts for electricity and gas, which will assist with managing budgets.

The cost of the contract along with all associated framework fees and energy management services are included within approved budgets. The expected value of the contracts is estimated at £2 million per annum, the final value is dependent on energy usage, new meters connections and the agreed market unit fixed rate.

Failure to award the contract by 1st April 2021 will mean our existing energy contracts will expire and move to 'out of contract rate'. These rates are nearly double the current market rate and this will place a significant financial pressure on revenue budgets. It would be equivalent to doubling the contract value to £4 million per annum, and each month we remain out of contract will incur additional costs averaging £167,000 per month. Therefore, it is essential we enter new energy contracts by 1st April 2021 to ensure we do not incur financial penalties.

(b) Risk Management

Recommendation from section 2 above	Risks/Threats/ Opportunities	Current Controls	Using the Risk Management Matrix Score the risk	Future Controls
Economic/Financial				
Delegated Authority to access a legally compliant framework agreement to procure corporate energy contracts/ Services	Failure to obtain delegated authority will mean we fall outside of the existing energy contract and will incur significant additional costs	Procure the energy via a broker through a legally compliant framework to obtain the best market rate for 12-month fixed term	18 (Severity would be critical if contract is not secured and probability of financial impact is very high)	Investigate the opportunity to procure energy on a flex-based procurement model that are responsive to market changes and may yield more cost savings.

Delegated Authority to sign off supplier terms and conditions and enter into agreements in consultation with HB Public law	Failure to complete this in a timely fashion, i.e. the same day and within normally within 2 hours of price setting, means the price may change	Delegate to AD to sign off on same day price is secured	12 (severity would be marginal if contract is not signed in time and probability of financial impact is very high)	None
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(c) Human Rights Act and Legal Implications

Human Rights Act and Legal Implications

The estimated value of the Council's spend for the energy services exceeds the OJEU procurement threshold of £189,330 which would require a full EU Procurement under the Public Contract Regulations 2015 (the Regulations). However, accessing a framework that is already OJEU compliant means that a further procurement exercise need not be undertaken by the Council

The Council is satisfied that the Framework Agreement to be utilised was tendered in accordance with the Public Contracts Regulations 2015 and lists the Council as one of the authority that could access this Framework Agreement. Officers must follow the process set out in the Framework Agreement in selecting the supplier and must also adhere to the procurement principles of equal treatment, fairness and non-discrimination.

Procurement Implications

Energy contracts fall within the Public Contract Regulations 2015 (PCR) therefore energy must be procured via a compliant legal framework.

All contracts are let in accordance with the Council's agreed Contract Procedure Rules.

(d) Equalities Impact Assessment

There are no known EIA implications tendering and entering a new contract for cooperate energy.

(e) Workforce

There is no known workforce implication from tendering and entering a new contract for corporate energy.

(f) Property

The corporate energy contracts will cover over 500 MPANs (meters) and more than 100 Council assets across the Council portfolio, it is essential we obtain the best value for money on the energy contracts to enable the efficient and cost-effective operation of these assets, failure to do so may risk the long-term financial sustainability of the assets.

(g) Carbon Emissions and Energy Costs

There may be a slight increase in energy costs as wholesale energy markets are extremely vulnerable and subject to daily fluctuation. Procuring energy through a legally compliant energy framework benefits from significant aggregated purchase power.

The carbon emissions from procured electricity are reducing in carbon emissions each year as the grid transitions away from fossil fuel power generation to more renewable energy generation. We will consider the opportunity to procure renewable electricity if this is financially viable.

6. **Supporting Information**

Council's Constitution

Article 13 of the Council's constitution defines a key decision as an executive decision which is likely to either result in the Council incurring expenditure which is, or the making of savings which are, significant, having regard to the Council's budget for the service or function to which the decision relates; or to be significant in terms of its effects on communities living or working in an area comprising two or more wards within the Borough and any expenditure or savings of £250,000. The decision being sought under this report meets these requirements and should follow the procedure for approving a key decision as set out in the Council's constitution.

Part 4.2 Rule 16.1 (Special Urgency - Access to Information Procedure) of the Council's Constitution allows for an urgent key decision to be taken outside of the key decision procedure if such a decision cannot be deferred and approval of the chair of the Overview and Scrutiny Committee is obtained. This provision also allows for the requirement for notification to be deferred. However in line with Part 4.2 Rule 16.2 of the Council's constitution, officers must ensure that as soon as reasonably practicable after the decision maker has obtained agreement under Rule 16.1 they make available at Observatory House and publish on Slough.gov.uk a notice setting out the reasons that the decision is urgent and cannot reasonably be deferred.

The Council's Contract Procedure Rules requires all contracts with a value greater than £50,000 to be sealed. Following the appointment of the suppliers, officers in consultation with HBPL will finalise and seal the contracts procured.

Corporate Energy Contracts

- 6.1.1 The current corporate Energy Contracts, with TGP, Eon, Opus and EDF expire on 31st March 2021. These contracts cover our corporate gas and electricity. The details are presented in Appendix A. These contracts cover over 500 meters across our corporate asset's portfolio, including all our corporate buildings, PFI schools, community schools, community buildings, car parks, street lighting, EV charging, communal lighting.
- 6.1.2 Failure to award a new corporate energy contract from 1st April 2021 will incur significant 'out of contract' charges for remaining with current suppliers out of contract, this will give rise to significant adverse financial impacts, and will cost the

Council approx. £170k/month in additional revenue expenditure for electricity and gas until a new contract is entered into.

7. **Comments of Other Committees**

Cllr Dhaliwal, Chair of Overview and Scrutiny has approved under Part 4.2 rule 16.1 Special Urgency Access to Information Procedure of the Council's Constitution that the procurement process cannot reasonably be deferred to cabinet, in order for the energy contracts to be in place by 1st April 2021 it must now be initiated.

8. **Conclusion**

The Cabinet are requested to:

- a) Delegate authority to the AD of Place Operations to access a legally compliant framework, award contracts and finalise terms and conditions with suppliers, for a 12-month fixed price corporate energy contract based on the best available market price.
- b) Note that this is an urgent key decision and in line with Part 4.2 Rule 16.1 – Special Urgency Access to Information Procedure of the Council's Constitution, the approval of the chair of the Overview and Scrutiny Committee has been obtained that the taking of the decision cannot be reasonably deferred.
- c) Note that the Chief Executive exercised her powers under rule 1.4 part 3.6 of the Constitution (Urgency Provisions) to approve the commencement of this procurement.
- d) Note that the AD of Place Operations will initiate and execute an energy procurement strategy for the period 2022-2025 for report and approval by no later than July 2021, for execution by no later than October 2021.

9 **Appendices Attached**

'A' - Energy Contracts to be let in 2020/21 in excess of £180,000.

10 **Background Papers**

None

APPENDIX A

LIST OF CONTRACTS TO BE LET IN 2020/21 IN EXCESS OF £180,000

	Contract Title	Description
1	Corporate Energy Contracts	Corporate Energy contracts with suppliers of gas and electricity for our Corporate Assets, including all corporate buildings, community buildings, community schools, PFI schools, communal lighting HRA assets, street lighting, car parks, EV chargers, street assets.
1a	Gas contract	Equivalent to approx. 11,500,00 kwh per annum
1b	Electricity Contract NHH	Equivalent to approx. 2,300,000 kwh per annum
1c	Electricity Contract HH	Equivalent to approx. 8,600,000 kwh per annum
1d	Street Lighting	Equivalent to approx. 2,600,000 kwh per annum