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TO:	Executive
DATE:	23 June 2022
EXECUTIVE MEMBER:	Deputy Leader and Portfolio Holder for Finance and Governance Portfolio Holder for Investment & Companies

KEY DECISION REQUIRED:	YES
WARD (S) AFFECTED:	ALL

SUBJECT:	ENERGY SUPPLY CONTRACT 2022/23
RECOMMENDATIONS:	
Executive is recommended to endorse:	
(i) The appointment of Corona Energy as the provider of gas energy supplies for Council properties from 1 April 2022 to 31 March 2023.	
REASONS FOR RECOMMENDATIONS:	
<p>The Council's contract with Avanti for the provision of gas energy supplies for its properties ended on 31 March 2022 and tenders have been obtained through the Council's appointed managing broker.</p> <p>The recent domestic and global energy supply market has made this procurement exercise significantly more challenging than in previous years. Prices fluctuated significantly on a daily basis throughout February and March and the war in Ukraine resulted in a period when no bids were available, followed by sanctioning of Russian energy suppliers.</p> <p>The Government subsequently issued Procurement Practice Note 01/22 (Contracts with Suppliers from Russia and Belarus) on 28 March which provides guidance to local authorities on the operation of these sanctions. The recommendations in this report are compliant with the Note.</p> <p>These circumstances meant that it was not possible to seek approval of the recommended contract in advance but it is now set out in this report for endorsement by</p>	

Executive. Forecast contract costs also require it to be brought to Executive's attention in compliance with the Contract Procurement Rules in the Constitution.

EXECUTIVE SUMMARY:

Executive is asked to endorse the appointment of Corona Energy as the supplier for gas energy for council buildings for the period from 1 April 2022 to 31 March 2023.

The Executive has authority to approve the above recommendation.

STATUTORY POWERS

1. The Council has power to procure the supply of natural gas and electricity under section 111 of the Local Government Act 1972 which enables the council to carry out any activity that is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.
2. The Council also has power to purchase these supplies on behalf of third parties under the general power of competence set out in section 1 of the Localism Act 2011.
3. The Council may enter into contracts for such services under section 1 of the Local Government (Contracts) Act 1997.

Gas Supply Contract

4. The contract covers the supply of gas energy to all operational council properties, excluding leisure centres and leased-out properties. The previous contract was with CNG who withdrew from the market with limited notice in November 2021. A short term contract was then arranged with Avanti to cover the period 25 November 2021 to 31 March 2022
5. In anticipation of the end of the contract with Avanti (who also then withdrew from the market) in March 2022 quotations were obtained from alternative suppliers through the Council's appointed managing broker ('Beond').
6. The recent domestic and global energy supply market made this procurement exercise significantly more challenging than in previous years. Prices fluctuated significantly on a daily basis throughout February and the war in Ukraine resulted in a period of five days when no bids were available, followed by sanctioning of Russian energy suppliers. The Government issued Procurement Practice Note 001/22 (Contracts with suppliers from Russia and Belarus) on 28 March which provides guidance to local authorities on the operation of these sanctions.
7. Following a competitive bidding process facilitated by Beond, RBBC's appointed energy broker bids were received. These are set out in the separate Part 2 report on this agenda. Russian suppliers were excluded from bidding.
8. The selected bid was Corona Energy for a period of 12 months from 1 April 2022 to 31 March 2023. This option was selected to avoid a long-term contractual commitment during a time of global uncertainty and escalating price increases.
9. Entering into a one year contract now, as compared to three years, allows time for the supply market to settle. It will also allow time to start to introduce mitigating measures to reduce the consumption of gas energy through operational changes and investment in improved plant and equipment. Environmental audits of the council's properties commenced in April 2022 and will help identify opportunities in this area.

It should be noted, however that this option is not without risk and the market may remain in the same position or deteriorate over the coming 12 months.

OPTIONS

Option 1 – Endorse the recommendations in this report so that the Council has continuity of the gas energy supply for its buildings.

This is the recommended option.

Option 2 – To reject the recommendations in this report.

This would require the authority to move onto out of contract rates that are running at a significantly higher cost and are expected to continue to fluctuate making cost control more challenging.

LEGAL IMPLICATIONS

10. Under Section 17 of the Local Government Act 1988 the Council is prohibited from taking into account in their procurement decisions, non-commercial considerations, including the location of any country or territory of the business activities or interests of contractors, or from terminating contracts for non-commercial reasons.
11. This statutory duty would therefore ordinarily preclude the Council from excluding any bid from a Russian supplier such as Gazprom, however, Procurement Practice Note 01/22 (Contracts with Suppliers from Russia and Belarus) issued on 28 March, at point 16 set out the following additional powers:

Regarding new procurements, you could decline to consider (or otherwise exclude from participating in the procurement) bids from suppliers who are constituted or organised under the law of Russia or Belarus, or whose 'Persons of Significant Control' information states Russia or Belarus as the place of residency, unless the supplier (or any member of their supply chain they rely on to deliver the contract):

- *is registered in the UK or in a country the UK has a relevant international agreement with reciprocal rights of access to public procurement; and/or*
- *has significant business operations in the UK or in a country the UK has a relevant international agreement with reciprocal rights of access to public procurement.*

Where the supplier has a more complex group structure involving parent or group companies based or operating in the UK, or in a country the UK has a relevant international agreement with reciprocal rights of access to procurement, you should consider the specific circumstances and take legal advice where appropriate.

12. The Council's agent confirmed that a report had been undertaken and concluded that we were entitled to exclude Gazprom as were solely Russian-owned without UK subsidiaries to consider.

FINANCIAL IMPLICATIONS

13. As set out in this report, the exceptional circumstances in the current energy supply market meant that the Council had very limited options when the new contract was procured in March 2022.
14. The 2022/23 approved revenue budget includes £0.200m for gas energy supply for council properties. This budget is based on historic tariffs and consumption levels.

15. The forecast additional costs (assuming usage at 2021/22 levels) of the contract with Corona Energy are set out in the table below

Budget 2022/23 £	Forecast Cost of the 12 Month Contract with Corona Energy 2022/23 £	Forecast Additional Costs Compared to Budget 2022/23 £
200,000	319,000	119,000

16. The forecast additional costs of £0.119m will have to be funded through realising offsetting savings elsewhere in the 2022/23 budget. If this is not possible it may result in an overspend that would result in a call on Reserves. Action will also be taken to reduce energy consumption wherever possible over coming months to reduce costs as noted above.
17. The forecast excess cost will be monitored throughout 2022/23 and updates provided in the quarterly budget monitoring reports to Executive. Consideration will have to be given to a budget growth bid for 2023/24 onwards if prices remain at current levels when the next contract renewal takes place.

EQUALITIES IMPLICATIONS

18. There are no equalities implications associated with this report.

COMMUNICATIONS IMPLICATIONS

19. There are no communications implications associated with this report.

ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS

20. The carbon offsetting arrangements that were in place with the previous gas energy supplier will remain in place for the duration of the new contract.
21. In addition, the environmental sustainability building audits that were commissioned in May 2022 will identify short, medium and long term opportunities for operational changes to reduce operating costs (including energy use), improve building efficiency and support delivery of the target of achieving net zero by 2030. Audit results will be known in September 2022.

RISK MANAGEMENT CONSIDERATIONS

22. There are no additional risk management implications. Price inflation risks are assessed throughout budget-setting and when updating the Medium Term Financial Plan.

CONSULTATION

23. The Portfolioholders for Finance & Governance and for Investment & Companies have been consulted on this report.

POLICY FRAMEWORK

24. The procurement of this contract has been undertaken in accordance with the Council's Contract Procedure Rules (CPR's), the Public Contracts Regulations (2015) and the Procurement Practice Note (01/22 (Contracts with Suppliers from Russia and Belarus) issued on 28 March 2022.

Background papers: *None*