

Signed off by	Chief Finance Officer Head of Legal & Governance
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To	Executive
Date	22 June 2023
Executive Member	Portfolioholder for Commercial and Community Assets

Key Decision Required	YES
Wards Affected	ALL

Subject	ENERGY SUPPLY CONTRACT 2023/25
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Recommendations
Executive is recommended to endorse the appointment of Shell Energy as the provider of gas and electricity supplies for Council properties from 1 October 2023 to 30 September 2025.
Reasons for Recommendations
<p>The Council's contracts for the provision of gas and electricity energy supplies for its properties were previously with multiple suppliers and had varying end dates during 2022 and 2023.</p> <p>The domestic and global energy supply market since the war in Ukraine has made procurement of energy significantly more challenging and volatile energy prices have resulted in suppliers requiring virtually immediate decisions in order to secure the best prices.</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 Executive.</p> <p>Forecast contract costs also require it to be brought to Executive's attention in compliance with the Contract Procurement Rules in the Constitution.</p> <p>The new contract will result in significant cost savings energy supplies to the Council's operational and other property compared to original forecast when the 2023/24 budget was approved.</p>

Executive Summary
Executive is asked to endorse the appointment of Shell Energy as the supplier of gas and electricity for Council-owned buildings for the period from 1 October 2023 to 30 September 2025 inclusive.
Executive has authority to approve the above recommendation

Statutory Powers
<ol style="list-style-type: none"> 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.
Background
<ol style="list-style-type: none"> 4. Currently, contracts for gas and electricity are with two suppliers. gas and some electricity is supplied by Corona Energy, while the remaining electricity is supplied by EDF Energy. 5. In order to allow the Council to invite bids for a single amalgamated contract for all energy supplies, and therefore secure the best price for both types of supply, it was necessary to seek extensions to some existing contracts in order that all contracts would expire at the same time in August 2023 6. The domestic and global energy supply market since the war commenced in Ukraine has been very volatile, which has made procurement of energy significantly more challenging, and has resulted in suppliers requiring immediate decisions when issuing a quote. 7. 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 Executive. 8. The value of the contract also requires it to be brought to Executive, in compliance with the Contract Procurement Rules in the Constitution.
Options
<ol style="list-style-type: none"> 9. Option 1 – Endorse the recommendations in this report so that the Council has continuity of the electricity energy supply for its buildings. This is the recommended option. 10. Option 2 – To reject the recommendations in this report.

This option is not recommended, as it would result in the Council incurring significantly higher energy costs.

Legal Implications

11. 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.

12. 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.

13. Accordingly, it was decided not to invite, or consider bids from Gazprom as they are solely Russian-owned without UK subsidiaries.

Financial Implications

14. The selected bid from Shell Energy for a period of 24 months from 1 October 2023 to 30 September 2025 results in a saving of £0.342 million per annum, or 40.1%, against the original forecast contract cost.

15. This will reduce the call on Reserves of up to £0.700 million that was anticipated when the 2023/24 budget was set. The reduced costs will also be taken into account when setting the 2023/24 budget.

Equalities Implications

16. There are no equalities implications associated with this report

Communication Implications

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

Environmental Sustainability Implications
18. The new contracts offer 100% renewable energy.
Risk Management Considerations
19. There are no additional risk management implications. Price inflation risks are assessed throughout budget-setting and when updating the Medium Term Financial Plan.
Consultation
20. The Portfolioholders for Finance & Governance and Commercial & Community Assets have been consulted on this report.
Policy Framework
21. The procurement of this contract has been undertaken in accordance with the Council's Contract Procedure Rules, 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