

# CHESHIRE EAST COUNCIL

## Cabinet

---

**Date of Meeting:** 3<sup>rd</sup> March 2015  
**Report of:** Chief Operating Officer  
**Subject/Title:** Energy Procurement  
**Portfolio Holder:** Cllr Peter Raynes, Finance

---

### 1.0 Report Summary

- 1.1 Cheshire East Council's contract with West Mercia Energy has a value of approx £8m per annum on energy (gas and electricity) within its Corporate, Street lighting and Schools portfolio (including Academies). The existing energy supply contract is due for renewal on 31<sup>st</sup> March /2016. However, giving 12 months' prior notice to the preferred supplier will maximise their ability to trade our commodities on the futures market.
- 1.2 The Pan Government Energy Project recommends that it is best practice for public sector organisations to buy energy through Central Purchasing Body (CPB) frameworks that have aggregated volumes, can offer flexible purchasing and enable best practice risk management.

### 2.0 Recommendations

- 2.1 It is important to note that this recommendation complies with the best practice guidance and recommendations from Pan Government Energy Project who advise that improved prices can be achieved through adopting flexible, aggregated, risk managed energy procurement.

West Mercia Energy continue to offer a full holistic service along with a unique commercial business model that has delivered lower than market unit rates, and shared trading gains which give confidence to Cheshire East Council and its stakeholders that it is securing value for money.

The recommended contract period is for 2 years with a one year extension option.

That Cabinet:

- i) Agree to continue to use the Procurement Method recommended i.e. a 'fully flexible' procurement.
- ii) Agree to enter into a contract directly with West Mercia Energy (WME) as the preferred provider for a maximum period of three years (two years with an option to extend for a further one year period).

### **3.0 Reasons for Recommendation**

- 3.1 The existing contract will expire 31<sup>st</sup> March 2016 and 12 months' notice will maximise the ability to trade our commodities on the futures market.
- 3.2 A benchmarking exercise to evaluate the levels of service between two different Central Purchasing Options was undertaken, collectively by The Corporate Energy Manager and Procurement Category Manager, and a commercial operator (See appendix 1) which determined that West Mercia Energy, the Council's existing supplier, offers best value.
- 3.3 Consideration has been given to OVO, the Councils Fairerpower supplier that offers a collaborative alternative to CEC residents but OVO are currently focussing on the domestic sector rather than the commercial "Half Hourly" market. Therefore they regrettably declined to answer the necessary benchmarking questions. Consideration to their capability should be considered at the next opportunity in March 2017 when the council will review its energy purchasing strategy and if required prepare a OJEU compliant tender exercise.
- 3.4 From the review and benchmarking exercise undertaken, it is recommended that WME offer the most appropriate energy solution for Cheshire East Council. (See appendix 1)

### **4.0 Wards Affected**

- 4.1 All

### **5.0 Local Ward Members**

- 5.1 All

### **6.0 Policy Implications**

- 6.1 No significant policy implications

### **7.0 Implications for Rural Communities**

- 7.1 None

### **8.0 Financial Implications**

- 8.1 Annual expenditure on gas and electricity including Corporate Buildings, schools and Street Lighting is currently £8.4 million.
- 8.2 The benefits of utilising this flexible purchasing model have been vindicated since its adoption by the Council in July 2011; a three year performance review has indicated that WME prices have been £568k below the market average for gas and electricity. The council has also received £148k from WME as a result of "trading gains" over the last three years.

## **9.0 Legal Implications**

- 9.1 The existing contract between the Council and WME describes WME as contracting in its capacity as a Central Purchasing Body and a Contracting Authority under the Public Contract Regulations 2006 and as a Local Authority under s1 Local Authorities Goods and Services Act 1970.
- 9.2 The Council may buy works, goods and services from or through a Central Purchasing Body and in doing so will be deemed to have complied with the Public Contracts Regulations 2006 (the Regulations) to the extent that WME has itself complied with Regulations. WME supply gas and electricity via separate framework agreements which have been entered into as a result of a competitive process.
- 9.3 WME also directly provides additional services namely associated billing and management services (which includes flexible purchasing).
- 9.4 WME is offering the additional services directly and so:
  - 8.3.1 the Council would be purchasing the additional service directly and would not be deemed to have complied with the regulations as WME has not itself complied with the Regulations;
  - 8.3.2 purchasing a service from WME (a group of other local authorities) does not override the Council's obligation to comply with procurement rules.
- 9.5 Purchasing gas and electricity from WME complies with EU regulations and the Council's own internal rules.
- 9.6 It is noted that the intention is to award the contract for a maximum of 3 years and that the contract value for the element of additional services is approximately £150,000.00 (the annual fee of £50,000.00 is set out in Appendix 1).
- 9.7 The purchase of additional services from WME is a direct award of contract as there has been no competition to decide to award this element of the services.
- 9.8 Whilst the contract value is below EU threshold in undertaking any procurement where there is deemed to be cross border interest, a contracting authority must comply with the key principles of proportionality, mutual recognition, transparency, non-discrimination and equal treatment (derived from the Treaty of Rome and the fundamental freedoms of the EU). There are no formal rules governing whether a contract will attract cross-border interest. The fact that a contract is beneath the relevant threshold will not be enough of a reason for there to be no cross border interest. If the contract is deemed to be of cross-border interest then the opportunity should be advertised. The Commission states that the subject matter of the procurement, the place of performance or delivery and the size and structure of the relevant service market are significant factors.

9.9 In this case the service has determined that a benchmarking exercise is the appropriate method to determine best value and is acting in accordance with the Pan Government Energy Project's recommendations.

## **10.0 Risk Management Overview of the benefit of flexible purchasing**

10.1 In utilising a Central Purchasing Organisation prices can be controlled and monitored as volumes will be aggregated, purchased flexibly and risk managed to reduce exposure to higher energy prices.

10.2 Energy prices/budgets can be determined as the Council will agree on capped 12 month prices so if costs increase, the Council/users will not automatically receive the increases and will be able to budget sufficiently.

10.3 If energy costs fall, prices will be monitored and WME will be able to unlock/unset (e.g. sell back to the market) tranches of energy in order to sell and buy back the volumes of energy at a lower rate e.g. they will seek to capture trading gains from the weakening of energy prices as they occur.

10.4 Because of the nature of flexible purchasing it is necessary for a Capital At Risk fund has to be established equivalent to 5% of the contract value. This has already been created within the previous contract term. It should be noted that this fund is held in reserve and will be returned at the end of the agreed contract period.

10.5 The flexible purchasing nature of the contract allows for market trading when conditions are favourable that can lead to financial gains throughout the year, 50% of any gains will be shared between WME and Cheshire East council.

10.6 This trading provides added value over and above the ability to secure competitive market prices and the 50% gain share that WME receive forms part of their overall management/fee structure which pays for their energy expertise including bureau services and site works.

## **11.0 Background and Options**

11.1 Cheshire East Council has opted for a flexible purchasing model as recommended by the Pan Government Energy Project since July 2011. This has been proven to be successful as the contract has delivered gas and electricity prices 3.6% lower than the market average during the period of the contract. Flexible purchasing solutions have been sought for the next contract period.

11.2 The current Cheshire East Electricity and Gas supply agreements which have a combined annual value of £8m per annum are due to expire 31st March 2016.

11.3 The Pan Government Energy Project recommend that LAs benchmark and evaluate all Central Purchasing Bodies solutions as they have all been evaluated already and all offer value for money. It is the additional customer

service elements and risk strategies which the Council is directed to should consider in order to best meet with their individual requirements.

- 11.4 Another option would be a formal EU tendering process. Due to the level of spend on Energy a re-tender of the contract will inevitably require a formal EU compliant tendering process to be undertaken. The Council could go out to tender detailing specific requirements for Cheshire East, however, this is not recommended due to the cost of tendering, which would also be time consuming and extremely demanding on resources. It is considered that there would be no benefit in this approach over and above the collaborative options already available – the Council would be dealing with the same supply market and would not be able to leverage demand without the other Local Authorities.
- 11.5 A benchmarking exercise to evaluate the levels of service between two different Central Purchasing Options was undertaken and a commercial operator (See appendix 1) which determined that West Mercia Energy, the Councils existing supplier, compares favourably on service and cost delivery.
- 11.6 The key points for recommending WME as the preferred energy supplier are that they provide continuity of service, the best options for communicating with all Cheshire East end users, the lowest management fees and they offer a unique business model of energy purchasing that allows possible cashable gains at the end of each financial year.
- 11.7 All costs are transparent including energy price, pass through costs and management fee. Trading gains made from capturing falls in the energy market are also transparent. The management fee is a fixed for the duration of the contract and is built into the unit cost of each energy bill.
- 11.8 Other local authorities currently utilising WME services for energy are:
  - Shropshire Council
  - Worcestershire County Council (some districts also)
  - Herefordshire Council
  - Telford & Wrekin Council
  - Gloucestershire County Council
  - Swindon Borough Council
  - South Gloucestershire
  - Gloucester City Council
  - Wiltshire Council
  - Forest of Dean District Council
  - Torbay Council

## 12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Colin Farrelly  
Designation: Energy Manager  
Tel No: (01270) 686161  
Email: [colin.farrelly@cheshireeast.gov.uk](mailto:colin.farrelly@cheshireeast.gov.uk)