

Cheshire East Council

Portfolio Holder Decision

Date of Meeting: 23 January 2017

Report of: Sophie Thorley, Commissioning Manager, the Skills & Growth Company

Subject/Title: Novation of the Fairerpower contract with OVO to the Skills & Growth Company from Cheshire East Council.

Portfolio Holder: Cllr Don Stockton, Regeneration (in consultation with Cllr Peter Groves, Finance and Assets)

1. Report Summary

- 1.1. Cheshire East Council launched the Fairerpower Energy offering in March 2015 to supply energy primarily to the residents of Cheshire East, but also across the North West and Midlands. The scheme has been successful in its original remit of offering a challenge to the big 6 energy suppliers to increase competition and with enabling access to cheaper energy deals.
- 1.2. In April 2016, the Council established the Skills & Growth Company, which is where the Fairerpower contract is managed on the Council's behalf. Given the company's ability to trade (within defined parameters including, Teckal exemptions), and its current management responsibility of the Fairerpower contract with OVO, it is recommended that the contract is novated to the Skills & Growth Company.
- 1.3. A number of meetings have taken place with the legal team, and the Chief Operating Officer to decide the best way forward for Fairerpower to enable the development and expansion of the brand and partnership; and also to continue to progress the initial aims of Fairerpower. Part of the Fairerpower growth and sustainability strategy is to ensure that as many people can benefit from the scheme as possible. The growth of Fairerpower will support its moral and ethical objectives by ensuring that the costs are minimised and any surplus can be used for fuel poverty initiatives.
- 1.4. The Fairerpower Tariff Board (comprising the Deputy Leader, Councillor Menlove, and the Chief Operating Officer) has been a key element of the governance structure for Fairerpower. The Tariff Board is a project management board which recommends decisions to the Chief Operating Officer around the contract. To date, all changes and developments have been discussed and supported by the Board and where required, Officer Decision Notices have been completed.
- 1.5. The tariff board will remain in its current form. The contract amendment will be led by Skills & Growth and reported to the Fairerpower Tariff Board and,

where required, to the appropriate Portfolio Holder/s. The Director of Legal Services and the Chief Operating Officer have delegated authority to authorise changes to the contract and management of the scheme. Skills & Growth will consult through the Fairerpower Tariff Board on contractual matters so that the Council is fully sighted on decisions.

2. Recommendation

It is recommended that the portfolio holder authorises:

- 2.1. The Director of Legal Services, in consultation with the Portfolio Holder for Finance and Assets and the Portfolio Holder for Regeneration to enter in to an appropriate legal agreements to novate the Fairerpower contract to the Skills & Growth Company, including (as a condition precedent) a Parent Company Guarantee whereby the Council will guarantee the performance of Skills & Growth under the Partnership Agreement post-novation.
- 2.2. The Director of Legal Services to make changes to the Skills & Growth Company contract and management of the scheme to reflect the novation of the Fairerpower contract.
- 2.3. Notes that the Skills and Growth Company will brief through the Fairerpower Tariff Board on any future contractual matters so that the Council is fully sighted on them and reviewed periodically.

3. Other Options Considered

- 3.1. In line with its commitment to grow the energy sector, the Council is committed to supporting the development of Fairerpower and has been successful in its delivery of the tariffs.
- 3.2. Options have been considered with the novation of the contract to the Skills & Growth Company being the preferred option.

Option 1 status quo with the council retaining the contract
Option 2 transfer the contract to Cheshire East Energy Limited
Option 3 transfer to another Alternative Service Delivery Vehicle
Option 4 cease the contract in its current form and redraft it.
Option 5 novate the contract to the Skills & Growth Company

- 3.3. Option 1 is not suitable due to trading constraints. Option 2 is not recommended as the Skills & Growth Company has greater expertise in contract management compared with CEEL. Option 3 is not suitable due to lack of knowledge of the project. Option 4 is not suitable due to the length of time which will be required and not acceptable to the contracting partner OVO.

4. Reasons for Recommendation

- 4.1. Following the Cabinet decision in October 2014, the Council made a commitment to provide energy tariffs to residents to help reduce fuel bill costs and also to address fuel poverty. The Skills & Growth Company was established after Fairerpower was established, therefore; transferring its management to the Skills & Growth Company was not an option at that time. Now that the wholly owned company is now established the Fairerpower contract with OVO is better placed within this vehicle for trading and management purposes. Trading via an ASDV is a more appropriate vehicle than a local authority that has limited scope to develop the brand due to restrictions. The Skills & Growth Company will carry on with the initial vision aims and objectives. The contract with OVO will run until December 2019.

5. Wards Affected and Local Ward Members

- 5.1. All wards

6. Implications of Recommendation

6.1. Policy Implications

- 6.1.1. Fairerpower was developed to tackle fuel poverty and provide access to cheaper energy in Cheshire East. This fits with the objectives of the Council relating to putting residents first
- 6.1.2. The wholly owned companies that Cheshire East owns are developed to allow services to be provided to other local authorities, partners and residents.

6.2. Legal Implications

- 6.2.1. The Skills & Growth Company has more freedoms and flexibilities to trade than the local authority and therefore is a better location for the Fairerpower contract. The Skills & Growth Company has the ability to trade within Teckal exemptions, and given its current management responsibility (as the Council's Agent) of the Fairerpower contract with OVO, it is recommended that the contract is novated to the Skills & Growth Company.
- 6.2.2. All contracts impose rights and obligations on the contracting parties. The Contract contains a clause that allows the unrestricted transfer of the Council's rights (under the Contract) to any company wholly owned by the Council. Crucially the Contract does not allow the unrestricted transfer of the Council's obligations (under the Contract). Therefore in order to transfer the Contract in its entirety to Skills & Growth, OVO Energy Limited's consent (to the transfer the contract to Skills & Growth) has been obtained. OVO has requested that a Parent Company Guarantee be signed by CEC and OVO, to have CEC guarantee the performance of Skills & Growth under the Partnership Agreement post-

novation. The signing of this document is a condition precedent to the Novation Agreement - e.g. it has to be done before the Novation Agreement is enacted.

6.2.3. If the Contract is transferred to Skills & Growth the Council will no longer have a direct legal relationship with OVO. Although the Tariff Board will be briefed on any proposed changes to the Contract, it is Skills & Growth who will be the custodians and controllers of the scheme. The Council will only be able to influence the scheme through the governance structure of Skills & Growth.

6.2.4. The proposed modifications to the Contract are substantial. This could lead to the Contract being challenged by a disappointed tenderer which, if successful, could lead to the Contract being set aside, the award of damages or a financial penalty being imposed on the Council. External legal advice has been sought and the risk of challenge has been deemed low. However, as a private limited company, Skills & Growth Company has more freedoms and flexibilities to trade than the Council.

6.3. Financial Implications

6.3.1. Fairerpower will be delivered within the existing budget as per the medium term financial plan.

6.4. Equality Implications

6.4.1. No material change

6.5. Rural Community Implications

6.5.1. Rural fuel poverty is an issue for rural communities. Therefore by providing lower fuel costs this will assist with this agenda.

6.6. Human Resources Implications

6.6.1. None

6.7. Public Health Implications

6.7.1. None

6.8. Implications for Children and Young People

6.8.1. None

6.9. Other Implications (Please Specify)

6.9.1. None

7. Risk Management

- 7.1. The risk of challenge is low as the initial contract is being novated across to the Skills & Growth Company. This is because the other tenderer for the Fairerpower contract is no longer in business
- 7.2. Effective governance arrangements are in place with the Council and the Skills & Growth Company to ensure the Fairerpower is delivered in accordance with the original contract.
- 7.3. Charging and trading risks are reduced by novating to the Skills & Growth Company.

8. Access to Information/Bibliography

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

9. Contact Information

Contact details for this report are as follows:

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