

<b>Subject:</b>	<b>Corporate Energy Procurement – Gas Contract</b>		
<b>Date of Meeting:</b>	<b>10 July 2008</b>		
<b>Report of:</b>	<b>Director Finance and Resources</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Angela Dymott, AD Property &amp; Design</b>	<b>Tel: 29-1450</b>
		<b>Jason Clarke, Energy &amp; Water Manager</b>	<b>Tel: 29-1431</b>
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<b>Key Decision:</b>	<b>Yes</b>	<b>Forward Plan No. CAB 2175</b>	
<b>Wards Affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE****1. SUMMARY AND POLICY CONTEXT:**

- 1.1 To seek approval to delegate approval powers to the Director Finance and Resources following a tender exercise in compliance with the European Union Public Procurement Directive to re-let the Brighton and Hove City Council Gas contract, which expires on 30<sup>th</sup> September 2008. The report will also outline current market volatility, procurement options and the need for the representatives of the Finance & Resources Directorate to act immediately on any suitable quotation. This report is complemented by a separate report in part 2 of the Agenda.

**2. RECOMMENDATIONS:**

That the Cabinet agree and authorise, due to the global volatility of energy markets that

(1) A contract is awarded to the best gas bid via the most beneficial procurement route following appraisal and recommendations from the council's energy adviser.

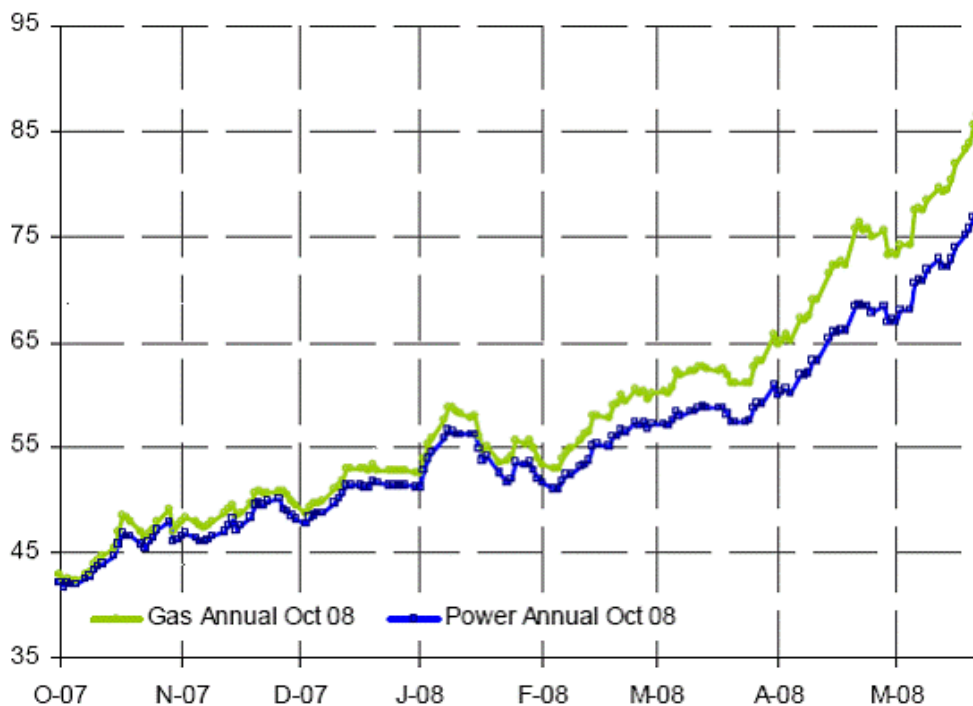
(2) The current OJEU procurement route continues whilst options are retained to place a contract through the most beneficial procurement route

(3) The Director, Finance and Resources be given delegated powers, following consultation with the Cabinet member, Leader, and Opposition Spokesperson to award the contract and take all other steps necessary for the implementation of the proposals.

(4) The Director of Adult Social Care and Housing to increase gas heating service charges for council tenants to reflect the increase in contract prices from 1<sup>st</sup> October 2008

### 3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The energy market has been particularly volatile over the course of the current contract. The market has been prone to regular fluctuations and is characterized by supplier quotations remaining valid for a maximum period of 24hrs. Prices have been seen to rise rapidly in 2006 with a subsequent market fall at the beginning of the 2007, which has now turned once again in an upward direction.
- 3.2 The graph below shows the increase in utility prices since October 2007 (Gas shown in green), the average annual gas price is now at 86.88pence per therm (approximately 3 p/per kilo watt). This dramatic increase is directly proportional to the global oil price, increased trading in this commodity has sustained prices at a record high currently \$130/barrel. Barring a major increase in oil production, prices are expected to continue to rise over the next 2-3 years. This belief is further compounded by recent statements by the head of OPEC in which he states his expectation that the price of oil to reach \$200 per barrel.



- 3.3 The council's energy adviser, Team Q Energy Services, were commissioned to undertake a tender exercise in accordance with the council's Contract Standing Orders, in compliance with the European Union Public Procurement Directive for the supply of Gas to the council's portfolio of 178 sites. The portfolio comprises a wide range of sites that include the Brighton Centre, King Alfred Leisure Centre, all schools, other administration buildings, Housing communal blocks and social care buildings.

- 3.4 The current contract, which was tendered in 2005, terminates on the 30<sup>th</sup> September 2008. The council spend through this contract in 2007/08 was £1.5 million. It includes a clause which will allow the continuation of the current contract for another 12 months, all contract mechanics would remain in place, however, a new price per unit would be agreed. The council's energy advisor has investigated this option, the returned prices being very similar to current market price.
- 3.5 Tender documents have been issued to 11 potential suppliers with the exercise due to close on the 26<sup>th</sup> June 2008. The exercise has been undertaken early in order to pre-empt anticipated winter fuel price rises

<b>Event</b>	<b>Time Scale</b>	<b>Date</b>
Tender Closes.		26 <sup>th</sup> June 2008
Tender Evaluation – review tender returns and present findings to Council Officer with delegated powers.	4 days	2 <sup>nd</sup> July 2008
Seek Tender Revisions – Seek revised prices based on preferred Council terms and conditions.	5 days	9 <sup>th</sup> July 2008
Second Tender Evaluation – review with Council Officers the most appropriate offer to accept	1 day	10 <sup>th</sup> July 2008
ALCATEL stand still period ends	11 days	21 <sup>st</sup> July 2008
Contract Acceptance – Place a letter of intent (Subject to Contract) with preferred bidder.		21 <sup>st</sup> July 2008
Review contract terms and conditions	40 days	30 <sup>th</sup> September 2008
Contract Starts		1 <sup>st</sup> October 2008

- 3.6 As this contract renewal will directly affect council leasehold housing tenants Property & Design have been liaising with Housing who are leading on the full notification that will be required. Initial notification of the expiry of the existing contract and the council's intention to re-tender the contract was submitted on 27<sup>th</sup> June 2008 in line with statutory requirements. However in light of the current market volatility and reluctance of suppliers to hold prices beyond 24hrs it may be necessary to seek Leasehold Valuation Tribunal (LVT) dispensation to forgo the 30 day notification period required on receipt of the supplier's offer to enable value for money and the best price to be secured. Legal advice is currently being sought on this issue and the decision on which course to pursue would be taken within the delegated powers.

- 3.7 Whilst a direct replacement of the existing contract is being considered a variety of procurement alternatives have also been explored. These include alignment and aggregation of purchasing with other authorities, flexible purchasing over various days throughout the year and Framework procurement through OGC.

#### **4. CONSULTATION**

- 4.1 Market evaluation has been carried out by both the council Energy and Water Manger and the Council Energy services consultant.
- 4.2 Further benchmarking has been carried out in association with East Sussex County Council Energy Management team.
- 4.3 Further advice on procurement routes was obtained from the procurement team.
- 4.4 Advice has been sought of the Housing Leasehold Management Team and Legal Services as to the council's position with regard to Leaseholder notification.

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

- 5.1 Early analysis of the prices within the Gas Market in March 2008 by our expert advisor had suggested a rise in Gas unit price of around 34% on long term contracts. However as the graph at 3.2 suggests and as evidenced by the recent experience of utilities tender exercises, such as sub 100kW electricity price, increases on long term fixed contracts of between 60-80% are conceivable.
- 5.2 The increased costs will affect schools, the Housing Revenue Account (HRA) properties as well as the General Fund services. Schools will be expected to fund these additional costs within their budget formula allocations. The majority of the additional costs for the HRA will be passed onto tenants and leaseholders.
- 5.3 For all other services the additional costs will need to be reflected in their Targeted Budget Management estimates for 2008/09, and identified as a pressure and managed within their cash limited budgets for 2009/10.

Finance officer consulted: James Hengeveld. 6<sup>th</sup> June 2008

##### Legal Implications:

- 5.6 The nature and value of the contract means that it falls within the EU Procurement Regulations. The various alternative scenarios for procurement of the supply described in section 6 of this report comply with EU Procurement Regulations and Contract Standing Orders. Any decision to dispense with the LVT notification period is to be undertaken in compliance with legal requirements.
- 5.7 The Council must take the Human Rights Act into account in respect of it's actions but it is not considered that any individual's Human Rights Act rights would be adversely affected by the recommendations in this report.'

Legal officer consulted: Sonia Likhari 4<sup>th</sup> June 2008

#### Equalities Implications:

5.8 An Equalities impact assessment has not been carried out as it is unlikely that the renewal of the contract will have any equalities implications

#### Sustainability Implications:

5.9

- *Sustainable Consumption and Production* - The renewal of the contract will not directly impact the consumption or production however we will aim to minimise consumption
- *Climate Change and Energy* – As a fossil fuel, emissions associated with gas consumption will impact on climate change. Increased unit cost should incentivise B&HCC to minimise use in all operations through more effective monitoring and control
- *Natural Resource Protection and Environmental Enhancement* – This indicator will not be affected by the proposed procurement.
- *Sustainable Communities* – Full consultation is required for the renewal of the gas contract. Reduction and minimisation advice will be available for leasehold tenants

#### Crime & Disorder Implications:

5.10 There are no crime and disorder implications

#### Risk and Opportunity Management Implications:

5.11 There are no additional risk or opportunity management implications

#### Corporate / Citywide Implications:

5.12 Key corporate implications are the increase in unit price. Budget holders should be made aware as soon as possible of potential rises in utility costs

### **6. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

As it is essential that the Gas contract is renewed, by the 30<sup>th</sup> September 2008 and market volatility has been established alternatives to delegation of powers are limited. Therefore all alternative options relate to the procurement route once powers have been delegated and these are listed below.

6.1 Continuation of solo OJEU route to meet timetable. A number of options are being pursued to ensure that best value can be achieved.

- Dual fuel – This option would allow the council to tie up of both fuel supplies Electricity/ Gas with the same supplier (E-On) who will then provide a discount below market rate.
- Trigger product - Index linked option this option can be very flexible by enabling the council to buy gas at a set trigger price points each month/quarter as with all flexible options there can be great advantages in a market that is going down as

well as up, however it is more difficult to achieve any great benefit when the market trend is up month on month.

- Winter tracker – This is an option where a daily allocation is applied during the winter months to each site – initially 80% of volume is purchased up front and the rest is purchased as required if the site exceeds allocation. At the end of the year this is tabulated and a refund or an invoice is sent depending on the usage during that year.

#### 6.2 Aggregated procurement with other local authorities.

- East Sussex County Council had intimated that there were possibilities to aggregate our portfolios and purchase as a consortium, however following East Sussex County Council report they intend to postpone this for at least a year. B&HCC could place a one year contract with a supplier and align in 2009 however, it is likely that the unit price would be higher over this year. Alternatively B&HCC could utilise the 12 month extension clause within the current contract.

#### 6.3 Procurement via OGC route

- The key benefit of procurement via the OGC framework route is speed and an implied saving through bulk purchasing. However the current OGC gas supply framework list consists of one supplier. This lack of competition is likely to have a negative effect on price especially as supplier fees will be loaded into the unit price. This route also attracts an extra administration fee. However it is worth retaining this option should the tenders returned prove unfavourable.

### 7. REASONS FOR REPORT RECOMMENDATIONS

7.1 The main grounds for the recommendations that are sought are to allow the council to benefit from the best price available within a volatile market where prices are held for a maximum of 24hrs.

7.2 To enable the council to procure flexibly and take advantage of potential to aggregate it's portfolio to achieve favourable unit costs.

### **SUPPORTING DOCUMENTATION**

#### **Appendices:**

None

#### **Documents In Members' Rooms**

None

#### **Background Documents**

1. None