

PROCUREMENT OPTIONS FOR ENERGY PROJECT DELIVERY CONTRACTOR

To: **Commercial and Investment Committee**

Meeting Date: **13 September 2019**

From: **Executive Director, Place and Economy**

Electoral division(s): **All**

Forward Plan ref: **2019/031** *Key decision:* **Yes**

Purpose: **To consider options for the procurement of a new Energy Project Delivery Contract to commence after the current contract for services under the Refit 3 Framework expires in April 2020.**

Recommendation: **The Committee is being asked to:**

- a) approve the recommended procurement route set out in paragraph 2.5;**
- b) approve the development of an Invitation to Tender, which will be shared with the Member Working Group for comment ahead of issuing to the market; and**
- c) delegate authority to the Chief Finance Officer, in consultation with the Chairman of Commercial and Investment Committee, to award the contract.**

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1. BACKGROUND

- 1.1 In 2014 and again in 2016¹, the Economy & Environment Committee approved using the Greater London Authority's (GLA's) Refit Framework to run a mini-competition and procure an Energy Performance Contractor for the Council and its Local Authority Partners. The GLA's Framework is an Official Journal of the European Union (OJEU) compliant procurement, which made available a number of service providers from which Local Authorities could appoint a contractor via a mini-competition. To use the Framework, the Council signed an access agreement with the GLA and pays a framework levy to Crown Commercial Services for its use for each project (excluding schools). In addition a support agreement is required with Local Partnerships for the quality assurance review of projects at pre-agreed fees. The Council originally accessed the Refit 2 iteration of the Framework and subsequently accessed Refit 3. Both times, Bouygues Energies and Services Ltd were appointed as the Council's provider.
- 1.2 All of the Council's energy projects e.g. the schools retrofit programme, solar farm projects, battery energy storage projects, smart grid projects and heat network projects are being scoped and delivered under these procurements. The Refit 3 Framework will expire in April 2020, after which new projects will need to be commissioned through a new procurement arrangement.
- 1.3 In anticipation of the expiry of the Refit 3 Framework, the Energy Investment Unit (EIU) has formed a working group of Local Authorities potentially interested in working as partners in a joint procurement of a replacement contract. The working group is formed of representatives from Cambridge City Council, South Cambridgeshire District Council, Huntingdonshire District Council, Fenland District Council, Peterborough City Council and Suffolk County Council.

2. MAIN ISSUES

Experience with Refit 3

- 2.1. The Energy Performance Contract procured under Refit 3 has successfully enabled the Council to progress our programme of energy projects. However, the Council and District Councils have experienced the following issues with Refit 3:
 - i) Non-school projects are liable to pay a Crown Commercial Services fees (0.25% of contract value with no cap) which is substantial on large projects;
 - ii) As the knowledge and capacity in the Energy Investment Unit and the Local Authorities has grown, the value for money of the Local Partnerships' fees to review project business cases etc. has declined. Our review requirements are now increasingly focused on energy market expertise and potential emerging revenues.

¹ Economy & Environment Committee minutes 14th July 2016

- iii) A more flexible approach is needed within the procurement to allow for projects where an energy performance contract, i.e. with a guarantee on energy savings/generation, is not the best value approach. Examples include smaller schools projects, and projects focussed on measures such as LED lighting, where risk of underperformance arising in service is minimal.

Procurement Route Options

2.2. The working group has considered three potential procurement routes:

- the Greater London Authority's Refit 4 Framework;
- conducting our own Official Journal of the European Union (OJEU) compliant procurement; and
- making use of other, existing, public sector frameworks e.g. frameworks owned by Leicestershire County Council, Stoke City Council, Swindon Borough Council or Crown Commercial Services' HELGA Framework (see Appendix 1 for details).

2.3. The 3 options are described in further detail below:

Option	Description
Refit 4	Co-owned by Local Partnerships (LP) and the Greater London Authority (GLA), the Refit 4 Framework is a planned Energy Performance Contracting Framework to replace Refit 3. The basic premise of providing Local Authorities with the confidence of guaranteed savings or generation remains. LP and the GLA plan to have a contract in place in time for local authorities to access and run mini-competitions from January 2020.
Own OJEU procurement	The project Partners conduct our own, OJEU-compliant procurement against our own agreed Specification, Terms and Conditions and Evaluation Criteria.
Other existing Framework	The project partners access one or more existing public sector Frameworks other than Refit.

2.4. A qualitative Strengths, Weakness, Opportunities & Threats (SWOT) analysis has been conducted on these options (Appendix 1). In addition lifetime contract costs, for an indicative £93million programme of energy projects, have been estimated and compared under Refit 4 and own OJEU procurement options (Appendix 2).

2.5. On the basis of this analysis the working group recommends that a new Energy Project Delivery Contract is procured by conducting our own OJEU procurement. The key reasons are as follows:

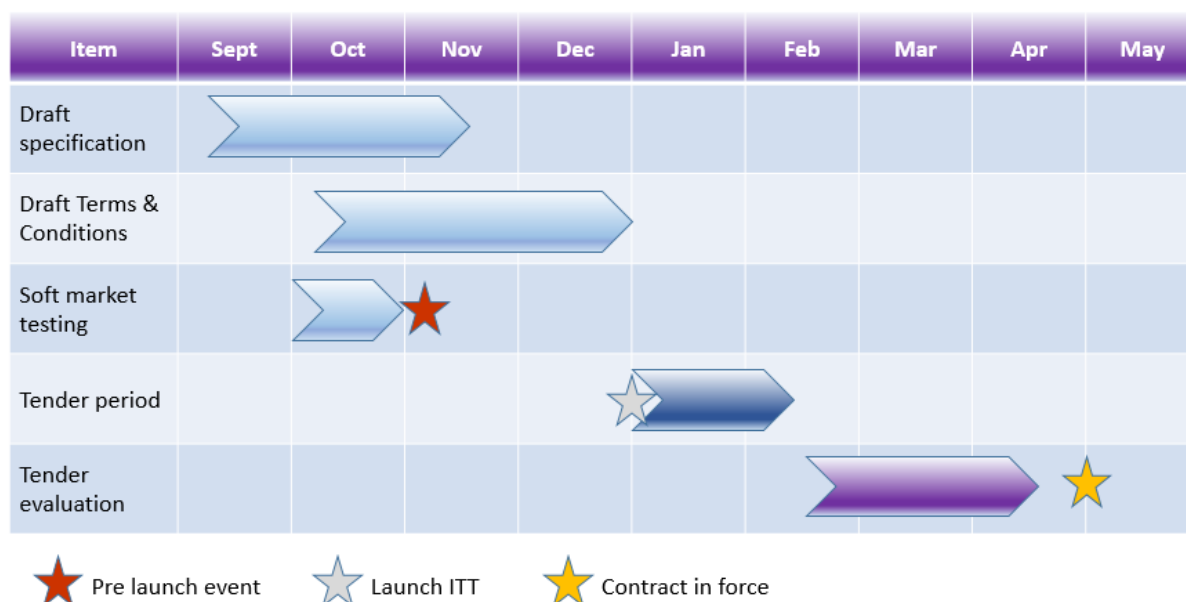
- i) **Cost:** over a 4 year contract duration we estimate our own procurement would save the Council in the order of £130k-160k. These savings are largely due to reduced costs of project review. Under Refit 4 we would be tied to Local Partnerships reviews at a cost of x% of project capex (capped at £x per project). We believe that if we

conducted our own OJEU procurement these reviews could be procured at lower cost by separate competitive tender.

- ii) **Review Quality:** Project reviews will be procured separately. Although this will involve increased staff and Legal time, we estimate these costs to be outweighed by the potential savings in review cost. The opportunity to specify how reviews are conducted and which expertise is needed will also lead to better and earlier understanding of revenue risks and opportunities.
- iii) **Completeness:** no single existing framework covers the full scope of services we require. Our own OJEU procurement would be comprehensive and tailored to our precise needs. Refit 4 would also be a good fit for our requirements based on discussions with Local Partnerships, although we would not have quite the same opportunity to tailor the specification to our precise needs.

Timescales

2.6. Projected procurement timescales are as follows:



- 2.7. These timescales are ambitious, but achievable. If we achieve these timescales there would be no significant gap between the end of Refit 3 and the start of a new contract. However, if the process were to take up to a full 12 months, this would not create a major problem. This is because we are able to continue to progress any projects initiated under Refit 3 prior to April 2020, up to their completion. Any gap between the end of Refit 3 and a new contract therefore only presents a hiatus to the initiation of new projects, rather than to the programme as a whole.

Developing an Invitation to Tender

- 2.8. The Local Authority officer working group will develop a specification for the procurement drawing on the Partners' experience under Refit 2 and 3. The specification may include pilot projects that tenderers are asked to produce a

High Level Assessment for, as part of their tender and/or an indicative list of potential projects that may be commissioned from the successful tenderer. The Invitation to Tender (ITT) will, however, be for a call-off contract and will not commit the Council or our Partners to procure any minimum value of project work under the contract.

- 2.9. Drafting of Terms and Conditions will be commissioned from LGSS Law with the Partners providing input and review of drafts. The costs of this legal work will be shared with the Partners, accounting for the differing sizes of their likely programmes of energy projects. At present we anticipate the County Council covering 30% of these costs and the other Partners the remaining 70%. We would make the Framework procured available, after its award, to further public sector bodies for an access fee. Revenue from access fees would be shared amongst the Partners in proportion to their contribution to the legal costs.
- 2.10. We plan to hold a pre-launch event with potential suppliers, prior to publication of the ITT for soft market testing purposes. The draft ITT documents will be shared with the Energy Investment Programme Member Working Group² for comment prior to publication of the ITT.

Delegated Authority

- 2.11. In order to be able to progress the tender process and move it to a conclusion as swiftly as possible, delegated authority is sought to allow the Chief Finance Officer, in consultation with the Chairman of Commercial and Investment Committee, to award the final 'call off' contract outlined in paragraph 2.8. In progressing such a contract, the County Council would not be precluded from entering into discussions about Refit 4 e.g. if the savings estimated in Appendix 2 are not realised as individual projects come forward.
- 2.12. In light of the above, the request for delegated authority is necessary to ensure that the contract can be awarded within the timescales set out in paragraph 2.6 above, and ensure the Council meets the necessary procurement regulation requirements.

3. ALIGNMENT WITH CORPORATE PRIORITIES

3.1 A good quality of life for everyone

There are no significant implications for this priority. This procurement will allow the development of clean energy projects, reduce energy consumption, reduce carbon emissions and help tackle climate change.

3.2 Thriving places for people to live

The continued ability to deliver energy projects under a new contract has the potential to support economic growth by making local energy infrastructure

² As established by C&I Committee on 21st June 2019

more resilient, less susceptible to grid capacity constraints and by enabling reduced cost energy supply to local businesses.

3.3 The best start for Cambridgeshire's children

The continued ability to deliver energy projects under a new contract has the potential to support Cambridgeshire's children by enabling continued delivery of schools energy projects that help schools manage their energy costs, reducing pressure on their budgets.

4. SIGNIFICANT IMPLICATIONS

4.1 Resource Implications

The contract would be procured on a call off basis, with no guaranteed minimum value of work to be let under it. Resource implications of larger projects let under the contract will be set out in Committee papers seeking approval for those projects. The only immediate resource implications are therefore the costs of running the procurement itself.

The Local Authority Partners have provisionally agreed cost sharing of Legal costs enabling the Council to recover 70% of these costs. The balance of costs were approved as part of the EIU transformation Fund bid approved by Committee on 26th April 2019³.

The following bullet points set out details of significant implications identified by officers (assumptions are set out in Appendix 2). Staff time requirements can be met from within existing headcount:

- £38k estimated revenue cost for EIU staff time to conduct the procurement.
- £18k estimated revenue cost for Procurement staff time to conduct the procurement.
- £42k estimated revenue cost for LGSS Law activity on drafting Terms & Conditions etc.

We will explore whether Local Authority Partners are willing to contribute towards EIU and Procurement staff costs. As they will be contributing their own staff time to the Local Authority officer working group and for their own internal approval processes, they may be resistant to this.

4.2 Procurement/Contractual/Council Contract Procedure Rules Implications

The OJEU procurement will be delivered in compliance with the Council's contract procedure rules. The contract would provide an Energy Project Delivery Contractor until April 2024. This 4 year contract duration is in line with Crown Commercial Services guidance⁴ on the maximum permissible duration of framework agreements.

³ Commercial & Investment Committee minutes 26th April 2019

⁴ Crown Commercial Services – Guidance on Framework Agreements

4.3 Statutory, Legal and Risk Implications

Legal support will be needed to draft Terms & Conditions to ensure that the new contract provides at least as much protection for the Council and its procurement Partners as provided by Refit 3 Terms & Conditions.

Commissioning of independent reviews of project documents from third parties may create tensions in terms of commercial confidentiality and/or ability of reviewers to participate in supply chains for subsequent projects. This will be explored with Legal and Procurement colleagues to ensure that the Invitation to Tender and Terms & Conditions explicitly set out how this will be handled.

4.4 Equality and Diversity Implications

There are no significant implications within this category.

4.5 Engagement and Communications Implications

To raise awareness amongst potential contractors a pre-launch event is planned for November to present and discuss our requirements. This will include providing potential suppliers with a soft market testing questionnaire. Results from this questionnaire, and from discussions at the event, will inform the finalisation of the specification for the Invitation to Tender and the Terms & Conditions.

4.6 Localism and Local Member Involvement

There are no significant implications within this category.

4.7 Public Health Implications

There are no significant implications within this category.

Implications	Officer Clearance
Have the resource implications been cleared by Finance?	Yes Name of Financial Officer: Sarah Heywood
Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by the LGSS Head of Procurement?	Yes Name of Officer: Gus DeSilva
Has the impact on statutory, legal and risk implications been cleared by LGSS Law?	Yes Name of Legal Officer: Debbie Carter-Hughes
Have the equality and diversity implications been cleared by your Service Contact?	Yes Name of Officer: Elsa Evans

Have any engagement and communication implications been cleared by Communications?	Yes Name of Officer: Joanna Shilton
Have any localism and Local Member involvement issues been cleared by your Service Contact?	Yes Name of Officer: Emma Fitch
Have any Public Health implications been cleared by Public Health	Yes Name of Officer: Stuart Keeble

Source Documents	Location
1. Economy & Environment Committee minutes 14 th July 2016	1. https://tinyurl.com/yxuao4xl
2. Commercial & Investment Committee minutes 21 st June 2019	2. https://tinyurl.com/y26a5st9
3. Commercial & Investment Committee minutes 26 th April 2019	3. https://tinyurl.com/y3pxs7su
4. Crown Commercial Services – The Public Contracts Regulations 2015 & The Utilities Contracts Regulations 2016 – Guidance on Framework Agreements	4. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/560268/Guidance_on_Frameworks_-_Oct_16.pdf

APPENDIX 1: SWOT Analysis

Post April 2020 EPDC Procurement Contracting Options SWOT Analysis

Context

1. Contract scope will be discussed and agreed elsewhere, but, for context, it is expected that the contract will cover the following services:
 - a. Energy Performance Contracts (EPCs) for schools and council buildings, including operation & maintenance of equipment as an option;
 - b. EPCs for larger “income generating” projects e.g. solar farm, battery energy storage, smart energy grids etc, including operation and maintenance of equipment;
 - c. Design & installation of energy conservation and generation measures, rather than a full EPC e.g. as a more cost effective route for projects such as LED lighting for small schools etc.
2. It is expected that the contract duration will be 4 years (the maximum duration for a Framework Agreement, other than in exceptional cases). The intention is that the contract will be accessible to partner authorities either from its commencement or from a later date when they join.

Options

3. **ReFit4:** Local Partnerships’ and GLA’s planned Energy Performance Contracting Framework to replace ReFit3. LP and GLA plan to have a contract in place in time for local authorities to access and run mini-competitions from January 2020.
4. **Own OJEU Procurement:** The project Partners conduct our own, OJEU-compliant procurement against our own Specification, Terms & Conditions and Evaluation Criteria.
5. **Other Existing Frameworks:** The project Partners access an existing Framework other than ReFit4 (see Annex for notes on a range of potential Framework Agreements).

SWOT Analysis

Option	Strengths	Weaknesses	Opportunities	Threats
ReFiT4	<ul style="list-style-type: none"> • Specification, Terms & Conditions and mini-competition template drafted by LP/GLA reducing cost and staff resource to Partners • Scope expected to be comprehensive • Access fees relatively competitive for larger programmes • Energy saving guarantees a core feature • Minimal gap between ReFiT3 and 4 contract targeted 	<ul style="list-style-type: none"> • Unknown contractors at this stage • Framework access fee significant for Partners with small programmes • Scope of project reviews e.g. no site visits or key market revenue indications • Cost of LP reviews of Investment Grade Proposals (IGPs) etc. 	<ul style="list-style-type: none"> • Partners can influence drafting of Specification etc. • In-built reviews of mini-competition, High Level Assessment (HLA) and IGP documents 	<ul style="list-style-type: none"> • Detailed terms, scope etc. not yet defined • Risk that a comprehensive specification adds supply chain layers and cost • Risk of no or few tenders from mini-competition • Risk of procurement delays • Risk that all Partners may not be able to be covered under a single Framework access agreement, increasing cost • Risk of overlooking key requirements in mini-competition Specification drafting
Own OJEU procurement	<ul style="list-style-type: none"> • Specification and Terms tailored to Partners' needs • Longest contract duration • Set-up and review costs likely to be 	<ul style="list-style-type: none"> • Cost and staff resource required to develop Specification, Terms & Conditions • Unknown contractor 	<ul style="list-style-type: none"> • Potential for Partners to recover costs or generate revenue by third parties paying to access Framework • Flexibility to 	<ul style="list-style-type: none"> • Risk of overlooking key requirements in Specification drafting • Risk that an "all-singing, all-dancing" Specification adds supply chain layers and cost

	<p>cheaper than ReFiT4 fees</p> <ul style="list-style-type: none"> • Not tied to ReFiT4, or other framework, start and end dates • Energy saving guarantees a core feature • Minimal gap between ReFiT3 and new contract targeted 	<ul style="list-style-type: none"> • Partners (rather than LP / GLA) will have to perform the due diligence on tenderers 	<p>procure expert third parties to review HLAs and IGPs</p>	<ul style="list-style-type: none"> • Risk of few or no tenders • Risk of procurement delays
Other public sector Frameworks	<ul style="list-style-type: none"> • Specification, Terms & Conditions already exist reducing cost and staff resource impact to Partners • Some frameworks are more focussed, stripping out the top layer in the supply chain. • Known contractors 	<ul style="list-style-type: none"> • No single framework covers the full scope we require • Shorter remaining contract duration • Less visibility of contractor pricing / value for money 	<ul style="list-style-type: none"> • Potential to learn from Framework providers • Mix and match use of multiple Frameworks may offer better value for money by stripping out layers in supply chain 	<ul style="list-style-type: none"> • May need to access multiple Frameworks requiring significant staff resource

NB key criteria are emboldened

Annex – Notes on ReFiT & Other Framework Agreements

ReFiT4

- Local Partnerships & GLA Energy Performance Contract Framework
- Planned to be in place by January 2020
- £x Framework Access fee including review of mini-competition ITT
- x% per project fee (including cost of reviewing HLAs and IGPs), capped at £x
- Key changes relative to the ReFiT3 Framework include:
 - No BEIS grant funding so fees will be set on a full cost recovery basis
 - CCS not involved therefore their fee is removed
 - New fee structure including: increased Access fee; reduced per project fees with a maximum cap on fee/project
 - Will aim to better reflect a multi-stage Investment Grade Proposal development process (as used by CCC for large generation, storage and smart grid projects)
 - Will consider how performance guarantees can be tailored to large scale generation projects
 - Will include lighter touch Measurement & Verification options e.g. first 3 years only M&V period
 - Increasing LP & GLA's powers to take action, at the framework level, against under-performing suppliers
 - Inclusion of Schedules with standard Power Purchase Agreement and Heat Purchase Agreement terms

Leicestershire County Council – Energy Performance Contract

- Energy Performance Contract
- Covering Leicestershire County Council and public bodies within approx. 50 miles of Leicester
- Scope covers energy efficiency and renewable energy including:
 - Solar PV
 - Lighting
 - Metering
 - Heating
- 2 year contract with option to extend by a further 2 years (2018-2022)

Swindon Borough Council – Public Power Solutions

- An OJEU compliant “dynamic purchasing system”
 - a framework of agreed suppliers to which others can be added prior to an ITT for a specific project.
 - set up with energy from waste and solar farm development in mind (covering ground mount, rooftop, and carport systems), but includes battery energy storage
 - not really designed for building energy conservation measures like LED lighting, boilers etc or for street lighting or for energy performance contracts
- 4 years duration

Stoke City Council – Decentralised Energy Networks Framework

- Suitable for a wide range of public sector-commissioned energy projects including: energy performance contracts, larger generation projects and district heating. Focus is on feasibility studies and heat network development work.
- Contract duration is until the end of January 2023
- The cost of accessing the framework is 2% of invoice value levied on the supplier
- Flexible over works contracting terms i.e. JCT, NEC or other form of contract can be used as appropriate.

Crown Commercial Services – Heat Networks & Electricity Generation Assets (HELGA) Dynamic Purchasing System

- Scope covers advice, design, installation and management of demand management and generation technologies including:
 - Solar
 - Battery energy storage
 - Wind turbines
 - Heat pumps
 - Biomass & Biogas
 - Heat networks
 - Anaerobic digestion
 - CHP and trigeneration
 - Building energy efficiency
 - Provision of PPAs and HPAs
- HELGA is a dynamic procurement system, with electronic sourcing and the ability for new suppliers to join the framework
- Lots expire in November 2022

APPENDIX 2: Refit 4 v OJEU Procurement Estimate Cost Comparison Over Contract Life

	Refit 4 Cost Estimate No Access Fee Sharing	Refit 4 Cost Estimate With Access Fee Sharing	OJEU Procurement Cost Estimate
Access fee	£x	£x	NA
LP Review Fees	£x	£x	NA
Staff costs initial procurement	£24,800	£24,800	£55,200
Staff costs procuring reviews	NA	NA	£7,728
Legal costs	£1,346	£1,346	£12,600
Alternative 3rd party review	NA	NA	£509,889
TOTAL	£745,998	£717,998	£585,417

Key Assumptions

- Costs are those borne by County Council only, does not include the Partners' costs.
- 4 year contract duration under both Refit 4 and OJEU Procurement.
- Refit 4 fees are:
 - £x access fee inclusive of mini-competition documentation review. NB LP have indicated that the full fee would not be charged to each partners under a joint procurement, but fees under such an arrangement are still TBD. To cover the potential range of costs, the table presents costs without sharing of the £x fee (worst case) and with the £x split across project Partners (best case);
 - Project review fees are x% of project capital value, capped at £x;
 - Reviews of school projects are assumed to be on a 1 in 5 sample rate as per Refit 3.
- Under a joint procurement CCC will pay 30% of total Legal costs and (in the best case) 30% of the Refit 4 access fee.
- Under an OJEU procurement independent reviews of project documentation would still be required, but would be competitively procured separately. Estimated costs and savings of this are:
 - 25% saving in review fees compared to Refit 4 fees;
 - 10 hours staff time at £46/hr to procure each review (assuming that standard specification and tendering templates will be used).
- CCC indicative programme of projects:
 - 6 school projects per annum, average capital value £135k (as per our average under Refit 3);
 - 3 large Energy Investment Programme projects per annum, average capital value £7.5m.
- Staff costs for initial procurement via Refit 4 are based on actual costs from Refit 3 mini-competition less 20% for learning.
- Staff costs for OJEU procurement are assumed to be around 50% higher than via the Refit 4 route.

- Legal costs for procurement under Refit 4 are based on actual costs from Refit 3, with CCC paying 30% of costs and partners the balance.
- Legal costs for OJEU procurement are estimated to be £42k, with CCC paying 30% of costs and partners the balance.