Energy purchasing

Forward Plan reference number: FP/751/07/20

Report title: Energy Purchasing – Contract extension from 1 October 2021	
Report to: Councillor David Finch, Leader of the Council with Additional Responsibilities for Property and Housing	
Report author: Mark Carroll, Executive Director for Place and Public Health	
Date: 8 October 2020	**For:** Decision
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County Divisions affected: All Essex	

1. Purpose of Report

1.1 To seek agreement to extend the existing contracts for energy (gas and electricity) for a period of 12 months from 1 October 2021.

2. Recommendations

2.1 Agree to extend existing supply contracts with

(i) Npower for the supply of electricity; and
(ii) Scottish and Southern Energy (SSE) for the supply of gas

for a period of 12 months commencing on 1 October 2021.

3. Summary of issue

3.1 Essex County Council (ECC) is responsible for procuring energy for its portfolio of buildings. This currently comprises some 275 operational buildings (core estate) and 250 schools (these numbers are expected to reduce as the estate commercialisation programme for core properties progresses). ECC is also responsible for procuring energy for highways, including lighting of street furniture.

3.2 On 20 February 2018 permission was granted by the Cabinet (Forward Plan reference FP/975/10/17) to procure a new flexible purchasing energy contract for a period of three years commencing on 1 October 2018 with an option to extend for a further 12 month period subject to performance. Prior to this ECC purchased energy under a fixed price contract.

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3.3 Following the procurement exercise, the Cabinet Member for Environment and Climate Action, by way of authority delegated from the Cabinet, awarded the contracts for the supply of electricity and gas to Npower and SSE respectively.

3.4 The current budgeted spend for 2020/21 is £12.7 million divided as follows

- Electricity £10.7million
- Gas £2.0 million; and

- Core ECC Estate £3.2 million
- Schools - £4.2 million
- Highways including Street Lighting £5.3 million

This spend includes all government charges such as Renewables Obligation and Climate Change Levy and other standard charges/distribution costs made by suppliers.

3.5 ECC purchases electricity and gas from Npower and SSE at rates procured by MITIE on its behalf. Mitie advises ECC when to make purchases of either electricity or gas in line with an agreed Risk Management and Policy and Procedures (RMPP) detailed within ECC's wider facilities management contract with MITIE; and so separate to the agreements with Npower and SSE.

3.6 In consideration of Mitie's recommendations, and subject to internal financial governance, ECC pays the market rate for the commodity on the day of the recommendation. This ensures that ECC benefits from the movement in prices as well as having the option to lock in prices should they appear to be increasing.

4. Options

4.1 **Option 1**: Do not award the extension. This option is not recommended. Whilst it is possible to complete a procurement process before the expiry of the existing contracts, ECC would not be in a position to purchase utilities beyond October 2021 and benefit from the historic low prices currently available. Additionally, officers wish to take time to consider the opportunities available from emerging technologies for energy generation and purchase. The additional time would enable ECC to evaluate these in greater detail prior to going to market in 2021.

4.2 **Option 2 (Recommended):** Extend the current contracts with Npower (electricity) and SSE (gas) for 12 months.

4.3 This option is recommended because it will enable ECC to forward purchase energy for Winter 2021 and Summer 2022 which covers the extension period of 1 October 2021 to 30 September 2022 and put ECC in a position to take advantage of low prices currently being seen in the market as soon as possible.

4.5 It would also provide sufficient time to undertake a full review of options for purchasing energy in the future, including buying energy from renewable assets such as solar and onshore wind, ahead of procurement of a new energy supply to commence from 1 October 2022.

4.6 The volume tolerance was 20% when the contract with SSE was first awarded on 1 October 2018. This was renegotiated to 30% during 2019. SSE propose a change in the volume tolerance from 30% to 15% for the 12 month extension period from 1 October 2021. Volume tolerance relates to the difference between gas consumption forecast and actual gas consumption – whether a surplus or a shortfall – for the whole year. In the event the volume tolerance is greater than 15%, SSE will seek to recover the cost of buying / selling the excess / surplus at the time of going to market. There will be no additional charges or penalties applied; SSE will only recover their costs. SSE have undertaken an analysis of ECC's actual gas consumption compared to the forecast over the 12 months to 30th September 2020 and the volume tolerance variance was 16%.

4.7 Historically, SSE have neither sought to recover these costs nor closely monitored volume tolerances. Recent events with Covid and a marked downturn in demand for utilities from corporate customers has brought the issue of volume tolerance in to focus for SSE.

4.8 The power contract with nPower does not specify a volume tolerance. Variations in actual consumption against forecast are managed by a reforecasting process that ECC, Mitie and nPower follow each month.

4.9 To mitigate the volume tolerance on the gas contract ECC, Mitie and SSE have agreed a reforecasting process that all partners will follow on a monthly basis. SSE will provide Mitie with a reforecast based on actual consumption to date and revised forecast consumption. Mitie will review this position and advise ECC. Subject to ECC's approval, this reforecast position will then be executed in subsequent gas purchases. This effectively allows the forecast to be adjusted in the light of ongoing actual consumption, so that by the end of the contract year the volume tolerance variance is within 15%

4.10 SSE have made it clear that they will only sign the contract extension if the volume tolerance is amended to 15%. This would only impact on the 12-month extension period i.e. 1 October 2021 – 30 September 2022. The volume tolerance will continue at its current rate of 30% until the end of the initial contract period, i.e. 30 September 2021. If ECC do not accept this position, the alternative option would be to procure a new supplier. For reasons set out in Option 1 above and taking account of the risk mitigation of the re-forecasting process being put in place, the preferred option is to award the extension.

6. Issues for consideration

6.1 Financial Implications

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6.1.1 There is no additional financial impact arising for ECC as a result of extending this contract by one year. The proposed approach is the most effective route to market by continuing with the flexible purchasing contract. This enables ECC to take advantage of the best market pricing at a given point in time acting on the advice of Mitie's market experts to make cost effective purchases that match our needs as and when appropriate.

6.1.2 When the contract was awarded in 2018 ECC followed Mitie's recommendation to purchase power and gas flexibly in the wholesale markets, instead of entering into a long term Fix Price Fixed Term (FPFT) contract. As of May 2020, ECC's flexible policy has helped to deliver savings on the wider account of £755,000 for the period October 2018 to March 2020 on power purchases and £418,269 on gas purchases when compared to the price it would have paid if it had entered into a new fixed price contract on 1 October 2018. (Note that this is the estimate applicable across the whole account including schools and other 3rd party arrangements and so the 'cashable' saving against the ECC budget is less than this – for Power the ECC attributable component is some £550,000 and for Gas it is some £155,000).

6.1.3 This approach is also consistent with the policies and procedures that ECC applies in order to manage risks associated with energy prices as set out in the RMPP dated 15 August 2018.

6.1.4 To mitigate some of the risks of a variably priced contract, at any point within the contract ECC remain able to fix the purchasing basket for a predetermined length should circumstances require this.

6.1.5 The total gross cost estimated annually to go through the contracts is some £12.7m, noting that

a) This £12.7m contains sites that are budgeted outside of ECC's core cost, such as schools
b) Updated projections for energy costs are generated every 6 months and the ECC budget allows for ECC's share of costs. This contract extension period of October 2021 to September 2022 covers both 2021/22 and 2022/23 ECC financial years. The budget for each financial year will be set based on latest intelligence of cost available at budget setting. The market price of energy could go up or down, and subject to the mitigations above the cost to ECC could go up or down. However, since ECC will allow for energy costs within its budget there are no direct costs outside of the budget arising from this contract extension decision
c) The £12.7m is the total invoiced cost including both commodity and non-commodity elements, and it is the commodity element that is purchased flexibly. The non-commodity component of the cost (some £7.7m of the total) forms the majority of the cost and is for various fixed tariffs that are charged along with commodity in each invoice

6.2 Legal implications

6.2.1 The Contracts awarded to Npower and SSE for the provision of Electricity and Gas (respectively) were for a period of 3 years with the option to extent for further 12-month period.

6.2.2 Regulation 72(1)(a) of the Public Contracts Regulations 2015 permits the modification of contracts during their term, irrespective of value, where the modification was provided for within the original procurement documents in clear, precise and unequivocal review clauses.

6.2.3 The contracts awarded to Npower and SSE contain the provision to extend for a period of 12 months, satisfying the conditions of Regulation 72(1)(a) ECC is therefore lawfully able to extend both contracts.

7. Equality and Diversity implications

7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

(a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
(b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
(c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that ‘marriage and civil partnership’ is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic

8. List of appendices

Equality Impact Assessment

9. List of Background papers

None

I approve the above recommendations set out above for the reasons set out in the report.	Date

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Councillor David Finch - Leader of the Council	**21/10/20**

In consultation with:

Role	**Date**
Councillor Simon Walsh - Cabinet Member for Environment and Climate Action	13/10/2020
Councillor Susan Barker - Cabinet Member Customer, Corporate, Culture and Communities	15/10/2020
Executive Director for Place and Public Health **Mark Carroll**	21/10/2020
Executive Director for Finance and Technology (S151 Officer) **Stephanie Mitchener (on behalf of Nicole Wood)**	20/10/2020
Director, Legal and Assurance (Monitoring Officer) Laura Edwards on behalf of **Paul Turner**	14/09/2020