

**Open Report on behalf of James Drury, Executive Director - Commercial**

Report to:	<b>Councillor Mrs P A Bradwell OBE, Executive Councillor: Children's Services, Community Safety and Procurement</b>
Date:	<b>Between 17 - 23 December 2021</b>
Subject:	<b>Approval to Award a Contract for Gas Provision for Lincolnshire County Council's Corporate Property Portfolio</b>
Decision Reference:	<b>I025289</b>
Key decision?	<b>Yes</b>

**Summary:**

A decision is required to award a contract for the Council's Gas Provision to the Council's Corporate Property Portfolio. The Report seeks approval for the contract to be awarded to ESPO and Total Energies Gas and Power through the ESPO Energy Framework Agreement 192\_23.

**Recommendation(s):**

That the Executive Councillor for Children's Services, Community Safety and Procurement:

1. Approves the award of contracts to ESPO and Total Energies, Gas and Power for Gas Provision to Lincolnshire County Council's Corporate Property Portfolio.
2. Approves the Council continuing to maintain the Purchase in Advance commodity strategy.
3. Approves the Council continuing to buy brown gas (to be reviewed annually).
4. Delegates to the Executive Director – Commercial, in consultation with the Executive Councillor for Children's Services, Community Safety and Procurement, the annual decision as to what type of gas to buy.

**Alternatives Considered:**

Please see the body of the report – Procurement Options.

**Reasons for Recommendation:**

Lincolnshire County Council is a member of ESPO, and whilst Lincolnshire County Council is unable to influence the Energy Market, it can influence ESPO and its commodity trading strategy having a seat on the Energy Governance Panel.

ESPO's historical performance has served the Council well over the years and delivered value for money.

It meets with National Procurement Strategy advice to use a framework agreement which aggregates spend.

It provides the flexibility to annually consider green gas as the market develops.

It provides a complete bill validation service that will eradicate the need for utility bill audits.

The Purchase in Advance Strategy provides budgetary certainty in an exceptionally volatile market.

The Council will also receive c.£16,000 rebate over the term of the contract.

## **1. Background**

Since 2007, Lincolnshire County Council (LCC), a founder member of ESPO, has procured its gas supply for its corporate property portfolio through the ESPO Energy Access Agreement (Framework). This framework is accessed by over 100 Local Authorities, Housing Associations and Charities.

The Council has to date purchased brown gas as previously this is all that has been available. Brown energy is energy that comes from conventional fossil fuels, such as oil or coal. The combustion from these fuels releases harmful emissions into the environment. Renewable or "green" energy comes from clean sources that are more sustainable and are perceived to be better for the environment e.g. solar, wind, geothermal, biogas, eligible biomass, and low-impact small hydroelectric sources.

The ESPO framework has the flexibility to annually review buying green or brown gas for individual large customers such as LCC but currently has no customers buying green gas. The current market is both significantly underdeveloped and limited in terms of supply, and expensive.

Under the current Framework (April 2019 – March 2023) the Council signed over delegated authority to ESPO to conduct commodity trading of brown gas on the Council's behalf. ESPO trades on the commodity market using a hedged based strategy called "Purchase in Advance" (detailed later in the report) using its internal trading software and internal professional expertise.

Details of the last two years of corporate consumption are tabled below, as only using last year's figures would give a distorted figure given the impact of Covid-19 when Council properties were not occupied and/or always heated.

Gas		
Non-Schools	Consumption (kwh)	Expenditure (£)
FY 19/20	15,857,723	£498,560
FY 20/21	14,267,169	£401,910
Variance %	-10%	-19.4%

*Source - Kier Property Services*

The Council's consumption has reduced during Covid but unfortunately due to old heating systems, zonal heating is not in place and therefore buildings require heating even with a single occupant.

As part of the current framework agreement and existing contract, ESPO trade on the commodity market on behalf of the Council, the supply (non-commodity) of gas is currently contracted to Total Energies Gas and Power (TGP) and under a separate contract between LCC and ESPO, LCC has the benefit of a fully managed service, whereby ESPO's Energy Team manage the Council's 139 Meter Point Reference Numbers (MPRN's) validating all invoice charges prior to invoicing the Council. The total cost of the managed service element for the Council's portfolio, based upon current MPRNs is £14,700 per annum (fixed).

ESPO has provided dedicated professional resource to meet the Council's needs including:

- i. Contract Support Officer
- ii. Billing Manager
- iii. Two Trade and Risk Managers
- iv. Customer Relationship Manager

The dedicated resource has provided the Council with energy market briefings and data reports to meet Freedom of Information requests (FOI's) as well as managing TGP on our behalf. In addition, TGP has dedicated resource that only manages the ESPO Framework portfolio as a primary account. This structure provides a good customer service to LCC in responding to queries.

### **How it Works**

Gas Commodity Costs is the cost for the purchase of the gas and is often known as the trading price. This element currently equates to roughly 64% of the cost per unit that is supplied. This is slowly reducing as decarbonisation and network and system costs continue to rise, both of which are non-negotiable, and make up 33% of the unit price with the supplier's margin making up the remaining 3%.

The existing framework allows ESPO to operate in a flexible manner adopting a hedging strategy which allows for varying volumes to be purchased periodically dependent upon

market trends, in accordance with the agreed cover plan levels of the total ESPO portfolio. This is currently under a Purchase in Advance (PiA) strategy. Ahead of the supply period, the Council must decide whether to adopt a Purchase in Advance or a Purchase within Period approach.

Purchase in Advance (PiA) is where the gas is purchased before the start of the supply period (this can often be 18 months ahead). This strategy is reasonably conservative allowing the Council to know the fixed price it will pay for the next 12 months and guarantees that the prices achieved are not subject to future market price movements. This creates budgetary certainty.

Purchase within Period (PwP) is slightly less conservative where only an agreed portion of the total volume requirement for the supply period (April to the following March) is purchased prior to the commencement of the supply period, with the balance purchased closer to the point of consumption and within the supply period, but before it is required. Currently how PwP would work if the Council adopted it, which it has not, is that during the winter ESPO would secure 80% under the PiA arrangement leaving 20% floating which would be traded under PwP. During the summer it operates whereby 50% is secured under PiA arrangement and 50% floating which would be traded under the PwP. In general terms a cold and hard winter would see PiA as favourable, whereas a mild winter would see PwP as favourable. Although, this year has seen unprecedented market trends, demonstrating the market's volatility.

### **Framework Performance**

**PiA-v-PwP** - ESPO do not advise on a strategy to adopt, they only present the data around both strategies. The Council has always adopted the more risk averse PiA strategy as it provides budgetary certainty.

The PwP strategy has outperformed the PiA strategy over the last five years. If the Council had chosen this approach it would have saved £30,000 in total over the five years. The main reasoning for this has been due to experiencing mild winters with the exception of 2018/19 (Beast from the East). However, PwP customers receive a price change in both April and October each year which removes the stability of budgetary certainty for a fiscal year.

ESPO's role is to track the market and react quickly to market behaviours (based upon politics, macroeconomics, regulations, infrastructure, oil prices and weather) acting in the best interest of their customers (LCC) on a not-for-profit basis whilst also operating within an agreed cover plan.

The cover plan is a hedging strategy agreed by the Energy Governance Panel (LCC has a presence) setting out the parameters within which ESPO is able to trade the gas portfolios volumes. The cover plan allows ESPO to commence trading volumes on the wholesale market up to 18 months in advance of consumption. The cover plan simply sets out the minimum and maximum trading volumes over the months, providing a level of flexibility

to take advantage of low prices in advance as well as refraining from trading large volumes when prices are at a high.

Through the existing wholesale trading cover plan, the Council’s gas is 100% procured for this winter with pricing secured at 39.35p/therm through until 31 March 2022. In addition, 91% of the gas the Council requires from 1 April 2022 to 31 March 2023 has also been secured at a cost of 54.17p/therm (29.3kwh = 1 therm) and based upon the Council’s average annual consumption of 15,000,000kwh, will see the Council’s wholesale gas costs equate to c.£277,320. The current market price is in excess of £1/therm which would see the Council’s wholesale costs equate to c.£512,000 based upon its average annual consumption if it was paying today’s prices.

There is a lack of market transparency despite discussions between the Purchasing Buying Organisations (PBO’s) and the Local Government Association (LGA). The PBO’s still remain reluctant to share their framework performance figures. In addition, the PBO’s will not share/publish contract prices in relation to their frameworks due to there being too many variables and strategies/prices are only made available upon signing up to the frameworks.

ESPO has a proven track record of responsive customer service on administration, account changes, invoice validation and tackling FOI’s because they have direct access and priority status with their suppliers. The Council is aware that a number of organisations have previously returned to the ESPO framework having tried the Crown Commercial Service (CCS) framework due to poor performance from CCS and the provider.

**Procurement Options**

Delivery Model			Pro's	Con's
<b>LCC House</b>	<b>Deliver In-</b>		<ul style="list-style-type: none"> <li>➤ Full control of coverplan and trading activity</li> <li>➤ No management fee to ESPO</li> </ul>	<ul style="list-style-type: none"> <li>➤ No internal specialist resources</li> <li>➤ No software solution to trade</li> <li>➤ No aggregated spend with other authorities</li> <li>➤ Unattractive to market due to small trading volumes</li> <li>➤ No track record</li> </ul>
<b>Independent Energy Broker</b>			<ul style="list-style-type: none"> <li>➤ Dedicated specialist resource</li> <li>➤ Trading software solution already in place</li> </ul>	<ul style="list-style-type: none"> <li>➤ Profit making organisation</li> <li>➤ Reliant on brokers knowledge and expertise</li> <li>➤ No rebate</li> <li>➤ No transparency around past or anticipated future performance</li> </ul>

<b>Alternative Public Buying Organisation</b>	<ul style="list-style-type: none"> <li>➤ Aggregated spend – attractive to market</li> <li>➤ Dedicated specialist resource</li> <li>➤ Trading software solution already in place</li> <li>➤ Not for Profit Organisation</li> </ul>	<ul style="list-style-type: none"> <li>➤ Unable to benchmark framework performance</li> <li>➤ No influence in decision making at governance level</li> <li>➤ Management fee</li> <li>➤ No rebate</li> </ul>
<b>ESPO</b>	<ul style="list-style-type: none"> <li>➤ Aggregated spend - attractive to the market</li> <li>➤ Framework has previously performed well</li> <li>➤ Rebate received on spend throughput</li> <li>➤ Dedicated specialist resource</li> <li>➤ Trading software solution already in place</li> <li>➤ Ability to influence decision making at governance level</li> <li>➤ Strong customer service</li> <li>➤ Dedicated professional resource</li> <li>➤ Not for Profit Organisation</li> <li>➤ No transition costs/activity</li> </ul>	<ul style="list-style-type: none"> <li>➤ Unable to benchmark performance against other PBO's</li> <li>➤ Management fee</li> </ul>

**Proposed route to Market:**

ESPO Framework Reference 192 The Supply of Mains Gas supported by ESPO’s fully managed service.

**Contract Length:**

Four years from April 2023 - March 2027. Includes annual review to consider green or brown, PiA or PwP strategy and fully managed service provision delegated to the Executive Director - Commercial in consultation with the Executive Councillor for Children’s Services, Community Safety and Procurement.

**Estimated Contract Value:**

The aggregate contract value over the four-year period for brown gas is estimated to be c.£2.5 million based on an average consumption of the last two years whilst taking into

consideration a level market price volatility. The equivalent volume of green gas would add an additional amount of c.£542k based on the current differential which will likely fall over time.

## **2. Legal Issues:**

### Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified

consideration must be given to measures to avoid that impact as part of the decision making process.

A separate Equality Impact Assessment has not been undertaken. However, the procurement supports the Council to achieve good value utilities to help protect the funding of frontline services including services that support individuals who may have a protected characteristic such as people with a disability and younger and older people.

#### Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS) in coming to a decision.

The procurement supports the Council to achieve good value utilities which in turn helps to protect the funding of those frontline services which maximise independence and wellbeing which is consistent with the principles underpinning the JSNA and the JHWS.

#### Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

The decision is not considered to have any implications for the section 17 matters.

### **3. Conclusion**

A successful procurement will lead to the appointment of a competent contractor to fulfil a four-year contract to trade and provide Gas Services (including bill validation) to the Council. It will ensure:

- Value for money is achieved.
- A fit for purpose contract is in place.
- Supportive member of ESPO, receiving a rebate of c.£16k over the contract term.
- Conformance with National Procurement Strategy advice utilising a framework agreement and aggregating spend.
- Flexibility to annually consider green gas as the market develops.
- A complete bill validation service that will eradicate the need for utility bill audits.

**4. Legal Comments:**

The Council has the power to enter into the contract proposed.

The decision is consistent with the Policy Framework and within the remit of the Executive Councillor.

**5. Resource Comments:**

The proposed contract provides the Council with access to specialist energy market resource and greater price certainty in a volatile market.

The cost of the supply is budgeted for in the Council's annual revenue budget with planning assumptions informed by market intelligence provided by the contractor.

**6. Consultation****a) Has Local Member Been Consulted?**

N/A

**b) Has Executive Councillor Been Consulted?**

Yes

**c) Scrutiny Comments**

The decision will be considered by the Overview and Scrutiny Management Board at its meeting on 16 December 2021 and the comments of the Board will be reported to the Executive Councillor.

**d) Risks and Impact Analysis**

The equality impact is referred to above.

**7. Background Papers**

No Background Papers within Section 100D of the Local Government Act 1972 have been considered in the preparation of this Report.

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