



# Report to Executive

Meeting Date – 19<sup>th</sup> March 2024  
Key Decision – Yes  
Public/Private – Public

Portfolio – Governance and Thriving Communities  
Directorate – Business Transformation & Change  
Lead Officer – Debbie Heard -Service Manager Procurement & Contract Management

## Title – Permission to Procure the Supply of Natural Gas to Corporate Properties

### Summary:

The paper seeks permission to procure a contract for the supply of natural gas to Cumberland Council (**CC**) corporate properties by calling off from Lot 2 of the Crown Commercial Services (CCS) Framework Agreement (**FA**) RM6251- Supply of Energy 2, which is a single Supplier FA with Total Energies Gas & Power Limited being the single Supplier. It also seeks to delegate the award of the contract to the Director of Business Transformation and Change.

### Recommendations:

It is recommended that Executive agrees:

1. To give permission to commence a regulated procurement exercise to call-off a contract for the supply of natural gas to the Council’s corporate properties only, through Lot 2 of the Crown Commercial Services (CCS) Framework Agreement RM6251-Supply of Energy 2, for a period of 4 years, with effect from 1st April 2025.
2. To also grant delegated authority to the Director of Business Transformation and Change to award the contract to the Framework’s single supplier for gas, Total Energies Gas & Power Limited, sign the Customer Agreement and enter into the relevant energy buying baskets.

### Tracking

Executive:	19 <sup>th</sup> March 2024
Scrutiny:	
Council:	

## 1. Background

- 1.1 CC's contract for the supply of natural gas is currently hosted by Westmorland and Furness Council and is due to expire on 31 March 2025.
- 1.2 As energy buying is a complex and volatile market, and as the council does not have a dedicated and/or experienced energy buyer, it is considered appropriate to use a recognised public sector buying organisation (PSBO) who have a dedicated, experienced energy buying team and can facilitate a route to market, compliant with the Public Contract Regulations 2015 (PCR2015).
- 1.3 Following a review of various PSBO's, it has been established that Crown Commercial Services (CCS), (which is Central Government's buying arm), offers access to the largest public sector energy consortium. The amalgamation of spend is greater than other PSBO's, thus giving CCS significant flexibility and influence in the market with their trading strategies. This minimises risk and secures good 'basket pricing' for their clients.
  - CCS trade 33TWh, which equates to 45-50% of the public sector gas market.
  - CCS has been trading in the wholesale market since 1980 and has a team of specialised traders and risk managers
  - Audited by the National Audit Office
  - A fully transparent 'not for profit service'
- 1.4 Historically, all four legacy councils used a 'flexible purchasing in advance' strategy. Both Central Government and The Department of Business, Energy and Industrial Strategy have highlighted the benefits of using a flexible purchasing strategy as it provides mitigation against the potentially extreme volatility of energy prices that can be found with 'spot buying'. CCS would purchase tranches of gas (on our, and the rest of the wider national consortiums behalf), up to one year in advance of the initial date of supply. Their energy team would purchase more tranches of gas when the wholesale gas market is low and less when the wholesale gas market is high. This limits the risks associated with spot buying. This advance purchasing means that the council need to have a firm commitment up to 12 months prior to the actual supply dates to allow this forward, flexible buying to happen.
- 1.5 Once permission to procure has been granted the Council will receive support from CCS to establish which of their options is most suitable and permission to award the contract will be sought, as referenced in Recommendation 2 above, from the Director of Business Transformation and Change.

1.6 In addition to the above CCS's energy frameworks include:

- Supplier commitment to Social Value (Fighting Climate Change and Wellbeing) and carbon net zero. With green options available.
- Compliant procurement process and contract drafting supported through specialist legal advice
- Commercial benefits achieved by CCS aggregated buying of approximately £51bn of public sector energy
- Named account manager and a dedicated customer service team
- Receive regular reports on energy prices and how they impact your budgets
- Access educational webinars, bulletins and events to let you know the latest insight on key energy market developments
- Provides a digital portfolio management service with online access to information such as site lists, invoices and consumption data.

1.7 It is recommended that the new contract will be for corporate properties only. Whilst the current Gas Contract has also been used to scope in non-corporate sites e.g. Schools, Charities, and Cumbrian Association of Local Councils (CALC), the recommendation will be to procure Gas for the corporate properties only as the current arrangement has brought risk to the council:

- the council signs-up with the supplier, therefore, ultimately, if a non-council site defaults on payment the council becomes liable (and this has happened historically).
- it takes resource to support non-council sites. This contract is particularly resource intensive, especially at the start of new contracts/new supplier, and at each new pricing year.
- when prices spike, as they did earlier in the year, and the council becomes the 'middle man' when disputes and issues arise.
- Non-council sites have to align with our strategy as it is the council's contract, in the best interests of the council. This proved contentious earlier in the year when prices were volatile and non-council sites wanted to go in their own direction but we unable to make their own decisions for their own sites as they were linked to the council contract.

1.8 Based on the comments in paragraph 1.7 above, in terms of mitigation, the council would support all non-council sites to make this change, and by starting communications with them at this early juncture, it would allow them some 12 months to decide on their options. The council could suggest alternatives routes to market for them i.e. there are various public sector frameworks available to meet differing needs, for instance, the Department of Education have an approved buying solution dedicated for schools (who have a unique buying pattern with reduced use in evening and in school holidays that

does not necessarily align with our corporate needs). Furthermore, CCS have offered to provide a support service to the individual establishments to assist in getting them onto the CCS framework as individual establishments, and on the correct purchasing strategy option that best meets their needs, (and YPO can do the same). This approach would allow non-council sites the flexibility to decide on their own contract length, their own strategy and make their own decisions.

1.9 The current contract value is approx. £4.5m per annum, which includes corporate and non-corporate property spend.

The new proposed contract is estimated to be circa £1.5m Per annum, based on the corporate property element of the current contract. The £1.5m estimate is broadly in-line with the Cumberland gas energy cost budgets for 2023/24.

This Contract itself will continue to be managed by the Procurement & Contract Management team initially, with the costs being met from the Cumberland gas energy cost budget(s).

**2. Proposals**

2.1 It is recommended that permission to procure is granted to undertake a call off award through Lot 2 of the CCS single supplier Framework Agreement RM6251-Supply of Energy 2, for the supply of Gas to the CC’s corporate properties only, for a period of 4 years, with effect 1st April 2025. The supplier is Total Energies Gas & Power Limited. It is also recommended to grant delegated authority to the Director of Business Transformation to award the contract, sign the Customer Agreement and enter into the relevant energy buying baskets.

**3. Alternative options considered**

3.1

<p><b>Option 1:</b> Not to Re-Tender / No Contract for Supply</p>	<p>This is not considered appropriate due to the following reasons:</p> <ul style="list-style-type: none"> <li>• The council would be in breach of the Public Contract Regulations 2015</li> <li>• We would be non-compliant with the Council’s Contract Procedure Rules</li> <li>• Uncontrolled purchasing would mean no benefit from aggregation of consumption and spend, reducing the chance for best possible deals.</li> </ul>
---	--

<p><b>Option 2:</b> To procure through a framework managed by a PSBO</p>	<p><b>This is our preferred option due to the following reasons:</b></p> <ul style="list-style-type: none"> <li>• This offers competitive pricing, allied to effective management of risk. Utilising their expertise means we can manage risk in a volatile market by purchasing flexibly up to 12 months in advance and offers the stability of annual pricing, we can manage the pricing risks effectively by enabling purchases to be timed to avoid unusual market price spikes and take advantage of any sudden dips in the market.</li> <li>• Using PSBO will allow us to consolidate our requirements with others, allowing for aggregation of spend and better pricing for all. We will be part of a large consortium, ensuring that suppliers will see us as a key customer and act accordingly.</li> <li>• We will benefit from the experience of specialist utility buyers employed by the PSBO.</li> </ul>
<p><b>Option 3:</b> To carry out own tender exercise</p>	<p>This is not considered appropriate due to the following reasons:</p> <ul style="list-style-type: none"> <li>• This would mean carrying out a full tender exercise which would incur Council time and the use of additional resources (using a National Framework reduces this time and cost because the initial assessment tender exercise has already been carried out).</li> <li>• The energy market is a highly complex and volatile market, and to carry out our own tender exercise and/or use an energy broker would mean a fixed price contract option only – if all of the volume of energy is bought at one point and fixed on one day there is a chance we get it wrong, and prices fixed at a high price for the contract duration.</li> </ul>
<p><b>Option 4</b> Use a Private Brokerage Service</p>	<ul style="list-style-type: none"> <li>• Cost of tendering the broker services on top of the supply.</li> </ul>

	<ul style="list-style-type: none"> <li>• Fees/charges (PSBO are not for profit)</li> <li>• Advice was taken from the <a href="#">National Energy Category Strategy for Local Government 2022 – energising procurement   Local Government Association</a> around the potential risks for a company of our size engaging with a Broker.</li> </ul>
--	--

**4. Conclusion and reasons for recommendations**

4.1 To grant permission to use the CCS Framework Agreement RM6251-Supply of Energy 2 and award a contract to the single supplier under that CCS Framework Agreement, namely Total Energies Gas & Power Limited, for the supply of Gas for CC’s corporate properties only, for a period of 4 years, with effect 1st April 2025.

4.2 Grant delegated authority to the Director of Business Transformation to award the contract, sign the Customer Agreement and enter into the relevant energy buying baskets.

**Implications:**

Approving the permission to procure and the delegated authority to award for a Corporate Gas Supply for CC’s Corporate Properties through the CCS framework ensures that the Council is legally compliant with the Public Contract Regulations 2015 for the 4 years, commencing 1<sup>st</sup> April 2025.

**Contribution to the Cumberland Plan Priorities - Sustainability & Local First**

Sustainability was considered by CCS in the establishment of the framework. This framework was open to National and Local Suppliers.

**Relevant Risks –**

The energy market is now very volatile and affected by things outside of our control. We need to ensure that we procure through an established National Framework who have experts in this field to ensure that we get the best possible prices for Gas for our Corporate Properties.

**Consultation / Engagement -**

No statutory consultation or engagement is required. There isn’t an energy team anymore within the Council to discuss this with.

## **Legal –**

The estimated value of CC's Gas requirements for its Corporate premises for the proposed term of four (4) years will be circa £6 million. In accordance with Rule 5.23 of the Council's Contract Procedure Rules (as amended on 16 January 2024), the decision to commence a procurement exercise for contacts with a value of £5,000,000 and above is a decision for the Executive.

The Executive is responsible for the award of the contract but may delegate authority to award the call off contract to TotalEnergies Gas & Power Limited to the Director Business Transformation & Change. (Paragraph 1.4 of part 3 – section 2 - Executive Procedure Rules).

As the estimated contract value exceeds the applicable value threshold under the Public Contracts Regulations 2015 (**PCR15**) it will be required to be procured using a method, which complies with the PCR15. In this case, utilising the Crown Commercial Service's (CCS) Framework Agreement RM6251- Supply of Energy 2 via to Call Off for CC's Gas corporate premises requirements, is a PCR15 compliant route.

Framework Agreement RM6251 does not utilise CCS's standard public sector Call-Off contract and Schedules. Legal services have reviewed the framework documentation provided namely the Customer Access Agreement between the Council and CCS, which governs the services CCS is providing, and the Call Off Contract between the Council and energy supplier.

The terms of both agreements include indemnities which, in accordance with the Constitution, need to be authorised by the Monitoring officer and Chief Finance Officer before the contract is entered into.

The main terms of the agreements are considered to be acceptable provided the rules of the Framework Agreement are followed. It is essential that officers calling off under the Framework fully acquaint themselves with the terms of the Customer Access Agreement and Call Off Contract to ensure adequate contract management.

The approval to commence the procurement is a key decision and the key decision process must be followed.

## **Finance –**

As noted above the estimated contract value is within the available budget. The financial implications will only be known once tender prices are received and reviewed.

Due to the CCS route to market, it is not expected that the removal of non-corporate property will impact on the tender prices.

## **Information Governance – N/A**

**Impact Assessments – N/A**

**Contact details:**

Contact Officer: Nicola Bell

Email: Nicola.Bell@cumberland.gov.uk

**Appendices attached to report:**

- None

**Background papers:**

Note: in compliance with section 100d of the Local Government Act 1972 the report has been prepared in part from the following papers: