

## Report to CABINET

# Utilities Procurement 2024 - 2028

**Portfolio Holder:** Cllr Abdul Jabbar - Deputy Leader and Portfolio holder for Value for Money & Sustainability

**Officer Contact:** Emma Barton - Deputy Chief Executive (Place)

**Report Author:** Helen Khan – Lead Energy Manager

**Ext.** 1965

**14<sup>TH</sup> October 2024**

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### Reason for Decision

To seek approval to enter into Supply Contracts with the suppliers appointed under the Crown Commercial Service Framework Agreement for Supply of Energy 2 (RM6251) for the supply of electricity and associated services (Lot 1) and the supply of natural gas and associated services (Lot 2) with effect from 1 April 2024.

### Executive Summary

Oldham Council currently procures its energy through Crown Commercial Service (“CCS”) framework arrangements.

The CCS Framework for the Supply of Energy and Ancillary Services (RM6011) commenced on 14 August 2019 and expired on 1 October 2023. Electricity and ancillary services were supplied by EDF Energy Customers Limited under Lot 1 and natural gas and ancillary services were supplied by TotalEnergies Gas & Power Limited under Lot 3. The Council was a party to a Supply Contract with each of the suppliers. Electricity and Gas were supplied to the Council under the RM6011 framework arrangements until 31 March 2024.

The CCS Framework Agreement for Supply of Energy 2 (RM6251) commenced on 21 February 2023 and will expire on 20 February 2027. There are two lots under the RM6251 Framework Agreement; Lot 1 - Supply of Energy - Electricity and Additional Services and Lot 2 - Supply of Energy – Natural Gas and Additional Services. The sole supplier under Lot 1 is EDF Energy Customers Limited (“EDF”) and the sole supplier under Lot 2 is TotalEnergies Gas & Power Limited (TotalEnergies”).

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As with RM6011, the Framework Agreement is accessed through a Customer Access Agreement and the energy supplies are delivered following completion of a Supply Contract with each of the Lot 1 supplier and the Lot 2 supplier. Under the Framework Agreement CCS trades and purchases gas and electricity on the Council's behalf from the appointed suppliers. There are options as to how this is done, but the Council tends to instruct CCS to lock prices for 12 month periods.

The Council should have entered into a Supply Contract with each of the appointed suppliers under the replacement RM6251 Framework Agreement prior to 1 April 2024, but the transition from RM6011 to RM6251 did not run as planned.

Therefore, retrospective approval is needed to enter into a replacement Supply Contract with each of the appointed suppliers for a term commencing on 1 April 2024. The template Supply Agreement shared by EDF states that the term runs from the Earliest Supply Start Date, which will be 1 April 2024 for the Council until the expiry or earlier termination of the final associated delivery period.

By way of clarification in relation to delivery periods and prices, CCS aggregates energy volumes required for all buyers to buy in bulk. This is called a basket. CCS offer both locked and variable baskets. For locked baskets, the price is locked throughout the delivery period. As detailed above, it is anticipated that the Council will secure its electricity and natural gas by way of annual delivery periods, with the first delivery period under each Supply Contract being 1 April 2024 to 31 March 2025.

The Council generally opts for Locked 6 (L6), which offers a 12-month fixed price. The trading begins 6 months (1 October to the 31 March) annually. The delivery period starts on the 1 April for 12 months. The Council is automatically entered into the subsequent 12-month contract period without needing to provide confirmation. However, if the Council wishes to opt out of the next 12-month period, it must notify CCS accordingly prior to the 15<sup>th</sup> September deadline before delivery period.

## **Recommendations**

It is recommended that Cabinet:

- (a) authorises a Supply Contract for electricity and ancillary services to be finalised and entered into between the Council and EDF Energy Customers Limited under Lot 1 of the CCS Framework Agreement for Energy Suppliers 2 and for a Supply Contract for natural gas and ancillary services to be entered into between the Council and TotalEnergies Gas & Power Limited under Lot 2 of the CCS Framework Agreement for Energy Suppliers 2, each for a 4 year term from 1 April 2024
- (b) delegate authority to the Paul Clifford Director of Economy, the Head of Procurement and Legal Services to formalise the contractual arrangements in relation to the required Supply Contracts
- (c) delegate authority to the Borough Solicitor to carry out all necessary formalities.

**Utilities Procurement 2024 – 2028****1 Background**

- 1.1 The Crown Commercial Service (“CCS”) Framework for the Supply of Energy and Ancillary Services (RM6011) commenced on 14 August 2019 and expired on 1 October 2023. Electricity and ancillary services were supplied by EDF Energy Customers Limited (“EDF”) under Lot 1 and natural gas and ancillary services were supplied by TotalEnergies Gas & Power Limited (“TotalEnergies”) under Lot 3. The Council was a party to a Supply Contract with each of the suppliers. Electricity and natural gas were supplied to the Council under the RM6011 framework arrangements until 31 March 2024.
- 1.2 The CCS Framework Agreement for Supply of Energy 2 (RM6251) commenced on 21 February 2023 and will expire on 20 February 2027. There are two lots under the RM6251 Framework Agreement; Lot 1 - Supply of Energy - Electricity and Additional Services and Lot 2 - Supply of Energy – Natural Gas and Additional Services. The sole supplier under Lot 1 is EDF and the sole supplier under Lot 2 is TotalEnergies.
- 1.3 As with RM6011, the Framework Agreement is accessed through a Customer Access Agreement and the energy supplies are delivered following completion of a Supply Contract with each of EDF and the TotalEnergies. Under the RM6251 Framework Agreement CCS is generally instructed to trade and purchase electricity and natural gas and any associated services from the appointed suppliers on the Council’s behalf.
- 1.4 The Council should have entered into a Supply Contract with each of the appointed suppliers under the replacement RM6251 Framework Agreement prior to 1 April 2024, but the transition from RM6011 to RM6251 did not run as planned.
- 1.5 Therefore, retrospective approval is needed to enter into a replacement Supply Contract with each of the appointed suppliers for a term commencing on 1 April 2024. The template Supply Agreement shared by EDF states that the term runs from the Earliest Supply Start Date, which will be 1 April 2024 for the Council and that it will remain in force until the expiry or earlier termination of the final associated delivery period. It is assumed the template Supply Contract for the provision of natural gas and associated services will be drafted in a similar manner.
- 1.6 By way of clarification in relation to delivery periods and prices, CCS aggregates energy volumes required for all buyers to buy in bulk. This is called a basket. CCS offer both locked and variable baskets. For locked baskets, the price is locked throughout the delivery period. As detailed above, it is anticipated that the Council will secure its electricity and natural gas by way of annual delivery periods, with the first delivery period under each Supply Contract being 1 April 2024 to 31 March 2025.
- 1.7 The Council generally opts for Locked 6 (L6), which offers a 12-month fixed price. The trading begins 6 months before a delivery period commences and it finishes 6 months prior to the start of the next annual delivery period beginning. Accordingly, the CCS purchase window starts on the 1 October. The Council is automatically entered into the subsequent 12-month contract period without needing to provide confirmation. However, if the Council wishes to opt out of the next 12-month period, it must notify CCS accordingly. For the contract period from 1 April 2024, to 31 March 2025, the Council was required to submit its requirements by 15<sup>th</sup> September 2023. For the period from 1<sup>st</sup> April 2025 to 31 March 2026, the Council must confirm its requirements by 15 September 2024.

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- 1.8 The estimated forecasted expenditure for the 2024/25 delivery period is split approximately as follows:
- Electricity £6.82M
  - Gas £2.1M

## 2 **Current Position**

2.1 The Energy Team currently manages the utilities portfolio utilising Crown Commercial Services (CCS) Framework RM6011 until 31 March 2024 and RM6251 with effect from 1 April 2024. The CCS is a Public Body Organisation (PBO).

- 2.2 The advantages of utilising the CCS Framework Agreement include:
- The Council can participate in the framework and utilise the supply contracts without any requirement to tender.
  - The Council can achieve better prices through bulk purchasing and economies of scale.
  - The CCS provide more effective risk management at times of high price volatility with their buying and trading expertise.
  - The Council have an added layer of support for dispute management.
  - Monthly purchasing updates and forecast updates to allow for more accurate budgeting.

2.3 The Council confirmed its L6 Basket requirements to CCS in September 2023 prior to seeking approval for the new Supply Contracts to be entered into with EDF as the sole Lot 1 supplier and with TotalEnergies as the sole Lot 2 supplier under the CCS RM6251 Supply of Energy 2 Framework Agreement. This oversight is addressed within the body of this report and it is proposed that the Council enters into a Supply contract with EDF under Lot 1 and with TotalEnergies under Lot 2 with effect from 1 April 2024 and the term is 4 years, subject to an annual right of termination. Once in place, the Council's requirements for the upcoming delivery period can be confirmed to the suppliers.

- 2.4 Approval is needed to enable:
- (a) a Supply Contract to be put in place with EDF Energy Customers Limited for electricity and ancillary services under Lot 1 of the CCS Framework Agreement for Energy Suppliers 2 and for a Supply Contract to be put in place with TotalEnergies Gas & Power Limited for natural gas and associated services under Lot 2 of the CCS Framework Agreement for Energy Suppliers 2, each for a 4 year term from 1 April 2024
  - (b) delegate authority to the Paul Clifford Director of Economy, the Head of Procurement and Legal Services to formalise the contractual arrangements in relation to the required Supply Contracts
  - (c) authority to be delegated to the Borough Solicitor to carry out all necessary formalities.

## 3 **Options/Alternatives**

3.1 Currently there is not a viable alternative option for the 2024/25 financial year, particularly because the Council confirmed its requirements to CCS for the provision of electricity and natural gas over the 1 April 2024 – 31 March 2025 delivery period back in September 2023. However, other options can be considered for the future. It is anticipated that preparing to change the contractual arrangements for the provision of electricity and gas would need a minimum of eighteen months to two years preparation. This would ensure the procurement process is not rushed and that the transition to alternative suppliers (if required) is managed to minimise the impact of the transition on officers and other suppliers, to avoid transfer objections and out of contract periods, and to incorporate bridging contract periods.

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3.2 Furthermore, it could be beneficial to wait until the Council appoints a strategic partner for decarbonisation of the borough (Oldham Green New Deal Delivery Partner) and the utilities strategy has been reviewed in line with further “green” low carbon strategies and longer-term energy procurement strategies, such as power purchase agreements. However, procurement of the OGND Delivery Partner is not likely to be complete until late 2025 (calendar year) and exploration of potential energy supply options via this route is likely to take a significant amount of time once the strategic partner is appointed. Therefore, this work can feed into decisions about the Council’s energy supply at the end of the 4 year period recommended in this report.

#### 4 **Preferred Option**

4.1 Continue using the RM6251 Crown Commercial Service Framework Agreement for Energy Suppliers 2 and appoint each sole supplier appointed to Lot 1 and Lot 2 for a term of 4 years commencing on 1 April 2024. This is the recommended option and it is a procurement compliant method of commissioning. The Council will continue to benefit from the significant purchasing power of CCS.

4.2 This arrangement has been ongoing for many years, rolling over as one framework expires another commences. The customer access agreement has given Oldham Council access to the framework on a one-year rolling basis, with the option of breaking the agreement in September each year, effective from the following April.

4.3 CCS trades and purchases gas and electricity on Oldham Council's behalf, with Oldham Council committing to 1 year arrangements with regard to the supply of natural gas and electricity. The current one-year rolling arrangement will expire on 31st March 2025, but it needs to be formalised.

4.5 Lastly, CCS has a comprehensive set of key performance indicators (KPIs) under RM6251, which it uses to manage supplier performance and effectively respond to unmet KPI targets. This support is very valuable.

#### 5 **Consultation**

5.1 In preparing this report, consultations have been conducted with stakeholders in the following departments: Legal Services, Finance, Procurement, Green Energy & Sustainability and the Energy Team at Oldham Council..

#### 6 **Financial Implications**

6.1 The Council has previously used the Crown Commercial Services CCS Framework RM6011, the recommendation in this report is to move to the new CCS Framework RM6251 that is now in place to continue to receive the best value for money in relation to the most competitive gas and electricity rates.

6.2 The Council’s Budget for 2024/25 was based on the contractual arrangements on the CSS Framework RM6251.

Lee Walsh- Assistant of Director Finance

#### 7 **Legal Implications**

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- 7.1 Rule 4 of the Contract Procedure Rules (CPRs) governs the procurement processes which the Council must follow. The process is based on financial value and whether legislation or the CPRs alone govern. In this matter, legislation governs. However, that does not mean the Council must carry out its own procurement if a compliantly procured Framework Agreement exists.
  - 7.2 In this matter the CCS RM6251 Framework Agreement for Energy Suppliers 2 has been commissioned and put in place for the benefit of a wide range of public sector contracting authorities.
  - 7.3 Therefore, provided the Commercial Procurement Unit manages the call-off process in accordance with the Framework Agreement and that Supply Contracts are put in place with the sole suppliers, which are fit for the Council's purposes, there are no known legal implications to the proposed action. The Council could be criticised for failing to put new Supply Contracts in place, but the actions proposed in this report would remedy the unfortunate delay.
  - 7.4 Legal Services should be consulted on the Supply Contracts as and when required.

Sarah Orrell – Commercial & Procurement Solicitor

## 8 **Equality Impact, including implications for Children and Young People**

- 8.1 No – An equality impact assessment is not required, as the CCS framework and utility contract terms does not affect the equality any groups, individuals, or have implications for children and young people.

## 9 **Key Decision**

- 9.1 Yes

## 10 **Key Decision Reference**

- 11.1 FCR-17-24

## 12 **Background Papers**

- 12.1 N/A

## 13 **Appendices**

- 13.1 N/A