

# Birmingham City Council

## Report to Cabinet

Date 8<sup>th</sup> September 2020



**Subject:** **PROCUREMENT STRATEGY FOR SUPPLY OF BULK LIQUID FUELS (CONTRACT REF: U63A\_2020)**

**Report of:** **Head of Contract Management (Procurement)**

**Relevant Cabinet Member:** **Councillor Tristan Chatfield, Cabinet Member for Finance and Resources**

**Relevant O &S Chair(s):** **Councillor Sir Albert Bore, Chair of Resources Overview and Scrutiny Committee**

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: <b>007777/2020</b>		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

### 1 Executive Summary

- 1.1 The Council's contract for bulk Ultra Low Sulphur Diesel (ULSD), petrol and heating oils with Certas Energy UK Ltd will expire on 30<sup>th</sup> September 2020.
- 1.2 This report sets out the proposed procurement strategy for the renewal of this contract.

### 2 Recommendations

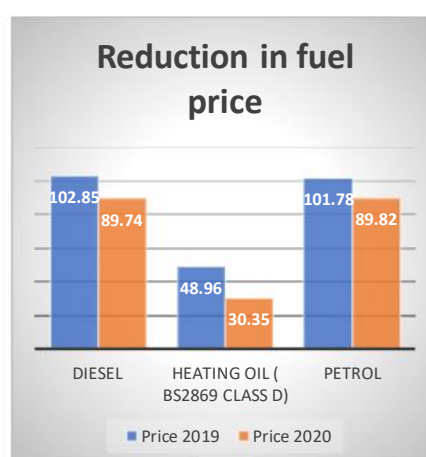
That Cabinet:

- 2.1 Approve the commencement of procurement activity in line with the approach set out in Section 7.4 below.
- 2.2 Delegates authority to approve award of contracts to Assistant Director, Development & Commercial, Director of Finance and Interim City Solicitor.
- 2.3 Authorises the City Solicitor to enter into any agreements necessary to give effect to the above decision

### 3 Background

- 3.1 The current contract with Certas Energy UK Ltd (Certas) for the supply of ULSD, petrol and heating oils commenced on 1<sup>st</sup> October 2016 and will expire on 30<sup>th</sup> September 2020.
- 3.2 This contract was let following a mini-competition exercise by Eastern Shires Purchasing Organisation (ESPO) using their Framework Agreement for liquid fuel ref: 301 that will also expire on 30<sup>th</sup> September 2020 and be replaced by a new and at the time of writing, yet to be confirmed framework agreement.
- 3.3 Bulk ULSD, petrol and heating oils are essential to Street Scene, Parks and Schools for the refuelling of fleet vehicles, plant & machinery operated by Parks and for the heating of buildings. It should be noted that drivers of other Council vehicles purchase fuel from petrol stations using procurement or fuel cards.
- 3.4 The market for fuel is a sophisticated global 'commodity' market with prices changing daily. Under the contract with Certas the Council receives a set weekly price for all supply in that week and for all Local Authority customers in the West Midlands Metropolitan Area that have called off from the ESPO framework. The price depends on the market at the time & the table & graph below show the reduction in fuel price over a 12 month period.

Fuel	Price 2020	Price 2019
Diesel	89.74	102.85
Heating Oil (BS2869 Class D)	30.35	48.96
Petrol	89.82	101.78



### 4 Options considered and Recommended Proposal

- 4.1 These are set out in section 7.4 below.

## **5 Consultation**

- 5.1 Assistant Director, Street Scene has been consulted and is in agreement with the proposed procurement strategy.
- 5.2 ESPO has been consulted and have confirmed that the future framework agreement is suitable for use and are willing to undertake the further competition on the Council's behalf.

## **6 Risk Management**

- 6.1 No significant risks to the Council have been identified as a result of implementing the recommended decisions.

## **7 Compliance Issues:**

### **7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?**

- 7.1.1 **Outcome 4: Birmingham is a great city to live in and Priority 1** - We will work with our residents and businesses to improve the cleanliness of our city by enabling cost effective fuelling of the Council's refuse collection and parks vehicles.
- 7.1.2 **Birmingham Business Charter for Social Responsibility (BBC4SR)** - Compliance with the BBC4SR is a mandatory requirement that will form part of the conditions of the contract along with submission of an action setting out social value commitments that are proportionate and relevant to the contract. The approved action plan will then be implemented and monitored during the contract period.

### **7.2 Legal Implications**

- 7.2.1 The arrangements for the supply of fuel contract in support of the performance of the Council's primary functions are contained in a raft of legislation according to the service areas.
- 7.2.2 Under S111 Local Government Act 1972 the Council is empowered to do any thing which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions

### **7.3 Financial Implications**

- 7.3.1 The estimated annual value of this contract, excluding a small amount of school spend is £3.2m based on historic expenditure. This contract will not commit the Council to any level of spend. Spend on items identified within this contract will be met from approved Directorate budgets. The graph below shows that there has been little change in value of the Council's spend over the last two, full financial years.



7.3.2 The 2020/21 vehicle fuel budget across all Directorates is £3.411m with the majority, £3.155m, within Neighbourhoods. The vehicle fuel budget overspent by £0.715m in 2019/20 and as a result has been increased by £0.508m for 2020/21 – primarily within Neighbourhoods. This reflects the bringing back in house of the part previously externalised Grounds Maintenance Service and work undertaken to reallocate budgets to more accurately reflect operational requirements. Current expectation is that spend this year will be contained within current budget

## 7.4 Procurement Implications

### Procurement Strategy

7.4.1 **Scope & specification** – The scope of the proposed contract includes the bulk supply and delivery of:-

- Ultra Low Sulphur Diesel (ULSD),
- Petrol; and
- heating oils

7.4.2 **Market analysis** – The market for fuel is a sophisticated global ‘commodity’ market with prices changing daily. The price of fuel comprises the manufacturing process for fuel and duty costs, which are adjusted on a weekly lagged basis using the industry standard Platts model. The industry standard oil price is always quoted in dollars and as such financial market fluctuations affect the final price in pound sterling. The fuel, duty and dollar costs are typically 97% of the total fuel cost.

The remainder of the cost is supplier profit margin and small load premium on which the suppliers compete (as a lot of Council sites have access problems and/or small tanks below that of a standard tanker’s capacity leading to additional cost for the supplier/distributor.

### 7.4.3 Procurement options

- i) **Tender as a ‘Birmingham only’ Contract** - This option was considered and discounted due to the low volume of fuel required by the Council would not generate sufficient market interest to obtain competitive pricing.
- ii) **Use the ESPO Collaborative Framework Agreement** – this is the recommended option due to the economies of scale achievable through aggregated volumes within the West Midlands further competition.

ESPO framework agreement for supply of liquid fuels ref: 301\_20 & justification for use

- 7.4.4 ESPO is currently undertaking tendering activity with view to awarding the new framework agreement (FA) from 18<sup>th</sup> August 2020 – 17<sup>th</sup> August 2022 (with 2 year extension option).
- 7.4.5 On commencement of the FA ESPO will publish a further competition for suppliers admitted on to that framework on behalf of the Council and other participating West Midlands Local Authorities. Economies of scales from bulk purchasing can then be realised.
- 7.4.6 The supply call off contract will commence on 1<sup>st</sup> October 2020 for a period of two years. Subject to the framework extension option being taken up (historically ESPO do take up the extension options if performance is satisfactory) another further competition will be undertaken in the spring/summer of 2022 with supply contracts commencing 1<sup>st</sup> October 2022.
- 7.4.7 Paragraph 3.6 of Part D (Finance, Contract and Procurement Rules) of the Council's Constitution permits where the proposed procurement route is the use of (or "call off" from) another Contracting Authority's Framework Agreement, a combined strategy and award.
- 7.4.8 Due to the limited timeframe between commencement of the ESPO FA (18<sup>th</sup> August 2020) and expiry of the Council's existing call off contract (30<sup>th</sup> September 2020) it is proposed that the award decision be delegated to officers given the lead in time to present a report to Cabinet.
- 7.4.9 The duration of the relationship with ESPO will (subject to ESPO utilising the Framework extension option) be 4 years structured as two 2 year call off contracts. These will commence on 1<sup>st</sup> Oct 20 – 30<sup>th</sup> Sept 22 and 1<sup>st</sup> Oct 22 – 30<sup>th</sup> September 24 respectively (subject to the framework being extended). The delegated award reports will set out the name of the successful provider.
- 7.4.10 A 2 year period has been identified as the most suitable duration as it allows for the contract to be reviewed and subject to a further competition exercise after 18 months. This will ensure that margins remain in line with market conditions.

Structure of the further competition

- 7.4.11 The further competition will be undertaken by ESPO on behalf of a number of Local Authorities. Fuel consumption data for all customers/sites will be issued to the successful framework providers. The data will be based on volume orders over a 12 month period. Economies of scale from bulk purchasing can then be realised.
- 7.4.12 The assessment of the further competition responses will be based on 100% price. The Suppliers will compete on margin only, for the reasons set out in 7.4.2 above.

7.4.13 Environmental, ethical and social value submissions will be considered and assessed as part of tender evaluation for admission on the framework by ESPO. This represented 12% of the overall evaluation criteria at framework award stage.

7.4.14 Call off contracts from the FA will permit Authority specific requirements for Social Value to be added. BBC4SR will form part of the Council's call off contract and it will be a contract condition for the successful supplier to provide an acceptable Charter Action plan for accreditation. This contract is clearly linked to protecting the environment and ethical procurement. The social value priorities will be

- **Priority 1** - Through the Charter action plan the Service Providers commitments need to focus on minimising the impact on the environment of (i) excavation and extraction and (ii) the transportation of fuel; and
- **Priority 2** - Through the Charter action plan the Service Providers commitments need to focus on how they will ensure that they are compliant with legislation on Modern Slavery

## **7.5 Human Resources Implications (if required)**

7.5.1 There are no HR implications

## **7.6 Public Sector Equality Duty**

7.6.1 The requirements of Standing Order No. 9 in respect of the Council's Equal Opportunities Policy will be incorporated into the Contract.

7.6.2 The requirements of the Equality Act 2010 will be specifically included in the Contract to comply with, the Act.