

# Report of the Strategic Director Regeneration & Culture to the meeting of Governance and Audit Committee to be held on 19<sup>th</sup> September 2014

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**Subject: Leeds City Region Green Deal Contract**

## **Summary statement:**

This report summarises the contract arrangements for the delivery of domestic energy efficiency measures in Bradford District through a Leeds City Region collaborative project and the proposed governance arrangements.

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**Overview & Scrutiny Area:**  
Environment & Waste



## 1. SUMMARY

This report summarises the contract arrangements for the delivery of domestic energy efficiency measures in Bradford District through a Leeds City Region collaborative project and the proposed governance arrangements.

## 2. BACKGROUND

2.1 Leeds City Council's Public Private Partnerships Unit have been engaged, for and on behalf of Leeds City Region (LCR) to lead the procurement of a Green Deal and ECO scheme for all Local Authorities within the LCR boundary.

2.2 Upon Contract award, a Framework Agreement will be established to run for four years. It is anticipated the Framework Agreement will be signed by the West Yorkshire Combined Authority (WYCA), with each Local Authority in the LCR (excluding Wakefield) to call-off from the Framework immediately. Wakefield have an existing contractual arrangement in place which prevents them from calling off at the outset, however this is due to expire in 2016 at which point Wakefield will review their position and call-off should they feel the Contract meets their needs.

2.3 Each Call-Off Contract will run until 2022 with regular performance reviews against Key Performance Indicators (KPIs) and a break clause after 3 years. The terms of the Framework Agreement are incorporated into each Call-Off Contract, allowing the terms of the Framework to continue for the duration of the Call-Off Contracts.

2.4 The offer to the bidders is an exclusive endorsement from each Local Authority and the LEP for them to provide energy efficiency and renewable services, including Green Deal and Energy Company Obligation (ECO) services to private households within each LA area.

2.5 By exclusively endorsing the product of the successful bidder, the Local Authorities are granting exclusive endorsement to the successful bidder to market to properties within the LEP/LCR geographical boundary. This means LCR Authorities shall not approve or advertise the Green Deal or ECO products of any other service provider or utility company and will signpost residents who make enquiries about energy efficiency and renewable products to this scheme. In doing so, the product of the successful bidder is being endorsed as a good quality, value for money offer to citizens.

2.6 There are some areas where Green Deal/ECO contracts already exist, so these are to be 'carved out' from the scheme as unavailable and recorded within the contractual documentation.

2.7 Most obligations contained in the Contract sit at Framework level, with obligations unique to the Authorities delegated through the Call-Off Contract. This is to ensure the LCR Authorities have collective power, while also making sure individual authority's interests are protected and they have a mechanism to hold the Contractor to account to deliver services in their area.



2.8 There is a Contract Management mechanism built in to ensure robust management of the contract, ensuring services are delivered and to generate some income for the Authorities.

2.9 Leeds City Council (LCC) originally set out as the Anchor Authority with the intention of LCC signing the Framework Agreement to allow the LCR authorities to call-off from the Framework., The WYCA was created on 1<sup>st</sup> April 2014 and has legal status, the Official Journal European Union (OJEU) procurement can be amended to allow WYCA to sign the Framework Agreement, transferring the risk from LCC to WYCA. All involved parties are currently undertaking due-diligence in this regard.

2.10 This is an unusual procurement in that there is no purchase taking place. Instead, it is a competition to obtain the use of LCR Local Authority branding, access to customer/stock data and marketing channels for the length of the Call-Off Contract which will assist in enabling the successful bidder to discharge their ECO.

2.11 Two bidders were taken through a Competitive Dialogue stage within the procurement process to inform and shape final bids. One bidder has now withdrawn leaving one bidder in place entering the final tender stage.

### **3. OTHER CONSIDERATIONS**

#### **Key Performance Indicators (KPIs)**

These have been developed to manage the performance of the contract with input from specialist officers in each Authority. The KPIs cover a number of key areas:

- Technical measures delivered within Bradford District
- Marketing Activity
- Customer Satisfaction
- Economic and Social Impact
- Information Management/Business Systems
- Finance

All of the targets are set at and monitored at a collective LCR level, except the following targets:

- Number of properties where Green Deal Measures and ECO measures have been installed
- Number of Green Deal Measures and ECO Measures installed

This ensures the Contractor is obliged to deliver services from contract award and that services are fairly distributed in each geographical location.



The Management Information that feeds into the collective targets will be broken down by Local Authority area, allowing organisations to understand how the contract is performing in their area.

Ultimately failure to meet any of the KPIs could result in termination of the contract and successful achievement of the KPIs will be a key consideration at break clause.

The procurement is intended to deliver outcomes in respect of social impact through the creation of job and apprentice opportunities. Please see below Table 1 that details the City Region wide minimum targets for social impacts during the first three contract years.

Table 1: Three Year Social Impact Targets across Leeds City Region

<b>Social Impact</b>	<b>Total</b>
Education site visits / workshops	12
Community site visits / workshops	12
Work experience - p/w	200
Apprentices existing - p/w	M
Apprentices existing - no.	M
Apprentices project initiated - p/w	1,457
Apprentices project initiated - no.	20
Short Courses	M
Entry Level 1 Qualifications	100
Level 2 Qualifications	20
Higher Level 3+ Qualifications	M
Employment (local)	44
Employment (LCR)	114
Employment (other)	44
Employment safeguarded	19
Business event held	12
Social Enterprise engaged	1
LCR businesses engaged	M
Y&H businesses engaged	M

\*M = Monitored, no specific target.

In addition there are Bradford District quantified targets for delivery of specific household technical measures. These are set out in the Table 2 below:



Table 2: Technical measure targets for Bradford District totals to year 3

	Bradford
EWI/IWI	300
HTTCWI (beads/foam)	150
Standard CWI	555
Loft insulation all depths	555
Boilers	740
Room in roof	450
<b>Measures Revised target</b>	<b>2750</b>
<b>Value - 3 years £3,396,125.00</b>	
<b>Income pa £16,980.63</b>	
<b>Income pa minus central contract mgmt £11,980.63</b>	
<b>% of overall scheme (revised target)</b>	<b>7.62%</b>
<b>Proportion of housing stock</b>	<b>18.05%</b>
	Bradford
EWI/IWI	10.91%
HTTCWI (beads/foam)	5.45%
Standard CWI	20.18%
Loft insulation all depths	20.18%
Boilers	26.91%
Room in roof	16.36%
	100%

As part of the evaluation process bidders have detailed how they will meet or exceed the targets stipulated and provide a rationale for how they will appoint to posts through filling skill gaps.

Detailed and robust marketing and mobilisation plans have been produced which will ensure customer take up, and in turn these will feed into the targets we have set for achieving LCR ambitions in this area.

The procurement team has appointed technical advisors to provide a benchmark for pricing to ensure that a competitive deal is secured for LCR residents. The prices for measures will be fixed for all residents based on a shopping basket of archetypes that the Contractor will be committed to guaranteeing (subject to bi-annual benchmarking). This means there will be equality of offer for all residents.

Exclusivity is not being granted for social housing or non-domestic/Small Medium Enterprise (SME) opportunities. However, the Authorities that have Council housing stock can use the Contract to request pricing for any energy efficiency or renewables projects they would like to consider. This approach means that Authorities can avoid entering into lengthy (and costly) procurements, and deliver local priorities in a timely fashion.



It is also proposed that the LCR Authorities will endorse the Provider's non-domestic/SME proposition on a non-exclusive basis if after receiving advance notification of the offer Authorities feel it represents value for money.

We have set a minimum threshold for an income share of £60k per annum to fund the position of a Contract Manager, with additional fees to be shared among the participating authorities based on revenue.

### **3.1 RESOURCES AND VALUE FOR MONEY**

All LCR Local Authorities have contributed to the procurement process and due to the complexity of the project the competitive dialogue process was selected.

Value for Money – competitive bid process with benchmarking built in as part of the Contract.

There is no capital spend obligation for the participating authorities. The Contract value could potentially generate in the region of £30 million of new investment into the LCR/LEP over the first three years with potential to generate limited fee income for each participating authority.

## **4. FINANCIAL & RESOURCE APPRAISAL**

There are no direct costs for the Council associated with the contract. If the Council draws down on the contract it will be expected to support the project with officer time, promotional, marketing support and managed access to District data and intelligence.

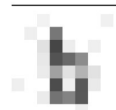
## **5. RISK MANAGEMENT AND GOVERNANCE ISSUES**

The project development to date has been governed by an LCR Green Deal Board with key officers from participating authorities. This has been supported by an energy officer group. Progress reports and papers for key decisions have been presented to LCR Leaders, Chief Executives and Director of Development meetings.

The final contract will set out performance management and dispute resolution processes. In addition a Liaison Procedure will be put in place this includes a Project Board which includes representatives of participating authorities and the contractor. This is detailed in Appendix 1.

The functions of the Project Board shall be to provide a forum for joint strategic discussion and consideration of all aspects of the Project. There will not be any voting rights; any variation to either the Frame work or Call off contracts must follow the procedure set out in the contracts.

In addition a Green Deal Officers Group will to provide a means for the joint review of all aspects of the performance of the Project, to consider any complaints, to monitor the KPIs, to discuss marketing issues, to consider operational matters and to consider any technical and planning problems in respect of the Project and formally report under performance of the Project to the Project Board



The Dispute Resolution process is summarised in Appendix 2.

## **6. LEGAL APPRAISAL**

The dialogue process has had a specific work stream for the legal documentation to be developed in conjunction with bidders, the procurement team, lawyers from each Local Authority and the Combined Authority. Bidders have produced mark-ups of both the Framework Agreement and Call-Off contract. At each stage the mark-ups have been shared with LCR lawyers for comment and amendment for feedback to bidders to enable negotiation of a strong commercial position for all Authorities.

## **7. OTHER IMPLICATIONS**

### **7.1 EQUALITY & DIVERSITY**

The Green Deal and Eco delivery arrangements include elements specifically for vulnerable households and those meeting qualifying benefits criteria.

### **7.2 SUSTAINABILITY IMPLICATIONS**

The domestic energy efficiency programme contributes to carbon emissions reduction targets in Bradford District and towards wider energy resilience.

### **7.3 GREENHOUSE GAS EMISSIONS IMPACTS**

Reduction in Greenhouse gas emissions is a component of the contracts performance management framework and is incorporated in the Bradford first 3 year KPIs.

### **7.4 COMMUNITY SAFETY IMPLICATIONS**

None

### **7.5 HUMAN RIGHTS ACT**

None

### **7.6 TRADE UNION**

None

### **7.7 WARD IMPLICATIONS**

None – the proposals are District wide

## **8. NOT FOR PUBLICATION DOCUMENTS**

None



## **10. RECOMMENDATIONS**

Recommended -

**10.1** That the Committee consider the draft Governance arrangements for the Leeds City Region Green Deal and Eco contract as set out in this report and provide officers with details of any concerns or issues they would wish addressed in the ongoing discussions.

## **11. APPENDICES**

Appendix 1 **Draft Liaison Procedure**

Appendix 2 **Call off Contract Dispute Resolution**





## Appendix 1

### SCHEDULE 2

#### DRAFT LIAISON PROCEDURE

A contract manager (the “**Contract Manager**”) shall have day to day management of the Project.

#### PROJECT BOARD

##### 1 PROJECT BOARD

- 1.1 The Authority and the Provider shall establish and maintain throughout the Contract Period a Project Board (the **Project Board**), consisting of a senior officers from each of the Leeds City Region Authorities who have signed a Call off Contract. Three (3) representatives from the Provider and the Contract Manager for the Project.
- 1.2 A minimum of Four (4) members of the Project Board must be present for the meeting to go ahead at least two from Local Authority Partners and two from the Provider.
- 1.3 The Provider and the Authority agree that during term of this agreement, the Provider shall procure the attendance of Provider Related Parties during such parts of meetings of the Project Board as the Parties shall agree.

##### 2 FUNCTIONS

The functions of the Project Board shall be to provide a forum for joint strategic discussion and consideration of all aspects of the Project. There will not be any voting rights; any variation to either the Frame work or Call off contracts must follow the procedure set out in the contracts.

##### 3 REPRESENTATIVES

The Authority and the Provider may appoint their representatives on the Project Board and remove their own representatives and appoint replacements, by written notice delivered to the other at any time. A representative on the Project Board may appoint and remove an alternate (who may be another representative of that party) in the same manner. If a representative is unavailable (and the other Parties' representative may rely on the alternate's statement that the representative is unavailable) his alternate shall have the same rights and powers as the representative.

Where required, legal, financial and governance attendees will be made available to support the meeting. These will be provided by WYCA as Framework signatories.



#### **4 CHAIRMAN**

The Chairman of the Project Board shall initially be the Leeds City Council representative and will be subject to review after one year. The Chair shall rotate on an annual basis around the Authorities who have signed a Call off contract. The Chair should be at a Senior Management level and familiar with the Project.

#### **5 FREQUENCY OF MEETINGS**

The Project Board shall meet at least once every quarter. Meetings shall be held in person where possible but teleconferences shall be permitted where personal attendance is not possible.

Meetings will be held in Leeds at WYCA building or other central location unless otherwise agreed from time to time by the Board.

#### **6 CONVENING OF MEETINGS**

Any member of the Project Board may convene a meeting of the Project Board at any time.

#### **7 NOTICES OF MEETINGS**

Not less than eight (8) Business Day notice (identifying the agenda items to be discussed at the meeting together with a copy of the KPI Report) shall be given to convene a meeting of the Project Board, except that in emergencies, a meeting may be called at any time on such notice as may be reasonable in the circumstances. The KPI Report shall be circulated to the Contract Manager for the Project fourteen (14) Business Days in advance of the Board Meeting.

#### **8 MINUTES**

The Contract Manager for the Project shall take the minutes. Minutes of all decisions and meetings of the Project Board shall be kept by the Provider and copies circulated promptly to the Authority, normally within ten (10) Business Days of the making of the decision or the holding of the meeting. A full set of minutes shall be kept by the Provider and shall be open to inspection by the Authority at any time, upon request.



## **GREEN DEAL OFFICERS' GROUP**

### **1 GREEN DEAL OFFICERS' GROUP**

The Green Deal Officers' Group shall comprise one (1) representative from each Authority in the Leeds City Region and three (3) representatives from the Provider

### **2 FUNCTIONS**

**2.1** The functions of the Green Deal Officers' Group shall be:

**2.1.1** to provide a means for the joint review of all aspects of the performance of the Project, to consider any complaints, to monitor the KPIs, to discuss marketing issues, to consider operational matters and to consider any technical and planning problems in respect of the Project and

**2.1.2** to formally report under performance of the Project to the Project Board

### **3 REPRESENTATIVES**

The Authority and the Provider may appoint their representatives on the Green Deal Officers' Group and remove those representatives and appoint replacements, by written notice delivered to the other at any time. A representative on the Green Deal Officers' Group may appoint and remove an alternate (who may be another representative of that party) in the same manner. If a representative is unavailable (and the other Parties' representative may rely on the alternate's statement that the representative is unavailable) his alternate shall have the same rights and powers as the representative.

### **4 CHAIRMAN**

The Contract Manager for the Project shall be the Chair.

### **5 FREQUENCY OF MEETINGS**

The Green Deal Officers' Group shall meet at least once every quarter and at least two (2) weeks in advance of the Project Board. Meetings shall be held in person where possible but teleconferencing shall be permitted where personal attendance is not possible. Meetings will generally be held in Leeds at WYCA building or by agreement at other locations.

### **6 CONVENING OF MEETINGS**

Any member of the Green Deal Officers' Group may convene a meeting of the Green



Deal Officers' Group at any time.

## **7 NOTICES OF MEETINGS**

Not less than eight (8) Business Days notice (identifying the agenda items to be discussed at the meeting together) shall be given to convene a meeting of the Green Deal Officers' Group, except that in emergencies, a meeting may be called at any time on such notice as may be reasonable in the circumstances. The Green Deal Officers Group shall be provided with KPI and any relevant management information at least fourteen (14) days in advance of any Green Deal Officers Group meeting.

## **8 MINUTES**

The minutes will be taken by rotation by members of the Green Deal Officers' Group. Minutes of all decisions and meetings of the Green Deal Officers' Group shall be kept by the Provider and copies circulated promptly to the Authority, normally within ten (10) Business Days of the making of the decision or the holding of the meeting. A full set of minutes shall be kept by the Provider and shall be open to inspection by the Authority at any time, upon request.



## Appendix 2

### Call off Contract

#### DISPUTE RESOLUTION

The Parties shall refer all matters in dispute arising out of or in connection with this Contract for consideration and decision by directors or designated senior managers of each Party, who shall use their reasonable endeavours to reach a solution to any such dispute within a period of twenty one (21) days, and failing which, unless the Parties agree another period of time, any such dispute may, upon agreement of the Parties be dealt with as set out in Clause 32.2.

If the dispute cannot be resolved by the Parties' Representatives nominated under Clause 32.1 the dispute may be referred to effective dispute resolution ('EDR') under the supervision of a suitable EDR organisation, such organisation to be agreed between the Parties (hereinafter referred to as 'the Organisation') . EDR shall commence by either Party serving on the other written notice ('EDR Notice') setting out in summary the issues in dispute and calling upon that other Party to join in an approach to the Organisation for the appointment of the Neutral (as defined in clause 32.3.)

EDR shall be conducted using a sole mediator ('Neutral') in or substantially in accordance with the Organisation's recommended agreement for the time being in use. The Neutral should be an accredited mediator agreed between the Parties, or in default of agreement within 14 days of notice of either Party calling upon the other to engage in EDR, appointed by the Organisation.

The Parties agree to co-operate fully and promptly and in good faith with the Organisation or the Neutral in the performance of their obligations under this Clause 32. Both Parties will afford the Neutral all necessary assistance which the Neutral requires to consider the dispute including but not limited to full access to any documentation or correspondence relating to the Services.

Unless agreed otherwise in the course of the procedure each Party shall bear its own costs of EDR, and the Neutral's costs shall be borne 50:50, or as otherwise directed by the Neutral.

If and to the extent that after engaging in good faith in EDR the Parties do not resolve the matters in dispute, all matters remaining in dispute shall be referred to the Courts.

In the event that the process of EDR does not succeed in finding a resolution to the dispute within a period of 56 days, or such other time as the Parties may agree, either Party may take such action as is available to it under this Contract or generally at law.



Work and activity to be carried out under this Contract shall not cease or be delayed by this dispute resolution procedure.

If any dispute:-

raises issues which are substantially the same as, or connected with, or touch upon, or concern issues raised in any dispute or difference arising out of or in connection with the Framework Agreement (a "Related Dispute"); or

arises out of, or touches upon, or concerns substantially the same facts as are the subject of a Related Dispute; or

is one that the Provider declares to be of interest to it in connection with the resolution of a Related Dispute

then notwithstanding that a Neutral may have been agreed or appointed under this Contract, either of the Parties may, by written notice to the other party and to the Authority in respect of the Framework Agreement and to the Neutral who has already been agreed or appointed hereunder, require the reference of any such dispute to be referred to the Neutral appointed or to be appointed in respect of any such Related Dispute under this Contract ("Joint Mediation").

The Parties agree to be bound by any requests or directions made by the Joint Mediation as to their consolidation or joinder in any mediation proceedings under this Contract and shall also be bound by any requests and procedural directions made by the Joint Mediation.

## **Framework Contract**

### **DISPUTE RESOLUTION**

The Parties shall all matters in dispute arising out of or in connection with Framework Agreement for consideration and decision by directors or designated senior managers of each Party, who shall use their reasonable endeavours to reach a solution to any such dispute within a period of twenty one) days, and failing which, unless the Parties agree another period of time, any such dispute may, upon agreement of the Parties be dealt with as set out in Clause 39.2.

If the dispute cannot be resolved by the Parties' Representatives nominated under Clause 39.1, the dispute may be referred to effective dispute resolution ('EDR') under the supervision of a suitable EDR organisation, such organisation to be agreed between the Parties (hereinafter referred to as 'the Organisation') . EDR shall commence by either Party serving on the other written notice ('EDR Notice') setting out in summary the issues in dispute and calling upon that other Party to join in an approach to the Organisation for the appointment of the Neutral (as defined in clause 39.3).

EDR shall be conducted using a sole mediator ('Neutral') in or substantially in accordance with the Organisation's recommended agreement for the time being in use. The Neutral should be an accredited mediator agreed between the Parties, or in default of agreement



within 14 days of notice of either Party calling upon the other to engage in EDR, appointed by the Organisation.

The Parties agree to co-operate fully and promptly and in good faith with the Organisation or the Neutral in the performance of their obligations under this Clause 39. Both Parties will afford the Neutral all necessary assistance which the Neutral requires to consider the dispute including but not limited to full access to any documentation or correspondence relating to the Services.

Unless agreed otherwise in the course of the procedure each Party shall bear its own costs of EDR, and the Neutral's costs shall be borne 50:50, or as otherwise directed by the Neutral.

If and to the extent that after engaging in good faith in EDR the Parties do not resolve the matters in dispute, all matters remaining in dispute shall be referred to the Courts.

In the event that the process of EDR does not succeed in finding a resolution to the dispute within a period of 56 days, or such other time as the Parties may agree, either Party may take such action as is available to it under this Contract or generally at law.

Work and activity to be carried out under this Framework Agreement shall not cease or be delayed by this dispute resolution procedure.

If any dispute:-

raises issues which are substantially the same as, or connected with, or touch upon, or concern issues raised in any dispute or difference arising out of or in connection with a Call-Off Contract (a "Related Dispute"); or

arises out of, or touches upon, or concerns substantially the same facts as are the subject of a Related Dispute; or

is one that the Provider declares to be of interest to it in connection with the resolution of a Related Dispute;

then notwithstanding that a Neutral may have been agreed or appointed under this Framework Agreement, either of the Parties may, by written notice to the other Party or parties to the Call-Off Contract and to the Neutral who has already been agreed or appointed hereunder, require the reference of any such dispute to be referred to the Neutral appointed or to be appointed in respect of any such Related Dispute under this Framework Agreement ("Joint Mediation").

The Parties agree to be bound by any requests or directions made by the Joint Mediation as to their consolidation or joinder in any mediation proceedings under this Framework Agreement and shall also be bound by any requests or procedural directions made by the Joint Mediation.

