

Decision Pathway – Report



PURPOSE: Key decision

MEETING: Cabinet

DATE: 05 April 2022

TITLE	Appointment of Preferred Bidder for the City Leap Energy Partnership		
Ward(s)	Bristol - City-wide		
Author: David White	Job title: Head of Energy Services and City Leap		
Cabinet lead: Cllr Cheney, Deputy Mayor with responsibility for Finance, Governance and Performance	Executive Director lead: Stephen Peacock, Executive Director, Growth and Regeneration		
Proposal origin: BCC Staff			
Decision maker: Cabinet Member Decision forum: Cabinet			
Purpose of Report: <ol style="list-style-type: none">For Cabinet to note:<ul style="list-style-type: none">the appointment of Ameresco Limited, with Vattenfall Heat UK Limited as an Essential Sub-Contractor, as the City Leap Preferred Bidder; andmatters in relation to the set-up of the City Leap Client Function.To seek authority from Cabinet to:<ul style="list-style-type: none">finalise arrangements for the City Leap Energy Partnership with Ameresco Limited to implement City Leap, andapprove matters in relation to the transition phase of the City Leap Energy Partnership.			
Evidence Base			
1. Background			
1.1. In April 2019, Cabinet approved City Leap, a new approach to delivering low carbon energy infrastructure, such as solar PV, heat networks, heat pumps and energy efficiency measures at scale.			
1.2. City Leap is an energy partnership between the council and a private sector Strategic Partner. The council will grant access to its estate to deliver low carbon energy infrastructure and facilitate delivery in the wider city, including with existing community energy groups and networks. The Strategic Partner will contribute capital funding, capacity and expertise in the delivery of low carbon energy infrastructure projects.			
1.3. Any financial risks associated with these projects and assets will be borne entirely by the Strategic Partner.			
2. Procurement of the City Leap Strategic Partner			

- 2.1. The City Leap Energy Partnership procurement launched in August 2020. A summary of the procurement process is set out in Appendix A.
- 2.2. Upon completion of the procurement process, the winning Bidder was confirmed as being Ameresco Limited – please see Appendix A for background information relating to the suppliers.

3. Next Steps

Subject to Cabinet approval of this report:

- 3.1. The transition phase of City Leap will commence. The transition phase will conclude with all relevant contracts being signed between the council and Ameresco to appoint it as the Strategic Partner, subject to a further Cabinet decision;
- 3.2. During this period, we will:
 - a) consult with those Energy Service employees who are confirmed as being in scope to transfer to the City Leap Energy Partnership, in line with TUPE regulations;
 - b) prepare Bristol Heat Networks Limited for sale to Vattenfall Heat UK Limited upon Contract Signature at the conclusion of the transition phase; and
 - c) set up the council's Client Function for City Leap.

The transition phase is targeting the end of September 2022 for completion of all of the above activities but the funding requested in this Cabinet Report to cover the transition period includes funding for an additional three months to December 2022 as a contingency.

4. Overview of Ameresco Limited's Tender

- 4.1. In summary, Ameresco Limited has committed to:
 - 4.1.1. Making the council's own operations carbon neutral by 2025 (covering its direct energy and transport emissions (Scope 1 and Scope 2));
 - 4.1.2. Retrofitting the council's social housing by 2030, achieving a minimum EPC Band C;
 - 4.1.3. £424m in low carbon energy infrastructure, including heat networks, renewable energy, heat pumps, energy efficiency and EV charging;
 - 4.1.4. c140,000 tonnes of carbon savings;
 - 4.1.5. c182MW of zero carbon energy generation; and
 - 4.1.6. c£61m of social value, including c£50m of contracts to be delivered by local suppliers.

5. Financial Matters

Revenue funding

- 5.1. Ameresco Limited will fully fund the operating costs of the City Leap Energy Partnership and the council will

not be required to make any financial contribution.

- 5.2. Ameresco Limited will make guaranteed payments to the council of £2.3m over the first five years of the Partnership, including a payment to the council of c£1.5m upon Contract Signature at the conclusion of the transition phase, and further guaranteed payments totalling £1.9m over the remaining term of the Partnership.
- 5.3. Ameresco Limited will also make non-guaranteed payments of £2.1m over the first five years of the partnership, subject to the deployment of capital expenditure and heat network connection fee income.

Capital funding

- 5.4. The Council is not committed to any future capital funding as a result of this partnership. Any future capital funding contributions would be subject to the usual decision-making processes of the council.

Heat network assets

- 5.5. Since 2015, the Council has been building a heat network to support the decarbonisation of heat in Bristol. In 2020, it set up a Special Purpose Vehicle, Bristol Heat Networks Limited (BHNL), in order to comply with the conditions of a government grant.
- 5.6. The council intends to transfer all of the assets that make up the heat network it currently owns to BHNL. The authority to undertake this asset transfer will be sought via a separate cabinet report currently anticipated to be coming forward in June 2022.
- 5.7. When the contracts are signed at the end of the transition phase, BHNL will be sold to Vattenfall Heat UK Limited, who will be responsible for and take on the risks associated with the heat network including those arising from the supply of heat to customers. Further information will be set out in the cabinet report referred to above.

Other assets

- 5.8. The council's wind turbines, solar farm and rooftop solar systems will remain in the ownership of the council.

6. Governance

- 6.1. The City Leap Partnership will be established as a 50/50 joint venture between the council and Ameresco Limited. The council and Ameresco Limited will each nominate the same number of directors to the board of the company. See Appendix H, Legal Commentary, for further information on the governance arrangement for the City Leap Energy Partnership and other legal matters.

7. Risks

- 7.1. The key risks associated with this Cabinet Report are:
 - 7.1.1. We cannot agree terms to enter into the suite of legal agreements.

7.1.2. We are unable to conclude the sale of Bristol Heat Network Limited.

8. Client Function for City Leap

- 8.1. For the council to manage its future relationship with City Leap, the council will set up an internal client team. The costs of setting up the client team are included in the transition budget below. The budget for the Client Function in future financial years will be approved as part of the Council's usual budget setting process.
- 8.2. See Appendix A for further details on the City Leap Client Function.

9. Budget

- 9.1. In January 2022, Cabinet was asked to approve additional funding of £880k to take the City Leap procurement exercise through to the appointment of the Preferred Bidder, a key milestone that will be achieved upon Cabinet approval of this Cabinet Report. At the time of writing, it is forecast that there will be an underspend against this additional budget of c£131k.
- 9.2. Therefore, in total, the council will have spent a total of £7.262m on the procurement exercise to date as follows:

	ACTUAL	ACTUAL	ACTUAL	FORECAST		FORECAST	Movement in
	2018/19	2019/20	2020/21	(to Apr 22 Cabinet)	TOTAL	(last month)	month
Core team - BCC staff	115,908	204,986	208,416	185,880	715,190	712,741	2,448
Core team - Agency	37,142	255,022	123,352	57,595	473,111	464,039	9,072
Core team - Internal professionals	129,093	407,018	353,227	609,688	1,499,026	1,517,903	(18,877)
External Advisors - Financial	67,000	559,163	258,509	276,981	1,161,654	1,152,390	9,264
External Advisors - Legal	50,016	401,434	256,816	605,276	1,313,542	1,313,980	(438)
External Advisors - Client Function			-	64,680	64,680	82,180	(17,500)
External Advisors - Commercial energy	55,280	627,921	11,127	-	694,328	694,328	-
Marketing & Travel	20,628	81,200	4,566	35,000	141,394	141,394	-
Internal recharges - other	(864)	3,025	5,000	5,000	12,161	12,161	-
Energy innovation services		1,187,000			1,187,000	1,187,000	-
Contingency					-	-	-
TOTAL	474,203	3,726,769	1,221,014	1,840,101	7,262,086	7,278,117	(16,031)
Brought forward		(288,863)	(812,095)	(1,091,080)			
Nov '18 Cabinet Approval	(763,066)				(763,066)		
Apr '19 Cabinet Approval		(4,000,000)			(4,000,000)		
20/21 Budget			(1,500,000)		(1,500,000)		
Energy Service approved revenue budget		(250,000)			(250,000)		
Jan 2022 Cabinet Approval				(880,000)	(880,000)		
TOTAL FUNDING	(763,066)	(4,250,000)	(1,500,000)	(880,000)	(7,393,066)		
Over/(Under) spend	(288,863)	(812,095)	(1,091,080)	(130,980)	(130,980)		

- 9.3. As noted in the January 2022 Cabinet Report (and in previous Cabinet Reports), further funding will be required for the transition phase and this is estimated to be c£1.26m plus a contingency of £0.54m giving a total transition budget of £1.8m as follows:

	Transition FORECAST (to December)
Core team - BCC staff	148,501
Core team - Agency	4,810
Core team - Internal professionals	358,626
External Advisors - Financial	150,000
External Advisors - Legal	200,000
Client Function mobilisation	300,000
Marketing & Travel	25,000
Internal recharges - other	73,000
Contingency - to December 2022	540,064
TOTAL	1,800,000

- 9.4. The transition budget of £1.8m assumes that transition will be complete by 30 September 2022 and that the City Leap Energy Partnership will be operational from 1 October 2022. However, given that there are a number of substantial workstreams within the transition phase, a contingency of £0.54m has been included in the funding request to cover an extension of the transition phase to 31 December 2022 and/or additional expenditure incurred during the period to September 2022.
- 9.5. Post completion of the transition phase, the revenue cost to the council of the City Leap Client Function and any retained Energy Service employees will be contained within the envelope of the previously approved Energy Service base budget for FY 2022/23.

Cabinet Member / Officer Recommendations:

That Cabinet:

1. Notes the appointment of Ameresco Limited as Preferred Bidder.
2. Approves the principle of the establishment of City Leap Energy Partnership Limited as a 50/50 joint venture between the Council and Ameresco Limited.
3. In relation to the transition phase of City Leap:
 - a. Authorises the Executive Director, Growth and Regeneration, in consultation with Cabinet Member for Climate, Ecology, Waste and Energy, Deputy Mayor for Finance, Governance and Performance, Director of Legal and Democratic Services and Director of Finance, to take all steps required to finalise the terms of the City Leap Energy Partnership with the Preferred Bidder, in line with the commitments set out in section 4 of this report.
 - b. Authorises the Director of Finance in consultation with the Deputy Mayor for Finance, Governance and Performance to draw down and spend up to £1.8m to fund the transition stage (being the stage from selection of Preferred Bidder to signature of contracts) which will include the project team and professional advisors. This sum will be funded from New Priority Investment Reserve.

4. Notes the re-purposing of part of the previously approved FY 2022/23 Energy Service base budget to fund the City Leap Client Function post transition.
5. Notes that further reports will be brought back to Cabinet:
 - a. To agree the transfer of the council's heat network assets into Bristol Heat Networks Limited and the financial and legal terms for the subsequent sale of Bristol Heat Networks Limited to the Strategic Partner, and
 - b. To agree to enter into the necessary legal agreements to formalise the City Leap Energy Partnership.

Corporate Strategy alignment:

1. The City Leap Energy Partnership is intended to contribute to the following Corporate Strategy 2022-2027 target: Make sure that the council is carbon neutral for all emissions by 2030 and supports the city in its aim to do the same.

City Benefits:

1. c£424m of investment in decarbonisation projects
2. c140,000 tonnes of carbon savings
3. c182MW of renewable electricity and heat generation capacity delivered over the next five years.
4. c£61.5m of social value generated.

Consultation Details:

Briefings provided to the Mayor, Cabinet Member Briefings, Oversight & Scrutiny Management Board, Growth and Regeneration Scrutiny Commission and Senior Officers, as well as significant engagement with community energy groups and other organisations from the VCSE sector - from July 2018 to present.

Background Documents:

1. The January 2022 Cabinet Report: <https://democracy.bristol.gov.uk/documents/s68668/City%20Leap%20-%20procurement%20update%20and%20contract%20extension%20notification%20FINAL.pdf>
2. The December 2020 Cabinet Report: <https://democracy.bristol.gov.uk/ielssueDetails.aspx?IId=30452&PlanId=0&Opt=3#AI22528>
3. The July 2020 Cabinet Report: <https://democracy.bristol.gov.uk/ielssueDetails.aspx?IId=25279&PlanId=0&Opt=3#AI20063>
4. The June 2020 Cabinet Report: <https://democracy.bristol.gov.uk/documents/s49367/2020%2006%2002%20Cabinet%20Decision%20Pathway%20-%20City%20Leap%20Energy%20Partnership%20update.pdf>
5. The April 2019 Cabinet Report: <https://democracy.bristol.gov.uk/ieDecisionDetails.aspx?AIId=15747>
6. The City Leap Prospectus: www.energyservicebristol.co.uk/cityleap

Revenue Cost	£1.80m of new funding to fund the transition phase of City Leap	Source of Revenue Funding	New Priority Investment Reserve
Capital Cost	N/A	Source of Capital Funding	N/A
One off cost <input checked="" type="checkbox"/> Ongoing cost <input type="checkbox"/>		Saving Proposal <input type="checkbox"/> Income generation proposal <input type="checkbox"/>	

Required information to be completed by Financial/Legal/ICT/ HR partners:

1. Finance Advice:

A high-level assessment was made of the Cost-Benefit to the Council, based on an analysis of key information. It shows an overall, indicative positive net benefit to the Council. A further finance update will be provided in the subsequent cabinet reports following finalisation of the contracts with the Preferred Bidder.

Recommendation

It is recommended that the Preferred Bidder be appointed, and that the terms of the contracts be finalised.

Finance Business Partner: Paul Keegan, City Leap Finance Business Partner – 24 March 2022

2. Legal Comments:

The City Leap Energy Partnership is a joint venture between the Council and the Preferred Bidder. The legal structure will include:

- A joint venture company (JVCo) that will originate low carbon energy infrastructure projects. 50% of the shares in JVCo will be owned by the council, and 50% of the shares will be owned by the Preferred Bidder.
- A concession agreement under which the Council will grant the Preferred Bidder access to its estate (subject to certain criteria being met) to install low carbon energy infrastructure on the Council's estate, and pursuant to which the Preferred Bidder will be held to key elements of their tender including the delivery of a heat network and considerable social value.

The Council's procurement of the joint venture partner to install low carbon energy infrastructure on the Council's estate is subject to the Concession Contracts Regulations 2016. Accordingly, the Council has conducted the procurement of the joint venture partner in accordance with the Concession Contracts Regulations 2016.

The City Leap legal structure will require the Council to establish a joint venture trading company in which it will hold shares directly (under s4 Localism Act 2011 and s95 Local Government Act 2003, the Council has the power to establish a company for the purposes of carrying out trade to generate profit or for other purposes).

Where state resources are being transferred into the structure, this could give rise to Subsidy Control Regime risks if transferred at less than market value. The Council has sought to mitigate that risk by following the “market investor” principle. The regulated competitive procurement process that has been undertaken to procure the joint venture partner should minimise risk of a transfer taking place at less than market value.

It is intended that the entities within City Leap will not be “bodies governed by public law” and so will not be subject to procurement regulations. However, this will require ongoing monitoring of the practical operation of the shareholder arrangements.

Further details of the contractual arrangements are contained in Appendix H – legal commentary.

Legal Team Leader: Sinead Willis, Team Leader – 7 March 2022

3. Implications on IT:

IT are fully aware and supportive of the process. IT will engage to support any required transition activities post appointment, including any activities under any required TUPE processes.

IT Team Leader: Gavin Arbuckle, Head of Service Improvement and Performance – 23 March 2022

4. HR Advice: All employees in scope will be transferred in accordance with the provisions of the Transfer of Undertakings Protection of Employment Regulations (TUPE). A dedicated HR Advisor will support management with this process, in relation to informing and consulting with employees and the provision of information to the new organisation. Consideration will need to be given to the resourcing of the client function.

HR Partner: Chris Hather, HR Consultancy Manager, Growth & Regeneration – 25 March 2022

5. Procurement Advice:

This paper details and confirms that a compliant tender process has been conducted in line with CCR2016 regulations. The highest combined scoring bidder has been identified and is evidenced by the moderated scores. Procurement deems that there is a medium risk of challenge to the appointment due to the nature of the requirement and the complex tender process coupled with legal risks detailed in Legal comments. The robust evaluation and moderation process alongside the justifications given for each score will evidence reasons for the appointment in answer to any potential legal challenge. The service will need to ensure the contract is adequately resourced to ensure the contract is closely monitored and contract managed.

Once Cabinet approval is granted and the standstill period is complete all required notices and processes can be published and finalised.

Category Manager: Niotia Ferguson, Category Business Partner – 23 March 2022

EDM Sign-off	Stephen Peacock, Executive Director Growth and Regeneration	23 March 2022
Cabinet Member sign-off	Cllr Cheney, Deputy Mayor with responsibility for Finance, Governance and Performance	23 March 2022
For Key Decisions - Mayor's Office sign-off	Mayor's Office	25 March 2022

Appendix A – Further essential background / detail on the proposal	YES
Appendix B – Details of consultation carried out - internal and external	NO
Appendix C – Summary of any engagement with scrutiny	YES
Appendix D – Risk assessment	YES
Appendix E – Equalities screening / impact assessment of proposal	YES
Appendix F – Eco-impact screening/ impact assessment of proposal	YES
Appendix G – Financial Commentary	NO
Appendix H – Legal Commentary	YES
Appendix I – Exempt Information	NO
Appendix J – HR advice	NO
Appendix K – ICT	NO
Appendix L – Procurement	NO