

CLYDEBANK HOUSING ASSOCIATION LTD.

TO: MANAGEMENT COMMITTEE **REF:** /LL
FROM: HEAD OF FINANCE & CORPORATE SERVICES **DATE:** 24.02.20
SUBJECT: CHA POWER GAS PRICE CONTRACT REVIEW

Purpose of Report

The purpose of the report is for the Management Committee and Board of CHA Power Limited to review and consider information in order to consider the renewal of the gas contract for CHA Power Limited applicable from 1st December 2019.

Potential impact on tenants and service users/Tenant Consultation requirements

There is no adverse impact on tenants and other service users as a result of information and decisions required in this report. Tenant/community consultation is not required.

Value for Money

CHA considers Value for Money in all aspect of its business including: -

- Managing our resources to provide quality services and homes to meet the needs of customers and the local community.
- Delivering the right service at the right time at the right cost.
- Planning for and delivering year on year improvements on our services based on customer priorities.
- Getting the most out of our assets and staff by operating efficiently and effectively.

Risk

There is no risk, financial or otherwise associated with any of the recommendations contained within this report in relation to proposed changes in the gas contract for CHA Power Limited, that cannot be facilitated within the short, medium and long-term budgets, price reviews and financial plans or that have not already been assessed within our risk register.

Legal/constitutional Implications (Reference to Model Rules)

There are no adverse legal or constitutional implications as a result of this report and/or any decision required.

Relevant CHA Objectives:

- To provide quality, affordable housing that meets the changing needs of our customers and to ensure fair access to housing within our area.
- To manage the houses provided, in a professional and cost effective manner, for the benefit of our local community and the environment.
- To ensure that our resources are adequate to deliver our objectives by investing in our people, demonstrating value for money and through robust procurement practices.
- To promote social inclusion by applying principles of equality and diversity to everything we do.

Relevant SHR Regulatory Standards of Governance and Financial Management

- The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.
- The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. And its primary focus is the sustainable achievement of these priorities.
- The RSL manages its resources to ensure its financial well-being, while maintaining rents at a level that tenants can afford to pay.
- The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.
- The RSL conducts its affairs with honesty and integrity.
- The governing body and senior officers have the skills and knowledge they need to be effective.

The Management Committee will require confirming that the contents of this report and decisions required do not constitute a breach, material or otherwise, of the above Standards.

Equalities

- No protected group is adversely affected by the proposals, recommendations or updates within this report. Our commitment to equal opportunities and fairness applies irrespective of factors such as race, sex, disability, age, gender reassignment, marriage & civil partnership, pregnancy & maternity, religion or belief and sexual orientation.

Introduction

CHA Power Ltd's current gas supply contract was for the period 01/12/2016 to 30/11/2019. In order to carry out a full procurement exercise, negotiations were initiated with the current supplier in November and a summary of findings can be seen below.

Alongside negotiating with the current supplier, the Head of Finance & Corporate Services reviewed [REDACTED] for the Supply of Natural Gas in order to secure the best possible renewal terms.

Summary

Both renewal options are with [REDACTED], the current supplier, as they were awarded the re-let of the [REDACTED] in August 2019. Supply of natural gas under the new contract will commence on 1 April 2020 and will run until 31 March 2022, with options for three yearly extensions until 31 March 2025.

Key benefits of the new contract include:

- [REDACTED] have committed to a range of Community Benefits which include apprenticeship training programmes, engagement with Scottish companies for sub-contracting works & services, funding towards community projects and supported education and training schemes;
- support to public bodies to help them to reduce their gas consumption through energy efficiency measures;
- Expected savings of at least £7.5m per year for public bodies.

By reviewing the terms of the [REDACTED], alongside the direct renewal with the supplier, we can see the pricing variances below.

It has been negotiated that any pricing will apply from 1st December 2019 and costs incurred already in the period to the current date will be backdated at the renewed pricing.

	Day rate p/kWh	Standing daily charge	Estimated annual consumption (kWh)	Estimated cost per annum (£)	Budget cost 2020/21 (£)	Savings per annum (£)
For info – current contract pricing to 30.11.19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	-	-
Renewal with [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Renewal with [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

Decision required

It is recommended that the CHA Power gas renewal be awarded through the [REDACTED] [REDACTED] to realise the savings outlined above and to access the potential for community benefits to be awarded.

If approved, the Head of Finance and Corporate Services will arrange for a Director of CHA Power to sign the attached contract document and have it processed for pricing to commence from 1st December 2019 to March 2022, with the possibility to extend to March 2025.

SCOTTISH PROCUREMENT

AGENCY AGREEMENT

relating to the supply of

NATURAL GAS

between

(1) CHA Power Ltd
[THE CLIENT],

-and-

(2) THE SCOTTISH MINISTERS

AGENCY AGREEMENT

Between

(1) CHA Power Ltd [THE CLIENT],

-and-

(2) THE SCOTTISH MINISTERS (THE “AUTHORITY”)

WHEREAS

- ONE The Authority is to enter into framework agreements with Suppliers of natural gas in terms of which natural gas is to be supplied to the Authority and to Scottish Public Bodies (as that term is defined in this Agency Agreement) for the period commencing 1st April 2014 for natural gas;
- TWO The Authority requires the Client’s authorisation to purchase natural gas and enter into Supply Arrangements on the Client’s behalf;
- THREE The Client agrees to appoint the Authority as its agent in this regard;
- FOUR The Client acknowledges that the Authority shall not be party to Supply Arrangements between the Client and the Suppliers and, in particular, shall not be responsible for payment to the relevant Suppliers in respect of natural gas supplied or the provision of any associated services to the Client;
- FIVE The Authority, acting through Scottish Procurement, the National Procurement Centre of Expertise, shall endeavour to achieve best value for the Client.

NOW IT IS HEREBY AGREED that:

1. Definitions and Interpretation

- 1.1 In this Agency Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

“Agency Agreement” means this agency agreement between the Client and the Authority consisting of these clauses and the two Schedules attached;

“Arbitration Notice” has the meaning given to it in clause 13.5;

“Authority” means the Scottish Ministers;

“Authority’s Obligations” means the obligations listed in Schedule 1;

“Client” means [name, designation and address of Client];

“Commencement Date” means the last date of signature of this Agency Agreement;

“Contracting Authority” means any contracting authority as defined in regulation 3 of the Public Contracts (Scotland) Regulations 2012 other than the Authority;

“Default” means any breach of the obligations of the Client (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the Client in connection with or in relation to the subject-matter of this Agency Agreement;

“Existing Supply Arrangements” means any contractual arrangements in existence as at the Commencement Date to which the Client is party in terms of which a supplier of natural gas supplies to the Client;

“Notice” means any notice given in accordance with clause 5 and “Notify” shall be construed accordingly;

“Party” means a party to this Agency Agreement;

“Risk Management Committee” means the forum of representatives of Scottish Public Bodies established by the Authority in relation to the risk management of the procurement of natural gas

“Risk Management Strategy” means the Authority’s current risk management strategy for the procurement of natural gas as that document may be amended from time to time;

“Schedule” means a schedule annexed to, and forming part of, this Agency Agreement;

“Scottish Public Body” means any of the following bodies; Scottish Non-Departmental Public Bodies, offices in the Scottish Administration which are not ministerial offices, cross- border public authorities within the meaning of section 88(5) of the Scotland Act 1998, the Scotland Office, the Scottish Parliamentary Corporate Body, councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994, Scottish joint fire boards or joint fire and rescue boards, Scottish joint police boards, Scottish National Park authorities, bodies registered as social landlords under the Housing (Scotland) Act 2001, Scottish health boards or special health boards, further or higher education institutions being fundable bodies within the meaning of section 6 of the Further and Higher Education (Scotland) Act 2005, any public body established by or under the Scotland Act 1998 or any Act of the Scottish Parliament, any association of or formed by one or more of the foregoing, bodies financed wholly or mainly by one or more of the foregoing, bodies subject to management supervision by one or more of the foregoing and bodies more than half of the board of directors or members of which, or, in the case of a group of individuals, more than half of those individuals, being appointed by one or more of the foregoing.

“Sectoral Centres of Expertise” means the Central Government Centre of Procurement Expertise, Scotland Excel, Advanced Procurement for Universities and Colleges, National Health Service Scotland National Procurement and any similar or successor bodies operating as centres of public procurement expertise in Scotland;

“Service Level Agreement” means the service level agreement agreed or to be agreed between the Authority and Suppliers;

“Supplier” means any supplier of natural gas appointed by the Authority to supply natural gas to the Authority and to Scottish Public Bodies;

“Supply Arrangements” means any contractual arrangements between the Client and a Supplier for the supply of or to facilitate the supply of natural gas by the Supplier to the Client (but not including Existing Supply Arrangements);

“Supply Information” means the information listed in Schedule 2;

“Supply Period” means the period from 1 April 2014 for natural gas or, if later, the date falling 6 months from Commencement Date to the Termination Date;

“Termination Date” means the date 12 months from the issue of a termination notice issued by either the Authority or Client; and

“Working Day” means a day other than a Saturday, Sunday or bank holiday in Scotland within the meaning of the Banking and Financial Dealings Act 1971.

1.2 The interpretation and construction of this Agency Agreement shall be subject to the following provisions:

- (a) Words importing the singular meaning include, where the context so admits, the plural and vice versa;
- (b) Words importing the masculine include the feminine and neuter;
- (c) Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument or re-enacted;
- (e) References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

- (f) The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
- (g) Headings are included in this Agency Agreement for ease of reference only and shall not affect the interpretation or construction of this Agency Agreement; and
- (h) References to the relationship of agency shall include the relationship of mandate.

2. Appointment of Agent

2.1 Subject to clauses 2.2 and 2.3, the Client appoints the Authority as its agent.

2.2 The Authority shall have authority as agent of the Client to:

- (a) conclude Supply Arrangements on the Client’s behalf (such Supply Arrangements to take effect in the Supply Period);
- (b) commit to advance purchases of natural gas on the natural gas market on the Client’s behalf (such purchases to take effect in the Supply Period);
- (c) sign any document necessary to give effect to the above; and
- (d) hold itself out as the Client’s agent and otherwise disclose the fact of its agency in respect of the above.

2.3 The Authority shall have no express or implied authority to act as the Client’s agent beyond that provided for in clause 2.2. Neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Agency Agreement.

2.4 The Authority shall be paid no remuneration or commission in respect of its agency.

3. Period of Agreement

This Agency Agreement shall commence on the Commencement Date and shall expire upon the Termination Date, which is determined in accordance with the provisions of this Agency Agreement under clause 11, or upon the date it is otherwise terminated,.

4. Authority’s Obligations

The Authority shall use reasonable endeavours to perform the Authority’s Obligations. For the avoidance of doubt, the Authority shall be under no obligation to make payment to or indemnify any Supplier in respect of the supply of natural gas or the provision of any associated services to the Client.

5. Notices

5.1 No notice or other communication from one Party to the other shall have any validity under this Agency Agreement unless made in writing by or on behalf of the Party concerned.

5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post or by the recorded or special delivery service), or by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in clause 5.3. Provided the relevant communication is not returned as undelivered, and subject to clause 11.2, the Notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail (such acknowledgement not to include an acknowledgement given by means of an automated electronic process).

5.3 For the purposes of clause 5.2, the address of each Party shall be:

- (a) For the Client:

CHA Power Ltd
77-83 Kilbowie Road

**Clydebank
G81 1BL**

For the attention of:
Tel:
Email:

- (b) For the Authority:
Scottish Procurement
The Scottish Government
Area 3-A South
Victoria Quay
Edinburgh
EH6 6QQ
For the attention of: Senior Portfolio Manager - Utilities
Tel: 0131 244 5485
Fax: 0131 244 0449
Email: procurementutilities@gov.scot

5.4 Either Party may change its address for service by serving a Notice in accordance with this clause.

6. Provision of Information to the Authority and to Suppliers

- 6.1 The Client shall, within one month of the date of its signature of this Agency Agreement, by Notice give to the Authority the Supply Information. The Client shall give the Supply Information to the Authority in any form reasonably requested by the Authority.
- 6.2 The Client shall by Notice give to the Authority updated Supply Information where reasonably requested to do so by the Authority or when there is a significant change to any Supply Information Notified to the Authority. In the absence of any such notice the Client shall update its Supply Information to the Authority on an annual basis.
- 6.3 The Client shall furthermore provide the Authority with all such information as may reasonably be requested regarding the Supply Information, its Existing Supply Arrangements, any Supply Arrangements and/or any dispute with a Supplier.
- 6.4 Where the Client terminates any Supply Arrangements with effect prior to the Termination Date, or is in dispute with a Supplier and intends to raise court proceedings or other dispute resolution proceedings against the Supplier to enforce its rights under any Supply Arrangements, the Client shall give Notice of that fact to the Authority.
- 6.5 The Client shall cooperate with any Supplier who supplies or proposes to supply the Client with natural gas with regards to verifying or improving the accuracy of the Supply Information. The Client shall give to any such Supplier the Supply Information where the Authority directs the Client by Notice to do so. The Client shall give the Supply Information to a Supplier in any form reasonably requested by the Authority.

7. Entire Agreement

- 7.1 This Agency Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This Agency Agreement supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral.
- 7.2 In the event of, and only to the extent of, any conflict between the clauses of this Agency Agreement, any document referred to in those clauses and/or the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the clauses of this Agency Agreement;
 - (b) the Schedules; and
 - (c) any other document referred to in the clauses of this Agency Agreement.

8. Assignment

8.1 The Client shall not assign, sub-contract or in any other way dispose of the Agency Agreement or any part of it without the prior written consent of the Authority (such consent not to be unreasonably withheld).

8.2 The Authority may assign, novate or otherwise dispose of its rights and obligations under the Agency Agreement or any part thereof to:

- (a) any Contracting Authority;
- (b) any other body established by the Crown or under statute; or
- (c) any private sector body;

which substantially performs any of the functions that had previously been performed by the Authority

9. Amendment

9.1 Subject to clause 9.2, this Agency Agreement may be amended only by the written agreement of both Parties.

9.2 Without prejudice to the Client's rights under clause 11, the Authority may by Notice to the Client amend the Supply Information.

10. Warranties, Representations and Liability

10.1 The Client warrants and represents that:

- (a) it has full capacity and authority and all necessary consents to appoint the Authority as its agent to the extent provided for in clause 2.2;
- (b) it has full capacity and authority and all necessary consents to enter into and perform its obligations under the Agency Agreement;
- (c) the Agency Agreement is executed by a duly authorised representative of the Client; and
- (d) it shall use reasonable endeavours to ensure that all information provided to the Authority under clause 6 shall be true, accurate and not misleading.

10.2 The Client shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of any breach by the Client of the warranties and representations in clause 10.1.

10.3 Neither Party excludes or limits liability to the other Party for:

- (a) fraud or fraudulent misrepresentation; or
- (b) death or personal injury caused by its negligence.

10.4 Subject to clause 10.3, in no event shall either Party be liable to the other for any:

- (a) loss of profits, business, revenue or goodwill; or
- (b) indirect or consequential loss or damage.

11. Termination

11.1 Each Party shall have the right to terminate the Agency Agreement at any time by giving 12 months' Notice to the other Party.

11.2 Any Notice to the Authority under clause 11.1 shall only be deemed to be given where the Authority acknowledges receipt of the letter, facsimile transmission or item of electronic mail containing such Notice (such acknowledgement not to include an acknowledgement given by means of an automated electronic process).

11.3 Without prejudice to the Authority's other rights of termination under this Agency Agreement or otherwise the Authority may terminate the Agency Agreement by Notice to the Client with immediate effect if the Client commits a Default and if:

- (a) the Client has not remedied the Default to the satisfaction of the Authority within 25 Working Days, or such other period as may be specified by the Authority, after issue of a Notice specifying the Default and requesting it to be remedied; or
- (b) the Default is a breach of clause 10.1 or otherwise a material breach of the Agency Agreement.

12. Governing Law and Jurisdiction

The Agency Agreement shall be governed by and interpreted in accordance with Scots law and the Parties submit to the jurisdiction of the Scottish courts (subject always to clause 13.3). Each Party irrevocably waives any objection which it might at any time have to the courts of Scotland being nominated as the forum to hear and decide any proceedings and to settle any disputes and agrees not to claim that the courts of Scotland are not a convenient or appropriate forum.

13. Dispute Resolution

13.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agency Agreement within 20 Working Days of either Party Notifying the other of the dispute and such efforts shall involve the escalation of the dispute to [position] (or equivalent) for the Client and the Director of Procurement Scotland for the Authority.

13.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim decree or order restraining the other Party from doing any act or compelling the other Party to do any act.

13.3 The Parties shall not institute court proceedings, save for proceedings of the kind mentioned in clause 13.2, until the procedures set out in clause 13.1 have been completed save that:

- (a) the Authority may at any time before court proceedings are commenced, serve a Notice on the Client requiring the dispute to be referred to and resolved by arbitration in accordance with clause 13.5;
- (b) if the Client intends to commence court proceedings, it shall serve Notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such Notice to serve a reply on the Client requiring the dispute to be referred to and resolved by arbitration in accordance with clause 13.5; and
- (c) the Client may request by Notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 13.5, to which the Authority may consent as it sees fit.

13.4 The obligations of the Parties under this Agency Agreement shall not cease, or be suspended or delayed by the reference of a dispute to arbitration and the Parties shall comply fully with the requirements of this Agency Agreement at all times.

13.5 In the event that any arbitration proceedings are commenced pursuant to clause 13.3:

- (a) the arbitration shall be deemed to be an agreement to refer to arbitration within the meaning of the Arbitration (Scotland) Act 2010;
- (b) the Authority shall give a Notice of arbitration to the Client (the "Arbitration Notice") stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days of the Arbitration Notice being issued by the Authority under clause 13.5(b) or if the person appointed is unable or unwilling to act, the arbitrator shall be nominated by the President of the Law Society of Scotland for the time being on the application of either Party; and

(e) the arbitration proceedings shall be governed by, and interpreted in accordance with, Scots law.

IN WITNESS WHEREOF these presents typewritten on this and the preceding 8 pages are executed as follows:

SIGNED for and on behalf of

CHA Power Ltd

At.....

On.....

Signature.....

Name

Position

Address.....

SIGNED for and on behalf of **the Scottish Ministers**

At.....

On.....

Signature.....

Name:

Position: Senior Portfolio Manager

Address: Victoria Quay, Edinburgh

EH6 6QQ

In the presence of

Signature.....

Name

Address.....

In the presence of

Signature.....

Name.....

Address: Victoria Quay, Edinburgh

EH6 6QQ

This is Schedule 1 to the Agency Agreement between **CHA Power Ltd** [the Client] and the Scottish Ministers.

SCHEDULE 1 – AUTHORITY'S OBLIGATIONS

1. Supply of Natural Gas

- 1.1 Subject to the Client's compliance with the terms of this Agency Agreement, the Authority shall facilitate the supply to the Client of natural gas for the Supply Period in accordance with the Risk Management Strategy.
- 1.2 The Authority shall make the current version of the Risk Management Strategy available to the Client on request.

2. Provision of Information

The Authority shall give Notice to the Client of:

- (a) the names and contact details of the Suppliers (where these are not known to the Client as at the date of the Client's signature of this Agency Agreement);
- (b) any Supply Arrangements made on the Client's behalf (and the terms of such Supply Arrangements, where these are not known to the Client as at the date of the Client's signature of this Agency Agreement);
- (c) any advance purchases of natural gas on the relevant market made by the Authority on the Client's behalf; and
- (d) any document signed on the Client's behalf.

3. Supplier Management

- 3.1 The Authority shall monitor and review the Suppliers' compliance with the Service Level Agreement.
- 3.2 The Authority shall make the Service Level Agreement available to the Client on request.

4. Consultation with the Risk Management Committee

The Authority shall consult with the Risk Management Committee or, where such forum has been disbanded or is otherwise not active, with the Sectoral Centres of Expertise:

- (a) with regards to the development and revision of the Risk Management Strategy;
- (b) with regards to the development of the Service Level Agreement;
- (c) with regards to the supply of natural gas to the Client and to other Scottish Public Bodies; and
- (d) where the Authority proposes to exercise its rights under clause 8.2 of the Agency Agreement.

This is Schedule 2 to the Agency Agreement between **CHA Power Ltd** [the Client] and the Scottish Ministers.

SCHEDULE 2 – SUPPLY INFORMATION

The Client shall provide details of specific supply points and consumption data for the following:

Supply Point Details

1. Daily metered gas sites
2. non daily metered gas sites

Information required by the Authority shall be detailed in templates to support the data capture.

Annual Update of Information

The Client shall update the authority on an annual basis with regard to the Supply Information and this update shall include

- Confirmation of the current Supply Information
- Site amendments eg additions / deletions
 - including effective date
 - impact on volumes
 - any consumption profile changes
- Any significant changes to consumption information