

## **CABINET MEMBER FOR PROPERTY & CULTURAL SERVICES – 21 MAY 2018**

### **PROMOTION OF COUNCIL LAND FOR DEVELOPMENT**

#### **Report by Director for of Property and Investment**

#### **Background**

1. The County Council has a number of public commitments to reduce carbon emissions on its own estate and across the wider County area. The installation of solar panels is an opportunity to both reduce emissions and make savings on energy bills.
2. The Low Carbon Hub (LCH) has grown from a local community group to an Oxfordshire focussed community benefit company aiming to make a step change in the delivery of community owned renewable energy assets in Oxfordshire. To date they have delivered rooftop/ ground mount solar and hydro projects valued at over £16m including solar panels on 25 schools across the county.
3. LCH's model aims to create a 'virtuous circle' of carbon reduction:
  - LCH identifies, develops and manages the installation renewables on a host site (for schools this is under a 20-year roof lease arrangement).
  - There is no cost to the host (OCC/School). The programme is funded through a community share offer
  - The installed panels contribute towards the County's carbon reduction ambitions
  - The panels generate an income; the benefits of which are split broadly 3 ways:
    - The Host benefits from cheap, clean electricity (for schools this is at 20% below grid energy prices);
    - The Capital is repaid to shareholders over the 20 years including an 'ethical' return;
    - Some income returns to the LCH to carry out more carbon reduction work in Oxfordshire in line with their not-for-profit purpose.
4. To date schools have carried out their own processes in identifying the Low Carbon Hub to install solar. We are not aware of schools entering into a roof lease with any other provider, or investing in panels with their own capital. This suggests that Low Carbon Hub has been able to provide the most compelling offer and is developing a reputation as a trusted provider.
5. 'Solar for Schools' is also a different not-for-profit organisation operating on a similar basis to Low Carbon Hub 'Solar Schools' programme. Whilst they also fund, deliver and manage panels they do not provide community benefit within Oxfordshire and there is no track record for working with them in the county. Working with a new provider is likely to delay the ability to deliver projects in advance of the end of tariffs in March 2019.

## Reason for requesting exemption from Contract Procedure Rules

6. The Feed in Tariff (FIT - the main government tariff supporting solar) was reduced significantly in 2015 with many suppliers dropping out of the market and business models rendered non-viable. **The remaining residual support from the feed in tariff will end in March 2019 and is likely to render more schemes non-viable** until panel prices drop sufficiently in coming years.
7. **Low Carbon Hub has identified a further 35 schools they wish to work with before March 2019.** Given the proven track record of Low Carbon Hub, the potential 340 tonnes per year of carbon reduction and the wider community benefits to Oxfordshire from the Hub's activities we would like to support as many of these schools as possible to move forward with Low Carbon Hub if they wish to do so, prior to 2019.
8. To clear the way to accelerate the opportunity for further schools to benefit before the funding is withdrawn we are requesting an exemption so that individual schools won't need to do a procurement process (although it is their independent decision as to whether they look at alternatives).
9. Schools still need to make an individual decision to go ahead with this scheme (owing to their responsibility for their own estate).
10. The reason for requesting exemption from the contract procedure rules is as follows:
  - **The investment is well below the applicable EU procurement threshold of £4.5m.** Low Carbon Hub offer a fully funded solar scheme and would therefore be considered a 'concession contract'. Should LCH get agreement from their 35 target schools the value of installations would be £770k. Values of their previous installations are around £1.7m.
  - **Neither schools nor the county council are spending their budgets** on this model (bar covering their proportion of the legal costs to put a roof lease in place).
  - **The exemption will remove a barrier and delay** which could prevent installations taking place before March 2019.
  - **The market place for 'rent a roof' solar (schemes in which companies fund panels) has shrunk substantially since the FIT drop in 2015** (note paragraph 5 on another provider).
  - Low Carbon Hub have a **proven track record** in Oxfordshire.
  - We are not aware of any other schemes that provide an additional community benefit to Oxfordshire.

## Probity and Value for Money

11. The request is for exemption from the contract procedure rules in relation to OCC entering into arrangements with Low Carbon Hub for the installation of solar panels on OCC maintained schools without going through any sort of procurement process to demonstrate that Low Carbon Hub represents the best value to OCC.

## **Background details in relation to overall financial and budgetary position.**

12. The Solar Schools scheme requires no capital outlay from either the council or the school. Low Carbon has installed £1.7m of panels on schools to date and proposes installing a further £770k on 35 schools – subject to agreement from the schools.
13. The proposed installations would generate a small revenue benefit to the schools in terms of the purchased electricity generated from the panels. This is pegged at 20% below grid electricity prices and forecast to be around £18k per year total across all schools.

## **Assessment of business case**

14. Low Carbon Hub forecasts the below costs/ benefits if installations take place across 35 sites as follows: (Benefits underlined accrue to OCC interests).

### **Key figures:**

Installed capacity (kWp): 809

Annual Generation (kWh/year): 689

Principal Construction Costs £k: 770

CO2 savings (tonnes/year): 340

Total cost savings to the school (nominal Per annum): £17,500

## **Assessment of financial risk to the Council**

15. Capital and installation costs, as well as long term maintenance costs are covered by Low Carbon Hub. Works are commissioned by the school and follow OCC's schools self-financed building and improvement process.
16. The main risks are around ensuring the availability of the roof for the 20-year duration of the lease and roof condition:
  - There are exit penalties reflecting lost income and capital investment should OCC/school exit lease during 20-year commitment
  - Should work need to take place to the roof LCH will cover the cost of removing and storing the panels on one occasion. Any subsequent cost of removal will be covered by the school.
  - Estates take a view on the longevity of the building before the recommending the lease.

## **Consequences if the proposed action is not approved**

17. Requiring each school to go through a separate procurement process is likely to create delays. If installations are unable to take place before the FIT is removed some schemes may become non-viable.

### **Future procurement strategy**

18. This exemption solely covers maintained school for period to April 2019 when the feed in tariff comes to an end.

### **Legal Appraisal and Financial Appraisal**

19. The legal appraisal confirms that the relevant regulatory regime is that governing concessions and that the applicable financial threshold is £4,551,413.

### **Financial Appraisal**

20. This document has been approved by the Finance Business Partner and the Procurement Business Partner.

### **RECOMMENDATION**

21. **The Cabinet Member for Property & Cultural Services is RECOMMENDED to approve this exemption from the Council's Contract Procedure Rules.**

### **ALEXANDRA BAILEY**

Director for Property & Investment

Contact Officer: Sarah Gilbert Tel: 07867 467797

May 2018

## Property and Investment Directorate

### **Request for exemption from tendering under Contract Procedure Rule (“CPR”) 20 in respect of the grant of a concession for the installation of solar panels at OCC maintained schools**

#### **Legal Appraisal by the Director Law and Governance**

##### **A. Background**

1. **The Property and Investment Directorate is seeking exemption under CPR 20 from the tendering requirements under CPRs 5-15 in relation to** the award of a concession for the installation of solar power systems at OCC maintained schools (the “Services”) as set out in the exemption report to which this Legal Appraisal is annexed.
2. The proposed concession arrangement would cover the period until March 2019 when the applicable feed in tariff expires. This is set out in more detail in the exemption report.

##### **B. Grounds for Exemption**

The proposed beneficiary of the concession, Low Carbon Hub, has an established track record of installing these systems at OCC schools and expressed a desire to install systems at a number of additional schools before the availability of the feed in tariff comes to an end. Although each school would still need to approve the installation by LCH, the directorate is concerned that to require each school to go through a separate procurement process could result in the deadline being missed.

##### **C. Appraisal**

1. Aside from the application of the Council’s own Contract Procedure Rules, public bodies are also required to comply with the Concession Contracts Regulations 2016 (“the Regulations”), which impose further procedural requirements in relation to concession contracts over a prescribed pecuniary threshold.
2. The estimated aggregate value of the Services is below the applicable EU threshold (£4,551,413) and the contract therefore falls outside the stricter requirements that would otherwise apply.
3. Notwithstanding the more limited procedural requirements, the Director of Law and Governance is concerned to ensure that, where there is a possibility of a cross-border interest in the contract, that the contractual arrangements proposed by E&E demonstrate compliance with the EU principles. In this case it is considered unlikely that there would be a cross-border interest in the contract because of the relatively low value.

##### **D. Recommendations**

In light of the information in the exemption report prepared by the Director of Property and Investment, the Director of Law and Governance recommends that the request for exemption is approved in the terms proposed, in these special circumstances.

Nick Graham  
Director of Law and Governance  
9 May 2018

## Property and Investment Directorate

### Request for exemption from tendering under Contract Procedure Rule (“CPR”) 20 in respect of the grant of a concession for the installation of solar panels at OCC maintained schools

#### Financial Appraisal by the Director of Finance

##### A. Background

1. The Property and Investment Directorate is seeking exemption under CPR 20 from the tendering requirements under CPRs 5-15 in relation to the award of a concession for the installation of solar power systems at OCC maintained schools (the “Services”) as set out in the exemption report to which this Legal Appraisal is annexed.
2. The proposed concession arrangement would cover the period until March 2019 when the applicable feed in tariff expires. This is set out in more detail in the exemption report.

##### B. Grounds for Exemption

The proposed beneficiary of the concession, Low Carbon Hub, has an established track record of installing these systems at OCC schools and expressed a desire to install systems at a number of additional schools before the availability of the feed in tariff comes to an end. Although each school would still need to approve the installation by LCH, the directorate is concerned that to require each school to go through a separate procurement process could result in the deadline being missed.

##### D. Appraisal

- a) Background details in relation to overall financial and budgetary position.

The Low Carbon Hub have already installed £1.7m of panels on schools to date and this exemption is for a proposed further £770k worth of installations on 35 schools. The scheme requires no capital outlay from either the council or school and on average schools will see a 20% reduction in their electricity prices.

- b) Assessment of business case.

The business case makes good sense and LCH has a track record with installing solar panels at our schools. Schools that take up the offer will benefit from a reduction in their electricity tariff, without the need to invest. Although, in comparison to the investment required, the benefit of £18k is quite small, we aren't investing the money, so the case still stacks up and represents a good deal for the schools. The key figures from the report are below.

##### Key figures:

Installed capacity (kWp): 809  
Annual Generation (kWh/year): 689  
Principal Construction Costs £k: 770

**CO2 savings (tonnes/year): 340**

**Total cost savings to the school (nominal Per annum): £17,500**

c) Assessment of financial risk to the council. (FBP)

As capital, installation and long-term maintenance costs are covered by the LCH, the main risks are around ensuring the availability of the roof for the 20- year duration of the lease and although the Estates team will view the building before recommending a lease:

1. There are exit penalties reflecting lost income and capital investment should OCC/school exit lease during 20-year commitment
2. Should work need to take place to the roof LCH will cover the cost of removing and storing the panels on one occasion. Any subsequent cost of removal will be covered by the school.

d) Assessment as to whether exemption specified is appropriate in terms of effective procurement by the council.

It is assessed that this is an effective procurement and no further action is needed before approving the exemption from a finance or procurement point of view.

#### **D. Recommendations**

In light of the information in the exemption report prepared by the Director of Property and Investment, the Director of Finance recommends that the request for exemption is approved in the terms proposed, in these special circumstances.

Lorna Baxter  
Director of Finance  
9 May 2018