

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2319

Title: Energy for Londoners Supply Company (EFLSCo)

Executive Summary:

The London Environment Strategy sets out the Mayor's commitment to deliver the Energy for Londoners Supply Company (EFLSCo) to offer fairer prices to all Londoners, especially the fuel poor. MD2187 approved expenditure of £250,000 and this Mayoral Decision (MD) seeks approval for further expenditure of up to £790,000 as set out below.

This MD also:

- notes that the contract for the delivery of EFLSCo is likely to be held by a GLA-owned subsidiary rather than GLA directly and that officers are developing options for this. Setting up a new subsidiary would be the subject of a further MD.

Decision:

That the Mayor:

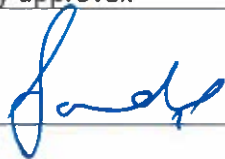
1. Approves the allocation and expenditure of revenue funding of up to £790,000 as follows:
 - a. up to £290,000 on further support from external legal advisers
 - b. up to £150,000 on further specialist support to the procurement process
 - c. up to £150,000 on TfL commercial personnel to support the procurement process
 - d. up to £125,000 on additional GLA staff in the Environment Team to support the project
 - e. up to £75,000 as a contingency, given the novelty of this project.
2. Notes the above expenditure is in addition to the £292,000 already approved for the project via MD2187 and Delegated Authority Forms. There will be further MDs to set up the proposed subsidiary and associated costs, for marketing expenditure and to enter into the EFLSCo contract, which will be for four years in the first instance.

Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision, and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date:

18/7/10

PART I – NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1 The Mayor's ambition is for London to be zero carbon by 2050. The Mayor also wants the energy market to work better for Londoners, delivering fairer prices, helping Londoners manage their energy use and make the best use of smart metering. As set out in MD2187 (approving commercial and legal support for this project) London has particularly acute problems: ten per cent of Londoners are in fuel poverty, levels of pre-payment meters (PPM) are high, levels of switching are low and London has low levels for the installation of energy efficiency measures, smart meters, and solar panels.
- 1.2 Despite the recent national political interest in this sector, the problems are still there. Last year, Ofgem published their state of the market assessment finding 60 per cent of people are typically paying about £300 more for their energy than customers on the cheapest fixed-term tariffs. They also found that 40 per cent of consumers earning less than £16,000 have never switched energy provider, compared to under one-third of other customers.
- 1.3 For these reasons, the Mayor committed in his Environment Strategy to deliver the Energy for Londoners Supply Company (EfLSCo) as the best means of quickly delivering fairer tariffs to Londoners, particularly the 335,000 households living in fuel poverty.
- 1.4 MD2187 approved expenditure totalling up to £250,000 on the project. This comprised commercial advice (up to £150,000) and external legal advice (up to £100,000). Following this approval, the necessary team was established in December 2017 to develop the tender documentation. This included bringing in external technical support to the GLA, TfL commercial and legal and external legal advisors and other specialist advisors as necessary.
- 1.5 This decision is informed by:
- **The detailed Cornwall Energy Feasibility Study commissioned in 2017**, which concluded that the Mayor's desired environmental and fuel poverty outcomes for EfL can be delivered equally effectively under a white label plus as a fully licensed route¹. Working with an existing energy supplier would however expose the GLA to significantly less risk (both financial and regulatory) and deliver desired outcomes quicker (a fully licensed supply route could take at least nine to 15 months longer to set up).
 - **The work of GLA officers and an embedded external energy market advisor** within the Environment Unit, drawing advice from specialists within GLA on finance, governance, insurance and marketing.
 - **GLA officer analysis of similar exercises undertaken by various Councils**, notably Leeds City Council's tender exercise which led to their White Rose Energy partnership with Robin Hood Energy Ltd.
 - **TfL commercial and legal advice on procurement, including external legal advice.**
 - **The work of various other external specialist advisors** who have been called on, on an ad-hoc basis for specific advice including peer review by other energy market specialists, specialist financial advice, modelling expertise and a contract management specialist who developed a performance management framework.

¹ The fully licensed route would mean the GLA setting up a licensed supplier, including associated systems, from scratch. "White labelling" generally means partnering with an existing supplier to market their tariffs under a specific brand. "White Label Plus" is a relatively new approach which involves a greater degree of control (e.g. developing bespoke tariffs) than "White Label".

- **Market testing.** The GLA published a Prior Information Notice setting out the Mayor's desired outcomes (see paragraph 1.7) in November 2017, then held a supplier day in December 2017, which was followed by written supplier responses.

1.6 One of the early decisions was to tender using the Competitive Dialogue procedure. This allows the GLA to have dialogue with a shortlist of bidders and refine our requirements at this stage. This is important given the novel and challenging nature of what the GLA is seeking. We have worked with TfL commercial and external legal advisors to ensure that the tender is robust. Given that the volume and complexity of documentation could deter some suppliers from bidding, GLA officers sought to mitigate this risk by holding a further supplier day on 25 May, after publication of the detailed tender documents, to explain GLA's requirements and the procurement process.

1.7 The Official Journal of the European Union notice was published on 14 May 2018 and the deadline for initial responses was 15 June 2018. Responses are currently being evaluated and the plan is to invite initial tenders from shortlisted bidders on 24 July. The documentation sets out the Mayor's key objectives:

- 1: competitively priced electricity and gas tariffs – bidders will have to guarantee that their prices will be in the top 10 per cent with more competitive bids scored more highly
- 2: excellent customer service – 70 per cent or higher customer satisfaction in the 'Which?' Survey
- 3: innovation to benefit customers
- 4: integration with energy programmes offered by the GLA, Boroughs and others
- 5: access to customer data to allow better design and targeting of energy programmes
- 6: commission payments to the GLA
- 7: facilitating a possible future transition to a successor upon expiry of the scheme
- 8: void services for Boroughs and Housing Associations.

1.8 This paper now seeks approval for further specialist commercial and legal advice to inform and run the tender process. Approval is also sought for services and for additional GLA Staff. The requirements are detailed below:

- **TfL Procurement:** there are very few examples of public sector procurements of this nature and based on the complexity and sensitivity of the requirement, and the complexity of the evaluation model, it needs to be carefully managed. Given the planned work and timetable which GLA have committed to, the need to be robust against potential challenge, and the demands of the competitive dialogue process, the current view is that the TfL team are not resourced appropriately to manage the requirement and as such have sought funding of up to £150,000 from the GLA to support the addition of two Commercial Managers to support the existing GLA funded Lead Commercial Manager, until completion of the procurement in early 2019. If, however, it becomes apparent that additional resourcing / funding is required over the term of the project, TfL and the GLA agree that further discussion shall be held to mutually agree the best approach to manage this.
- **External Legal Advisers:** MD2187 approved up to £100,000 for external legal advice, which will not be sufficient given the size, complexity and novel nature of the project. As part of the shared service arrangement, such projects are supported by external legal advisers and managed by TfL Legal. The estimate has been increased to take into account the additional support the external legal advisers have had to provide the EfLSCo Project Team and the TfL commercial team with the tender documents. It takes into account that the maximum proposed number of bidders, that may be invited to dialogue and covers all work up to and including contract signature. A revised estimate of up to £390,000 has been received from the external law firm and we are therefore requesting approval for up to £290,000. If, however there are fewer bidders down-selected or taken to dialogue (and there is less reliance on the external lawyers on non-legal work), then the actual costs will be lower.

- **Further specialist support for the procurement process:** MD2187 approved expenditure totalling up to £150,000 on industry specific GLA support. Following a procurement exercise, we contracted with a specialist company who have provided a Director who has supported the EflSCo Project Team, with his energy market expertise. We have also let small contracts for specialist financial, contractual and additional energy market advice. Following the first phase of the project, we now have a better idea of the commercial support required. This includes additional expenditure with the specialist company that we have already engaged, additional energy market expertise (particularly to provide a second evaluator on specialist topics), financial expertise to help with financial evaluation, commercial expertise and specialist support to the dialogue process) that will be required over the next year. We therefore request an additional £150,000 to be spent across this range of specialist advice, which will be procured in accordance with GLA/TfL procedures.
- **Additional GLA Staff:** The EflSCo Project Team (part of the Environment Unit) consists of a fixed term grade 11 and a grade 10, overseen by a grade 12. We now seeking funding for additional staff (a grade 8 marketing specialist for 10 months, a further grade 8 project manager and grade 6 admin support, both for 12 months. This will cost £125k and will develop this project further taking forward engagement work and provide administrative support for the project workstreams.). These are fixed term posts that will provide support for activities under the project workstreams (Procurement, Marketing, Company setup, Engagement and Data) up to launch and immediately after.

- 1.9 A further MD will be sought at the end of the tender process, to seek approval for entering into a contract with the winning bidder. There will also be a further approval, as detailed in the next paragraph, on a GLA subsidiary to hold the contract for this work.
- 1.10 The proposed arrangements are likely to involve the use of the GLA's trading powers under the Local Government Act 2003 which require that the GLA's participation in the EflSCo contract is through a separate trading entity e.g. a GLA owned company. This is also beneficial from an operational perspective. Officers are starting work to determine the most appropriate form of company, which is likely to be a new GLA subsidiary. The setting up of such a subsidiary will require a business case, which will be subject to a further MD, following the completion of this work.
- 1.11 The GLA Environment Team is working closely with GLA Marketing, and TfL commercial to scope out the tender requirements to procure a contract with a marketing agency for identification of brand identity and the development of an awareness raising marketing campaign. The branding will then be used by the contracted energy supplier to feed into their lead generation (such as direct marketing and advertising), customer acquisition, customers facing portals and any multi-channel marketing they run to drive up customer volumes. It is likely that we will be able to use existing procurement frameworks to tender for a marketing agency. At this stage, the exact nature of the required spend is uncertain, as is the revenue and capital expenditure split. Marketing expenditure will be subject to a further MD, subsequent to a tendering exercise to establish in more detail the level and nature of expenditure required (no commitment will be entered into until the MD has been approved).

2. Objectives and expected outcomes

- 2.1 The purpose of EflSCo is to offer fairer energy tariffs for Londoners, especially those in fuel poverty. The budgets requested are essential to ensure its effective delivery. It is likely the eventual contract will be for four years in the first instance with the possibility of extension for a further period of up to four years. As mentioned above, the contract is likely to be held by a GLA owned subsidiary, which will manage the contract, and may in time take on other delivery functions relating to GLA energy programmes. The detail of this will be covered in a separate MD. Setting up such a subsidiary will have governance, accounting and tax implications which will also be covered. Our aim is that the operations of this company will be self-financing, from the commission payments under

the EflSCo contract. This will be subject to a financial case to be presented at the time of the MD covering contract signature.

3. Equality comments

- 3.1 The public-sector equality duty (PSED) under section 149 of the Equality Act 2010 requires the identification and evaluation of the likely potential impacts, both positive and negative, of the decision on those with protected characteristics². The Mayor to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. This may involve, in particular, removing or minimising any disadvantage suffered by those who share a relevant protected characteristic and taking steps to meet the needs of such people. In certain circumstances compliance with the Act may involve treating people with a protected characteristic more favourably than those without it. The GLA will take appropriate steps to identify any potential negative impacts expected on those with protected characteristics. It is likely that those with protected characteristics will gain from the positive benefits of this scheme in equal measure should they choose to switch to the proposed GLA supply company, and there will be equality of access to participate in the delivery and benefit from the scheme, without discrimination. Given the disproportionate impacts of high energy prices on the most vulnerable Londoners there will be a positive effect in tackling social and health inequality through this programme of activity.

4. Other considerations

Project costs

- 4.1 Taken together with the previous approval for up to £250,000 under MD2187 and £42,247 under several DARs, an additional allocation of funding will mean total expenditure for EflSCo (including contingency), is up to £1,082,247. The contingency has been estimated based on experience of the project so far. This compares to Cornwall's estimate of £490,000-£825,000 for setting up a White Label Plus scheme, though EflSCo objectives remain more ambitious and broader than a typical White Label Plus arrangement, and following an OJEU compliant procurement procedure is resource intensive, though should give us a more robust outcome. Moreover, given GLA is not a local authority with its own housing stock, GLA is having to engage with Boroughs and Housing Associations. Hence the greater than initially forecasted expenditure on legal and other specialist support. The expected detail of the expenditure is as follows.

Table 1: Projected Expenditure	2017-18 Actual and approved	2018-19 Approved	2018-19 forecast and MD request	Total spend expected
Additional staff	£1,519	£4,692	£125,000	£131,211
Additional TfL commercial			£150,000	£150,000
External legal advisers	£91,594	£8,406	£290,000	£390,000
Commercial support (approved for under MD2187)	£51,350	£98,650		£150,000

² These are: age, disability, gender reassignment, pregnancy and maternity, race, gender, religion or belief, sexual orientation and in certain circumstances marriage and civil partnership.

Additional expertise (energy market, voids, financial, evaluation modelling)	£34,260		£150,000	£184,260
Supplier event cost - approved via DAR		£1,776		£1,776
Contingency			£75,000	£75,000
Total	£178,723	£113,524	£790,000	£1,082,247

- 4.2 As mentioned above, it is expected that future operations of this initiative will be self-financing (through commission payments which will form part of bidder's responses to the procurement process). Estimates indicate that there is likely to be a surplus that would be invested in environmental programmes. However, it is possible that forecast customer or commission payments will not be met. Best estimates will be presented as part of the approval for the final contract. If necessary, setting up a subsidiary is likely to cost around £50,000 (approval for this, if necessary, will be included in the separate MD for this).
- 4.3 A further cost is expected on marketing activities (including branding development and awareness campaign design and delivery). At this stage, the size of the required spend is uncertain, as is the revenue and capital expenditure split.

Risks and issues

- 4.4 The risks relating to this request for additional expenditure are the usual risks of managing external contracts and will be managed in accordance with GLA procedures. This project is complex and novel and we have requested a contingency to reflect that we may need to bring in additional specialist support at short notice, if unexpected issues arise, or may need to spend more on advice that we have already planned for. The risks relating to the project as a whole are as follows:

Risks	Likelihood (out of 4)	Impact (out of 4)	Rating	Treatment/mitigation
Complexity of tender impacts on market response (i.e. ability of bidders to meet EFLSCo objectives)	2	4	8	<ul style="list-style-type: none"> PIN, supplier event and questionnaire in Nov/Dec showed positive response from suppliers. Tender documents created with input from energy market specialists. Further supplier event held post-publication to explain the tender to suppliers and give them the opportunity to ask questions. Standard Selection Questionnaire (SSQ) responses are currently being evaluated.
Complex dialogue could cause delays	2	3	6	<ul style="list-style-type: none"> Planning dialogue carefully, making sure it is not overloaded and focusses on key issues/objectives. Ensuring TfL have necessary expertise
OFGEM not making customer transfer easy	3	2	6	<ul style="list-style-type: none"> Met OFGEM to discuss potential future transition. Will continue dialogue with Ofgem.

Government Price cap	4	2	8	<ul style="list-style-type: none"> GLA officers will keep the impact of the price cap under review as part of project development.
GLA itself having to engage directly with a large number of customers	2	3	6	<ul style="list-style-type: none"> Setting up a GLA subsidiary that the winning bidder will enter into contract with, and ensuring customer acquisition/retention/interaction rests with contracted energy company etc.
Funding for set-up / operation insufficient	3	3	9	<ul style="list-style-type: none"> Substantial budget available (c4m in total) for set-up which is being kept under review. GLA does not pay partner for operation. There will be costs for GLA company/vehicle which could be covered also by surplus revenue
Boroughs set up their own energy companies / partnerships	2	2	4	<ul style="list-style-type: none"> In relation to start-up there is sufficient interest already (eight boroughs have written Letters of Intent to use the voids framework and work with the GLA to reach out to people living in fuel poverty). Further activity to galvanize support, involving the Deputy Mayor and Mayor as appropriate.
Risk of 'GLA owned company' / SPV being set up too late	3	3	9	<ul style="list-style-type: none"> Dedicated workstream being set up, with support from GLA Finance and TfL legal Budget earmarked for development of company/SPV.

5. Financial comments

- 5.1 Mayoral approval is sought for expenditure up to £790,000 on the following to support the Energy Supply Company initial stages;
- up to £125,000 on additional GLA staff in the Environment Team to support the project
 - up to £150,000 on TfL commercial personnel to support the procurement process
 - up to £290,000 on further support from external legal advisers, managed by TfL Legal
 - up to £150,000 on further specialist support to the procurement process
 - up to £75,000 as a contingency.
- 5.2 As table 1 under section 4 shows the total revenue spend on this programme is currently expected to be £1,082,000. Of this the Energy Efficiency and Delivery Team have £550,000 revenue budget for EFLSCo. Therefore, the team will need to convert £532,000 of the Energy Supply Company capital budget to revenue to fund the above. Most of the spend is to happen in 2018-19 apart from possible staffing and contingency spend that may span into 2019-20.
- 5.3 It should be noted that MD 2187 approved £250,000 of the £1,082,000 spend detailed in the table in section 4. £42,000 of the spend in table 1 was also approved via various Delegated Authority Form.

- 5.4 The Energy Supply company programme budget is currently made up of £550,000 revenue and £3,288,000 capital. As part of this MD £532,000 budget is to be converted to revenue so the revised budgets will be £1,082,000 revenue and £2,756,000 capital.
- 5.5 It should be further noted that a proportion of the remaining £2,756,000 capital budget will be spent on marketing and awareness and possibly establishing a new company (most likely a subsidiary of the GLA, which will have at least initial cost and resource implications). The level of marketing expenditure, and the detailed expenditure proposals, will be known after the tender process. Officers will then seek further approvals, via a Mayoral Decision, to commit this expenditure and, separately, to convert the required budget from capital to revenue

6. Legal comments

- 6.1 As previously set out in MD2187, the GLA's principal purposes, under section 30 of the Greater London Authority Act 1999, are promoting economic development and wealth creation, promoting social development, and promoting the improvement of the environment, all in Greater London. The GLA has power under section 30 of the Greater London Authority Act 1999 to operate in the area of energy supply and related matters, on the basis that such operation is calculated to produce social and environmental benefits.
- 6.2 Further, the Authority also has a subsidiary power pursuant to Section 34 of the Act which covers the procurement of a commercial consultant and external legal support to provide advice in relation to the tender as set out above.
- 6.3 This request for additional funding falls within the GLA's statutory powers to do things considered to further, or which are facilitative of, conducive or incidental to the discharge of, its general functions:
- 6.4 Section 9.1 of the GLA's Contracts and Funding Code (the "Code") requires the GLA to undertake a formal tender process or make a call off from an accessible framework for procurements with a value between £10,000 and £150,000. As set out in MD2187, the external legal support, the support was called-off the Legal panel available to the GLA and managed by TfL Legal.

7. Planned delivery approach and next steps

Activity	Timeline
Standard Selection Questionnaire (SSQ) application deadline	15 June 2018 (now passed with SQ responses being evaluated)
Invitation to participate in dialogue and submit an initial tender issued (ITS)	24 July 2018
Detailed dialogue period	16 October – 6 November 2018
Invitation to submit final tender submission deadline	14 December 2018
Contract signature (after the standstill period expired)	26 February 2019
Mobilisation	March 2019 onwards

Appendices and supporting papers:

None

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after approval or on the defer date.md

Part 1 Deferral:

Is the publication of Part 1 of this approval to be deferred? YES/NO

If YES, for what reason:

YES – the approval can be published but the numbers should be withheld until December 2018 so that the various procurements are not compromised (by advertising how much GLA is prepared to spend to potential suppliers).

Until what date: (a date is required if deferring) 1 December 2018

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form –NO

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

Stephen de Souza has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

Lucy Owen has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

Shirley Rodrigues has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

Corporate Investment Board

This decision was agreed by the Corporate Investment Board on the 16 July 2018.

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

M. D. Allen

Date

16.7.18

CHIEF OF STAFF:

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature

D. Zellam

Date

16/7/2018.

