

Item No.	Classification: Open	Date: 29 September 2020	Meeting Name: Strategic Director of Finance and Governance
Report title:		Gateway 3 Corporate Liability Insurances	
Ward(s) or groups affected:		All	
From:		Corporate Risk and Insurance Manager	

RECOMMENDATIONS

1. That the Strategic Director of Finance and Governance approves the extension of the corporate liability insurance contract with QBE Insurance Ltd via RMP Ltd and Arthur J Gallagher (AJG) for a period of one year with effect from 1 October 2020 with an estimated annual value of £520,510.
2. That the Strategic Director of Finance and Governance also notes the associated extension and approves the associated spend as detailed in paragraph 7 of the liability insurance claims handling contract to Gallagher Bassett International Ltd in line with the liability insurer's requirement for a period of one year with effect from 1 October 2020 with an estimated annual value of £77,290.
3. That the Strategic Director of Finance and Governance considers and approves as appropriate any changes to the insurance coverage that may be offered and notes the change in the sub limit in relation to legal expenses for inquests and public enquiries.
4. That the Strategic Director of Finance and Governance also notes that the contracts will be extended by way of deed of variation to the original contracts.

BACKGROUND INFORMATION

5. The council's main insurances are currently placed with different contractors as follows:
 1. Property Insurances (Housing, Education, General, Commercial, Motor and Crime) – ZMI
 2. Liability Insurances – QBE via intermediaries Risk Management Partners (RMP) and Arthur J Gallagher (AJG)
 3. Liability claims handling with Gallagher Bassett also via RMP and AJG
6. AJG, as stated in paragraph 5.2, places the insurance business with the insurer. For the insured to access certain insurance markets it must be via an insurance broker such as AJG.
7. This report relates to items 5.2 and 5.3 above, liability insurances, which include all liability insurance policies including employer's liability, public liability, official's indemnity and professional indemnity insurance. It also includes the liability claims handling as under the terms of the liability insurance the council is required to use the insurer's affiliated claims handlers.

8. Although there is no legal requirement to insure liability risk the council does in fact insure against a comprehensive range of insurance risks to protect its own and stakeholders' liabilities.

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

9. Discussions with RMP indicate that they are happy to offer an extension, and more formal discussions on terms will take place during the renewal process between September and October 2020. The extension has been offered on the same rates as the current contract.
10. The current contract commenced on 1 October 2015 for two years with the option to extend for one further period of 12 months. The value of the original contract including the claims handling contract element for the period 1 October 2015 to 30 September 2017 was £1,052,548. The value of the one year extension from 1 October 2017 was £630,000.
11. The contract was then extended by a further two years at a total value of £1,212,248 for reasons set out in the associated gateway report signed off in June 2018.
12. This report is seeking approval for an additional one year extension at an estimated total contract value of £597,800 per annum. This estimated total contract value is the sum of the two values referenced in recommendations 1 and 2.
13. There are no new insurance coverage requirements being sought. However, any improvements in policy wording and level of cover will form part of the discussions.

Reasons for Variation

14. The main and most pressing reason for seeking an extension, although other factors are at play, is due to the restrictions in place on new OJEU tenders related to the COVID-19 pandemic. Plans were being made to commence a tender at the beginning of the year but then guidance was circulated by the Director of Law and Democracy advising that no new tenders were to be commenced before the end of June 2020 due to the Covid 19 situation unless it was absolutely necessary. This guidance was relaxed in July 2020 to say that new procurements may be considered on a case-by-case basis.
15. Whilst the council's insurer was happy to offer cover at the same rate, a change under one section of the policy wording has required in change in strategy for the future. Extending the current contract for a year will allow the council the opportunity to see if any other insurers align with this change at the upcoming October renewals to better inform plans for a tender.
16. Another factor for seeking an extension relates to the major fire tragedy affecting a social housing block, Grenfell Tower, which may yet impact on how insurers quote for local authorities with social housing stock in any future tenders. Until further detail is known following the public inquiry (for which the timescales for the outcome have been delayed, including most recently by pandemic), it is still hard to predict how the insurance industry will respond.

17. As referenced in the last gateway report in June 2018, the mutual insurance vehicle, the Local Government Mutual, made up of local authorities and the Local Government Association was incorporated in late 2018 but only opened for business in April 2019. As it is still a relatively new venture with mainly smaller authorities that have joined, the council is still considering how it is operating and performing for its current members.

Future Proposals for this Service

18. The council is currently considering options for a procurement exercise for a new contract to be in place on 1 October 2021. The Department of Education have recently extended the Risk Protection Arrangement (RPA), an alternative to commercial insurance, and now allow local authority maintained schools to join where previously it was just for academies. If Southwark schools did decide to join this scheme rather than still purchase their insurance via the council, this would impact on the insurance programme and tendering design.

Options Considered

19. A number of procurement options were considered:

No	Option	Advantages	Disadvantages
1	Let the contract lapse and not extend	There would be a cost saving as no premium would need to be paid	No insurance protection for council assets Not an option as the council policy is to place insurance with an external provider
2	Undertake competitive tender	Would allow the market to be tested	As per the reasons outlined in paragraphs 14-17 it is not the right time to tender
3	Utilise an insurance framework	Would allow market to be tested with no need for an OJEU procurement	Council guidance during the pandemic didn't allow for any new tender/quote process which would have included a framework and at this point, there is insufficient time to use a framework to put arrangements in place for October 2020. Use of a framework would also incur a commission charge of a percentage of premium spend and there is no guarantee the council would receive any bids
4	Undertake a competitive tender for an alternative insurance financing solution (e.g. catastrophic insurance cover only)	Potential for some premium saving	As per the reasons outlined in paragraphs 14-17 it would not be the right time to do soft market testing to explore this option further In addition, there is not enough time to set up all the systems and processes and funding arrangements required to

			<p>move to catastrophic only cover.</p> <p>There would be a significant increase in the self-insured risk exposure at probably the wrong time with cuts to local government budgets and significant financial pressures due to the pandemic.</p>
5	Extend the current contract	<p>Would ensure insurance cover is in place and unlikely that costs will increase significantly</p> <p>Current provider has already confirmed they would be happy to offer an extension</p>	There is a potential risk of challenge as noted in paragraph 20.2 below.

Identified risks for the Variation

20. Identified risks are as follows:

No	Risk	Risk Level with mitigation	Mitigating Action
1	A significant insured loss occurs before contract is finalised resulting in RMP QBE not willing to negotiate or increasing the premium	Medium	<ol style="list-style-type: none"> 1. Seeking approval as soon as possible 2. Confirming that RMP QBE will hold their rates and complete the renewal process as soon as possible
2	Risk of procurement challenge due to contract not being fully tendered	Low	There is a potential risk of challenge. However, given the difficulties with undertaking a competitive tender process (as highlighted in paragraphs 14-17), and the ability of the council to agree a modification of this contract, then this is considered a low risk. The council also plans to reprocure the contract over the next year.
3	Risk of Brexit affecting the insurance market	Low	Securing an extension to the current contract which ends after the end of the UK transition period will mitigate any potential immediate negative effects of Brexit

Policy implications

21. There are no direct policy implications.

Contract management and monitoring

22. As there are no issues with the day to day performance of the contract, the current contract management and monitoring arrangements will remain in place. The contracts are currently managed by the corporate risk and insurance team. Performance is monitored using a variety of techniques including quarterly review meetings, a defined service level agreement and key performance indicators. Annual performance reports are produced and considered by the department's contract review board.
23. QBE via RMP and the claims handlers' performance of each contract element have broadly remained unchanged over the past year. Examples of good contractor performance include:
 - a. excellent support and involvement in the quarterly performance review meetings
 - b. willingness of contractor to engage with other relevant council functions to improve the insurance claims handling process, such as the council's legal litigation and legal disrepair teams
 - c. involvement of contractor in certain pro-active initiatives such as third party insurance subrogation and insurance fraud investigations
 - d. willingness of contractor to settle claims and provide free insurance training

Community Impact Statement

24. The decision has been judged to have no or a very small impact on local people and communities.

Social Value considerations

25. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider social, economic and environmental benefits that may improve the well being of the local area can be secured. The social value considerations included in the tender (as outlined in the Gateway 1 report) are set out in the following paragraphs in relation to the tender responses, evaluation and commitments to be delivered under the proposed contract.

Economic considerations

26. There are no local economic benefits as the contractor is an international organisation with no local offices.

Social considerations

27. As this insurance provider is an international organisation, social considerations from a local workplace perspective do not arise. Staff employed by this provider already receive in excess of the London Living Wage.

Environmental/Sustainability considerations

28. The service seeks to limit unnecessary travel and meetings, and as far as possible utilise online systems to minimise paper waste.

Financial Implications

29. The financial implications are as detailed in the main body of the report. The proposed extension of one year at an estimated maximum contract value of £597,800 represents 21% of the original contract value.
30. The costs associated with the extension of this contract can be met from cost centre group CD190 (Insurance Funds).
31. Any extension or variation of the contract beyond the scope of this report will require confirmation of funding and formal approval in line with corporate procurement protocols.

Legal Implications

32. Please refer to the comments of the director of law and democracy.

Consultation

33. No additional consultation has been undertaken.

Other implications or issues

34. There are no other implications or issues.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (F&G20/013)

35. The report recommends that the corporate liability insurance contract with QBE Insurance Ltd via RMP Ltd and Arthur J Gallagher (AJG) and associated liability insurance claims handling contract with Gallagher Bassett International Ltd be extended by way of deed of variation to the original contracts.
36. The strategic director of finance and governance notes the current volatility of the insurance market as described in paragraphs 14 to 18 and that the extension will enable the council to ensure best value for future insurance tenders.
37. The strategic director of finance and governance notes the financial implications within the body of the report.

Head of Procurement

38. This report seeks the approval of the Strategic Director of Finance and Governance for the extension of the corporate liability insurance contract with QBE Insurance Ltd via RMP Ltd and Arthur J Gallagher (AJG) for a period of one year with effect from 1 October 2020. The estimated annual value of £520,510.
39. The report also asks that the Strategic Director of Finance and Governance notes the associated extension and approves the associated spend as detailed in paragraph 7 of the liability insurance claims handling contract to Gallagher Bassett

International Ltd in line with the liability insurer's requirement for a period of one year with effect from 1 October 2020 with an estimated annual value of £77,290.

40. The report asks that the Strategic Director of Finance and Governance considers and approves as appropriate any changes to the insurance coverage that may be offered and notes the change in limit in relation to legal expenses for inquests and public enquiries and also notes that the contract will be extended by way of deed of variation to the original contract.
41. The details of the contract and proposed variation are set out in paragraphs 14-17 of the report.
42. Staff allocated to the contract are paid in excess of London Living Wage (see paragraph 27) and the contract will be managed and monitored as detailed in paragraphs 22 and 23, with annual reports brought to DCRB in line with Contract Standing Orders.


Director of Law and Democracy

43. This report seeks the approval of the strategic director of finance and governance to an extension of the existing corporate liability insurance contract with QBE Insurance Ltd and the associated extension of the liability insurance claims handling contract with Gallagher Bassett International Ltd as set out in paragraphs 1 and 2 of this report, respectively.
44. Paragraphs 9 to 17 of this report sets out the key aspects of the proposed variations and the reasons why the variations are necessary.
45. The original appointment in 1 October 2015 was subject to, and awarded in accordance with the EU procurement regulations, and it is therefore necessary to ensure that any variation of that contract is permitted within those regulations. Regulation 72 of the Public Contract Regulations 2015 permits modifications to be made to contracts during their term, in certain circumstances. This includes at regulation 72(1)(e), where the modification, irrespective of their value, is not substantial within the meaning of regulation 72(8). The proposed modifications to the corporate liability insurance contract and the liability insurance claims handling contracts are not considered substantial with the meaning of regulation 72(8), because the modification would not:-
 - render the contract materially different in character from the one initially concluded;
 - extend the scope of the contract considerably;
 - have allowed other potential suppliers to participate or be selected or another tender to be accepted.
46. The strategic director of finance and governance is advised that when relying on any grounds for exemption from the requirements of the Public Contract Regulation 2015, there is a potential risk of challenge on the basis that the council does not have sufficient grounds to justify negotiation in this circumstance, particularly where the contract has been extended a number of times. However, given that the modification is not substantial coupled with the Covid 19 pandemic and the market situation described in paragraphs 14 to 17 of this report, it is considered that the risk of challenge is low. The risk is mitigated as the council has plans to re-procure the contract over the next year.

47. The council's Contracts Standing Order 2.3 requires that no steps are taken to vary a contract unless the expenditure involved has been included in approved revenue or capital estimates, or is otherwise approved by the council. Paragraph 30 of this report confirms how the proposed additional expenditure will be resourced.
48. The resultant deeds of variation will be in a form approved by the director of law and democracy.

PART A – TO BE COMPLETED FOR ALL DELEGATED DECISIONS

Under the powers delegated to me in accordance with the council’s Contract Standing Orders, I authorise action in accordance with the recommendation(s) contained in the above report.

Signature  Date 29/09/2020
Strategic Director of Finance and Governance
Designation

PART B – TO BE COMPLETED BY THE DECISION TAKER FOR:

- 1) All key decisions taken by officers
- 2) Any non-key decisions which are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available.

1. DECISION(S)
As set out in the recommendations of the report.

2. REASONS FOR DECISION
As set out in the report.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION
As set out in the report.

4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION
None

5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST
<i>If a decision taker or cabinet member is unsure as to whether there is a conflict of interest they should contact the legal governance team for advice.</i>
N/A

6. DECLARATION ON CONFLICTS OF INTERESTS

I declare that I was informed of no conflicts of interests.*

or

I declare that I was informed of the conflicts of interests set out in Part B4.*

(* - Please delete as appropriate)

BACKGROUND PAPERS

Background Papers	Held At	Contact
Gateway 3 Variation Decision: Corporate Liability Insurances	Corporate Risk and Insurance, Finance and Governance	Laura Sandy 020 7525 7398

APPENDICES

No	Title
N/A	None

AUDIT TRAIL

Lead Officer	Laura Sandy, Corporate Risk and Insurance Manager	
Report Author	Laura Sandy, Corporate Risk and Insurance Manager	
Version	V8	
Dated	29 September 2020	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Director of Law and Democracy	Yes	Yes
Director of Exchequer (for housing contracts only)	No	No
Cabinet Member	No	No
Contract Review Boards		

Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	29 September 2020	