

<b>Item No.</b> 10.	<b>Classification:</b> Open	<b>Date:</b> 9 March 2021	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Gateway 1 - Procurement Strategy Approval Leasehold and Ancillary Properties Buildings Insurance	
<b>Ward(s) or groups affected:</b>		All leaseholders and a small number of freeholders	
<b>Cabinet Member:</b>		Councillor Stephanie Cryan, Council Housing	

## **FOREWORD – COUNCILLOR STEPHANIE CRYAN, CABINET MEMBER FOR COUNCIL HOUSING**

Southwark's duty as a landlord is to ensure that we have adequate buildings insurance in place to help safeguard our leaseholders. Our current buildings insurance contract expires in April 2022 and this report asks cabinet to agree a new procurement strategy for providing this cover.

Our buildings insurance cover needs to be comprehensive and meet the needs of our 14,134 leaseholders. It needs to offer good value for money and the size of the portfolio will lend to economies of scale in premiums payable. We will be consulting with leaseholders to ensure they are involved in the process and any suggestions made will be considered for inclusion in the final tendering process.

The council intends to undertake a competitive tender in line with the Public Contract Regulations 2015 as this will allow us to put in place new contracting arrangements as quickly as possible and continue to meet out statutory responsibilities.

## **RECOMMENDATIONS**

### **Recommendation for the Cabinet**

1. That the cabinet approves the procurement strategy outlined in this report to undertake a procurement in line with the Public Contract Regulations 2015 (PCR) for the leasehold and ancillary properties buildings insurance contract (including a separate claims handling service) for a period of three years commencing 1 April 2022, with an option to extend for two twelve month extensions, making a total estimated contract value of up to £25.57m. The estimated total contract value is up to £5.1m per annum (including insurance premium tax at 12%).

### **Recommendation for the Leader of the Council**

2. That the leader of the council delegates authority to the Cabinet Member for Housing to award the contract for the reasons set out in paragraph 12.

## **BACKGROUND INFORMATION**

3. The leaseholders and ancillary properties buildings insurance contract relates to flats and maisonettes sold by the council under long lease terms. There are two separate policies within the contract covering:
  - The main policy where flats have been sold (under the Right to Buy scheme or through other disposals e.g. auction sales, social home buy)
  - A policy to insure under-leased blocks on a comprehensive basis (there are currently two).
4. In addition, the council may need to nominate buildings insurers, as per the terms of houses sold on leases.
5. The terms of the current lease requires the council as the freeholder:

Clause 4 (6) “To insure the building to the full insurance value thereof against destruction or damage by fire, tempest, flood and other risks against which it is normal practice to insure, or to make other appropriate and adequate arrangements and in the event of destruction or, damage by any such risk as aforesaid to rebuild or reinstate the property and the building”.
6. The most advantageous way to do this is by placing a contract with a single insurer. This ensures that a standard approach can be followed for both the leaseholders and the council.
7. The contract was last awarded in 2018 when Zurich were awarded the contract which commenced on 1 April 2018.
8. The estimated cost of the new contract is £5.1m per annum for a period of three years with an option to extend for 2 twelve month extensions, making a total estimated contract value of £25.57m (including insurance premium tax, which will be 12% from June 2021, but may be subject to change throughout the term of the contract). It should be noted that insurers can break the long term agreement at any point and impose a higher premium should the claims experience be higher than expected and this risk will have to be considered during the tender process.

## **Summary of the business case/justification for the procurement**

9. The council's leasehold portfolio totals 14,134 properties. Although there is a limited market for these contracts, the size of the portfolio will attract international insurers and leaseholders should benefit from economies of scale in the premiums payable from those that submit tenders.
10. Leaseholder representatives were closely involved in the procurement of the current contract and will be for the new contract. The council will take into consideration any requirements suggested by leaseholder representatives. The council will include these requirements as part of the new tender

documents subject to the advice from the council's exiting insurance broker AJ Gallagher. The costs for using a broker will form part of the procurement costs.

11. The claims experience has been consistent for the last three years ranging between £2.8m and £3.1m annually. If this trend can be continued or improved for the period up to 1 April 2022, it will reduce the risk that deterioration of the claims experience has an adverse impact on pricing.
12. Due to the tight time constraints that will have to be met as detailed in the latter part of the procurement project plan, in conjunction with Section 20 consultation requirements, approval is being sought to delegate the award of this contract to the Cabinet Member for Housing. This will ensure that the council has appropriate insurance cover for its leasehold stock from 1 April 2022 otherwise it will be in breach of 14,134 leases of flats.

### **Market considerations**

13. Since the last tender in 2017, the insurance market has changed significantly with rates and premiums rising significantly. This has been driven by a number of factors including Grenfell, storm/flood losses in the last 2-3 years and Covid-19. Claims experience remains a factor but insurers are also now reacting to events such as Grenfell e.g. asking for detailed information in respect of the cladding of buildings and imposing terms or declining to offer terms where materials used are considered too much of a risk.
14. Capacity for the type of insurance business being considered here remains challenging. The market essentially comprises four insurers, of which only one will only do business with council directly. This is part of the reason as to why expressions of interest at the last tender did not result in formal bids. The council's existing insurer is the only insurer who deal direct at this time. The use of an insurance broker for this tender exercise should ensure that all possible insurer interest is secured and it is hoped competitive terms as a consequence.

### **KEY ISSUES FOR CONSIDERATION**

#### **Options for procurement route including procurement approach**

15. Do nothing – the council must take action otherwise it would place itself in breach of the terms of 14,134 leases, and this is therefore not an option.
16. Use of a framework – various insurance frameworks now exist (e.g. Crown Commercial Services and Yorkshire Purchasing Organisation) that were not available in the past. The products and services available from these organisation give local authorities direct access to their framework agreements, however there is no guarantee that the use of a framework will attract more bids at better rates. There is also a commission to pay for the use of these frameworks, which is currently 0.5% for the duration of the awarded contract.

17. Carry out an external procurement process – the council could elect to undertake a one stage competitive tender following the PCR 2015.
18. Self-insure – under the terms of the current lease, the council can “make other appropriate and adequate arrangements” rather than insure the building with a provider, and opt to self-insure. However, following counsel’s advice that the council would not be able to re-charge the costs, the option to self-insure has been deemed unfeasible.
19. Unlike some areas of insurance, there are still insurers for this type of insurance at this time. Although the use of an insurance broker does not guarantee those insurers will bid, a broker will guarantee access to these markets. Insurers will consider the risks of the council’s business based on its individual merits.

### **Proposed procurement route**

20. The proposed procurement route is to undertake a one stage competitive tender following the PCR 2015 which will allow the council to put in place new contracting arrangements for 1 April 2022. The council will be working with their insurance broker to procure, although not to manage, the contract.

### **Identified risks for the procurement**

21. The table below identifies a number of risks with this procurement, the likelihood of occurrence and the controls in place to mitigate the risks.

<b>R/N</b>	<b>Risk Identification</b>	<b>Likelihood</b>	<b>Risk Control</b>
R1	Price is significantly higher than the current contract	Medium	Although the contract cost will be recovered through the annual service charges, the tender will seek bids for a fixed price for the duration of the contract  The council will continue to be pro-active in liaising with the insurer to reduce the cost of claims
R2	Insurer goes out of business	Low	The credentials and financial viability of the bidders will be considered as part of the tender evaluation process
R3	Obtaining sufficient returned tenders to make the process competitive	Medium	Contact known insurers contracted with other local authorities and use a broker to assist with the procurement process as a

R/N	Risk Identification	Likelihood	Risk Control
			number of insurers are unlikely to negotiate directly with the council
R4	Unexpected contract price increase from year to year or insurer breaks long term agreement with increased premium	Low	If the claims experience of the policy deteriorates and results in higher premiums, the increase can either be recharged to home owners as a service charge or the council may adopt a flexible approach to funding the additional claims by establishing a subrogation fund
R5	Failure to consult with leaseholders under Section 151 of the Commonhold and Leasehold Reform Act 2002	Low	Meet dates set out in the procurement project plan. Tender process is managed by home ownership services who are also responsible for the statutory consultation with leaseholders
R6	Failure to comply with the Public Contract Regulations (2015)	Low	Meet dates set out in the procurement project plan Ensure that the procedures are transparent and comply with legislative requirements
R7	Failure to have all the information available at the required times	Medium	Keep leaseholder representatives informed and liaise with relevant council officers
R8	Changes to internal procedures and processes should a new insurer be appointed from 1 April 2022	Medium	Frequent communications with the insurer at a senior level. Ensure there is a smooth transition from one insurer to another. Communications to leaseholders and old insurer, if relevant to ensure client team have processes in place to cover situation where both old and new claims are being processed by different insurers during transition period
R9	When bidding, insurance companies customarily hold their terms for up to 90	Medium	Working closely with the broker, the council will offer companies the option to

R/N	Risk Identification	Likelihood	Risk Control
	days from the date that they submitted their bid. (This is to mitigate against the risk of any deterioration in the council's claim experience.) However the timescale associated with the council's internal procurement procedures exceeds 90 days and therefore poses the risk that companies will be put off from making a bid		revise their original terms once the 90 day period has expired and before the contract start date. This builds confidence with the bidder that there is an agreed process in place to deal with any deterioration in claims experience
R10	There is a noticeable change in the council's claims experience in the period between the date the insurance company submits their bid and the start of the contract thus forcing the company to change their terms and increase their price	Medium	The council will work with the repairs and leaks from above teams, closely monitoring claims performance to minimise the cost of claims. Claims experience is directly linked to the performance of the council's repairs team in housing and modernisation identifying and carrying out repairs to the building. Additionally any unforeseen event outside of the council's control could occur which could adversely impact the claims experience

### Key /Non Key decisions

22. This report is a strategic procurement and is therefore a key decision.

### Policy Implications

23. It is unlikely that many insurers will be interested in tendering as there is a limited market for this type of local authority scheme. Due to the size of the contract, the legislation requires the council to consult with all leaseholders. A Section 20 Notice of Intention must be served advising leaseholders of the nature of the contract. Leaseholders have a period of 30 days to make comments. As this contract will be subject to an open procedure as set out in the PCR, leaseholders are not entitled to nominate insurers. This first stage of the consultation process has to be undertaken before the contract can be advertised.

24. Notices of Proposal have to be sent to all leaseholders before awarding the contract advising them of the successful tenderer with details of the premiums they will pay from the commencement of the contract.

### Procurement Project Plan (Key Decisions)

Activity	Completed by/Complete by:
Forward Plan for Gateway 1 decision	Feb 2021
DCRB Review: Gateway 1 CCRB Review: Gateway 1	28 Jan 2021 11 Feb 2021
Notification of forthcoming decision – cabinet	March 2021
Approval of Gateway 1: Procurement Strategy Report	09 March 2021
Scrutiny call-in period and notification of implementation of Gateway 1 decision	17 March 2021
Issue Notice of Intention	22 March 2021
Invitation to tender	26 July 2021
Closing date for return of tenders	20 Sep 2021
Completion of evaluation of tenders	15 Oct 2021
Issue Notice of Proposal	25 Oct 2021
Forward Plan for Gateway 2 decision	Oct 2021
DCRB Review: Gateway 2 CCRB Review: Gateway 2	02 Dec 2021 09 Dec 2021
Notification of forthcoming decision	15 Dec 2021
Approval of Gateway 2: Contract Award Report	23 Dec 2021
End of scrutiny Call-in period and notification of implementation of Gateway 2 decision	14 Jan 2022
Standstill Period (end date)	28 Jan 2022
Contract award	07 Feb 2022
Add to Contract Register	07 Feb 2022
TUPE Consultation period	31 Mar 2022
Publication of award notice in FTS and Contracts Finder	07 Feb 2022
Contract start	1 April 2022
Contract completion date	31 Mar 2025
Contract completion date – if extension(s) exercised	31 Mar 2027

## **TUPE/Pensions implications**

25. The appointment of a new contractor in this proposed retender may amount to a Service Provision Change but the council's preliminary view is that there is unlikely to be relevant transfer under TUPE between the incumbent and new contractor. Nevertheless until due diligence is carried out definitive advice on TUPE cannot be provided. This due diligence work will be carried out before the tender process commences so that its results can be included in the tender pack. There are no TUPE implications for the council as an employer because the council's contract management and administrative function will remain with the council and these activities will not form part of the contract specification.

## **Development of the tender documentation**

26. The tender documentation will be prepared with the support of the council's insurance broker who has practical experience of providing this support to other local authorities and to this council.
27. The current strategic contract management team and a representative from the operational team will then develop the tender document with the support of the insurance broker.
28. The tender will be based on the previous tender documentation, but amended as necessary following comments by leaseholder representatives and on the advice of the insurance broker. The corporate risk and insurance manager, departmental procurement officer and a Legal Services officer will be involved in finalising the tender documentation to ensure compliance with best practice.
29. Whilst the council has its own standard form of contracts, there are specific contracts used in the insurance market. The wording used in the insurers draft agreement and terms and conditions will be reviewed by Legal Services in order to protect the council's interest.

## **Advertising the contract**

30. The contract will be advertised in FTS and Contract Finder via the London Tenders Portal with the support of the council's insurance adviser. Where individual leaseholders suggest insurers, they will be directed to the FTS notice.

## **Evaluation**

31. The contract will be awarded on the basis of MEAT (Most Economically Advantageous Tender) based on a price/quality ration of 70:30, using the Open procedure of the PCR (2015).



32. A larger weighting has been given to the price due to the highly specialised nature of the contract and limited market for bidders to be in a position to submit a tender.
33. The evaluation panel will consist of the business systems manager and pre assignment manager from homeownership services (HOS), the corporate risk and insurance manager and a representative from the council's insurance advisor. The range of council officers with different specialities and competencies is considered appropriate for this type of contract.
34. As with previous contracts, leasehold representatives will be given the opportunity to be involved in the process of reviewing the contract specification.

### **Community impact statement**

35. The contract will have an impact on leaseholders and a small number of freeholders as they will have to contribute towards the contract cost in their service charges.

### **Social Value considerations**

36. 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 details of how social value will be incorporated within the tender are set out in the following paragraphs.
37. Social Value is unlikely to be able to form part of this tender due to the nature of the services being provided, although suppliers will be asked on applicable elements such as apprenticeship opportunities, and the payment of London Living Wage / Real UK Living Wage will be made as part of the tender.

### **Economic considerations**

38. As part of the statutory consultation process, leaseholders are allowed to suggest their own (local) insurer. However, as public notice of this contract will be given, leaseholders cannot nominate providers and will be advised to direct any interested providers to the FTS Notice.
39. The terms of the contract, should leaseholders have to make a claim under the policy, will permit them to submit quotes from (local) contractors of their own choice to carry out repairs to the internal parts of their property. The contract also allows the insurer to instruct their own nominated contractor should the leaseholder not want to obtain their own quotes.

### **Social considerations**

40. The successful contractor will be required to demonstrate that they operate an Equal Opportunities Policy, comply with the provisions of the Equalities

Legislation, the Employment Relations Act 1999 (Blacklists) Regulations 2010 and the Prevent Duty under section 26 of the Counter-Terrorism and Security Act 2015. The council can exclude companies who break the law by blacklisting if they are either still blacklisting or have not put into place genuine actions concerning past blacklisting activities. The council can require "self cleaning" which enables a potential contractor to show that it has or will take measures to put right its earlier wrongdoing and to prevent it from re-occurring and to provide evidence that the measures taken by the economic operator are sufficient to demonstrate it has:

- "Owned Up": clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities
- "Cleaned Up": taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct, and
- "Paid Up": paid or undertaken to pay compensation in respect of any damage caused.

41. The council's contract conditions will include an express condition requiring compliance with the blacklisting regulations and include a provision to allow the contract to be terminated for breach of these requirements. In addition, the council's contract conditions will include an express condition requiring compliance with the Prevent Duty. The council's working in occupied premises policy will include this provision and will require the successful contractor to notify the council if they have any concerns.
42. The successful contractor is expected to meet the London Living Wage (LLW)/ Real UK Living Wage (RUKLW) requirements. The terms and conditions of the insurer will be checked as part of the tender process and reported in the Gateway 2 report. If there is no provision for this it will be included for which there may be an additional cost associated. However, owing to the nature of this industry it is highly probable that all company employees will be earning over LLW/ RUKLW rates.
43. The successful contractor will be encouraged to consider trades union recognition in line with the council's Fairer Future Procurement Framework.

### **Environmental/Sustainability considerations**

44. All exchanges of information in relation to this procurement will be via the council's e-procurement system. During the course of the contract the provider will be required to use digital resources, including secure electronic mail and databases in order to eliminate the unnecessary use of paper.

### **Plans for the monitoring and management of the contract**

45. The council's contract register publishes the details of all contracts over £5,000 in value to meet the obligations of the Local Government Transparency Code. The Report Author must ensure that all appropriate

details of this procurement are added to the contract register via the eProcurement System.

46. The contract will be for a fixed sum for the duration of the contract, perhaps with an allowance for inflation based on the house building cost index – depending on the tender price. The financial risk will fall on the insurer should the value of claims exceed the contract sum paid by the council.
47. The council will require access to the insurer's IT system detailing claims and action taken. The system will include details of the cost of claim (payments and any reserve) and actions taken by the insurer to finalise the claim. The system should be in such a format that reports can be run by the council for each claim and for specific periods.
48. Annual contract performance reports will be taken to DCRB in line with the requirements of CSOs. Regular monitoring meetings between relevant council officers and the insurer will also be held at least quarterly, or more frequently if required.
49. The contract will be administered in the first instance by council staff. They will send out claim forms, receive them back together with quotes from leaseholders' nominated contractors and scan the documents to the insurer. The staff will liaise with leaseholders and act as a link between the leaseholder and insurer to resolve any queries. These services will be documented in a separate agreement between the council and the insurer.
50. Council staff will also liaise with housing services where claims have been caused by a failing in a neighbouring tenanted property, e.g. where a leaseholder has a leak originating from the flat above them. Housing services staff will be requested to prioritise a repair to tenanted properties so that the authorisation can be given to leaseholders to instruct their nominated contractor to start repairs to their property. This will benefit leaseholders as claims are progressed quicker and it will assist in minimising the cost of the claim. As claim costs form the basis of bids from insurers, procedures in controlling costs from escalating will have a beneficial effect on future contracts.

### **Staffing/procurement implications**

51. There are no additional resource issues as home ownership services already has a buildings insurance officer who is responsible for the administration of the contract.
52. The buildings insurance officer and the team are supported by a manager who has experience of this contract since 2006. In addition, other staff in the team have been trained in dealing with queries from the insurer and leaseholders.

## **Financial implications**

- 53. The annual cost of the contract will be for a fixed sum, although it could include an annual inflation allowance relating to the house building cost index as set by the Royal Institution of Chartered Surveyors (RICS) index.
- 54. The contract will run over a period of three years commencing 1 April 2022, with an option to extend for two twelve month extensions. The estimated total contract value is £5.1m per annum (including insurance premium tax at 12%). This makes a total estimated contract value of £25.57m.
- 55. The cost of the contract is recharged in full to the leaseholders as a part of their annual service charges. There are no budgetary consequences as a result of this contract as there is a neutral effect on the Housing Revenue Account.

## **Investment implications**

- 56. None identified.

## **Legal implications**

- 57. The Landlord & Tenant Act, 1987, allows leaseholders to request a summary of insurance cover. The council has to provide a summary to the leaseholder which includes the insured amount, name of the insurer and the risks covered. Leaseholders can then apply in writing to the landlord to afford reasonable facilities to inspect the policy, see evidence of payment of premiums for that and previous periods and take copies or extracts.
- 58. Please see concurrent from the Director of Law and Governance.

## **Consultation**

- 59. 12 homeowners from the home owners on-line residents panel have been selected to join a task and finish group and participate in the procurement of the contract. The leaseholders will be given the opportunity to input into the tender specification and criteria by reviewing the previous tender documents, The group will also be invited to review the statistical information that the council has available in relation to the current local authority buildings insurance market. It is anticipated that this will happen over the course of 3-4 separate meetings. Subject to interest two of the working group will be invited to participate in scoring the quality evaluation of the tender.
- 60. The contract is subject to statutory consultation with the leaseholders. This involves a two stage process, with the first stage (a notice of intention) consulting the leaseholders on the council's intention to enter into a long term agreement for the provision of buildings insurance, and the second stage (a notice of proposal) detailing the results of the tender process.

61. Residents Forum will be updated as necessary during the course of the tendering.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Finance and Governance (H&M 20/134)**

62. The Strategic Director of Finance and Governance notes the recommendation in this report to undertake an EU procurement for the leasehold and ancillary properties buildings insurance contract. The contract will cover an initial period of three years commencing 1 April 2022 with the option to extend for a further two years. The contract is for a fixed price currently estimated at £5.1m per annum, but subject to annual inflationary uplifts as determined by RICS. The size of the council's leasehold portfolio and claims history will influence contract pricing along with current market uncertainty arising from the Grenfell tragedy, which presents a risk in terms of market appetite for insurance provision of this type. In budgetary terms there are no implications for the Housing Revenue Account as the cost of the contract is fully rechargeable to leaseholders as part of their annual revenue service charge.

### **Head of Procurement**

63. This report seeks approval from cabinet to go out procurement for Leasehold and Ancillary Properties Buildings Insurance for a period of three years commencing 1 April 2022, with an option to extend for two x 12 month extensions, making a total estimated contract value of up to £25.57m. The estimated total contract value is up to £5.1m per annum (including insurance premium tax at 12%).
64. The proposed procurement route options are detailed in paragraphs 15 to 20 and preference is a single stage procurement which is allowable under EU Public Contract regulations 2015, the Brexit legislation and the councils contract standing orders (CSOs)
65. Risks are detailed in paragraphs 21, the tendering process is detailed in paragraphs 26 to 34 and plans for management and monitoring the contract is detailed in paragraphs 40 to 50.

### **Director of Law and Governance**

66. This report seeks the cabinet's approval to the procurement strategy for the leasehold and ancillary properties buildings insurance contract (including a separate claims handling service) as further detailed in paragraph 1. As the estimated contract value exceeds £4m, this approval relates to a strategic procurement and the decision is therefore reserved to cabinet.
67. The nature and value of these services are such that they are subject to the full tendering requirements of the Public Contract Regulations 2015 (PCR 2015). As noted in paragraph 20, the intention is to undertake a one stage

competitive tender in compliance with the PCR 2015, so these tendering requirements will be satisfied. Officers from the contracts team in Law and Governance will assist in the procurement and advise on contract documentation throughout the procurement process.

68. Approval is also sought from the Leader to delegate the award (Gateway 2) decision to the Cabinet Member for Housing to ensure that the new contract can be effective from 1 April 2022.

## BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Gateway 1 – Procurement Strategy Approval Leasehold and Ancillary properties Buildings Insurance	Preassignment Team 160 Tooley Street London SE1	Tabitha Cox, Preassignment Manager 020 7525 7252
<b>Link:</b> <a href="http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=5380&amp;Ver=4">http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=5380&amp;Ver=4</a>		

## APPENDICES

No	Title
None	

## AUDIT TRAIL

Cabinet Member	Councillor Stephan Cryan, Council Housing	
Lead Officer	Duncan Whitfield, Strategic Director of Finance and Governance	
Report Author	Louise Turff, Homeownership services manager	
Version	Final	
Dated	25 February 2021	
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 Governance	Yes	Yes
Director of Exchequer (For Housing contracts only)	No	No
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		25 February 2021