

Item No.	Classification: Open	Date: 20 September 2021	Meeting Name: Strategic Director of Finance and Governance
Report title:		Gateway 3 – Variation Decision Corporate Liability Insurances	
Ward(s) or groups affected:		All	
From:		Corporate Risk and Insurance Manager	

RECOMMENDATION(S)

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 four years with effect from 1 October 2021 with an estimated annual value of £598,098 up to a total estimated maximum extension value of £2,392,392.
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 four years with effect from 1 October 2021 with an estimated annual value of £87,245 up to a total estimated maximum extension value of £348,980.
3. That the Strategic Director of Finance and Governance considers and approves as appropriate any changes to the insurance coverage that may be offered.
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 contract and subsequent variations.

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 includes all liability insurance policies consisting of 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 a four year extension, on the basis of a new long term agreement, and more formal discussions on terms will take place during the renewal process finishing by October 2021. The extension has largely been offered on the same rates as the current contract although there has been an increase in the premium against the employer's liability cover which accounts for the overall increase in premium against the amount paid last year. An increase in the excess applied to employer's liability claims from £250,000 to £500,000 to bring it in line with the excess applied to public liability claims was also taken which limited the increase in the premium.
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. A further one year extension was agreed, at a value of £597,800, as set out in the associated gateway report signed off in September 2020.
12. This report is seeking approval for an additional four year extension at an estimated total contract value of £685,343 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. Although a gateway 1 report was signed off in February 2021 for a new procurement strategy for this contract, due to various factors as set out in paragraphs 15 – 17, a review of this strategy was undertaken and it was felt the council would be in a better position to seek a further extension with a new long term agreement with the current provider rather than continue with a full tender exercise.
15. The insurance market is currently extremely difficult and volatile as it is now operating in what is known as a hard phase, which does not currently show any signs of easing. A number of insurers are reviewing their accounts and large rate increases are being seen across the market, along with restrictions in cover, the policy limits being offered and higher deductibles being requested. This is being driven in part by reinsurers who are increasing their premiums and applying blanket exclusions to certain risks plus large losses being experienced by insurers globally. The public sector insurance market is limited anyway, and further limited for the council due to its claims handling requirements. A new long term agreement was sought with the current provider as this was felt would secure best value for the council.
16. Another factor for seeking a longer 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 part of any retender exercise, potential bidders will look at the council's claims experience. There is currently a very large reserve against an employer's liability claim due to a recent review which resulted in the reserve being increased substantially. There has also been deterioration generally in the last 12 months in the employer's liability claims experience. This would affect how the council is viewed and likely the bids submitted at a tender.

Future Proposals for this Service

18. The council will start the process for a procurement exercise in July 2023 for new arrangements to be in place for October 2025. This will be done with the whole programme (liability and property insurances) being procured at the same time as the property insurances contract also ends in September 2025. The Department of Education extended the Risk Protection Arrangement (RPA) in April 2020, an alternative to commercial insurance, and now allow local authority maintained schools to join where previously it was just for academies. So far, only one Southwark school has joined this scheme rather than still purchase their insurance cover via

the council, but if more schools made this change in the near future, this would impact on the insurance programme and tendering design.

Alternative Options Considered

19. A number of procurement options were considered:

No	Option	Advantages	Disadvantages
1	Let the contract lapse and not extend	No premium would be due so there would be a cost saving	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 PCR procurement	Use of a framework would 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 There would also 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.
5	Extend the current contract	Would ensure insurance cover is in place and unlikely that costs will increase significantly Current provider has already confirmed they would be happy to offer an extension	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	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 in accordance with regulation 72 of PCR 2015, then this is considered a low risk.

Policy framework implications

21. There are no direct policy implications.

Contract management and monitoring

22. 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.

23. 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.

24. QBE via RMP and the claims handlers' performance of each contract element has 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, equalities (including socio-economic) and health impacts

Community impact statement

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

Equalities (including socio-economic) impact statement

26. This decision has been judged to have no or very small impact on equalities as it is related to purchasing an insurance policy and claims handling services with no potential for discrimination to people with different protected characteristics.

Health impact statement

27. This decision has been judged to have no or very small impact on health inequalities as it is related to purchasing an insurance policy and claims handling services to protect its own and stakeholder's liabilities.

Climate change implications

28. This decision has been judged to have no or very small impact on climate change as it is related to purchasing an insurance policy and claims handling services which are almost entirely conducted electronically.

Social Value considerations

29. 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

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

Social considerations

31. 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

32. The service seeks to limit unnecessary travel and meetings, and as far as possible utilise online systems to minimise paper waste and most recently, all meetings are now conducted online.

Financial Implications

33. The financial implications are as detailed in the main body of the report. The proposed extension up to a maximum of four years at an estimated maximum contract value of £2,741,372 represents 78% of the original contract value.
34. The costs associated with the extension of this contract will be contained within cost centre group CD190 (Insurance Funds).
35. 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.

Investment Implications (Housing Contracts only)

36. Not applicable.

Legal Implications

37. Please refer to the comments of the director of law and governance.

Consultation

38. No additional consultation has been undertaken.

Other implications or issues

39. There are no other implications or issues.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (F&G21/005)

40. The Strategic Director of Finance and Governance notes the recommendation to extend the liability insurance and claim handling contract and the financial implications, as set out at paragraphs 33 to 35.
41. It is further noted that any extension or variation of the contract beyond the scope of this report will require confirmation of funding. It is observed that any increase could, as an interim measure, be covered by drawing from the insurance reserve, subject to the approval of the Strategic Director of Finance and Governance and advice on how the longer term provision of liability insurance under the contract is resourced.

Head of Procurement

42. This reports seeks approval from the Strategic Director of Finance and Governance to extend the corporate liability insurance contract with QBE Insurance Ltd via RMP Ltd and Arthur J Gallagher (AJG) for a period of four years with effect from 1 October 2021 for a total estimated value of £2,392,392 and the liability insurance claims handling contract to Gallagher Bassett International Ltd for a period of four years with effect from 1 October 2021 for a total estimated value of £348,980.
43. The Strategic Director of Finance and Governance notes the detailed for the variation in paragraphs 14 to 17, risk are detailed in paragraph 20, contract management and monitoring is detailed in paragraphs 22 to 24, equalities, health and climate impacts are detailed in paragraphs 26 to 28.

Director of Law and Governance

44. This report seeks the approval of the strategic director of finance and governance to a variation of the corporate liability insurance contract with QBE Insurance Ltd via RMP Ltd and Arthur J Gallagher (AJG) for a period of four years with effect from 1 October 2021 with an estimated annual value of £598,098 up to a total estimated maximum extension value of £2,392,392.
45. The strategic director of finance and governance is also requested to note the other recommendations in paragraphs 2 to 4 of this report.
46. Paragraphs 9 to 17 of this report sets out the extent of the required variation and the reasons why the variation is necessary.
47. The original contract was awarded in accordance with the Public Contracts Regulations 2015 (PCR 2015) and commenced on 1 October 2015, and it is therefore necessary to ensure that any variation of that contract is permitted within those regulations. Regulation 72 of the PCR 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 modification of the corporate

liability insurance contract is 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

48. The strategic director of finance and governance is advised that when relying on any grounds for exemption from the requirements of the PCR 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. However, given that the modification is not substantial within the meaning of Reg. 72(8) coupled with the market situation described in paragraphs 14 to 17 of this report, it is considered that the risk of challenge is low.

49. 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 34 of this report confirms how the proposed additional expenditure will be resourced.

Director of Exchequer (for housing contracts only)

50. Not applicable.

Director of Education (for schools contracts only)

51. Not applicable.

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 (and as otherwise recorded in Part B below).

Signature



Date 30 September 2021

Designation Strategic Director of Finance and Governance

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

- 1) All key decisions taken by officers

- 2) Any non-key decisions that are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available (see 'FOR DELEGATED DECISIONS' section of the guidance).

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

* Contract standing order 6.6.1 states that for contract Variations with an Estimated Contract Value of £100,000 or more, the lead contract officer (LCO) must consult with the relevant cabinet member before the decision is implemented.

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)

7. CONSIDERATION GIVEN TO WHETHER, AS A NON-KEY DECISION, THIS SHOULD BE FORWARDED TO THE CONSTITUTIONAL TEAM FOR PUBLICATION IN ACCORDANCE WITH REGULATION 13(4)*

The decision taker should consider whether although a non-key decision, the decision is sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available. Where there is any doubt, having considered the importance and/or sensitivity of a decision, it should be deemed that Regulation 13(4) would apply.

I consider that the decision be made available for publication under Regulation 13(4).*

or

~~I do not consider that the decision be made available for publication under Regulation 13(4).*~~

(* - Please delete as appropriate)

* Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the council is required to put in place a scheme for recording and publishing some officer executive decisions. This process is sometimes referred to as "Regulation 13(4)".

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	Final	
Dated	20 September 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
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		30 September 2021