

Item No.	Classification: Open	Date: 29 March 2023	Meeting Name: Cabinet Member for Council Homes and Homelessness
Report title:		Gateway 2 - Contract Award Approval Leasehold and Ancillary Buildings Insurance Contract	
Ward(s) or groups affected:		All leaseholders and a number of freeholders	
From:		Head of Homeownership Services	

RECOMMENDATION

1. That the Cabinet Member for Homes and Homelessness approve the award of the leasehold and ancillary buildings insurance contract to Protector Insurance (Protector) commencing 1 April 2023 in the estimated sum of £9.8m per annum for a period of three years with an option to extend for two x twelve month extensions, making a total estimated contract value of £48.9m, including insurance premium tax (IPT) at 12%, and with the year on year increase in premiums of the new contract will be linked to The Royal Institution of Chartered Surveyors (RICS) index as well as the policy's claim performance.

BACKGROUND INFORMATION

2. Since 2021, the council have set about testing the market to procure a new leasehold buildings insurance contract. It is accepted that at present, the insurance market is in a period referred to as a hard market phase with premiums rising significantly, restrictions in cover being introduced and policy limits and excesses being reviewed or introduced. This is being driven in part by reinsurers, large losses being experienced by insurers nationally and globally for example, the fire at Grenfell Tower and climate change causing storm/ flood losses along with the impacts of Covid-19 and inflation.
3. Furthermore, at the start of 2021, the council were aware that there were only four public sector insurers that underwrite leasehold buildings insurance, of which only one will do business with the council directly, and one will not provide insurance for local authorities in London. In an effort to navigate these increasingly challenging circumstances, the council opted to explore alternative routes when re-tendering the contract and recruited the services of its insurance broker Arthur J Gallagher (AJ Gallagher), as noted in the Gateway 1. Firstly, it was reasoned that using a broker would provide additional expertise in the insurance market. Secondly, it would mean the council could appeal to those insurance companies who only deal through a broker as well as the one that deals direct through the council, thereby maximising the number of bids received.

4. Zurich Municipal, the council's current leasehold buildings insurance provider and the only company known to deal directly with the council, communicated on 26 September 2022 that it would not be submitting a bid due to a change in their corporate strategy where they are seeking to stop providing buildings insurance on mortgaged properties. On the basis that the council's procurement process proved unsuccessful, in good faith Zurich Municipal offered the council the option of a 12 month extension.
5. With assistance from AJ Gallagher, a market engagement meeting was held in September 2022 with the two potential bidders in the market. The meeting provided the council with an opportunity to engage with these companies and answer their questions directly.

Procurement project plan (Key Decision)

Activity	Completed by/Complete by:
Forward Plan for Gateway 2 decision	March 2023
Briefed relevant cabinet member (over £100k)	20 March 2023
Approval of Gateway 1: Procurement Strategy Report	09 March 2021
Issue Notice of Intention (Applies to Housing Section 20 Leaseholder Consultation)	04 July 2022
Invitation to tender	04 Oct 2022
Closing date for return of tenders	25 Nov 2022
Completion of evaluation of proposal	16 March 2023
Issue Notice of Proposal (Applies to Housing Section 20 Leaseholder Consultation)	Not applicable
DCRB Review Gateway 2:	16 March 2023
CCRB Review Gateway 2:	20 March 2023
Notification of forthcoming decision – Five clear working days	Not applicable**
Approval of Gateway 2: Contract Award Report	22 March 2023
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	30 March 2023
Contract award	31 March 2023
Add to Contract Register	07 April 2023
TUPE Consultation period (if applicable)	07 April 2023

Contract start	01 April 2023
Place award notice in Find a Tender Service	07 April 2023
Publication of award notice on Contracts Finder	07 April 2023
Contract completion date	01 April 2026
Contract completion date – if extension(s) exercised	01 April 2028

**Application for special urgency

KEY ISSUES FOR CONSIDERATION

Description of procurement outcomes

- The main outcome of the process is to ensure that appropriate insurance cover is in place for the approximately 14,200 units of council leasehold stock from April 1 2023. This is an absolute requirement, as a failure to ensure would place the council in breach of the lease terms.

Key/Non Key decisions

- This report deals with a key decision.

Policy framework implications

- Under the terms of the lease, the council, as the freeholder, must insure its properties against the normal insurance perils. Without this covenant, Right to Buy and shared ownership purchasers and their assignees would find it impossible to obtain a mortgage. The most advantageous way for the council to do this is by placing the contract with a single insurer.
- The number of leaseholders at the commencement of the contract is estimated to be about 14,200. The contract sum will be recovered in full from leaseholders by Homeownership Services (HOS) through their service charges. There is therefore a neutral effect on the Housing Revenue Account (HRA).
- In previous years, when the leasehold buildings insurance has been subject to the procurement process, the council have issued leaseholders a Notice of Intention and Notice of proposal. While a Notice of intention was issued for this procurement at the outset of the process in July 2022, it has not been possible to issue a Notice of Proposal prior to the contract start due to the time restraints posed by the changing nature and singularity of this particular procurement. Notices of proposal will be served, but the contract will need to start prior to the end of the observation period. The council will seek dispensation for this at the First Tier Tribunal.

Tender process

11. The procurement strategy initially undertaken was subject of a Gateway 1 report, which was approved on 9 March 2021. The report outlined a one stage competitive tender following the Public Contract Regulations (PCR) 2015, which would allow the council to put in place new contracting arrangements for 1 April 2023.
12. The tender went out publicly via the London Tenders Portal on 4 October 2022, with a closing date of 11 November 2022. In the tender pack, the council provided information on cladding, insulation and construction for all blocks of seven storeys and above. However, during the tender process questions were raised requesting the same information for blocks of six storeys. The council was unable to provide this information at the time, as it is not a legal requirement under the Building Safety Act to collect such data. Another question raised was regarding valuation costs for every leasehold property or block in the borough. This information is not available due to the size of the leasehold and property portfolios owned and managed by the council. At the time, there were circa 14,200 leasehold properties within approximately 3,000 blocks, and to obtain individual valuations would have been a very costly exercise. The council had undertaken some archetypal valuations, which were included in the tender documentation. All queries were responded to. Extensions were requested by the two companies represented at the market engagement meeting, which the council agreed to, resulting in the tender closing date being moved to 25 November 2022.
13. The tender closed at 12 noon on the 25 November 2022, when it was confirmed that no bids had been received.
14. Following the close of the tender, a meeting was held on 28 November with the Head of Homeownership Services (HOS), Legal Services, Procurement, Corporate Insurance and AJ Gallagher to discuss the council's options. Given the failed procurement process, the agreed conclusion was to approach Zurich Municipal for contract terms for the additional 12 months (as per paragraph 4), and use that time to tender for the contract again. On the advice from AJ Gallagher, the council would present this second tender to the private sector market as of February 2023. Should the second tender prove unsuccessful then the council's fall back position would be to utilise Zurich's 12 month contract.

Tender evaluation

15. Working closely with the council, ensuring its requirements were fulfilled and that all industry standards were met, the tender evaluation process was overseen by AJ Gallagher. Protector provide leasehold buildings insurance to a number of local authorities across the UK, and are therefore understood to meet the council's standard procurement requirements as per Public Contract Regulations (PCR) 2015.

16. Upon evaluation, the council understand the contract with Protector to be their soundest offer as it provides homeowners with long term security and assurances surrounding their buildings insurance cover.

Plans for the transition from the old to the new contract

17. The contract to be let under this procurement must be let in accordance with the consultation requirements set out in section 20 of the Landlord and Tenant Act 1985, as amended by S151 of the Commonhold and Leasehold Reform Act 2002. This is to enable costs incurred through these contracts to be recharged to leaseholders through collection of annual service charges.

18. The existing contract is managed by HOS (see also Plans for monitoring and management of the contract section, below) who also handle the initial processing of claims. Leaseholders will therefore see little change in terms of channels of communication. Procedures have been put in place within HOS to ensure that a clear distinction is made between claims under the old and new insurance contracts, in order to minimise any chance of disruption.

19. The council can confirm that if a claim form were submitted after 1 April 2023 for an incident that took place prior to that date, then this claim would be the responsibility of the previous insurer, Zurich Municipal. Any claim form submitted with an incident date after 1 April 2023 then the new insurer, Protector, would be responsible.

Plans for monitoring and management of the contract

20. 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.

21. The existing insurance contract is monitored by the Buildings Insurance Officer, supported by the Business Systems and Preassignment Managers. It is planned that this arrangement will be continued for the duration of the new contract. It is not anticipated that the council will see any substantial operational changes as a result of the new contract.

22. The council 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 as well as acting as a link between the leaseholder, insurer and relevant council departments in order to resolve any queries.

23. The council will have access to reports generated from the insurer's IT system; this will ensure that up to date monitoring information will always be available to council staff.

24. Regular monitoring meetings between relevant council officers and the insurer will be held at least quarterly or more frequently if required.

25. Annual Performance Reviews will be presented in line with the council's contract standing orders (CSO).

Identified risks for the new contract

26. The table below identifies the risks associated with this contract, the likelihood of occurrence and the control in place to mitigate the risks, likelihood being rated low, medium and high.

R/N	Risk Identification	Likelihood	Risk Control
R1	Leaseholders are presented with premiums which have doubled	High	<p>The council is aware of the current financial situation facing its homeowners, and that any increase in premiums will only add to this.</p> <p>Due to high interest rates and the current state of the insurance market, unfortunately a dramatic increase in premiums is to be expected. The council is presently looking into ways to reduce the impact that these cost increases will have on homeowners.</p>
R2	Financial risk to the HRA due to HOS only increasing the estimated 2023/24 insurance premiums by 11% based on inflation rates in November 2022, and now being informed the increase will be a 100% increase.	High	<p>The actualisation of the 2023/24 estimates will take place in September 2024, therefore the HRA would have paid the full 100% increase in insurance premiums.</p> <p>HOS however would have only collected the 11% as estimated.</p> <p>The HRA will bear the expense until the remainder is collected at actuals in 2024. HOS are exploring the possibility and practicalities of carrying out an ad-hoc billing run to recover some of these costs prior to September 2024.</p>
R3	Leaseholders challenge the service charge for the premiums due to the failure to carry out the full statutory	Medium	<p>The council will seek retrospective dispensation from the FTT for starting the contract prior to the section 20 consultation.</p>

	consultation process.		
R4	The estimated contract amount provided by Protector is a single sum covering all properties. No breakdown of cost of premium per property.	Medium	The council are currently in the process of calculating the costs based on valuations, property type and bedroom numbers.
R5	Risk of procurement challenge by accepting terms outside of normal procurement route.	Low	Protector's is the only offer available offer to the Council and cover is needed by 1 April 2023. The public sector market is very limited and Protector are arguably the only insurer in the market. We have explored all options available and sought legal advice. Protector would have presented terms if we had gone to tender on the private market, however due to time restrictions, Protector offered terms after negotiations with the broker.
R6	Insurer goes out of business	Low	Credentials and viability of insurer has been considered in assessment process. Monitoring through life of contract to ensure coverage is maintained. According to the most recent AM Best report Protector are considered 'Good', scoring 'B++'.
R7	Unexpected contract price increase from year to year	Low	If the claims experience of the policy deteriorates and results in higher premiums, the increase can be recharged to homeowners as a service charge or the council may adopt a flexible approach to funding the additional claims by establishing a subrogation fund.

Community, equalities (including socio-economic) and health impacts

Community impact statement

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

Equalities (including socio-economic) impact statement

28. With respect to the Public Sector Equality Duty, it is considered that this contract will have no impact on local people or communities in terms of equalities as it is for the provision of a buildings insurance contract; it is not directed at any group or triggered by any issue related to equalities. By putting into practice Southwark's Fairer Future commitments, which includes the pledge to embed equality into all aspects of council operations, the contract outlined in this report will be managed so as to make certain that all council homeowners are treated equally. Protector have their own diversity and inclusion strategy, which takes into consideration the culture, ethnicity, age, sexual orientation, gender identity, individual ability and many other characteristics of both its employees and customers. Further economic implications of this extension are detailed in paragraphs 39 to 41.

Health impact statement

29. The council recognises the findings of the *Build Back Fairer: COVID-19 Marmot Review* (2020) by the UCL institute of Health Equity and the Health Foundation. Through close monitoring of the contract, the council, with Protector, will always work to ensure that it does not contribute to or exacerbate any existing health inequalities.

Climate change implications

30. Both Protector and the council demonstrate a commitment to tackling the climate emergency. The climate impact posed by the contract outlined in this report will be monitored closely, and strategies will be put in place to help mitigate against any further climate impact.

Social Value considerations

31. 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

32. The estimated value of this contract is contained in paragraph 1 of this report.

Social considerations

33. The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, contractors and sub-contractors engaged by the council to provide works or services within Southwark pay their staff at a minimum rate equivalent to the LLW rate. Protector demonstrate a commitment to standards relating to the payment of the minimum legal wage or a wage that meets local industry standards, whichever is greater.

Environmental/Sustainability considerations

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

35. Exchanges of information over the life of the contract will be via email, conforming to the council's commitment to reduce needless paper usage.

Market considerations

36. 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 (see paragraph 2). 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.

Staffing implications

37. There are no additional resource issues as HOS already have a Buildings Insurance Officer who is responsible for the administration of the contract.

38. The Buildings Insurance Officer is supported by a manager who has extensive experience in managing similar buildings insurance contracts. In addition, other staff within the service have been trained in dealing with queries from both the insurer and leaseholders; therefore sufficient cover is in place in the absence of the Building Insurance Officer. The leaks from above team has been set up to tackle the titular issue as part of a wider council concern and is not specific to this contract. This service will therefore be managed and resourced from elsewhere within the council.

Financial implications

39. The contract will run over a period of three years commencing 1 April 2023, with an option to extend for two twelve month extensions. The estimated total contract value is £9.8m per annum (including insurance premium tax at 12%). This makes a total estimated contract value of £48.9m, which takes into account current variables of insurance premium tax.
40. Protector have offered a risk management advice service, which HOS will be raising with the Asset Management team.
41. To facilitate the administration of the contract, previous insurers have been subject to a claims handling service, usually at 12.5% of the contract value, which has covered the council's overheads of managing the contract and the claims. Protector will not be agreeing to this, which will therefore lead to increased costs to the HRA. It is understood that increasingly insurers in this market are no longer agreeing to a claims handling fee due to the scale of the task. The cost to the council of administering the contract will be met from existing budgeted staff resources. Should the costs of administering this contract increase then the council may need to reflect this in the overhead costs leaseholders currently pay via their service charges.

Investment implications

42. None identified.

Second stage appraisal (for construction contracts over £250,000 only)

43. Not applicable.

Legal implications

44. 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.

Consultation

45. Statutory consultation via a notice of intention has been carried out with all leaseholders, and a notice of proposal will be served shortly. Consultation was also carried out during the original tender process with leaseholder representatives taken from the council's resident panel. A task and finish group was set up to specifically look into the leasehold buildings insurance contract and were due to assist the council in assessing the original tender's quality criteria. The group have been kept informed at all stages of the process.

Other implications or issues

46. None identified.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (H&M 22/140)

47. The Strategic Director of Finance notes the proposed contract award to Protector Insurance, commencing on 1 April 2023 for an initial period of three years, with the option for two one year extensions to 31 March 2028. The report outlines the exceptional difficulties experienced in procuring leasehold insurance cover for the council's housing stock sold under long leases.
48. The Strategic Director of Finance is satisfied that exhaustive efforts have been made to obtain terms given the prevailing conditions and appetite in the insurance market to provide cover for risks of this nature. It is also noted that the premium quoted is significantly higher than previous contract terms; however, the council's existing insurer is withdrawing from the leasehold insurance market and has only offered short-term terms as a provider of last resort in the event that no other bids exist. Therefore, in the absence of any other realistic alternative, Protector represents the only option available to ensure the council is able to fulfil its statutory obligation to provide insurance cover with immediate effect (from 1 April) and over the medium-term (up to five years).
49. As the report sets out, the cost of insurance is fully rechargeable to leaseholders under the terms of their lease, therefore from a budgetary perspective it is cost neutral to the Housing Revenue Account (HRA). However, there are cash flow implications given that estimated insurance service charges for 2023-24, (which were estimated some months previously), do not adequately reflect the cost of the new contract for the financial year 2023-24. However, this is largely a matter of timing in terms of the costs being incurred and being recovered in full, when the charges are actualised the following financial year. This will be carefully monitored throughout the year and if necessary, the option to issue a supplementary estimate during the year will be considered.

Head of Procurement

50. This report seeks the approval of the Cabinet Member for Homes and Homelessness for the award of the leasehold and ancillary buildings insurance contract to Protector Insurance. The contract will commence on 1 April 2023 in the estimated sum of £9.8m per annum for a period of three years with an option to extend for two x twelve month extensions. This makes a total estimated contract value of £48.9m. The value includes insurance premium tax (IPT) at 12%. It should be noted that the year on year increase

in premiums of the new contract will be linked to The Royal Institution of Chartered Surveyors (RICS) index as well as the policy's claim performance.

51. The details of the background to this requirement and tender process are set out in paragraphs 2-16 of the report, together with pertinent market considerations in paragraph 36. The risks associated set out in the table at paragraph 26.
52. The plans for the management and monitoring of the contract are set out in paragraphs 20-25. Community, Health, Equality and Climate Change Impact statements are detailed in paragraphs 28-30 with social value considerations in paragraphs 31-35.

Assistant Chief Executive – Governance and Assurance

53. This report seeks the approval of the Cabinet Member for Homes and Homelessness to the contract award for leasehold and ancillary buildings insurance to Protector Insurance as further detailed in paragraph 1. By virtue of contract standing order 6.5.2(a), and at an estimated contract value of £48.9m, this award decision would ordinarily be taken by Cabinet, but was delegated by the Leader (at the Cabinet meeting of 9 March 2021) to the Cabinet Member for Housing, whose portfolio is now the Cabinet Member for Homes and Homelessness.
54. 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 12 and as approved at Gateway 1 stage, this service was tendered in accordance with those PCR 2015 requirements. However despite a full tendering process being undertaken, no tenders were received, and the intention is therefore to proceed to award of contract with Protector, for the reason noted in paragraphs 14-16.
55. Regulation 32 (2)(a) of the PCR 2015 allows a contracting authority to negotiate an award of contract, without a further process of tendering, where no tenders have been submitted in response to an open PCR 2015 procedure, provided that the initial conditions of the contract for that procurement process are not substantially altered, and that a report is sent to the Commission where it so requests.
56. As noted in paragraph 17, this contract must be let in accordance with the requirements of Section 20 of the Landlord and Tenant Act 1985, as amended by Section 151 of the Commonhold and Leasehold Reform Act 2002. Whilst a Notice of Intention was issued to all leaseholders, it has not been possible to issue a Notice of Proposal, and therefore dispensation will be sought from the First Tier Tribunal in relation to this award.
57. The Cabinet Member's attention is drawn to the Public Sector Equality duty (PSED General Duty) under the Equality Act 2010, which requires public bodies to have regard, when making decisions, to the need to eliminate discrimination, advance equality of opportunity and foster good relations

between persons who share a relevant protected characteristic and those who do not share it. The Cabinet Member is specifically referred to the community, equalities (including socio-economic) and health impacts at paragraphs 27-29 setting out the consideration that has been given to equalities issues which should be considered when approving this award.

58. Contract Standing order 2.3 requires that no steps are taken to award a contract unless the expenditure involved has been included in approved estimates, or is otherwise approved by the council. Paragraphs 39-41 confirm the financial implications of this award.

BACKGROUND DOCUMENTS

Background documents	Held At	Contact
Gateway 1 – Procurement Strategy Approval Leasehold and Ancillary Building Insurance	Preassignment Team 160 Tooley Street London SE1	Georgina Brown, Business Systems Manager 020 7525 4367

AUDIT TRAIL

Lead Officer	Dominic Cain, Director of Exchequer	
Report Author	Louise Turff, Homeownership Services Manager	
Version	Final	
Dated	20 March 2023	
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
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Cabinet Member	Yes	No
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet	Yes	No
Date final report sent to Constitutional Team		20 March 2023