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|-----------------------------------|---|-------------------------------|
| <b>Item No.</b>                   | <b>Classification:</b> Open   | <b>Date:</b> December 15 2009 |
| <b>To</b>                         | Executive   |                               |
| <b>Report title</b>               | Gateway 1 - Procurement Strategy Approval<br>Corporate Insurance Procurement (excluding Property Insurance) |                               |
| <b>Ward(s) or groups affected</b> | ALL   |                               |
| <b>From</b>                       | Finance Director  |                               |

## RECOMMENDATION

1. That the Executive approve the procurement strategy outlined, in paragraph 26-28, in this report for the Corporate Insurance (excluding Property Insurance) procurement.

## BACKGROUND INFORMATION

### Current Insurance Contract Arrangements

2. The council's main insurance contracts are currently placed with different insurers as follows:
  - (a) Property Insurance – Zurich Municipal (ZM);
  - (b) Motor and Miscellaneous (including Fidelity Guarantee) Insurances - Zurich Municipal (ZM);
  - (c) (i) Liability Insurances – American International Group (AIG) via intermediaries "Risk Management Partners" (RMP) and Heath Lambert (HL);
  - (c) (ii) Liability Claims handling with Gallagher Bassett also via RMP and HL; and
  - (d) Engineering Inspection Services and Insurances – HSB Houghton (HSBH) via HL.
3. This report relates to the procurement of all insurances listed in paragraph 2 with the exception of '(a) Property Insurance'. Tenderers will be invited to tender for the provision of all or some of the insurances specified in paragraph 2 (b) to (d).
4. All of the council's insurances as specified in paragraph 3 are due to expire on 30<sup>th</sup> September 2010, as authorised in relevant reports.
5. The insurances were all initially tendered for in 2003 for 5 years, with further 2 year extensions.
6. There are separate arrangements in place for the property insurances. Unfortunately, as a direct result of the council's property loss experience, ZM significantly increased their premiums on the housing property element of the insurance contract, thus breaking the property insurance Long Term Agreement (LTA) with the council. These therefore were subject to a separate approval process and there is now a contract in place with ZM for property insurances until 30<sup>th</sup> September 2012.
7. The estimated annual cost of the contract that is being procured is approximately £847,000 per year for a period of 3 years. This is subject to the usual break clause provisions

allowing the rates to be reviewed annually. The contract value will be approximately £2,540,000. Using the 2009/10 costs this is split as follows:

| Insurance Element   | Cost per annum  |
|---|-----------------|
| Motor Insurance   | £83,334         |
| Miscellaneous Insurance (including Crime/ Fidelity guarantee) | £75,665         |
| Liability Insurance   | £388,200        |
| Insurance Premium Tax (IPT) (Motor, Misc and Liability)       | £27,359         |
| Engineering Inspection  | £187,236        |
| Motor Claims Handling   | £29,000         |
| Liability Claims Handling                                     | £55,880         |
| <b>TOTAL</b>  | <b>£846,674</b> |

8. It is proposed that the contract will have extension provisions for two x a single year, making a total estimated contract value of approximately £4,233,000.
9. The council did consider placing this insurance contract for a shorter period to bring it in line with the property insurance arrangements which will expire on 30<sup>th</sup> September 2012. However, after consideration, it was felt that the insurance market required at least a 3 year contract for the council to obtain best value for money and also to provide enough time for a potential consortium insurance purchasing arrangement (arising from the imminent change in local authority law) to become a viable option for the council to consider participation in.

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

10. Unlike most organisations, LBS, along with other major local authorities, is not legally required to compulsorily insure certain risks including the Employers' and Motor Liability risks since we are exempt from the provisions of the Employers' Liability (Compulsory Insurance) and Road Traffic Acts respectively. However, as a matter of financial prudence, we along with most similar authorities do in fact insure against a comprehensive range of insurance contingencies including Employers' and Motor Liabilities, to protect public assets against catastrophic potential losses mainly. LBS is, however, required to have crime insurance (Fidelity Guarantee). LBS must also arrange engineering inspection for relevant plant by a "qualified independent person" under Health and Safety legislation.

### **Market considerations**

#### *General Market Conditions*

11. The UK Local Authority insurance market is generally limited. The council's insurance brokers, Heath Lambert, have confirmed that under normal circumstances there are 3 main insurance companies for our insurance business. These are ZM, AIG and Travellers.
12. At contract extension in October 2008 it was expected that The Local Authority Mutual (LAML) would be a viable alternative market for our insurance. That commitment and the power to set up a mutual were recently found, following challenge by RMP in the Court of Appeal, to be unlawful as it was concluded that councils did not have the power to join together to participate in mutual insurance companies. This resulted in the LAML folding. Instead, councils are likely to be given new legislative powers to establish mutual insurance companies in light of the recent LAML court judgment. Urgent new amendments have been laid on the Local Democracy, Economic Development and Construction Bill that will give

'best value' authorities legislative power to join together to set up and participate in mutual insurance companies. Following agreement by both Houses on the text of the Bill it received Royal Assent on 12 November. The Bill is now an Act of Parliament (law). The timescales of the implementation of the new legislation are yet to be published.

13. The insurance market is affected by the current position of the financial sector generally and from the fact that investment income is currently low resulting in negotiations with the insurance market being difficult which is likely to keep insurance premiums high.

#### *Specific Southwark Conditions*

14. The Insurance markets will be fully aware of the council's current claims experience which may impact on the markets view of the council's insurance portfolio.
15. There are also a number of changes since the last procurement that may change the council's risk. Significant examples of where the insurance risk may have been reduced are:
  - the vast majority of the council's back-office staff has now been relocated from a series of older buildings into one central modern facility;
  - the decision has been taken to bring the previously outsourced benefits and council tax process in-house in April 2011;
  - investment in implementing various fire loss recommendations; and
  - tree roots risk improvement.

In addition the following example may be perceived to increase the insurance risk:

- various shared services arrangements in place (e.g. Croydon anti-fraud contract and PCT partnership).

#### **Proposed procurement route**

16. The usual procedure used by the council for EU procurements is the restricted procedure, where a pre-qualification questionnaire (PQQ) is used to shortlist a limited number of organisations who are invited to tender. Information on the insurance market suggests that there is a limited market for these types of cover, as noted in paragraph 11, and therefore for this procurement it is suggested that an open procedure is used, where all organisations expressing an interest in the contract are invited to tender. The council's usual requirements for shortlisting at PQQ stage (financial, equalities etc) will still be undertaken as part of the tender evaluation process.
17. This tendering process will be undertaken over a period of months in line with the applicable EU procurement regulations. The details of the stages required for an EU Open Procedure are set out in paragraph 33.

#### *Alternative Procurement Routes Considered*

18. Consideration was given to a consortium purchase arrangement.
19. The LAML is a mutual insurance company which started in April 2007 with insurance cover initially being provided for Brent and Harrow with a further commitment to join the LAML being given by 8 other London Boroughs. By setting up a specific mutual insurance company with ownership shared by participating members, participants hoped to achieve economies of scale in purchasing reinsurance protection and to cut out the profit element

and other overheads of the existing local authority insurers as well as other benefits. Initially LAML members joined the mutual without going to tender as soon as their existing insurance agreements expired.

20. That commitment and the power to set up a mutual were recently found, following challenge by RMP in the High Court and the Court of Appeal, to be unlawful as it was concluded that councils did not have the power to join together to participate in mutual insurance companies. This resulted in the LAML folding.
21. Councils are likely, however, to be given new legislative powers to establish mutual insurance companies in light of the recent LAML court judgment. Urgent new amendments are to be made to the Local Democracy, Economic Development and Construction Bill that are intended to give 'best value' authorities legislative power to join together to set up and participate in mutual insurance companies. Following agreement by both Houses on the text of the Bill it received Royal Assent on 12 November. The Bill is now an Act of Parliament (law). As outlined in paragraph 12, the timescales of the implementation of the new legislation are yet to be published
22. Ideally, given the initial commitment of approximately a third of London Boroughs to LAML, and the previous success of the former Local Authority Mutual insurance vehicle, it is hoped that following the change in legislation there may be the opportunity in the next 3 to 5 years for a consortium purchase arrangement.
23. The Consortium Purchase option has been discounted for this procurement, as it is not currently available, but will be reviewed at a later date.

#### *Bringing Claims Handling In-House*

24. Currently the insurance claims handling is outsourced and provided by the respective insurers preferred claims handling partners. Consideration has been given to bringing insurance claims handling back in-house.
25. However, in order to ensure the consistency of the claims handling service, the extra staff costs that would be involved, and the representational advantage that having liability claims decided by an outside impartial party our preferred option is for insurance claims handling to remain outsourced to provide cover for staff shortages. The tenderers ability to provide claims handling will be assessed as part of the evaluation process.

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

26. It is considered that carrying out a publicly advertised competitive tender process in accordance with the applicable EU Regulations is the only option currently open to the Council. It will also provide the council with the greatest flexibility to draw up a specification that meets its own requirements and obtain the best value for money that the current market is able to provide. Whilst a consortium purchase may be favourable to the council for the future, it is not currently available.
27. It is proposed that an EU Open process is followed as the strategy for the procurement of the insurance policies.
28. As part of the tender process, the council will review the best mix of presently insured and uninsured risks, (e.g. we do not presently insure for property terrorism losses) including alternative excess levels and combinations of excesses over different insurance classes which might produce the best economic advantage to the council overall over the longer term, within the limitations applicable at a time when the insurance market is likely

to be difficult for our portfolio of risks and generally overall. Specifically the procurement process will consider:

- not insuring certain insurable risk at all;
- insuring certain insurable risks that are not currently insured; and/or
- raising insurance excesses to a point that the council is only purchasing insurance at catastrophic risk level.

## Identified risks

29. As the service is currently insured by a third party insurance contractor and there has been deterioration in the insurable loss experience of the council, there are a number of related risks identified which have been captured in the table below, along with the control measures.

| Risk  | Control   |
|---|---|
| 1. There is insufficient insurance market interest in the council's contract, and there is no or limited Tender response.           | <ul style="list-style-type: none"> <li>- Robust procurement process outlining the strength of the council's position.</li> <li>- Publication of the Tender in the Post Magazine.</li> <li>- Direct letters to all likely Tenderers.</li> </ul>  |
| 2. If the insurer was to change there may be a weakened negotiation when negotiating on the council existing claims.                | <ul style="list-style-type: none"> <li>- To continue with the robust claims management already in place to progress any outstanding claims</li> <li>- Utilising an independent claims assessor to support the council's claims process.</li> </ul>  |
| 3. Procurement does not meet with timescales required and result in the contract not being procured in time.                        | <ul style="list-style-type: none"> <li>- Advice from procurement and legal through the course of the procurement.</li> <li>- Project manager appointed to run the procurement.</li> </ul>   |
| 4. That the premium rises and/or excess levels rise at the start or during the contract period impacting on the Council's resources | <ul style="list-style-type: none"> <li>- the tendering documentation will include a range of options across varying excess levels and premiums and we will only choose a premium level that is affordable.</li> <li>- if meeting the cost of premiums proves difficult further consideration will be given to self-funding the insurable risk</li> <li>- consideration will be given to meeting increase from insurance reserve if appropriate</li> <li>- consideration will also be given to review of current other spending priorities compared to need for insurance provision</li> <li>- as a final resort only consideration would be given to not setting the insurance agreement start date until resources are available to meet the cost of premiums and anticipated cost of excess payments (basically self-insuring for a period.)</li> </ul> |

## KEY ISSUES FOR CONSIDERATION

### Key /Non Key decisions

30. This is a key decision.

### Policy implications

31. This procurement does not have any direct policy implications. However this procurement may indirectly have an impact on the council's Policy and Resources strategy.

### Procurement project plan

32. An EU Open tendering process is to be undertaken. A Project Board that will involve the following stakeholders will be established, listed below. Permanent members will sit on the project board throughout the procurement, whilst other members will be invited, as and when their input is required.

| Job Title  | Role             | Status on Project board                               |
|--|------------------|---|
| Assistant Finance Director   | Project Director | Chair of Board and Tender Evaluation Panel            |
| Corporate Risk Manager   | Project Manager  | Permanent Member of Board and Tender Evaluation Panel |
| Insurance Manager  | Project Member   | Permanent Member of Board and Tender Evaluation Panel |
| Representative from Departments to evaluate appropriate elements of the tender |                  | Occasional member as required                         |
| Procurement adviser from the Strategic Procurement Team                        |                  | Occasional member as required                         |
| Legal representative from the Contracts Team                                   |                  | Occasional member as required                         |

33. Representatives from Departments involved in specific insurance classes will be asked to attend procurement meetings as required.

### Key Decisions

### Procurement project plan

| <b>INSURANCE PROCUREMENT CONTRACT TIMESCALES</b>    | <b>Complete by:</b>     |
|---|-------------------------|
| Gateway 1 – Presentation to CCRB (on behalf of CMT) | 5th November 2009       |
| Gateway 1 – Presentation to Executive               | 15th December 2009      |
| Business Questionnaire documentation draft          | 28th February 2010      |
| Tender documentation draft                          | 28th February 2010      |
| Tender documentation finalised                      | 10th March 2010         |
| Advertise the contract - OJEU                       | 15th March 2010         |
| Advertise the contract – Trade Press                | 20th March 2010         |
| Issue Invitation to Tender (including PQQ)          | 20th March 2010 onwards |

| <b><u>INSURANCE PROCUREMENT CONTRACT TIMESCALES</u></b>         | <b>Complete by:</b> |
|---|---------------------|
| Closing Date for return of Tenders (52 days)                    | 15th May 2010       |
| (Presentation to short-listed applicants)                       | OPTIONAL            |
| Evaluation of tenders   | 5th June 2010       |
| Completion of any post-tender clarification meetings/interviews | 20th June 2010      |
| Evaluation Deliberation Meeting                                 | 20th June 2010      |
| Gateway 2 draft   | 20th June 2010      |
| Gateway 2 – Presentation to CCRB                                | 24th June 2010*     |
| Gateway 2 – Report to CMT                                       | 25th June 2010*     |
| Gateway 2 - CMT   | 28th June 2010*     |
| Gateway 2 – Presentation to Executive                           | 22nd July 2010*     |
| Scrutiny Call-in complete                                       | 31st July 2010*     |
| End of Alcatel Period   | 11th August 2010*   |
| Contract Award  | 12th August 2010    |
| Contract Start  | 1st October 2010    |
| Contract Complete   | 30th September 2013 |

\* Tentative dates only. Dates to be confirmed once the Decision making timetable has been finalised.

#### **TUPE implications (if no TUPE implications write ‘not applicable’)**

34. Advice will be taken as to whether there are any TUPE implications.

#### **Development of the tender documentation**

35. Tender documentation will be developed by the Project Board, following consultation with occasional members and other relevant experts.

#### **Advertising the contract**

36. An OJEU notice will be posted in the Official Journal of the European Union and advertisements will be placed in the Post & Insurance Monitor Magazine. Letters soliciting interest will also be sent to possible providers, of whom the council is aware.

#### **Evaluation**

37. An Open EU tendering process will consist of the following stages:

1. The proposed procurement route will be an open tendering process.
2. The approach to the market will be via an OJEU notice and an advertisement in the Post & Insurance Monitor Magazine. The tender process will include an invitation to tender to organisations that express an interest in tendering; evaluation of tenders that are submitted and any necessary post-tender clarification with the preferred bidder(s).

3. **Tender Evaluation Panel:** Members of the project group will serve on a tender evaluation panel (TEP) which will be set up to evaluate tender submissions. Southwark Procurement will be advising throughout this procurement process to ensure that best practice is followed.
4. **Tender Assessment / Written Submissions/ Business Questionnaire:** This stage involves the assessment of written submissions (and business questionnaires), which should contain method statements detailing how a provider will deliver the service to meet the council's requirements. The TEP will assess all submissions against the criteria agreed of 70% on Price and 30% on Quality.
5. **Tender Assessment:** This stage will involve formal interviews with those Tenderers who have adequately met the tender evaluation criteria and assessment.
6. **Post Tender:** Once the successful provider has been chosen, a final contract will be awarded to the winning Tenderer, subject to a successful Gateway 2 report being accepted by the Executive. The final contracts will be drawn up with the input of advice from the relevant officers.

### **Community Impact Statement**

38. Liability claims handling will continue to be monitored to ensure that the provider continues to provide an acceptable service to members of the community who claim under the council's liability policy.

### **Sustainability considerations**

39. The specification will include the requirement for electronic exchange of information to minimise the need for paper records. The council currently has software in place with the existing provider so if the insurances were transferred to another provider there may be the need to purchase appropriate software. This requirement will form part of the Tender specification.

### **Economic considerations**

40. The full cost to the council over the full 5 year period is likely to be £4,235,000. There are likely to be no additional running costs of this contract. As this procurement is for a service there will be no additional life span of the contract remaining after the contract comes to an end. Due to the limited nature of the insurance market and the need to use national insurance markets, there is no opportunity for local economic benefit.

### **Social considerations**

41. As part of the procurement process, Tenderers will be assessed on their Equal Opportunity Policies. As stated in paragraph 11, the Insurance Market is limited and there is the need to use national insurance providers.



## **Environmental considerations**

42. As stated in paragraph 39 above, the specification will include the requirement for electronic exchange of information to minimise the need for paper records. In addition the Tenderers will be assessed based on their Environmental Policy.

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

43. Robust contract monitoring arrangements which are currently in place for the current Contract will continue with the new Contract. In addition there will be a transition plan developed for the change to the new Contract.

## **Resource implications**

### Staffing/Procurement Implications

44. The resources required for this procurement process are outlined in paragraph 32. Once the contract is up and running, the contract management will continue in the same way as with the current contract. There are, therefore, no additional resource implications.

### Financial implications

45. The cost of future premiums and excess payments as a result of this procurement are expected to be contained within the existing budgeted resources for insurance despite the risk that they may be higher due to the difficult market conditions that persist within the financial sector generally (see paragraph 29, risk number 4).
46. In any one year of this new insurance agreement where the number of claims is higher than anticipated and costs exceed the budget provision, there may be a one-off draw down on reserves held for this purpose, if alternative revenue resources cannot be made available.
47. Where the claims experience suggests that moving forward there will be a continued pressure on the insurance budget, a bid for additional year on year revenue provision will be required to meet future premiums and claims, and the need to maintain the insurance reserve at the required level.

### Legal implications

48. Advice has been taken and will continue to be sought through the procurement as necessary, from the Contracts Section of Communities, Law and Governance.

## **Consultation**

49. Consultation will be sought from relevant officers in other departments as outlined in paragraph 32, including:
- Fleet Services – Motor Insurance
  - Highways – Liability claims such as ‘slips and trips’ and ‘tree root’ claims
  - Housing Services – Housing related liabilities claims (slips and trips on housing related property and water damage claims to contents) and engineering claims.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Communities, Law & Governance**

50. This report seeks the approval of the Executive to the procurement strategy for the provision of corporate insurance outlined in this report.

It is considered that these services are a Part A service under the Public Contracts Regulations 2006. As the estimated value of this/these contract(s) exceeds the relevant EU threshold, this procurement must be tendered in accordance with those Regulations. Paragraph 32 of this report confirms that an open one stage tendering procedure is proposed, which will comply with EU regulations and CSO tendering requirements.

This contract is classified as a strategic procurement and therefore CSO 4.4.2(a) requires the Executive or executive committee to authorise the proposed procurement process, after taking advice from the Corporate Contracts Review Board.

### **Finance Director**

51. This report is from the Finance Director and as such a financial concurrent is not required.

### **Head of Procurement**

52. This report is seeking approval to procure Insurance services (excluding property) following a competitive process. For a contract of this size and nature CSOs require that reasonable steps should be taken to seek five tenders following a public advertisement. Officers have confirmed that the market for this type of service is limited and therefore are proposing to follow an open EU procedure. This would appear to be the most appropriate procurement route given the circumstances.
53. Paragraph 28 confirms that flexibility will be built into the tender process to enable the council to secure the best mix of insurance/ excess levels and therefore assist with the achievement of best value. Paragraph 32 sets out the project governance with the appropriate structure including a project board and project manager. The evaluation criteria will be set at 70/30% in favour of price. With an open procedure officers will need to have tender documents ready to send out at the point that the advertisement is placed. This will need to include the detailed criteria and any sub weightings that may be set by the Tender Evaluation Panel. The implications of an open procedure appear to be reflected in the procurement timeline which is reasonable and achievable.

## KEY POINT SUMMARY

- This procurement will follow a *strategic* protocol
- This contract is for *services* and is *replacing an existing provision*
- There are EU procurement implications

## BACKGROUND DOCUMENTS

| Background Documents     | Held At             | Contact                          |
|--------------------------|---------------------|----------------------------------|
| Procurement Working file | Audit and Risk, FMS | Risk Manager, ext. 020 7525 7348 |
|                          |                     |                                  |

## APPENDICES

No appendices.

## AUDIT TRAIL

|   |  |  |                  |
|---|--|--|------------------|
| <b>Lead Officer</b>   | Dave Howes, Assistant Finance Director |  |                  |
| <b>Report Author</b>  | Maureen McLean, Corporate Risk Manager |  |                  |
| <b>Version</b>  | Final                                  |  |                  |
| <b>Dated</b>  | 20 <sup>th</sup> November 2009         |  |                  |
| <b>Key Decision?</b>  | yes                                    | <b>If yes, date first appeared on forward plan</b> | 24 November 2009 |
| <b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b> |  |  |                  |
| <b>Officer Title</b>  | <b>Comments Sought</b>                 | <b>Comments included</b>                           |                  |
| Strategic Director of Communities, Law & Governance                       | yes                                    | yes  |                  |
| Finance Director  | yes                                    | yes  |                  |
| Head of Procurement   | yes                                    | yes  |                  |
| <b>Contract Review Boards</b>   |  |  |                  |
| Departmental Contracts Review Board                                       | yes                                    | yes  |                  |
| Corporate Contracts Review Board  | yes                                    | yes  |                  |
| <b>Executive Member</b>   | Yes/                                   | No   |                  |
| <b>Date final report sent to Constitutional Team</b>                      |  |  | December 4 2009  |