

Item No. 15.	Classification: Open	Date: 9 May 2017	Meeting Name: Cabinet
Report title:		Gateway 1: Procurement Strategy Approval - Leasehold and Ancillary Properties Buildings Insurance	
Ward(s) or groups affected:		All leaseholders and a small number of freeholders	
Cabinet Member:		Councillor Stephanie Cryan, Deputy Leader and Cabinet Member for Housing	

FOREWORD – COUNCILLOR STEPHANIE CRYAN, DEPUTY LEADER AND CABINET MEMBER FOR HOUSING

Southwark's duty as a landlord is to ensure that we have adequate building insurance in place to help safeguard our leaseholders. Our current buildings insurance contract expires in April 2018 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 13,600 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 final tendering process.

The council intends to undertake a one stage competitive tender and follow an EU open procurement as this will allow us to put in place new contracting arrangements as quickly as possible and continue to meet our statutory responsibilities.

RECOMMENDATIONS

Recommendation for the Cabinet

1. That the cabinet approves the procurement strategy outlined in this report to undertake an EU procurement for the leasehold and ancillary properties buildings insurance contract for a period of three years commencing 1 April 2018, with an option to extend for two twelve month extensions, making a total estimated contract value of up to £18m. The estimated total contract value is up to £3.6m per annum (including insurance premium tax at 12%). This takes into account current variables of insurance premium tax.

Recommendation for the Leader of the Council

2. That the leader of the council delegates authority to the deputy leader and 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 three 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 three)
 - A much smaller policy relating to mortgaged housing properties – currently 1 property – where the council is still providing a mortgage.

In addition, the council may need to nominate buildings insurers, as per the terms of houses sold on leases.

4. 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”.

5. 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.
6. The contract was last awarded in 2013 when Zurich were awarded the contract which commenced on 1 April 2013. The contract was for an initial period of three years ending 31 March 2016, with the option to extend the contract for two years following annual reviews.
7. The estimated cost of the new contract is £3.6m 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 £18m (including insurance premium tax, which will be 12% from June 2017, but may be subject to change throughout the term of the contract). It should be noted that it is normal insurance practice for insurers to include a break clause whereby they can withdraw from a contract should the claims experience be higher than expected and this risk will have to be considered during the tender process.
8. The contract will have provision for two twelve month extensions, making a potential total estimated contract value of £18m.

Summary of the business case/justification for the procurement

9. The council’s leasehold portfolio totals 13,600 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 main requirements suggested by the leaseholder representatives and council officers from the previous tender process are detailed below and will be included as part of the new tender documents:

- Premiums to be based on bed numbers
- Premiums to be further subdivided based on whether the property is a flat or maisonette, purpose built or converted and consideration be given to the height of the block
- Premiums to be based on a unit price
- Premiums to be fixed for the duration of the contract with an annual increase linked to the house building cost index
- No excess on claims, apart from subsidence, when a maximum excess per block would apply
- Leaseholders to have the option of selecting their own chosen contractor to carry out repairs
- Claims to initially be administered by council officers
- A fixed sum insured for all flats
- Agreement of how to account for new sales and buy backs during the course of the year
- Agreement as to how to treat leaseholder improvements
- Agreement over the services fee payable to the council by the insurer for claims handling services
- Agreement over communal claims to be made by the council
- Agreement that leaseholders can make a claim for internal works only through Home Ownership Services
- Agreement that the insurer will be the nominated insurer for houses sold on leases
- A separate schedule and rates for where the whole block has to be insured
- Participation in compiling a leaseholder's insurance handbook
- The council is the insured party with the leaseholder (and their mortgagees) noted as interested parties.

Any new suggestions by the leaseholder representatives will also be considered for inclusion in the tender documents.

11. The claims experience has been consistent for the last four years ranging between £1.3m and £1.8m annually. The claims experience of the policy has not triggered an

increase in the premium payable over the course of the contract. If this trend can be continued for the period up to tendering, favourable renewal terms should be obtainable.

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. This will ensure that the council has appropriate insurance cover for its leasehold stock from 1 April 2018 otherwise it will be in breach of 13,600 leases of flats.

Market considerations

13. At the time of the last tender in 2012, insurance premiums had been low as the global insurance market had been soft. However, in the period since, the market has shown signs of hardening. Two years ago the council was being advised that underwriters were showing greater underwriting discipline and increasing their focus on account profitability. Poor claims experience and/or ineffective risk management were also having an impact on terms being quoted. The position is continuing to deteriorate this year.
14. The requirements of this contract make it highly specialised with few companies having the capacity, funding and knowledge to administer the contract. Although the contract was widely advertised at the previous tender in 2012, only three tenders were received, two from brokers and one from an insurer. There are two major insurers in the market and insurance brokers who tender for this type of work. The procurement process will ensure that appropriate adverts are placed to gain maximum exposure in these areas.

KEY ISSUES FOR CONSIDERATION

Options for procurement route including procurement approach

15. Alternative procurement options have been explored, but found to be unfeasible. Although the contract sum is large, it is impractical to join in with other authorities in letting a new contract as other authorities will have different lease terms, stock numbers and types, and expiry dates for their contracts. Also, the cost of claims settled in respect of other local authorities may be higher than for Southwark claims, which would have a negative effect on the premiums paid by Southwark leaseholders. In addition to this the Insurance London Consortium (ILC) confirmed that it is not currently open to new members. The Insurance Services II Framework Agreement managed by Crown Commercial Service may have future benefits but the current agreement ends on 20 February 2020 and further advice needs to be sought on section 20 implications and potential dispensations that would need to be sought.
16. Under the terms of the current lease, the council can “make other appropriate and adequate arrangements” rather than insure the building with a provider. The council can therefore opt to self insure and set up a reserve pool to meet the costs of any claims. However, extra staff with insurance experience would need to be recruited to administer claims within both the Homeownership Unit and also Housing Services. Contracts would also need to be tendered for the services of a loss adjuster to act on the council’s behalf unless there were sufficient competencies already in place within housing services. These issues cannot be easily overcome without a change to the staffing resources within the council. Self insuring also

places the council under a greater risk should the cost of claims be more than is received in service charges from leaseholders and is something the council has no control over. The insurance premiums charged to leaseholders may therefore fluctuate significantly from one year to the next. Apart from these considerations, the earlier form of lease (under which over 5,000 flats were sold) requires the council to insure the whole block for the full range of perils. Self insuring is therefore not considered a feasible option.

17. The council must take action otherwise it would place itself in breach of the terms of 13,600 leases.

Proposed procurement route

18. The recommended approach is to undertake a one stage competitive tender following the EU open procedure which will allow the council to put in place new contracting arrangements for 1 April 2018.

Identified risks for the procurement

19. The risk log below lays out identified risks. Likelihood and impact ratings are scored from 1-5 with 1 being the lowest risk and 5 being the greatest. The overall score is the likelihood rating multiplied by the overall score. The maximum score indicating the highest risk would be 25 and any risk with a score exceeding 16 would be deemed unacceptable.

Risk	Assessment impact and mitigation	Likelihood	Impact	Overall Score
Price is significantly higher than the current contract	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	4	2	8
Insurer goes out of business	The credentials and financial viability of the bidders will be considered as part of the tender evaluation process	2	5	10
Obtaining sufficient returned tenders to make the process competitive	Contact known insurers contracted with other local authorities	3	5	15
Unexpected contract price increase from year to year	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.	1	5	5

Risk	Assessment impact and mitigation	Likelihood	Impact	Overall Score
Failure to consult with leaseholders under Section 151 of the Commonhold and Leasehold Reform Act 2002	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	1	4	4
Failure to meet the European procurement regulations	Meet dates set out in the procurement project plan Ensure that the procedures are transparent and comply with legislative requirements	1	4	4
Failure to have all the information available at the required times	Keep leaseholder representatives informed and liaise with relevant council officers	2	4	8
Changes to internal procedures and processes should a new insurer be appointed from 1 April 2018	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	2	2	4

Key/non-key decisions

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

Policy implications

21. 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 EU open procedure, leaseholders are not entitled to nominate insurers. This first stage of the consultation process has to be undertaken before the contract can be advertised.
22. 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	Jan 2017
DCRB Review: Gateway 1 CCRB Review: Gateway 1	23 Mar 2017 30 Mar 2017
Notification of forthcoming decision – cabinet	02 May 2017
Approval of Gateway 1: Procurement Strategy Report	09 May 2017
Scrutiny call-in period and notification of implementation of Gateway 1 decision	16 May 2017
Issue Notice of Intention	27 Apr 2017
Invitation to tender	01 June 2017
Closing date for return of tenders	06 July 2017
Completion of evaluation of tenders	7 Aug 2017
Issue Notice of Proposal	22 Aug 2017
Forward Plan for Gateway 2 decision	April 2017
DCRB Review: Gateway 2 CCRB Review: Gateway 2	14 Sept 2017 21 Sept 2017
Notification of forthcoming decision	02 Oct 2017
Approval of Gateway 2: Contract Award Report	31 Oct 2017
End of scrutiny Call-in period and notification of implementation of Gateway 2 decision	14 Nov 2017
Standstill Period (end date)	28 Nov 2017
Contract award	8 Jan 2018
Add to Contract Register	8 Jan 2018
TUPE Consultation period	31 Mar 2018
Publication of award notice in Official Journal of European (OJEU) and Contracts Finder	8 Jan 2018
Contract start	1 April 2018
Contract completion date	31 Mar 2021
Contract completion date – if extension(s) exercised	31 Mar 2023

TUPE/pensions implications

23. 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

24. The tender will be based on the previous tender documentation, but amended as necessary following comments by leaseholder representatives. 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.
25. 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

26. The contract will be advertised in OJEU and contract finder via the London Tenders Portal. Where individual leaseholders nominate insurers, they will be directed to the OJEU notice.

Evaluation

27. The contract will be awarded on the basis of MEAT (Most Economically Advantageous Tender) based on a price/quality ration of 70:30, using an EU Open procedure.
28. 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. The leasehold representatives will be fully involved in the assessment process and their main criterion will be the price.
29. The evaluation panel will consist of the business systems manager and pre assignment manager from home ownership services and the corporate risk and insurance manager. The range of council officers with different specialities and competencies is considered appropriate for this type of contract. The leaseholder representatives will also be fully involved in the assessment process.
30. The evaluation criteria will be based on price and quality, as follows:

Price:

- Overall price

Quality:

- Experience of similar contracts in the public sector, particularly mixed tenure blocks
- Suitably qualified staff available to manage claims
- Claims handling strategy

- Information technology and data exchange capabilities
 - Quality control over sub insurers used.
31. As with the last two contracts, leasehold representatives will be given the opportunity to be involved in the contract specification by advising how they would like the contract to be administered and they will also be part of the evaluation panel, evaluating certain quality aspects.

Community impact statement

32. 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

33. 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.

Economic considerations

34. 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 OJEU Notice.
35. 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.
36. The council is an officially accredited London Living Wage (LLW) employer and is committed to ensuring that, where appropriate, contractors engaged by the council to provide works or services within Southwark pay their staff at a minimum rate equivalent to the LLW rate. 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 rates.

Social considerations

37. Tenderers will be asked to submit a statement of their policies and procedures regarding equal opportunities, equality and diversity. These will be evaluated and measured against the council's policies.
38. The council can exclude companies who break the law by blacklisting from public contracts if they are either still blacklisting or have not put into place genuine 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 them from re-occurring and to provide evidence that the measures taken are sufficient to demonstrate it has:

- “Owned Up”: clarified the fact and circumstances in a comprehensive manner by actively collaborating with the investigating authorities
- “Clean Up”: taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct Suitably qualified staff available to manage claims
- “Paid Up”: paid or undertaken to pay compensation in respect of any damages caused.

Environmental/sustainability considerations

39. 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

40. 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.
41. 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.
42. Regular monitoring meetings between relevant council officers and the insurer will be held at least quarterly or more frequently if required.
43. 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.
44. 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

45. 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.
46. The buildings insurance officer is supported by a manager who has experience of this contract since 2006. In addition, other members of staff in the team have been trained in dealing with queries from the insurer and leaseholders.

Financial implications

47. The annual cost of the contract will be for a fixed sum, although it could include an annual inflation allowance specified by the house building cost index.
48. The contract will run over a period of three years commencing 1 April 2018, with an option to extend for two twelve month extensions. The estimated total contract value is £3.6m per annum (including insurance premium tax at 12%). This makes a total estimated contract value of £18m, which takes into account current variables of insurance premium tax.
49. 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 procurement as there is a neutral effect on the housing revenue account.

Legal implications

50. The Landlord and Tenant Act, 1987, allows leaseholders to request a summary of insurance cover. The council has to provide a summary to the leaseholder that 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.
51. Please see concurrent from the director of law and democracy.

Consultation

52. Home Owners' Council was consulted on 11 January 2017. It will be given the opportunity to assist in how it would like the contract to be administered and will be part of the evaluation process.
53. 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. As the timescale for procuring the contract is stringent, and it is imperative to have a start date for the contract of 1 April 2018, the notices of intention have already been served, to ensure that there are no delays from the consultation process.
54. Home Owners Council will be updated as necessary during the course of the tendering.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance

55. The strategic director of finance and governance notes the recommendation in this report to undertake EU procurement for the leasehold and ancillary properties buildings insurance contract. The contract will cover an initial period covering financial years 2018-19 to 2020-21, with an option to extend for a further two years.
56. The financial implications explain that the cost of the contract is recharged in full to the leaseholders as a part of their annual service charges, with a neutral effect on the housing revenue account.

Head of Procurement

57. This report asks that cabinet approves the procurement strategy outlined to undertake a tender for leasehold and ancillary properties buildings insurance contract. This contract would commence on 1 April 2018 for a period of three years, with an option to extend for two twelve-month extensions, making a estimated annual contract value of up to £3.6m per annum (including insurance premium tax at 12%), so the total estimated contract value of up to £18m.
58. The report sets out that the insurance is required by the council as part of the terms of the property freehold that it maintains where flats and maisonettes have been sold by the council with long lease dates (detailed in paragraph 3).
59. The recommended procurement strategy is to let this contract via a one stage, open tender that is compliant with the Public Contract Regulations 2015 and will apply evaluation criteria that to the Southwark standard approach of 70% price and 30% quality.
60. Paragraph 36 sets out that London Living Wage will be applied to the contract where appropriate to do so depending on the location of the winning bidder. Whilst the arrangements for on-going management of the contract and monitoring of its performance are set out in paragraphs 40-44 of the report.

Director of Law and Democracy

61. This report seeks the cabinet's approval to the procurement strategy to undertake EU procurement for the leasehold and ancillary properties buildings insurance contract as further detailed in paragraph 1. As this is a strategic procurement, the decision to approve this strategy is reserved to the cabinet.
62. The scope and value of these insurance services (at an estimated value up to £18m) means that this procurement is subject to the full tendering requirements of the Public Contract Regulations 2015. As noted in paragraph 18, it is proposed that a one stage competitive tender following the EU open procedure is undertaken, which will meet those EU tendering requirements. Officers from legal and procurement will assist in the procurement process and drafting of the tender and contract documents. At this value, the contract award (gateway 2 approval) is also reserved to the cabinet. However as noted in paragraphs 2 and 12, approval is also sought from the leader to delegate approval of the award of the contract to the cabinet member for housing.

63. Details of the consultation to be undertaken in relation to this procurement are noted at paragraphs 52 - 54 of this report. The council has a statutory and common law duty to consult on certain areas of service delivery and the formulation of proposals or decisions. To meet legal requirements, consultation must be undertaken when proposals are still at a formative stage, it must be meaningful and include sufficient reasons for the proposal and allow adequate time for interested parties to consider and respond. The outcome of the consultation must be conscientiously taken into account when the decision is taken. As noted in paragraph 53, the contract is also subject to statutory consultation with leaseholders and the 2 stages of the process have been included within the procurement project plan at the appropriate times. The outcome of the statutory consultation will be detailed in the gateway 2 award report for consideration by the decision maker.

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 2QH	Georgina Brown, Preassignment Manager 020 7525 4367
Link: http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&MId=5380&Ver=4		

APPENDICES

No	Title
None	

AUDIT TRAIL

Cabinet Member	Councillor Stephanie Cryan, Deputy Leader and Cabinet Member for Housing	
Lead Officer	Duncan Whitfield, Strategic Director of Finance and Governance	
Report Author	Louise Turff, Homeownership Services Manager	
Version	Final	
Dated	25 April 2017	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Director of Law and Democracy	Yes	Yes
Director of Exchequer (For Housing contracts only)	Yes	Yes
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 April 2017