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| Item No. | Classification: Open | Date: 20 June 2018 | Meeting Name: Strategic Director of Finance and Governance |
| Report title: | | Gateway 3 Corporate Liability Insurances | |
| Ward(s) or groups affected: | | All | |
| From: | | Head of Financial Information and Governance | |

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 two years with effect from 1 October 2018 with an estimated annual value of £513,000 up to a total extension value of £1,026,000.
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 two years with effect from 1 October 2018 with an estimated annual value of £93,124 at a total extension value of £186,248.
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 contract will be extended by way of deed of variation to the original contract.

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 including employer's liability, public liability, officials 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.
9. An increase in the liability premium was applied at renewal on 1 October 2017 due to the change in the Ogden rate. The Ogden rate is the discount used when calculating future loss in personal injury claims where victims of life-changing injuries accept lump sum compensation payments. The actual amount they receive is adjusted according to what interest they can expect to earn by investing the money. The government changed this rate from 2.5% to -0.75%.

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

10. Initial discussions with RMP indicate that they are happy to offer a two year extension and more formal discussions on terms will take place during the renewal process between June and October 2018. It is likely that the extension will be offered on the same terms and rates as the current contract.
11. 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.
12. This report is seeking approval for an additional two-year extension at an estimated contract value of £606,124 per annum.
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. There are various reasons for seeking an extension to the current contract rather than proceed with a full tender. This is based on uncertainty in the insurance market due to a number of factors.
15. One factor is a further change to the Ogden rate. The government changed the rate in early 2017 from 2.5% to -0.75%. Due to lobbying by the insurance industry, it is likely the rate may change again which could further impact premiums. In September 2017, the Lord Chancellor confirmed proposed reforms to move the rate back to between 0% and 1% to better reflect evidence of 'the actual investment habits of claimants'. The government also said it wanted to ensure the rate was reviewed at least every three years with the support of an independent expert panel. It is still unclear when these changes will happen.
16. A second factor is a recent major fire tragedy affecting a social housing block, Grenfell Tower, which may impact on how insurers quote for local authorities with social housing stock in any future tenders. Until further detail is known following the public enquiry, it is hard to predict how the insurance industry will respond.
17. Thirdly, there is news of new providers coming into the market with a very recent report of early May 2018 of a mutual insurance vehicle being incorporated as a

limited company. The mutual, LGAM, is made up of local authorities and the Local Government Association and is being described as an alternative to the existing local authority insurance market by enhancing choice. It will be important to see how this develops in the coming months. Once the mutual is accepting business, then the council will need at least a year to consider how it is operating and performing for local authorities that have joined.

18. A further consideration is based on expert external advice received that underwriters are showing greater underwriting discipline and increasing their focus in account profitability. Poor claims experience and/or ineffective risk management are also having an impact on terms being quoted. It is difficult to predict the future but given very low interest rates, the weak recovery in the Eurozone and continuing high claims inflation it is likely that this will result in a hard market phase in the insurance sector.

19. Further information is contained in the closed version of the report.

Future Proposals for this Service

20. The council is currently considering options for a procurement exercise in 2019.

Options Considered

21. A number of procurement options were considered:

| No | Option | Advantages | Disadvantages |
|----|---|--|--|
| 1 | Let the contract lapse and not extend | None | No insurance protection for council assets Not an option as the council policy is to insure |
| 2 | Undertake competitive tender | Would allow the market to be tested | As per the reasons outlined in paragraphs 14-19 it is not the right time to tender |
| 3 | Utilise an insurance framework | Would allow market to be tested with no need for an OJEU procurement | There is only one currently available via CCS and this expires on 30 April 2019 which doesn't fit with our timescales or policy renewal dates. Using the CCS framework would incur a commission charge of 0.75% 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 14-19 it would not be the right time to do soft market testing to explore this option further In addition, there is not enough time to set up all the systems and processes and funding arrangements required to move to catastrophic only cover. |

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| | | | There would be a significant increase in the self-insured risk exposure at probably the wrong time with cuts to local government budgets |
| 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 22.2 below. |

Identified risks for the Variation

22. 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 14-19), and the ability of the council to agree a modification of this contract, then this is considered a low risk. |

Policy implications

23. There are no direct policy implications.

Contract management and monitoring

24. 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.

25. 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 councils 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 Impact Statement

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

Social Value considerations

27. 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

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

Social considerations

29. 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

30. The service seeks to limit unnecessary travel and meetings, and as far as possible utilise online systems to minimise paper waste.

Financial Implications

31. The financial implications are as detailed in the main body of the report. The proposed two-year extension at an estimated contract value of £1,212,248 represents 72% of the original contract value.
32. The costs associated with the extension of this contract will be contained within cost centre group CD190 (Insurance Funds).

33. 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.

Legal Implications

34. Please refer to the comments of the director of law and democracy.

Consultation

35. No additional consultation has been undertaken.

Other implications or issues

36. There are no other implications or issues.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (F&G18/004)

37. This report recommends the extension of the corporate liability insurance and the liability insurance claims handling contract from 1 October 2018 for two years. The contracts will impact on financial years 2018-19 to 2020-21. The financial implications note that the costs can be contained within the current budget. Future budgets will be set by council assembly on an annual basis.

Head of Procurement

38. This report seeks approval for the extension of the corporate liability insurances contract with QBE Insurance Ltd via RMP Ltd and Arthur J Gallagher (AJG) for a period of two years with effect from 1 October 2018 with an estimated annual value of £513,000 up to a total extension value of £1,026,000. The report also notes the associated extension and approves the associated spend of the liability insurance claims handling contract to Gallagher Bassett International Ltd for two years with effect from 1 October 2018 with an estimated annual value of £93,124 at a total contract value of £186,248.

39. The value and nature of the variation is such that it is subject to the tendering requirements of the Public Contracts Regulations 2015 (PCR 2015). Regulation 72(1)(e) of PCR 2015 permits contracts to be modified, irrespective of their value, if the modification is not substantial. The reasons for the extension are noted in paragraphs 14 to 18 of this report and 7 and 8 of the closed report.

40. Paragraphs 31 to 33 of this report confirm the financial implications of this variation.

41. The report confirms the monitoring and management arrangements which will be in place during the life of the contract.

Director of Law and Democracy

42. This report seeks the strategic director of finance and governance's approval to the extension of the corporate liability insurances contracts as further detailed in paragraphs 1-4 of this report. As the variation decisions relate to contracts for

insurance then the decision to approve is reserved to the strategic director of finance and governance under contract standing order 6.6.3(d).

43. The value and nature of these insurance services means that the original appointments were subject to the tendering requirements of the Public Contract Regulations 2015 (PCR 2015), and it is therefore necessary to ensure that any variations or extensions to those appointments are permitted within those procurement regulations. Regulation 72 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 value is not substantial. Having considered the circumstances noted at Regulation 72(8) which notes those modifications which could be considered substantial, it is considered by officers that the contract could be extended under this provision, particularly given the council is considering options for a procurement exercise in the future.
44. CSO 2.3 requires that no steps are taken to vary a contract unless the expenditure involved has been included in approved estimates, or is otherwise approved by the council. Paragraphs 31-33 confirm the financial implications of this variation.

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.

Signature  Date 20.6.18

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 which are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available.

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| 1. DECISION(S) |
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| As set out in the recommendations of the report. |
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| 2. REASONS FOR DECISION |
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| As set out in the report. |
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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.

5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST

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.

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)

BACKGROUND PAPERS

| Background Papers | Held At | Contact |
|---|--|------------------------------|
| Gateway 3 Variation Decision: Corporate Liability Insurances | Corporate Insurance, Risk Finance and Governance | Laura Sandy 020 7525 7398 |
| http://moderngov.southwark.gov.uk/mglIssueHistoryHome.aspx?IId=50014144&optionId=0 | | |

APPENDICES

| No | Title |
|-----|-------|
| N/A | None |

AUDIT TRAIL

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|--|--|--------------------------|
| Lead Officer | Jo Anson, Head of Financial and Information Governance | |
| Report Author | Laura Sandy, Insurance Manager | |
| Version | V1 | |
| Dated | 12/06/2018 | |
| 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) | No | No |
| Cabinet Member | Yes | N/A |
| Contract Review Boards | | |
| Departmental Contract Review Board | Yes | Yes |
| Corporate Contract Review Board | Yes | Yes |
| Cabinet Member | Yes | N/A |
| Date final report sent to Constitutional/Community Councils/Scrutiny Team | 20 June 2018 | |

