

Notice of KEY Executive Decision containing exempt information

This Executive Decision Report is part exempt and Appendix A is not available for public inspection as it contains exempt information within the meaning of paragraph 3 of Schedule 12A to the Local Government Act 1972. It is exempt because it refers to financial or business affairs of any particular person, and the public interest in maintaining the exemption outweighs the public interest in disclosing the information

Subject Heading:	Award of Leasehold Buildings Insurance Contract
Decision Maker:	Councillor Christopher Wilkins
Cabinet Member:	Councillor Christopher Wilkins
SLT Lead:	Dave McNamara, Director of Finance, s151 Officer
Report Author and contact details:	Paula McLoughlin, Principal Risk & Insurance Manager, 01708 432116, paula.mcloughlin@onesource.co.uk
Policy context:	Insurance/Risk Management
Financial summary:	£6.95m (based on first annual estimated price) over the five year contract term to be recharged to leaseholders
Reason decision is Key	Expenditure of over £500,000 although to be recharged to leaseholders.
Date notice given of intended decision:	19/10/22 date of i-decision notice
Relevant OSC:	Overview & Scrutiny Board
Is it an urgent decision?	No

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Is this decision exempt from being called-in?	No
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The subject matter of this report deals with the following Council Objectives

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

[This is a draft report and will be updated to acknowledge the consultation exercise and to include a response acknowledging the issues raised]

The report seeks approval to award the contract for the provision of Leaseholders buildings insurance, including accidental damage, from 31st March 2023 for a period of five years at a total value of £6.95m based on first annual estimated price. This is on behalf of Right To Buy (RTB) and residential leaseholders, including shared owners.

The market for underwriting leasehold insurance of tower blocks has changed considerably since the tragic events at Grenfell Tower in 2017 and the subsequent identification of sub-standard cladding in a number of tower blocks. The current provider of insurance cover and market leader has decided to withdraw from the market and did not submit a tender. Additionally, claims on the current policy have exceeded premiums in three consecutive years, 19/20 20/21 & 21/22.

Both of these factors would have impacted on the tenders received; as such the proposal to award the contract to Bidder B represents a significant increase on existing premiums at a time when residents are impacted by the cost of living crisis. Whilst acknowledging the difficulties that this causes it reflects the situation in other London Boroughs who are tendering for similar insurance cover.

AUTHORITY UNDER WHICH DECISION IS MADE

Constitution Part 3 Section 2.5

The following Functions may be delegated to individual Cabinet members by the Leader

(h) To award contracts, agree extensions of contract terms and awards/extensions of Consortia contracts, of a value above £5,000,000 and up to £10,000,000 and contracts where external funding is guaranteed and there is no longer term financial commitment to the Council.

STATEMENT OF THE REASONS FOR THE DECISION

To provide on behalf of Right To Buy (RTB) and residential leaseholders, including shared owners, in accordance with the obligations of the Council within the lease agreements.

The current insurance contract commenced on 31st March 2018 under a five year agreement expiring 31st March 2023. As freeholder of the property it owns, the council is obligated within the lease agreements to put in place appropriate buildings insurance.

Procurement was carried out via the Open Tender process for a standalone policy for leaseholders in accordance with the obligations of the Council within the lease agreements. Bids were received and evaluated based on 70% price and 30% quality.

Consultation was undertaken in two stages as set out below.

It is recommended that the contract be awarded to Bidder B, Protector. Two bids have been received and evaluated based on price and quality against the specification. Bidder A was deemed non-compliant as it did not provide all the mandatory cover specified, Bidder B, Protector, is therefore the preferred supplier.

The preferred bidder was unable to supply terrorism cover so this element of cover will be included under the council's corporate policy via Lloyds and the details are set out in Appendix A.

The total estimated value is £6.95m (excluding terrorism) over a 5 year term based on the properties declared at time of tender. It is not possible to provide an actual full contract price as this could be subject to unpredictable factors such as changes in the number of properties declared, annual inflation increases and increase in the Insurance Premium Tax rate.

This premium unfortunately represents a significant increase to right to buy, shared ownership and residential leaseholders and the details are established in Appendix A.

The cost of the contract will be fully recharged to Leaseholders in accordance with the terms of the lease via service charges administered by the Home Ownership service.

Background

Within the Council's housing stock there are a significant number (currently approx. 2600) of privately owned properties for which the Council is the Freeholder, for example former tenanted flats/maisonettes sold by the Council under the Right to Buy legislation or shared ownership properties.

Under the leasehold or shared ownership agreement, the Council is obligated to provide Buildings Insurance. This ensures a consistent approach from the insurance provider in the event that an incident occurs affecting multiple properties in a block

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and protects the leaseholder's interest in their property including the Council's freehold interest in the structure.

Expiry of the existing contract has coincided with an extremely challenging time in the insurance market for this product. Tender of previous contracts has occurred during periods of relatively soft market conditions when significant benefit was achieved from the pricing applied. Rates were maintained during the long term agreements, protecting against premium increases whilst the market fluctuated. This meant previous premiums charged were extremely competitive and unsustainable in the current extended period of hard market conditions.

The current insurer has declined to bid on the basis they are reconsidering their market position generally, this is not restricted to Havering and is in common with the current market trend. The current policy has a poor claims experience with claims costs exceeding premiums in three consecutive years, 19/20 20/21 & 21/22 (the latter by more than double the premium).

The market is very limited due to the specific nature of local authority leasehold policies, insuring homes in a mixed environment of leasehold and tenanted properties in addition to the accumulation risk and escape of water risk associated with blocks of flats. Insurers still remain cautious in this market space following the tragedy at Grenfell. We are aware that three suppliers have withdrawn from the market, one very recently who had originally submitted a bid under this procedure. The market is therefore evolving very quickly and reacting to increasing pressures in the market and the global insurance market of:

- Increase in rebuilding costs running above inflation impacting the reinstatement value of buildings on risk and the estimated maximum loss exposure
- Consequent impact on reinsurance market that insurers offset their losses against
- Climate change – increase in severe weather events globally and locally
- Increased cost of rebuilding/supply chain/labour force pressures pushing up cost of claims.

Locally in Havering we have been impacted severely by a higher frequency of extreme weather events including storm and flood which has contributed significantly to the high claims loss under the policy.

It is known that three London Boroughs have recently failed to secure bids at tender. It is appreciated that this is a very unwelcome increase in the current financial climate but is reassuring that we have been able to secure a bid to provide insurance protection for the residential owners in this extremely challenging market.

The current contract expires on 31/3/23 and the council must ensure that arrangements for appropriate buildings cover are in place.

OTHER OPTIONS CONSIDERED AND REJECTED

Self-insuring was considered and discounted. The Council has a legal obligation to provide this insurance, with a reputable insurer, to the leaseholders/shared owners and to fail to do so could result in a legal challenge and financial liability for any uninsured losses.

Therefore, the alternatives were either a full open procedure or to use an existing framework. A framework route would limit the potential market as it would be limited to existing suppliers on the framework. It would attract a management fee which would be additional cost for the leaseholders/shared owners.

The council has an existing appointed Insurance Broker, so use of one of the frameworks would require appointment of the existing broker as a separate process initially, incurring additional costs and process.

The market is limited, with some providers withdrawing their products and has hardened significantly since the fire at Grenfell as well as due to extreme weather events. An open procedure has given wider access to the market and to encourage new bidders and encourage a bid from a potential new supplier, but unfortunately we are seeing no new entrants to the market as suppliers withdraw.

PRE-DECISION CONSULTATION

Leaseholders/shared owners were consulted in a two part process under the Notice of Intention to Enter into Qualifying Long-Term Agreements, given under Section 20 of the Landlord and Tenant Act 1985 (as amended by the Commonhold and Leasehold Reform Act 2002) and Schedule 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003, prior to the invitation to tender and before the contract award decision.

The Stage 1 Pre-tender consultation took place between 9th September 2022 and 9th October 2022. There were two responses.

The written observations can be summarised as follows:

- Insured Value – it was clarified that the sum insured of “reinstatement value up to a maximum of £350k”, for leasehold properties under the existing policy applies per unit and not per block. The new contract increases this to £450k to allow for inflation and higher increases in rebuilding costs.
- Extended Accidental Damage Cover – it was confirmed that the current contract included this at no additional charge and was therefore included as standard for all leaseholders.
- The Landlord insures the buildings including common parts and recharges to leaseholders, this does not include contents cover which a resident would insure for separately if required.

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- Find a Tender Service superseded Official Journal of the European Union and is the method used to publish the procurement.

The Stage 2 Notice of Proposal consultation period started on 13th January 2023 and ended on the 13th & 25th February 2023 for leaseholder and shared owners respectively. There were 51 responses, with general and specific queries, the main themes as set out below:

- Why has the premium increased dramatically? - Information was provided on the current market conditions, limited and reducing suppliers, increased pressure from global events and severe weather locally, poor claims history/increased losses and value under current policy.
- Does this cover tenanted housing stock, how much are tenants paying? No, this policy covers leasehold and shared owner properties only. Council rents go into a revenue account from which we pay for expenditure on the properties, including insurance premiums.
- Why has the current insurer declined to quote? – The current insurer advised they were considering their market position and the impact was not limited to Havering.
- Can I take out my own Building Insurance and/or the council amend the lease to accommodate this? - It was confirmed the council is obligated to arrange cover and this is not possible.
- Why is the sum insured for my property £450k? – It was confirmed the sum insured for leasehold flats is “reinstatement value up to £450k” and the benefit of this outlined in terms of protecting from underinsurance in an environment of higher inflation and escalating rebuilding costs.
- How have the premiums been calculated/apportioned? Information was provided on the price quoted and impact of this.
- Can I see the new policy wording/documents/what is the claims process? - The proposed policy wording was supplied. Specific claims queries clarified.
- Can you please provide documents and information of all companies approached? - Details were provided on the compliant procurement process, market wide opportunity, no companies approached directly
- Terrorism cover is not necessary, why has this been included?- It was confirmed this is provided under existing cover, as the preferred bidder does not supply terrorism this will be included under the council’s corporate policy.
- The Council need to re-tender, as the prices are too high and/or for a shorter contract period. Details of the process were supplied, the limited market and the risk set out that no new suppliers are entering the market plus the risk that the current bidder may decline to bid again. An increased likelihood premiums will be sustainable over a longer period and give an opportunity for the poor claims experience to improve.
- What am I currently paying for my Insurance? – Current details were confirmed.
- Is this an additional premium to the Service Charge? – It was confirmed the premium is included in service charges.

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Whilst individual responses are not considered in the report, all of the issues raised have been referred to in the report.

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Paula McLoughlin

Designation: Principal Risk & Insurance Manager

Signature:



Date: 17 February 2023

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

Insurance and Risk Management seek to award a contract for these services in accordance with the Council's responsibilities as a landlord.

The Council is a contracting authority for the purposes of the Public Contracts Regulations 2015 (PCR 2015). The value of the contract exceeded the threshold for Works contracts and was therefore caught by the full regime of the PCR 2015. The procurement process followed by the Council has already been set out in the body of this report and appears to be a fully compliant procedure.

The Council must carry out a Consultation procedure, in accordance with Section 151 of the Commonhold and Leasehold Reform Act 2002 and the Service Charges (Consultation Requirements) (England) Regulations 2003.

Due to the the public procurement process, it would not be appropriate for tenants to nominate a supplier from whom the Council should try to obtain an estimate. Therefore, the consultation process is slightly different to where there is no obligation to advertise the contract opportunity on Find a Tender.

The Council is instead required to give notice of its intention to enter into a qualifying long term agreement to each leaseholder who will be asked to contribute through their service charge. In such a Notice, the Council must invite the making, in writing, of observations in relation to the relevant matters.

Officers have already confirmed that leaseholders were consulted both prior to tender and on the tender results.

FINANCIAL IMPLICATIONS AND RISKS

The cost of the insurance is recharged to leaseholders, The premiums are collected with service charges by Housing, Home Ownership. Collection and arrears sit with Housing for this new contract term. There are adequate resources within the current budget. There is a risk that the increased premium, combined with the increase in the other services charges may push up arrears. This will be monitored closely, to ensure early intervention where necessary and Leaseholders are also being encouraged to switch to monthly direct debit payments.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

None arising from this decision.

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EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

None arising from this decision. Insurance is provided to all leaseholders and they are consulted at key stages of the process in line with regulations.

HEALTH AND WELLBEING IMPLICATIONS AND RISKS

None arising from this decision.

ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS

None arising from this decision.

BACKGROUND PAPERS

APPENDICES

Appendix A Bid financial details Exempt

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

Proposal NOT agreed because

Details of decision maker

Signed

C. Wilkins

Name: Councillor Christopher Wilkins

Cabinet Portfolio held:

CMT Member title:

Head of Service title:

Other manager title:

Date: 9th March 2023

Lodging this notice

The signed decision notice must be delivered to Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____

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