

<b>London Borough of Hammersmith &amp; Fulham</b>  <b>CABINET</b>  <b>7 OCTOBER 2019</b>		 hammersmith & fulham
<b>ENGINEERING AND MOTOR INSURANCE TENDER STRATEGY FOR 2020-25</b>		
<b>Report of the Cabinet Member for Finance &amp; Commercial Services – Councillor Max Schmid</b>		
<b>Open Report</b>		
<b>Classification: For decision</b> <b>Key Decision: Yes</b>		
<b>Consultation:</b> <b>Policy &amp; Strategy, Legal, Finance, Business, Commercial, IT, Risk Management</b>		
<b>Wards Affected:</b> All		
<b>Accountable Director:</b> David Hughes, Director of Audit, Fraud, Risk and Insurance		
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## 1 EXECUTIVE SUMMARY

- 1.1 This report sets out the proposed strategy upon which sovereign insurance contracts for Engineering Inspection and Motor will be procured for contract commencement dates of 1<sup>st</sup> April 2020.
- 1.2 The strategy will entail a detailed tender process in conjunction with the Council's retained insurance advisors and with close engagement with the LBHF procurement function to ensure the Council's requirements are fully incorporated, ensuring that each of the councils is priced according to its own risk profile but benefits from bulk discounts sought from tenderers and efficiencies arising from sharing operational arrangements provided by the shared Insurance service.
- 1.3 The Council is committed to protecting the safety and wellbeing of its residents, in line with the Council's vision to ensure it obtains best value for residents by being ruthlessly financially efficient. The over-arching aims of this proposed tender are to put in place appropriate engineering inspection and motor insurance cover arrangements for the Council and its residents and achieve financial efficiencies in the process of arranging the cover.

## **2 RECOMMENDATIONS**

For Cabinet to:

- 2.1 Approve a waiver to Contract Standing Orders 7 – 10 and 11 – 16 concerning the conduct of the tendering process, on the basis that the process will be conducted in accordance with the EU public procurement rules and otherwise the requirements of the Contract Standing Orders of the RB of Kensington & Chelsea as lead borough for the procurement will apply, on the basis that that this is in the overall interests of the Council (as provided for within Contract Standing Order 3) in relation to the following two contracts:
  - Engineering inspection.
  - Motor insurance.
- 2.2 Approve the proposed procurement strategy for tendering the Council's engineering inspection services and motor insurance requirements set out in the report.
- 2.3 Approve the inviting of tenders on a collaborative basis for the following LBHF insurance requirements:
  - Engineering inspection.
  - Motor insurance.
- 2.4 Approve a delegation to the Strategic Director of Finance and Governance, in consultation with the Cabinet Member for Finance and Commercial Services, to approve the award of the contracts listed in paragraph 2.3 above.
- 2.5 Approve a waiver of the requirements of Contract Standing Order 19 concerning the format of the contract documents and the requirement for the contract to be executed as a deed, on the basis that there are circumstances which are genuinely exceptional (as provided for within Contract Standing Order 3) as further explained in paragraph 4.11 of the report.

## **3 REASONS FOR DECISION**

- 3.1 The Engineering Inspection contract was last tendered in 2014/15 and is due to be re-tendered. In September 2018, Cabinet approved a delegation to the Strategic Director of Finance and Governance, in consultation with the Cabinet Member for Finance and Commercial Services, to direct award a contract for the Engineering Inspection contract for a period of one year from 1 April 2019 with the existing supplier. This service is required to comply with the Council's statutory obligations for certain items of plant such as Lifts and Boilers, ensuring they are certified as safe for continued service in compliance with the Health and Safety Executive regulations. This compliance testing must be carried out by certified and qualified engineers independent to those responsible for routine maintenance and repair services at the Council.
- 3.2 The Motor insurance contract was last tendered in 2014/15 and is due to be re-tendered. The Council has historically transferred some or all the financial risks associated with own damage to vehicles or claims by third parties in accordance with

Common Law and the provisions of the Road Traffic Act to external insurance providers.

#### **4 PROPOSAL AND ISSUES**

- 4.1 The Council's insurance operation is discharged via a shared Insurance Service. The service delivery is fully integrated, with employees delivering service response to all three councils based on specialisation.
- 4.2 In view of the potential for catastrophic financial loss to Council budgets arising from the need to meet compensation awards for injury to the public or employees it is prudent to cap the financial exposure from any one motor event or occurrence by transferring some of this financial risk through the purchase of insurance from suitably regulated and qualifying providers.
- 4.3 The current providers of the contracts under consideration are:
- Engineering inspection – Bureau Veritas.
  - Motor insurance – Zurich Municipal.
- 4.4 Expenditure on the relevant insurance contracts for 2019/20, excluding 20% VAT for Engineering Inspection and including 12% Insurance Premium Tax for Motor (the former, as a service, is subject to VAT instead of IPT) is £92,679, as follows:
- Engineering inspection                      £79,489.
  - Motor insurance                                      £13,190.
- 4.5 The level of motor insurance premiums is driven by several factors, the most prominent being the nature of the motor fleet insured and the claims experience of the Council; the policy deductible (excess); global re-insurance rates and individual supplier experience and risk appetite or capacity.
- 4.6 Current levels of self-insurance (the amount below the policy excess where the Council covers the cost of the claim) were set based on claims analysis and sovereign risk appetite assessed during the last tender process and tender options will once again explore the cost versus benefit of higher deductibles: it follows that the higher the policy excess (self-insurance), the lower the premium but the higher the retained risk.
- 4.7 The shared Insurance service has reduced the Council's financial provision for self-funding claims from in excess of £3.5m to less than £2m over the past 5 years. The Council paid out less than £50,000 in self-insurance motor claims payments from 2015-19. Claims below the policy excess are paid directly from an Insurance fund controlled by the Council, rather than by the insurer.
- 4.8 The expectation is to receive six or more valid quotations for the motor insurance contract, however engineering Inspection is a specialist market and it is possible as few as two quotations would be received.
- 4.9 The Public Contract Regulations 2015 (PCR), in accordance with the 2014 EU Procurement Directives, will apply to the tender process in view of the likely award value of the final contract(s). The procurement process will be undertaken in accordance with the Competitive Procedure with Negotiation, which requires a Contract Notice to be published in the Official Journal of the European Union. A notice

will also be published on Contracts Finder. The procurement will be overseen by the shared Insurance service with appropriate engagement and support from the LBHF procurement service. The procurement exercise will take place using the e-procurement portal, CapitalEsourcing, which will ensure that the procurement directive requirements are met.

- 4.10 The Invitation to Tender (ITT) technical specifications will be drawn up by the Assistant Head of Insurance Service supported by the retained insurance advisors, JLT Speciality Limited, with close engagement with the LBHF procurement function to ensure the Council's requirements are fully incorporated. The indicative, high-level, tender timetable is as follows:

Political Cabinet	2 <sup>nd</sup> September 2019
Cabinet (approval of Procurement Strategy)	7 <sup>th</sup> October 2019
Invitation To Tender released to the market	October 2019
Initial bid deadline	November 2019
Negotiations with bidders	November 2019
Final bid deadline	December 2019
Evaluate Tenders	December 2019
Award Contract	February 2020
Cover Incepted / Contract Start	1 <sup>st</sup> April 2020

- 4.11 Insurance is classified as a special contract in Law and therefore insurance policy documentation is the basis of contract combined with the ITT specification and bidder response.
- 4.12 The proposed contract length is five years for Engineering inspection and four years for Motor insurance.
- 4.13 Many of the likely bidders have registered offices or operations based in the financial services sector of the City of London but bidding will be open to any qualifying supplier authorised to underwrite insurance or provide engineering inspections services in the UK and of suitable financial standing. To ensure that they meet the minimum standards, bidders will be required to evidence they are authorised to underwrite insurance business or provide engineering inspection services in the UK and must be at least "A"-rated by Standard and Poors or equivalent agency and prepared to produce:
- A copy of their annual reports and accounts for the last 3 years;
  - The name and address of their bankers;
  - Details of last 3 years of underwriting experience (in the case of motor insurance).
- 4.14 The Quality Award Criteria will be based on the technical specification; the technical specification will include both service delivery and added value for Engineering inspection and both policy coverage and claims handling requirements for Motor insurance. Evaluation of bidders' responses to the award criteria will be carried out in accordance with the published marking scheme.

The evaluation and ITT bidding will be subject to the following structure:

- Engineering inspection as a separate tender.
- Motor insurance as a separate tender.

4.15 Due to the specialist nature of these contracts, they would attract specialist bidders who are, in most cases, unlikely to quote for both contracts.

4.16 For Engineering inspection, bidders will be required to submit the price per lot individually scheduled for each of the three boroughs to ensure that sovereign best value has been achieved for each council. For Motor insurance, price evaluation will be based on the total price per lot to provide the cover for all three boroughs, with each borough being priced according to its own risk profile but benefitting from bulk discounts sought from tenderers and efficiencies arising from sharing operational arrangements provided by the shared Insurance service. There will be the important option to offer a multi-lot discount to secure multiple lots and options for different Motor policy excesses each council, hence the recommendation to use the Competitive Procedure with Negotiation.

4.17 The Engineering inspection contract will be awarded based on the most economically advantageous terms to the Council and the Motor insurance contract on the basis of the most economically advantageous terms to all three boroughs in accordance with the evaluation basis specified in the ITT in detail, but in summary it is anticipated it will be evaluated as follows:

#### Engineering inspection

- Price for inspection services – 40% - Maximum points will be awarded to the lowest priced bidder, considering any Long-Term Agreement discounts. A formula will be used to adjust the scores of all remaining bidders to reflect the percentage difference in prices.
- Service delivery – 50% - This will be evaluated against the requirements of the Contract within the Tender Document. Scores will be adjusted to consider the difference between the services offered and those requested together with the quality of the management information available.
- Added Value – 10%. This will include items that improve the quality of the service/product requested. Additionally, the Council has responsibilities under the 2012 Public Services (Social Value) Act to ensure compliance with its provisions. Those commissioning services must comply with the Council's Social Value Policy outcomes that seek to deliver:
  - More opportunities for local micro-businesses, local small and medium sized enterprises and local third sector organisations; and/or
  - More employment and training opportunities for local residents.

Examples of social value sought might include the following:

- skills development to prepare school leavers for employment;
- entrepreneur development/encouragement sessions.

#### Motor insurance

- Price 50% – 5-point deduction for each 1% variance from lowest bidder price.
- Technical specification 35% - evaluated and documented deductions for minor non-compliance with specified requirements and bid rejection for major non-compliance. Examples of major non-compliance being failure to supply the fire insurance peril or to agree to the minimum requirement to allow self-handling of all claims up to the policy excess.
- Added value/Innovation 15% – evaluated and documented additional points for exceeding specification minimums, offering additional services or covers and providing social value (as per above). ITT documentation will provide guidance to bidders.

The above evaluation basis is the same as used at the last successful and compliant tender and contract award process.

## **5 ANALYSIS AND OPTIONS**

- 5.1 Re-procurement of these contracts through a shared procurement run by the shared Insurance service is not the only option, as the existing contracts could be renewed for a further year. However, this would require waiving the Contract Standing Orders in order that a direct award of contract can be awarded for a further year with the existing suppliers. Additionally, the proposed re-tender will be timely, fiduciary responsible and most likely to deliver the best financial outcomes for both the Council (and therefore the tax-payer), with the expectation of mitigating the risk of significant further premium increases.
- 5.2 The numerous and considerable benefits of taking a joint approach to insurance tendering and claims handling and having one insurance provider for all three authorities per policy have been clearly evidenced in the 2012-19 period and are summarised below.
- 5.2.1 As a result of previous tenders, LBHF have previously secured a 5-10% discount by procuring policies through exercises undertaken by the shared Insurance Service. The proposed tender exercise will involve sovereign policies being procured for LBHF, with tenderers able to bid for one or more lots. It is expected that tenderers will bid for all three councils involved in the tender as the economies of scale on offer are mutually beneficial to the insurer and the insured. It is possible the Council could secure discounts of up to 15% by way of a multi-authority discount under the shared tenders for 4-5-year contracts, while each council will be priced on its own risk profile, and that the procurement strategy undertaken by the shared Insurance Service would again deliver savings to the Council.
- 5.2.2 The cost of administration and handling claims using the shared Insurance service would continue to be managed within existing budget provision. In addition, LBHF would continue to benefit from claims handling performance delivered by the shared Insurance service which has seen the value of self-insured claims reducing significantly year on year. Moving away from the current arrangements would have significant cost implications which are set out in 5.5 and 5.6.
- 5.2.3 Ad hoc insurance costs such as taking external legal advice and opinion can be shared by the three councils when the same policy conditions are in place for all three.
- 5.2.4 Insurance coverage positions can be agreed with one insurer, which then apply to all three authorities, whereas they would have to be negotiated separately with different

insurance providers, improving the efficiency of the shared service arrangement and keeping costs within budget, as well as obtaining the best terms for each Council.

- 5.2.5 There is greater power in negotiating for three councils collectively, whether when negotiating premium terms, insurance coverage issues or otherwise. It is very important to note there is no question under the approach proposed of one authority subsidising either or both of the others. Each authority has and will continue to have its own policy and premium based on its individual risk exposures and claims experience.
- 5.2.6 Administration savings for insurers and the retained insurance advisors and a higher level of service received due to them both being able to take a shared approach placing policy cover, providing policy documentation and with all other aspects of the client and supplier relationship. This leads to benefits through premium charges and broker fees incurred by each council.
- 5.2.7 It is important to recognise all Motor prices are quoted based on a bidder winning all three authorities. The price which one authority obtains in this way is unlikely to be achieved through a sovereign tender process. In addition, our brokers do not consider that the number of interested bidders will be reduced by procuring policies for the three councils using the proposed approach.
- 5.3 Regarding the Engineering inspection contract, it is possible up to three different bidders could win these contracts. However, the Motor insurance policy will include delegated authority from the insurer to the shared Insurance service to continue to self-handle claims and will be awarded to the highest-scoring bidder for all three. It is important to note that separate prices are still received for the three councils, reflecting their own risk profile, and the evaluation criteria will reserve the right not to award the contract to the lowest bid (ensuring a bid is not accepted that was not in the Council's best interests) and the contracts themselves remain sovereign to each council.
- 5.4 It would not be practical to run a tender process which resulted in more than one Motor insurer per policy as the shared Insurance service does not have the resources (LBHF budget coverage) to do so.
- 5.5 Prior to the establishment of the shared Insurance service, the previous LBHF Insurance service employed 3 FTE posts, without handling claims in-house. In 2014/15 (the last year before in-house claims handling commenced) claims handling fees paid to insurers were £40,695 plus VAT. As well as saving on the external claims handling cost, the implementation of the shared service enabled the sharing of management costs across the three Councils while ensuring there was enough budget to provide appropriate staff coverage to meet LBHF's needs.
- 5.6 If a separate tender process were required, LBHF would need to recruit additional resources, including management and staff, with immediate effect to run a successful sovereign insurance service and retain claims handling in-house. In addition, there would be a long lead time required to put this resource in place and then run a separate tender exercise. There is no budget provision available for recruiting additional LBHF staff or for outsourcing claims handling activity. Outsourcing the claims handling function would be likely to result in the value of self-funded claims increasing, based on LBHF's previous experience prior to the shared service being introduced.

- 5.7 Failure to arrange Engineering inspection would result in failure to discharge statutory duty for a system to certify plant is safe for operation and may lead to prosecution or fines from the Health and Safety authorities.
- 5.8 Failure to purchase Motor insurance at all would result in unacceptable and uncapped financial exposures to the Council and would be illegal. The only other alternative to the current procurement strategy would be for the Council to set up its own captive insurance company (a wholly-owned subsidiary company to the Council), retaining significant financial exposure in-house, and to approach the re-insurance market direct rather than the current provider market. This strategy has been tested in the past by other Councils with limited success and is not recommended at this time due to the complex feasibility studies and timescales involved.
- 5.9 For the above reasons, our professional recommendation is a collaborative re-tender exercise led by the shared Insurance service to procure the Council's cover from 1<sup>st</sup> April 2020 for Engineering inspection and Motor insurance.

## **6 EQUALITY IMPLICATIONS**

- 6.1 It is not anticipated that there will be any direct negative impact on groups with protected characteristics, as defined by the Equality Act 2010, from these proposals.
- 6.2 Implications completed by: Fawad Bhatti, Social Inclusion and Policy Manager, tel. 020 8753 3437

## **7 LEGAL IMPLICATIONS**

- 7.1 This report is recommending the approval of the Procurement Strategy for two contracts. One is for an engineering inspection services contract, and the other is for the Council's motor insurance policy. The former is in excess of the EU threshold for services over the proposed five-year term, while the latter is being tendered together with the RB Kensington & Chelsea and City of Westminster requirements for a four-year period, and again the EU threshold for services will be exceeded when these are aggregated. Consequently, a full tendering exercise is required in accordance with the Public Contracts Regulations 2015 ("the 2015 Regulations"). As set out in the report, the 2015 Regulations are proposed to be followed using the competitive procedure with negotiation.
- 7.2 To the extent that this will be a collaborative procurement, various waivers of the provisions of Contract Standing Orders are proposed on the basis that the standing orders of the Royal Borough of Kensington & Chelsea will apply, though subject always to following the 2015 Regulations. Contract Standing Order 3 sets out when Cabinet can grant such a waiver and the permitted grounds for doing so. Here the basis relied upon is that the waiver is in the overall interests of the Council.
- 7.3 Because of the unusual way in which insurance arrangements are formalised a waiver is also sought in relation to the requirement for the contract to be entered into as a deed, on the basis (again as permitted by Contract Standing Order 3) that the circumstances are genuinely exceptional.
- 7.4 Implications completed by: Deborah Down, Senior Associate with Sharpe Pritchard LLP on secondment to the Council [dtdown@sharpepritchard.co.uk](mailto:dtdown@sharpepritchard.co.uk)



## **8 FINANCIAL IMPLICATIONS**

- 8.1 This report requests approval of the proposed procurement strategy for tendering the Council's engineering inspection services and motor insurance requirements, the invitation of tenders and the delegation of the contract award.
- 8.2 The costs of these contracts are met from current revenue budgets. The spend for 2019/20 was £92,679 (comprising £79,489 relating to engineering inspection and £13,190 relating to motor insurance).
- 8.3 The precise costs of the new contracts will not be known until the tendering exercise is complete. It is expected that the procurement exercise proposed will ensure that the Council achieves best value for money in line with its priority of being Ruthlessly Financially Efficient. The final financial implications will be set out in the award report, but the costs are expected to be met from existing revenue budgets.
- 8.4 Implications verified by Emily Hill, Assistant Director, Corporate Finance, tel. 020 8753 3145.

## **9 IMPLICATIONS FOR BUSINESS**

- 9.1 No implications for local businesses.
- 9.2 Implications verified by: Albena Karameros, Economic Development Team

## **10 COMMERCIAL IMPLICATIONS**

- 10.1 The recommended procurement exercises have an estimated value over the statutory threshold and are subject to the Public Contracts Regulations 2015. The proposed routes comply with these regulations.
- 10.2 As the lead authority is the Royal Borough of Kensington and Chelsea, waivers from the LBHF CSOs may be required. These may be approved by Cabinet, in accordance with CSOs 3.1
- 10.3 Implications completed by Andra Ulianov, Procurement Consultant, tel. 0208 753 2284.

## **11 IT IMPLICATIONS**

- 11.1 No IT implications are considered to arise from this report as it requests approval for the proposed procurement strategy for procuring the council's Engineering Inspection and Motor insurance contracts by the shared Insurance service. Should this not be the case, for example, by requiring new systems to be procured or existing systems to be modified, IT Services should be consulted.
- 11.2 IM implications: a Privacy Impact Assessment(s) should be carried out to ensure that all the potential data protection risks arising from this procurement exercise are properly assessed with mitigating actions agreed and implemented.
- 11.3 Any contracts arising from this report will need to include H&F's data protection and processing schedule. This is compliant with the General Data Protection Regulation (GDPR) enacted from 25 May 2018.

- 11.4 Any suppliers appointed as a result of this exercise will be expected to have a GDPR policy in place and all staff will be expected to have received GDPR training.
- 11.5 Implications verified/completed by: Tina Akpogheneta, Interim Head of Strategy and Strategic Relationship Manager, IT Services, tel 0208 753 5748.

## **12 RISK MANAGEMENT**

- 12.1 Failure to arrange Engineering inspection would result in failure to discharge a statutory duty for a system to certify plant is safe for operation and may lead to prosecution or fines from the Health and Safety authorities. The council must therefore ensure that a system is in place in accordance with management of risk 14 on the corporate risk register.
- 12.2 Additional Social Value has been delivered from other Insurance contracts let by the Shared Insurance Service, specifically through Protector Insurance who facilitated training for the council's contract managers on insurances and indemnities as part of their commitment to the council. We shall seek a similar commitment from the successful bidders in accordance with the council priority, Being ruthlessly financially efficient.
- 12.3 Implications verified by: Michael Sloniowski, Risk Manager, tel. 020 8753 2587, mobile 07768 252703.

**BACKGROUND PAPERS USED IN PREPARING THIS REPORT:** None