

# LONDON BOROUGH OF HAMMERSMITH & FULHAM

**Report to:** Cabinet

**Date:** 17/07/2023

**Subject:** Insurance tender 2024-2029

**Report of:** Councillor Rowan Ree, Cabinet Member for Finance and Reform

**Report author:** Beverly Mills, Assistant Head of Insurance

**Responsible Director:** David Hughes, Director of Audit, Fraud, Risk and Insurance

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## SUMMARY

This report sets out the proposed strategy upon which sovereign insurance contracts for Residential Leaseholder Buildings, Property, Combined Liability, Directors' & Officers' Liability, Motor, Crime, Personal Accident & Travel, School Journey and Engineering Inspection will be procured for contract commencement dates of 1<sup>st</sup> April 2024.

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.

The over-arching aims of this proposed tender are to put in place appropriate insurance cover for the Council and its residents, achieve financial efficiencies in the process of arranging the cover and to carry out appropriate section 20 consultation and liaison with the Council's leaseholders to ensure they are appropriately insured and recharged.

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## RECOMMENDATIONS

1. To note and approve the proposed procurement strategy for tendering the Councils insurance requirements and allied engineering inspection services, commencement of this formal tender process, intended compliance with the Public Contract Regulations and the need to seek suitable authority on a sovereign basis to award the contract after evaluation. Estimated contract award for all lots, based on 2023/24 premiums is £20M over a period of 5 years.
  2. To note that due to the likely contract value the award to be returned to Cabinet for approval.
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**Wards Affected:** All

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<b>Our Values</b>	<b>Summary of how this report aligns to the H&amp;F Values</b>
Building shared prosperity	Providing financial protection of the Council and leaseholders assets and liabilities
Creating a compassionate council	For residential leasehold buildings insurance, the lease arrangement requires the Council as Freeholder to cover the reinstatement value of the leaseholder's asset
Doing things with local residents, not to them	To secure a competitive quotation for all the Council's insurance contracts, with the broadest cover available to ensure the widest protection is in place
Being ruthlessly financially efficient	Risk of financial exposure if the insurance is not in place 01 April 2024
Taking pride in H&F	Insurance provides financial protection in the event of an insured peril causing damage to a property
Rising to the challenge of the climate and ecological emergency	Insurance provides protection of property for insured perils including weather related events of storm and flood

### **Financial Impact**

3. The estimated annual value of this contract is £4m and will ensure that the Council has appropriately insured against potential risks relating to Residential Leaseholder Buildings, Property, Combined Liability, Directors' & Officers' Liability, Motor, Crime, Personal Accident & Travel, School Transport and Engineering Inspections. The funding for 2023/24 is included in the Council's approved General Fund and HRA Budgets and the Council also retains an insurance reserve for supplementary unknown and unquantifiable risks.
4. It should be noted that there are a limited number of providers in the market, and this is likely to be reflected in tender submissions. The full details on the actual costs of the new contract from April 2024 will be reported in the Contract Award Report upon completion of the procurement. Any additional financial implications will need to be considered as part of the Council's annual MTFS and Budget setting processes for 2024/25+.

*Sukvinder Kalsi, Director of Finance, 25th May 2023*

## Legal Implications

5. The various insurance contracts described in this report, when aggregated for the full 5-year term, exceed the threshold above which a full tendering exercise is required in accordance with the Public Contracts Regulations 2015 (“the 2015 Regulations”). A five-year contract for the engineering inspection would also exceed the Public Contract Regulations 2015 threshold for services. As set out in the report, the 2015 Regulations are proposed to be followed using competitive procedure with negotiation.
6. Because 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 22.3.4 sets out when Cabinet can grant such a waiver and the permitted grounds for doing so. 22.3.4 state ‘the procurement will be run as Collaborative Procurement or other partnership arrangement with another public body, and the procurement procedures of that other public body will apply.’
3. Waivers of contracts within the value range set out in this report must be approved by the s151 officer on recommendation of the Contracts Assurance Board.

The decisions set out in this report are Key Decisions (see Article 12 of the Constitution) and the report must be submitted to Committee Services for publication on the Council’s website.

Angela Hogan, Chief Solicitor (Contracts and Procurement) 19<sup>th</sup> May 2023

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## Background Papers Used in Preparing This Report

None

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## DETAILED ANALYSIS

### Background

1. The contracts of insurance in respect of Property, Combined Liability, Motor, Directors & Officers, expire after a five-year term on 31 March 2024. A re-tendering of these contracts open to all qualifying bidders is required under the Public Contract Regulations 2015.
2. The contracts for Terrorism, Personal Accident, & Travel, School Journey, Crime expired 31 March 2022 and were extended by waiver for a period of two years to coincide with the Council’s main insurance programme.

3. Residential leasehold buildings insurance was last procured in 2019 on a five-year contract award basis. However, the insurer Avid, withdrew from the market early 2023. The market for leasehold buildings had already reduced significantly due to the exit of Ocaso and Zurich in 2022, leaving Protector Insurance as the only provider offering a quotation to LBHF. Insurance was therefore placed with protector effective from 01 April 2023 for a period of 12 months. Leaseholders were notified of this change in advance of invoices being for 2023/24 being issued and were told that the Council would be undertaking a competitive procurement for this cover from 1 April 2024
4. The Council's insurance operations are discharged via a shared Insurance Service hosted by Royal Borough of Kensington and Chelsea. The service delivery is fully integrated with employees delivering service response to all three councils based on specialisation.
5. In view of the potential for catastrophic financial loss to Council budgets arising from damage to assets or the need to meet compensation awards for injury to the public or employees it is prudent to cap the financial exposure from any one event or occurrence by transferring some of this financial risk through the purchase of insurance from suitably regulated and qualifying providers.
6. The total annual expenditure based on the 2023/24 premium, inclusive of Insurance Premium tax @ 12% is £3,803,494. Additionally, the self-insurance contribution to the insurance fund is not yet finalised and agreed with Finance, however, will be in the range of £800k to £1.2m
7. The level of insurance is driven by a number of factors the most significant being the sums insured and claims experience, levels of self-retained risk, global re-insurance rates and individual supplier experience and risk appetite and capacity.
8. The Property and Liability contracts are currently procured with a large, self-insured deductible (excess) of £100k for each claim and an annual aggregate cap of £881,250 for Property and £1,468,750 for Liability claims.

The evaluation methodology to be used to evaluate the bids enables consideration of the current deductible limits together and also higher levels which insurers may provide quotations for. This will potentially increase the number of bidders as re-insurers would be able to consider policy options with high deductible levels.

This strategy is being proposed to reduce uneconomic pound swapping with insurers for known loss levels and to mitigate the amount of insurance premium tax payable.

The available market for placement of local authority insurance is traditionally limited, with past tender exercises receiving quotations from only three suppliers for the main property and liability programme.

9. Beyond not purchasing insurance at all, which would result in unacceptable and uncapped financial exposures to the Council, the only alternative to the current procurement strategy would be for the Councils to collectively or perhaps individually, set up their own captive insurance company or alternative risk transfer retaining significant financial exposure in-house, and to approach the re-insurance market direct rather than the current provider market. Given the increasing cost of insurance premiums, and the attaching Insurance Premium Tax @ 12% it may provide an alternative solution for certain risks. The feasibility of such an approach is being investigated and subject to appropriate evaluation, detailed consideration, independent evaluation and appropriate briefings and scrutiny from Councillors could result in some elements of the procurement not being awarded following the tender process but instead being covered via such a process. This potential is being made clear to the insurance market as part of both the premarket engagement and in the detail of the invitation to tender documents given concerns about the viability and competitiveness of elements of the current marketplace.
10. In demonstrating that other options are known and considered there is an Insurance London Consortium (ILC) which is a group of nine London boroughs who collectively purchase their insurances. This group is mostly outer London Boroughs but includes Tower Hamlets and Islington with the procurement process delegated to London Borough of Croydon. The Council has traditionally obtained wider cover options than those available through the ILC, for example for motor on an any vehicle/any driver basis and has been able to tender for a wide range of deductibles and cover basis that fits individual Borough needs rather consortium needs. The three neighbouring Councils within the current Shared Service are similar in the risks they present and offer the marketplace sufficient premium income to attract economies of scale with the added benefit of one management team, homogenised internal processes and probably the most experienced and qualified internal claims handling team as reflected in that the shared services is currently granted greater claims handling authority with no inner reporting limits than any ILC member. In the circumstances joining the ILC has not been considered advantageous previously and that remains the current assessment.

## **Reasons for Decision**

11. It is a requirement Public Contract Regulations 2015 that these insurance contracts are subject to competitive procurement and as established above, the non-purchase of insurance coverage would result in uncapped financial exposures for the Council and for which the potential value of losses could exceed reserves. Prudence would therefore dictate purchase of insurance and for some covers is a statutory requirement.

## **Contract Specifications Summary**

12. Under the Public Contracts Regulations (PCR) insurance provisions are classified as services. The estimated value of the contract is over the threshold

for services, currently set at £213,477. Therefore, the procurement of insurance services is subject to the full rigour of the Public Contract Regulations 2015 public procurement regime.

13. The engineering inspection contract is not an insurance product but rather a compliance product to ensure adherence with the statutory requirements for plant and associated equipment as overseen by the HSE.
14. The contract will be awarded on a five-year basis.
15. Insurance policies are recognised as a special form of contract in law and subsequent awards will not be subject to usual form of contract / deed but governed by the policy wording and accompanying schedule of cover.

### **Procurement Route Analysis of Options**

16. As the host borough the process will be subject to RBKC procurement methods and oversight although this will include discharge of responsibilities under 2012 Public Services (Social Value) Act.
17. The method of procurement will be Competitive Procedure with Negotiation and involve an initial ITT, potential single negotiation / clarification stage and bidders then invite to submit their final bids.
18. The contracts will be awarded on the basis of the most economically advantageous terms as assessed for the bids against numbered lots or combination of lots to all three Councils in the shared service. Whilst the award will be based on the total value of the bid for all three Councils, it will be mandatory for bidders to provide a price breakdown between the individual Councils.
19. Evaluation criteria will be clearly stated by lot and response documents will require completion of spreadsheets against criteria that will vary between lot based upon importance of in-house claims handling provisions and indicate to bidders' likely level of points deductions.

### **Market Analysis, Local Economy and Social Value**

20. The market is traditionally for public sector risks in each category of risk. Property and Liability limited to two or three markets, Residential Leasehold one, possibly two markets currently. The lower value contracts of Crime, School Journey & Personal Accident are very difficult to place in isolation of the main insurance portfolio. Directors & Officers, Terrorism and Engineering inspection are also limited to two or three providers able to quote for local authority risks.
21. Evaluation will be subject to a 10% social value consideration this is the purchase of a pure financial product. The 10% weighting is compliant with RBKC procedure.

## Risk Assessment and Proposed Mitigations

22. The key risk is ensuring that the process is managed to and kept on track to a timetable. A more complex internal timetable is being finalised to govern these risks and will be shared and reported upon to Director of Audit, Fraud, Risk and Insurance.

## Timetable

Key Decision Entry (Strategy)	17/05/2023
Contracts Assurance Board (Strategy)	24/05/2023
Cabinet Sign off (Strategy)	17/07/2023
Initial invitation to tender released to market	01/09/2023
Closing date for initial submissions	29/09/2023
Period for clarification / negotiation	30/09/2023 – 30/10/2023
Final ITT released to remaining market	01/11/2023
Closing date for final bids	01/12/2023
Clarifications	04/12/2023 – 18/12/2023
Evaluations complete	22/01/2024
SLT / Cabinet Member award and similar processes across shared service	
Contract award	1 <sup>st</sup> March 2024
Contract Commencement date	01/04/2024

Please note these dates are indicative at present and subject to amendment.

## Selection and Award Criteria

23. To ensure that they meet the minimum standards, bidders will be required to evidence they are authorised to underwrite insurance business in the UK and must be at least “B++ “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 for the classes of business under consideration

The Quality Award Criteria will be based on the technical specification, the technical specification will include both policy coverage and claims handling requirements. Evaluation of bidders’ responses to the award criteria will be carried out in accordance with the published marking scheme. Evaluation criteria will be: -

Lot type	Price	Policy Coverage	Claims provision / service	Added Value	Social Value
Leasehold	60%	10%	10%	10%	10%
Property	50%	20%	15%	5%	10%
Terrorism	60%	10%	10%	10%	10%
Liability	50%	15%	20%	5%	10%
Directors and Officers	60%	20%	5%	5%	10%
Crime / FG	60%	20%	5%	5%	10%
PA / Travel	60%	20%	5%	5%	10%
School Journey	60%	20%	5%	5%	10%
Motor	50%	15%	20%	5%	10%

### **Contract Management**

24. KPI's to be developed based on bidder responses but as a financial product are typically defined around reporting timeframes and correspondence response.
25. Contract variables such as sums insured, deductibles and aggregate may be subject to annual inflationary uplifts, part of bidding process is for bidders to clarify and be evaluated on this.

### **Equality Implications**

26. No negative impact. Having insurance in place will provide a positive impact for all residents, staff and leaseholders including leaseholders with protected characteristics as the policy provides financial protection of their assets in the event of an insured clam including fire, storm damages and escape of water. In compliance with Section 149 of the Equalities Act 2010, the Council has given due regard to the requirements of the Public Sector Equality Duty. It is not anticipated that the re-procurement of these insurance contracts will have any negative impacts on any groups with protected characteristics, under the terms of the Equalities Act 2010.

### **Risk Management Implications**

27. Insurance is a method of transferring risk from one party to another. This could be the risk of damage to an asset (e.g. property insurance) or the risk to others arising from an activity (e.g. liability insurance). External insurance is necessary to provide a higher degree of financial certainty for the Council, which enables it to operate in an environment where risk is always present. Ground up insurance cover, where there is no excess, is not however a financially efficient transaction and the Council has chosen not to follow this route. The terms of



risk transfer for the Council are set by a contractual arrangement commonly called the insurance policy. This requires the insurer, in return of a payment from the insured (the premium), to agree to reimburse the insured for losses arising from the consequences of an insured event.

28. The Council's risk environment internally and externally has changed materially in recent years. It continues to change at an escalating pace with new and emerging Cyber threats, Terrorism and specifically, more demanding regulations, for example the introduction of the General Data Protection Regulations. There is no single solution for protecting the public purse, the Community, Management, and the Council from the liabilities it faces. The best approach is a combination of strong corporate governance and broad corporate indemnification through insurances and risk control.

*Verified by Moira Mackie, Head of Internal Audit, 19 May 2023*

## **Local Economy and Social Value Implications**

29. It is a requirement that all contracts let by the council with a value above £100,000 provide social value commitments that are additional to the core services required under the contract.
30. Insurance is a shared service with RBKC & WCC. RBKC are the host, and the tender will therefore follow the RBKC procurement rules on this process.
31. This report confirms that the tender evaluation will be subject to a 10% social value consideration and the 10% weighting is compliant with the RBKC procedure.
32. It is advised that in drawing up contracts with the service provider, a clause is included to confirm that at least 10% of proxy value of social value will be delivered and evidenced as part of the services commissioned.
33. It is recommended the project lead will work closely with the council's Social Value Officer and the service provider to agree on social value measures and their delivery plan.
34. It is advised that the commissioner works with Legal to ensure appropriate social value clauses are included in the contract, so that the council can enforce its right to compensation if social value commitments are not delivered.

Oliur Rahman, Head of Employment and Skills 24/5/23

## **Consultation**

35. Stage 1 and Stage 2 consultation and engagement is required with leaseholders in the normal manner, under section 20 of the Landlord & Tenant Act 1985, with this process occurring in July/August 2023 and then again in January/February 2024. Stage 1 outlines the basis of the proposed tender and

the various options upon which tenders are being sought and invites engagement and input prior to finalisation of the tender documents. Stage 2 provides the tender results, evaluation and a draft recommendation for contract award and seeks further leaseholder engagement and input prior to finalising recommendations.

36. The Stage 1 leaseholder consultation gives notice of an intention to tender and requests leaseholder feedback. It is not a commitment to proceed on the basis described and it is therefore possible for the Council to either decide to proceed on an alternative basis and move on to Stage 2 or to not tender at all. However, if the Council decided to not proceed with a Leaseholder tender at all it would need to withdraw the Stage 1 consultation Notice with a letter sent to leaseholders explaining why the tender process was not proceeding.

## **Digital Services and Information Management Implications**

37. Claims received a data protection notice is provided. If the claim is sent directly to LBHF from the Claimant/ Claimant's solicitor, we provide a fair obtaining notice which confirms that we will use data as follows:  
*'We are required to send you this information to comply with Data Protection Act 1998. It explains how we may use your details and tells you about the systems we have in place that allow us to detect and prevent fraudulent claims. The Council is a subscriber to the Claims & Underwriting Exchange (CUE). The CUE system is an insurance industry shared database of insurance claims that helps compensators and insurers identify non-disclosure, concurrent claims activity and prevent fraud.'*  
*A notice explaining how the Council will use the data is also issued, which includes Ant-Fraud purposes, management information, compliance with legal obligations and responsibilities. Additionally, we explain how the data will be processed.*
38. Claims submitted via the online portal system are covered by the claims portal privacy notice, which allows the Council to share information with our insurers.
39. Data is also processed in accordance with the general LBHF data policy requirements.

## **LIST OF APPENDICES**

Appendix 1 - Equality Impact Assessment