

Corporate Policy Committee

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| Date of Meeting: | 2 December 2021 |
| Report Title: | Insurance Contracts Procurement |
| Report of: | Jane Burns, Executive Director, Corporate Services |
| Report Reference No: | N/A |
| Ward(s) Affected: | All wards |

1. Purpose of Report

- 1.1.** This report seeks approval for the approach to the re-procurement of the Council's insurance portfolio for contracts expiring in March 2022.
- 1.2.** Cheshire East Council spends approximately £1.2 million per year on insurance premiums across its entire portfolio. As reported to Finance Sub Committee as part of the procurement pipeline report in September 2021, the estimated contract value for re-procurement is £4.8-5 million.
- 1.3.** There are currently two approaches open to the re-procurement.
 - 1.3.1.** Option 1 is to proceed with the full re-procurement of the insurance portfolio through a procurement framework, incepting cover from 1st April 2022 for an initial period of cover of three years, with the option to extend by a further 2 years.
 - 1.3.2.** Option 2 is to award a contract modification, extending the current cover arrangements by 12 months from 1st April 2022 to 31st March 2023 and then progressing the full re-procurement through a procurement framework for cover to be incepted from 1st April 2023 on a period of cover for 3 years with the option of a further 2-year extension.
- 1.4.** The Council's appointed Professional Insurance Brokers, Aon, support the procurement of the Council's insurance cover, and preparations for the full re-procurement have been made. Aon have recently advised that now is a very challenging time to go out to tender for the full re-procurement of the Council's insurance portfolio, and so Option 2 is recommended to the

Corporate Policy Committee as it provides an opportunity for the Council to receive a better-quality consideration and response in due course.

2. Recommendations

- 2.1.** Corporate Policy Committee is asked to:
 - 2.1.1.** Approve a one-year extension to the Council's current insurances and delegate authority to the Executive Director Corporate Services to approve the modification of the existing contracts of insurance to facilitate such extension, with a formal report to come back to this Committee seeking the delegation of authority to the Executive Director Corporate Services to undertake the procurement process using a framework for cover incepting 1st April 2023 and award the contracts following the procurement exercise.

3. Reasons for Recommendations

- 3.1.** The continuous provision of insurance cover is required to ensure protection against the Council's key insurable risk areas, including employer and public liability, property, and motor fleet damage.
- 3.2.** Not all insurances are statutory; for example, the Council must have Employer Liability insurance in place and motor cover for the Council's fleet, however, in other areas the organisation needs to ensure that it obtains a balance of cover to proportionally manage risk exposure whilst obtaining the optimum value for money.
- 3.3.** In preparing for the full re-procurement of the insurance contracts, advice has been provided to the Council's Insurance Manager by our appointed brokers, the details of which are summarised in paragraph 5.1 below. In brief, Aon has indicated that the current state of the market for insurance providers is less than optimal for the Council's requirements to receive consideration by all potential providers, increasing the possibility that cover available to the Council will not be provided at the most favourable terms, or fails to be offered at all.
- 3.4.** Option 2 allows the Council to take an informed position, ensuring cover remains in place for a period of 12 months, during which time the full re-procurement exercise can be undertaken during 2022 when market conditions are expected to have improved to the Council's benefit.
- 3.5.** Further information from Aon, and details of the policies being re-procured are provided in the exempt Appendix 1 to this report.

4. Other Options Considered

4.1. Options appraisal

| Option | Impact | Risk |
|------------|---|---|
| Do nothing | Failure to secure insurance cover for 1 st April 2022 onwards | Risk of significant and unacceptable levels of exposure in terms of financial and reputational challenges and undermines ability to deliver key services. For example, lack of motor cover would ground the Council's fleet, which includes waste collection vehicles. Not recommended |
| Option 1 | Re-procurement through a compliant framework; secures cover from 1 st April 2022, albeit not likely to be at best value or terms to the Council. | Risk of failure to receive terms for some or all policies given the advice on market conditions provided by the Council's broker. Risk of failure to receive terms which present sufficient value for money for the Council. Not recommended |
| Option 2 | Cover from 1 st April 2022 for one year secured through modification of existing contracts. Cover from 1 st April 2023 secured through re-procurement using compliant framework. | Potential for modification to be challenged by an insurance provider. Recommended |

4.2. To "do nothing" leaves the Council without cover available to it, in either its statutory or "voluntary" areas of insurance. This exposes the Council's finances to significant and unplanned levels of pressure as the Council's financial plans are not based on full self-financing of claims. Failure to have statutory covers would also undermine the ability to deliver services; for example, lack of motor cover would ground the Council's fleet, which includes waste collection vehicles.

4.3. Option 1 is deliverable and would result in the invitation to tender being published after 5 days after the minutes of the committee are published. (Circa 11 December) Although option 1 has the lower compliance risk, it may result in a less competitive outcome for the council.

- 4.4.** The risk associated with option 2; potential challenge from providers to the contract modification, is mitigated by the prevailing market conditions, communication with the market regarding the reason for modification via the broker and the clear intention to undertake a full re-procurement in 2022.

5. Background

- 5.1.** As the Council's appointed Professional Insurance Brokers, Aon have advised that now is a very challenging time to go out to tender for the full re-procurement of the Council's insurance portfolio given the following factors/concerns:
- 5.1.1.** Current 'hard market' conditions; Aon are advising all their clients to only go out to the market if absolutely needed. Premium rate increases are still being imposed by the market. Insurers are requiring far more detailed underwriting data to even consider quoting and are more selective on which tenders to bid for.
- 5.1.2.** The Council must consider that the current contracts were entered into during a 'Soft Market' phase; this is a period where there is more competition in the insurance markets, premium rating factors were more favourable to those seeking cover and the Council achieved a very successful outcome in terms of policy deductibles and the premiums. Insurers have now become far more selective on which risks they chose to quote on and there is no guarantee of savings nor a quote being secured.
- 5.1.3.** Over the past 18 months, Aon have seen several public sector organisations request extensions on contracts and exemptions for tender due to the pandemic and focus on recovery of services. Not all Insurance providers seek to do business with the public sector; the limited market for Insurance providers for the Council is currently dealing with significantly higher than usual numbers of tenders because of delays last year during the pandemic.
- 5.2.** The Council's Insurance team and AON have planned and prepared to undertake the full procurement exercise, and whilst there had been some concerns over the general insurance market raised, the position regarding provider's ability to respond has been escalated more recently. The advice on the potentially poor quality of the outcome of the planned exercise prompted exploration of other options for seeking to ensure that cover could be obtained for 1st April 2022, whilst optimising the ability to receive the best consideration in the market.
- 5.3.** In discussion with the Broker, Procurement, and Legal colleagues, consideration has been given to a contract modification. Modification of current contracts, to extend by a year, should improve the Council's ability to take the full re-procurement exercise to the market during 2022 when the expectation is that conditions with providers will have stabilised.

- 5.4. The contract modification will extend current policies “as is”; there will be no changes to the policies or terms and conditions sought through the modification.
- 5.5. There are no changes proposed at this stage to the list of policies which will be included in the framework procurement for cover incepting 1st April 2023, however, as these may be placed with alternative providers, there could be differences in the level of details, or for example in the level of deductibles (excess) offered on each policy.

6. Implications

6.1. Legal

- 6.1.1. The contracts of insurance would need to be modified if an extension to the current contracts are sought. Accordingly, if full procurement of the insurances needs to be deferred for the reasons set out above; the issue is whether the contracts can be extended on a compliant basis under Regulation 72 of the Public Contract Regulations. Regulation 72 provides the criteria for contracts and framework agreements to be modified without a new procurement procedure during their term and provides different options for modification or variation dependent upon circumstances.
- 6.1.2. At the time of writing this report the contracts Modification Request Form is under review and not yet finalised. A case may be made for the modification and extension of the current contracts of insurance; assuming the current providers would accede to such extension which the insurance team have indicated all providers have agreed.
- 6.1.3. Any application of Regulation 72 creates the theoretic risk of a challenge. If a challenge was successful, the Council may find its insurances being invalidated, further insurance cover would then need to be sought.
- 6.1.4. The paucity of case law on Regulation 72 since the inception of the Public Contract Regulations suggests a lack of an appetite in the marketplace to litigate. Market specific advice from Aon must be considered and must give appropriate weight. Aon are specialist in the market and are aware of the commercial factors and have suggested is very likely that the insurance providers will look to the opportunity to win the Council ‘s business come 2023.

- 6.3.** The “Do nothing” option is not legally viable.
- 6.4.** Option 1 of an immediate full procurement from a legal perspective can be viewed as risk free; in that it presupposes that the Public Contract Regulations are being adhered to. If the Insurance team is being warned against going out to reprocure based on “best value” being achieved; then on balance Legal would advise that the existing cover may be extended under Reg 72.
- 6.5.** Option 2: Whereas extension under Reg 72 is not “risk free”; it is felt that the risk that this option presents (that of a challenge) can be mitigated via sensible market engagement. This is seen as a low-risk option. The re-procurement of the insurances from 1/4/23 is risk free so long as the Public Contract Regulations provisions are adhered to.
- 6.6. Finance**
- 6.6.1. Based on the 2021/22 renewal figures and the indicative estimates provided by the broker for uplift across the various policies, the cost of the extension by one year is approximately £1.27m. This will be covered through the corporate insurance revenue budget.
- 6.6.2. The request to extend current arrangements by 12 months, whilst the full re-procurement is undertaken is to obtain the optimum outcome from the market and ensure value for money is obtained.
- 6.7. Policy**
- 6.7.1. There are no specific policy implications arising from the recommendations of this report.
- 6.8. Equality**
- 6.8.1. There are no specific equality implications arising from the recommendations of this report.
- 6.9. Human Resources**
- 6.9.1. There are no specific human resources implications for the recommendations of this report. This is a business-as-usual activity and additional capacity for this is not required.
- 6.10. Risk Management**
- 6.10.1. The delivery of all services by the Council to residents is supported by the provision of insurance policies as an intrinsic part of our approach to risk management.
- 6.10.2. The objective of obtaining cover at greatest value for money and on most advantageous terms to the council is now deemed to be best achieved by the extension of current arrangements by one year, to be followed with the

full re-procurement during 2022, which will be brought back to the Corporate Policy Committee.

- 6.10.3. Timescales for the implementation of an extension to current arrangements are understood and planned for to ensure that deadlines are met, and the Council's insurance cover is continuous.

6.11. Rural Communities

- 6.11.1. There are no specific implications for our Rural Communities in the recommendations of this report.

6.12. Children and Young People/Cared for Children

- 6.12.1. There are no specific implications for Children and Young People/Cared for Children in the recommendations of this report.

6.13. Public Health

- 6.13.1. There are no specific implications for Public Health in the recommendations of this report.

6.14. Climate Change

- 6.14.1. There are no specific implications for Climate Change in the recommendations of this report.

| Access to Information | |
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| Contact Officer: | Josie Griffiths, Head of Audit and Risk josie.griffiths@cheshireeast.gov.uk |
| Appendices: | Appendix 1: List of policies and advice note from AON. <i>(The Appendix contains exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 and is not for publication.)</i> |
| Background Papers: | n/a |