

AGENDA ITEM: 11

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Meeting	Cabinet Resources Committee
Date	28 February 2012
Subject	Appointment of Insurer for Liability and Motor Insurance and the Appointment of Legal Providers for Associated Advice, Assistance and Representation
Report of	Cabinet Member for Resources and Performance
Summary	To note the acceptance of the tender from Zurich Insurance, trading as Zurich Municipal Insurance, for the Council's liability and motor insurances from 1 October 2010, and the appointment of legal providers for associated advice, assistance and representation.

Officer Contributors	Paul Lawrence, Head of Insurance
Status (public or exempt)	Public (with separate exempt report)
Wards affected	Not applicable
Enclosures	Appendix A – Scoring
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

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1. RECOMMENDATIONS

1.1 To note the acceptance of the tender submitted by Zurich Insurance, trading as Zurich Municipal Insurance, for the Council's liability and motor insurances, with effect from 1 October 2010, at a first year annual premium of £359,231, subject to a 3 year Long Term Agreement expiring 30 September 2013, with an option to extend for a further 2 years to 30 September 2015.

1.2 Upon the annual renewal of the Council's liability and motor insurances arrangements to waive the sealing requirement contained in Contract Procedure Rule 10.6.

1.3 To retrospectively agree:-

(i) the waiver of the Council's Contract Procedure Rules in respect of the procurement of the provision of legal advice, assistance and representation required as a result of claims made before 1 April 2012 under the Council's liability and motor insurances arrangements; and

(ii) the entry into contracts from April 2011 with (a) Weightmans LLP, (b) Kennedys LLP, and (c) Barlow Lyde & Gilbert LLP for the provision of legal advice, assistance and representation required as a result of claims made before 1 April 2012 under the Council's liability and motor insurances arrangements.

1.4 To waive the Council's Contract Procedure Rules in respect of the procurement of the provision of legal advice, assistance and representation required as a result of claims made after 1 April 2012 under the Council's liability and motor insurances arrangements.

1.5 To enter into contracts with:-

(i) legal providers on the panels of the Council's respective insurers; and

(ii) ad hoc specialist legal providers,

for the provision of legal advice, assistance and representation required as a result of claims made after 1 April 2012 under the Council's liability and motor insurances arrangements.

2. RELEVANT PREVIOUS DECISIONS

2.1 Cabinet Resources Committee 22 July 2008 (Decision Item 9) – Resolved that the Insurance Strategy and Risk Analysis Appendix be adopted.

2.2 Cabinet 22 February 2010 (Decision Item 6) – Budget & Council Tax 2010/11 - Recommended to Council that authorisation be given to allow tenders to be sought for contracts listed in Appendix I (Contracts)

- 2.3 Council 2 March 2010 (Minute Item 145) – Received and adopted the Cabinet Budget & Council Tax 2010/11 Report of 22 February 2010.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Corporate Plan 2011-13 commits the Council to delivering ‘Better Services with Less Money’. Insurance cover can provide the Council with budget certainty against losses arising from insurable risk. Reviewing and negotiating contractual arrangements for associated legal costs will also support the delivery of better services with less money.
- 3.2 The Council's insurance contracts are periodically subject to full European Union market testing. Also insurance contracts are considered to be a partnership between insured and insurer, where it is in the interest of both parties to reduce risk and incidence of claims supported by entering into Long Term Agreements (LTA's).

4. RISK MANAGEMENT ISSUES

- 4.1 Sound insurance arrangements are essential to protect the Council and its assets. Failure to effect cover would have detrimental financial and reputational consequences.
- 4.2 As the provision of legal services falls within Part B of the Public Contracts Regulations 2006, they are not subject to the rules requiring publication of the invitation to tender on a Community-wide basis. Legal advice, assistance and representation required as a result of claims made under the Council's liability and motor insurances arrangements has been ongoing for a number of years. Accordingly officers consider the risk of challenge to be fairly low.
- 4.3 The risk and cost of disengaging current representation on existing claims and instructing new advisers is considered too high. Accordingly subject to Cabinet agreement it is proposed to continue with existing terms of engagement for instructions given on claims received prior to 1 April 2012.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Pursuant to the Equality Act 2010, the Council and all other organisations exercising public functions on its behalf must have due regard to the need to: eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advance equality of opportunity between those with a protected characteristic and those without; promote good relations between those with a protected characteristic and those without. The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; Sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination.
- 5.2 Adequate insurance arrangements are essential to provide the Council with budgetary certainty to enable delivery of services for the benefit of all

members of the community. Zurich Municipal and the legal providers have equal opportunities policies in place which meet the Council's equalities obligations.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

6.1 Liability and Motor Insurance Arrangements

6.1.1 The Council's Liability and Motor Insurance expired on 30th September 2010. In support of the Insurance Strategy, bidders were asked to provide quotations on the basis of the Council's expiring level of cover, varying increases in policy excesses, changes to cover limits and range of cover. This practice demonstrated value for money in the procurement of insurance and satisfaction around the level of risk to be taken by way of insurance excesses, self and non insurance. The results for variations generally across the range of cover did not demonstrate sufficient benefit by way of additional premium reductions to warrant materially altering the basis of cover.

6.1.2 Financial implications, details of the bids and consideration of the basis of cover are set out in the Background Information section below and the accompanying exempt report.

6.1.3 The identity of the tenderers referred to in the table below and Appendix A are detailed in the exempt report. Tenders for the sums detailed were received as follows:-

<u>Bidder</u>	<u>Annual Premium</u>
Zurich Municipal Insurance (ZMI)	£359,231
Bidder B	£459,314
Bidder C	£559,629

6.1.4 The annual premium is met from existing budgetary provision.

6.1.5 The first annual premium is £359,231. If the contract is renewed annually within the terms of the initial 3 year LTA the full contract cost will be circa £1.08m. If the contract is extended and renews annually for a further 2 years, the full contract cost will be circa £1.8m. Annual premiums may be subject to increase or decrease by RICS property building indices, salary and wages fluctuations and changes in risk etc. Assuming the level of risk and claims experience remains constant increases are not expected to rise by more than 5% per annum.

6.2 Associated Legal Provision of Advice, Assistance and Representation

6.2.1 The proposals for providing associated legal support on claims arising under the Council's Liability and Motor Insurance arrangements is set out at 9.2.6.to 9.2.8 below.

- 6.2.2 The cost per claim under the new arrangements should be less however the overall cost will depend on the number and complexity of claims received.
- 6.2.3 The hourly charging rates for current existing claims already instructed agreed with providers range between £145 to £160 per hour for a Partner, £125 to £150 for a Solicitor/Associate and £88 to £100 for a trainee/para-legal.
- 6.2.4 Per claim panel rates for legal representation on new claims arising from claims incurred on or after 1 October 2010 but made after 1 April 2012 will be selected from a panel of solicitors provided by the existing Insurer, Zurich Municipal.
- 6.2.5 Per claim panel rates for legal representation on new claims arising from claims incurred prior to 1 October 2010 but made after 1 April 2012 will be allocated by the expiring insurer, Chartis (AIG) to one firm of solicitors where a similar fixed fee arrangement has been agreed. The proposed solicitors are acceptable to the Council.
- 6.2.6 These cost form part of the overall cost of insurance and are met from existing Insurance budgets.
- 6.3 There are no Staffing, ICT, Property or Sustainability implications.

7. LEGAL ISSUES

- 7.1 Procurement processes must comply with the European procurement rules and the Treaty obligations of transparency, equality of treatment and non discrimination as well as the Council's Contract Procedure Rules (CPR's)
- 7.2 As set out in section 9.1.2 below, a European procurement was carried out for the Council's liability and motor insurances arrangements.
- 7.3 CPR 10.3.7.2 requires that a sufficient surety (e.g. a bond) shall be taken for due performance for a contract with a value of over £300,000 unless the Director/Head of Service, the Chief Finance Officer and the Head of Legal so direct following the completion of a risk assessment. These officers have agreed a surety is not required for the Council's liability and motor insurances arrangements because insurance companies are strictly regulated by the Insurance Companies Act 1982 and Insurance Companies (Reserves) Act 1995. These regulations require companies to be registered to transact business in this country and satisfy specified reserve and solvency margins. The Standard and Poor's industry rating of ZMI is currently an acceptable AA-/Stable.
- 7.4 CPR 10.6.1 requires that contracts whose value exceed £156,422 must be sealed on behalf of the Council unless the Assistant Director - Legal directs otherwise. The Assistant Director - Legal has agreed that the contract for the Council's liability and motor insurances arrangements is not one required to be sealed due to commercial insurance practice where it is accepted practice that the insurance policy is evidence of the contract. The policy wording sets out all terms and conditions applicable. As stated in Recommendation 1.2 a

waiver of CPR 10.6.1 is sought for the annual renewal of the Council's liability and motor insurances arrangements.

- 7.5 The basic premise applying to the letting of contracts for works, supplies or services by contracting authorities is that the provisions of Directive 2004/18/EC, as implemented by the Public Contracts Regulations 2006 (as amended), should be adhered to. For the most part this set of rules (the "Procurement Rules") requires there to be fair and open competition across the European Community for government contracts.
- 7.6 The Procurement Rules make a distinction between two categories of services. Part A services are subject to the full tendering regime. Part B services have a comparatively relaxed regime applying to them, covering only matters such as ensuring that specifications for services are not discriminatory and that reporting and notifying obligations are met. Part B services are not subject to the rules requiring publication of the invitation to tender on a Community-wide basis because they would generally be of less interest to service providers from other member states.
- 7.7 The provision of legal services falls within Part B services. However, contracting authorities are still required to comply with the Treaty on the Functioning of the European Union (formerly the EC Treaty principles) in the way they carry out procurements and also to obtain value for money. These principles apply to all procurements with a "cross-border interest", whether or not the full procurement regime applies. This means that the contracting authority is expected to ask itself whether there is a market for these services in other member states and if so what form of appropriate notification and advertisement should apply before an award of contract.

8. CONSTITUTIONAL POWERS

- 8.1 Constitution, Part 3 – Responsibility for functions, section 3 – Responsibility of the Executive, paragraph 3.6 – terms of reference of the Cabinet Resources Committee.
- 8.2 Constitution, Part 4 - Financial Regulations part 2, section 10.1 states that "The Chief Finance Officer is responsible for maintaining the Insurance Strategy, arranging adequate insurance cover for the Council and keeping comprehensive records of all risks covered".
- 8.3 Constitution, Part 4 – Contract Procedure Rules, section 5.8 provides that a Cabinet Committee may waive the requirements of the Contract Procedure Rules if satisfied that the waiver is justified because:
- 5.8.1 the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procedure Rules is justifiable; or
- 5.8.2 the contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have

been foreseen; or

5.8.3 the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English Law); or

5.8.4 there are other circumstances which are genuinely exceptional

8.4 This report seeks waivers of the Contract Procedure Rules for the procurement of the provision of legal advice, assistance and representation on the basis of Contract Procedure Rules 5.8.1 and 5.8.4 because of the risks associated with changing providers of existing cases, the Insurers requirement to approve the selection of legal representation and the currently unknown extent of future in-house local authority legal provision and the impact this will have on external arrangements.

9 BACKGROUND INFORMATION

9.1 Liability and Motor Insurance Arrangements

9.1.1 The Council's Liability and Motor Insurance was arranged subject to a Long Term Agreement (LTA) which expired on 30th September 2010.

9.1.2 Notices in compliance with the EC Public Services Directive were prepared and published in OJEU (Official Journal of the European Union) on 30 May 2010. Initial expressions of interest were received from Zurich Municipal Insurance (ZMI) and three others. Pre Qualification Questionnaires (PQQ's) were dispatched to all four prospective bidders.

9.1.3 On return the PQQ's were subject to evaluation by Insurance, Procurement and Finance. One PQQ returned did not meet a key financial ratio test and therefore could not be progressed to the invitation to tender stage. Details are included in the exempt section of this report.

9.1.4 Tender Documents setting out the Council's requirements and details of the insurance programme for the next 12 months and beyond were sent to the ZMI and bidders B and C.

9.1.5 All three companies made submissions. It should be noted that insurance companies will often present their insurance programmes in different ways which means it is not always possible to provide a direct comparison between bidders in terms of cover and premiums. However, tenders were scored on the best available data with adjusting comments made where necessary. The results of the bids and consideration of the basis of cover are set out in the exempt report.

9.1.6 Appendix A shows the scoring allocated to ZMI against the other two bidders.

9.1.7 It should be noted that ZMI is the lowest price, they are an existing provider of insurance to the Council, and have a Standard and Poor's rating of AA-/Stable.

9.1.8 Insurance contracts are offered subject to LTA's. The object of these agreements are to build longer term relationships between the insurer and insured to work together to improve insurable risk to the mutual benefit of both

parties. In exchange for a discount off the premium quoted the insured agrees to accept renewal from the insurer during the period of the LTA providing the rates quoted are not increased beyond inflation increases. If claims experience warrants increases the agreement is broken and the insured is free to seek alternative markets, or accept the terms provided by the existing insurer. All bidders offered a 5% reduction in premium in exchange for an initial 3 year LTA with an option for the Council to extend by an additional 2 years. Premiums quoted are net of this discount and 5% Insurance Premium Tax.

- 9.1.9 Following evaluation of the tender Zurich Insurance, trading as Zurich Municipal Insurance, were advised that their submission was successful. Policy documents were issued and as set out in Recommendation 1.1 cover for the Council's Liability and Motor Insurances put in place.
- 9.2 Associated Legal Provision of Advice, Assistance and Representation
- 9.2.1 Third Party claims alleging negligence against the Council indemnified by our liability and motor insurance arrangements are predominantly investigated and determined by officers. If these matters are of a particularly complex legal or sensitive nature or become the subject of formal litigation, the Council may require further legal representation.
- 9.2.2 The Council receives approximately 800 claims per annum under these insurance arrangements and appoints legal representation on approximately 75 cases per annum. These range from simple pre-action disclosure, pothole vehicle damage claims, motor vehicle accidents, pavement tripping claims, employee accidents, tree root subsidence. more serious injury claims and representation at inquests.
- 9.2.3 In respect of these claims the Council's respective insurers have agreed to the appointment of three main external firms of solicitors to represent both the Councils' and the Insurers' interests. In addition a further specialist firm has been agreed on matters involving safeguarding. These firms are all vastly experienced in insurance liability and specifically public sector litigation.
- 9.2.4 The level of work can vary considerably depending on the number and complexity of claims received. Charging rates currently agreed with providers range between £145 to £160 per hour for a Partner, £125 to £150 for a Solicitor/Associate and £88 to £100 for a trainee/para-legal. Average legal costs incurred through these arrangements are just under £2,400 per case or circa £250,000 per annum
- 9.2.5 Currently there is no in-house legal resource available to support insurance claims however consideration is being given to this as a consequence of discussions regarding inter authority partnering arrangements. Once this is established and a capacity to deliver a service to Barnet in respect of insurance claims is identified, a further report will be brought to Cabinet Resources Committee to agree future arrangements. Until then it is proposed to enter into the following arrangements.

- 9.2.6 As set out at recommendation 1.4 and 1.5 legal representation on new matters arising from claims incurred on or after 1 October 2010 but made after 1 April 2012 will be selected from a panel of solicitors provided by the existing Insurer, Zurich Municipal. The Council will benefit from panel rates negotiated by Zurich with these providers. By committing all claims to this arrangement the Council will benefit from agreed fixed rates, details of which are set out in paragraph 6.2.1 of the exempt report. The range of solicitors available via the Insurers panel is acceptable to the Council.
- 9.2.7 As set out at recommendation 1.4 and 1.5 legal representation on new claims arising from claims incurred prior to 1 October 2010 but made after 1 April 2012 will be, with agreement of the expiring insurer, Chartis (AIG), allocated to Kennedys LLP on a fixed fee basis. As this work will involve older claims and therefore likely to be more complex, it is expected that the fixed fee will be higher than those referred to in paragraph 9.2.5 above. Details of the rates are set out in paragraph 6.2.2 of the exempt report. These solicitors are acceptable to the Council.
- 9.2.7 Specialist appointments, for example safeguarding claims, will continue to be instructed in agreement with the relevant insurer. Charging rates are agreed on each claim, subject to annual review.
- 9.2.8 As set out at recommendation 1.3 cases where solicitors have been instructed to advise and represent the Council on claims received before 1 April 2012 under the Council's liability and motor insurances arrangements will continue within the terms and conditions of the existing agreed annual contracts.

10. LIST OF BACKGROUND PAPERS

10.1 None

Legal: SWS
Finance: MC/JH

Appendix A – Scoring

	Weighting Criteria	Scoring criteria	Zurich Municipal		Bidder B		Bidder C	
			Tender Score	Total Score	Tender Score	Total Score	Tender Score	Total Score
Insurance Cover								
Financial Evaluation	40%	ranked 1 to 3 (3 = lowest price)	3	24	2	16	1	8
Conditions and Extent of Cover	20%	out of 5	4	16	5	20	4	16
Quality of Service Standards including Claims Handling	20%	out of 5	5	20	5	20	5	20
Range of services offered by insurer, expertise with public sector risks, wording of the long term agreement/contract offered	20%*	out of 5	5	20	5	20	5	20
TOTAL				80		76		64

*please note due to a typographical error the weighting criteria was initially shown as 10%. This correction does not affect the outcome.

