

## Contract for the Insurance of Leasehold Flats (2023-2028)

Date: 31<sup>st</sup> March 2023

Report of: Head of Internal Audit and Insurance

Report to: Chief Officer Financial Services

Will the decision be open for call in?

☐ Yes ☒ No

Does the report contain confidential or exempt information?

☐ Yes ☒ No

### Brief summary

- The council arranges property and terrorism insurance for leasehold owners who have purchased their property under right to buy or a mortgage from the council. The cost of insurance is then recharged to individual leaseholders.
- The existing five-year contract is due to expire on 31 March 2023 and therefore a new contract is required.
- A procurement process has been carried out for a new five-year contract, commencing on 1<sup>st</sup> April 2023. Bids have now been evaluated and approval is sought for contract award.

### Recommendations

- a) The Chief Officer Financial Services is recommended to approve the award of a contract for insurance cover for Leasehold Flats to Protector Forsikring ASA (Protector Insurance). The contract is to commence on 1<sup>st</sup> April 2023 for a period of five years at a value of £338,106 plus insurance premium tax for the first year of cover.

### What is this report about?

- 1 This report sets out the outcome of the procurement process for the insurance for leasehold flats and seeks approval for the award of a new contract for five years commencing 1<sup>st</sup> April 2023.
- 2 A competitive tender was run utilising the pre-existing Insurance Placement Dynamic Purchasing System (DPS) 978, established collaboratively by Yorkshire Purchasing Organisation, Eastern Shires Purchasing Organisation and North East Purchasing Organisation.
- 3 The DPS, which allows for the inclusion of new suppliers during its lifetime, has an extensive list of suppliers covering a multitude of lots. Use of the DPS ensures that all suppliers have already been vetted and due diligence checks undertaken. It also provides better value for the council due to the economies of scale.

- 4 Use of a DPS in this way complies with the council's Contract Procedure Rules which require that, in the absence of an appropriate internal service provider, or any existing provider, a third-party framework agreement or DPS is to be considered before proceeding to public competition.
- 5 In accordance with recommended practice under the DPS, the Council used its appointed broker, Marsh Ltd, to provide market expertise and guidance to undertake the procurement via the DPS.
- 6 As a result of this the council has received two bids, only one of which was compliant. This has been evaluated against the specified evaluation criteria and shown to provide appropriate policy cover and claims handling arrangements.

#### **What impact will this proposal have?**

- 7 The council is the freeholder of approximately 2,557 properties in relation to which the leasehold has been sold in accordance with right to buy. The terms of the lease do not require the council to insure these properties but do provide at clause 3.6, that the council covenants "To rebuild or reinstate the Flat and the Building in the event of destruction or damage by fire tempest flood or any other cause against the risk of which it is normal practice to insure."
- 8 Provision of this insurance provides protection for the leaseholders in relation to damage to the fabric and fixtures and fittings of the leasehold property they have purchased from the council in relation to these insurable perils.
- 9 Separate insurance cover for leasehold owners is to be obtained in relation to terrorism and sabotage through existing contractual arrangements or by a separate procurement route.
- 10 The proposed action has no implications for equality and diversity, cohesion and integration.

#### **How does this proposal impact the three pillars of the Best City Ambition?**

☒ Health and Wellbeing

☒ Inclusive Growth

☐ Zero Carbon

- 11 The policy provides insurance for leaseholders who may otherwise find it difficult to obtain such insurance at a competitive price in the current market. As the existing contract expires on 31<sup>st</sup> March 2023, if the contract is not awarded, leaseholders will be left with no insurance cover on the fabric, fixtures and fittings of leasehold flats.

#### **What consultation and engagement has taken place?**

Wards affected:

Have ward members been consulted?

☐ Yes

☒ No

- 12 Procurement consultation with Procurement and Commercial Services ('PACS') has been ongoing since May 2022 to ensure that requirements for the procurement of the contract will be fully met.
- 13 In accordance with the council's brokerage contract, the broker Marsh Ltd has been engaged and consulted to ensure that the procurement exercise provided best value for money to the council. The brokers have explained that the market for insurance cover like this is currently a hardening market, with many providers withdrawing from the market and premiums rising to reflect the losses experienced by the market in recent years. The brokers have confirmed that based on their expertise and experience, having evaluated the bid it is reasonable in the context of the market as it stands.

- 14 Under the Landlord and Tenant Act 1985, the council is required to consult with the leaseholders prior to entering into a qualifying long-term agreement. The leasehold section of the council have undertaken statutory consultation with leaseholders. Only one observation, including two questions, was submitted as part of the consultation process. This queried the fact that only one compliant bid was received and requesting more information to get a better understanding on the valuation basis of the leasehold flats.

### **What are the resource implications?**

- 15 The contract price for the first year of the contract is £338,106 plus insurance premium tax.
- 16 Under the contract for insurance, mid-term adjustments can be made allowing the addition and removal of premises covered.
- 17 In addition, the council is required to provide renewal details annually and the contractor will provide terms – the premium for the year. A rate guarantee applies for the full five-year term of the contract so that the annual premium is calculated on the basis of the previous periods rate subject to percentage additions calculated on the net earned loss ratio (the total incurred claims at the 1<sup>st</sup> December of the current policy year.)
- 18 The contract cost is then recovered through annual recharges to the Communities, Housing and Environment Directorate, who recover the cost of the insurance from leaseholders individually.
- 19 Officers in the Leasehold Section maintain a database of leasehold properties to be insured and supply this information to the Insurance Section. They also arrange for premiums to be collected as part of the annual service charge to Leaseholders.
- 20 Given the length of contract term and the contract value, recovery of the full cost of the insurance premium under the leasehold service charge is subject to compliance with the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003. Together these require consultation with the leaseholders in respect of a qualifying long-term agreement. In the absence of compliance, the recovery of contract costs is capped at £100 for each leasehold owner.
- 21 As a result of changes in the procurement approach, and the current state of the leasehold insurance market, the council has been unable to comply in full with these requirements, and is therefore subject to the cap on recovery. As a result, the total recharge in the first year will recover £255,700; a shortfall of around £86,800 against the total expenditure. Based on the assumption of an annual increase of 12%, the overall potential shortfall to the authority, would be approx. £551k.

22

### **What are the key risks and how are they being managed?**

- 23 Having the insurance in place will negate the possibility of the Council being called upon to meet any losses sustained in leasehold flats resulting from any of the perils insured under the policy.

#### Addition of properties to insurance

- 24 In order to ensure that additional properties sold to leaseholders during the right to buy period are covered by the insurance, there is provision within the policy to allow mid-term adjustments which will (subject to limited exceptions) be made on a quarterly basis. Arrangements will be made to update the policy sooner should a property sold fall within the exceptions set out by the insurer.
- 25 In addition, prior to each renewal up to date property information is gathered and sent to insurers to ensure adequate cover is in place for each annual policy period.

## Valuation

- 26 As the insurance valuations for each leasehold have been provided by the purchaser at the point of sale it is recognised that there is a need to ensure that these valuations remain up to date and fit for purpose.
- 27 Arrangements are being made to obtain valuations of properties across the leasehold estate using a beacon approach.

## Recovery of Service Charge

- 28 The Resource section of this report sets out details of a potential £551k shortfall in recovery of the cost of this insurance resulting from shortcomings in the council's compliance with leaseholder consultation requirements. However, the council has sought counsel's advice in this respect and has complied to the best of its ability with the spirit of these consultation requirements.
- 29 A dispensation from the first-tier tribunal in respect of the deficiencies in the consultation has been sort. A dispensation, if granted, would remove all or part of the cap on recovery.
- 30 Whilst there is therefore a risk that the full cost of the insurance can not be recovered from leaseholders all relevant steps have been taken to minimise this risk.
- 31 Leaseholders have been advised of the council's intentions in this regard so as to protect the council from any reputational harm which may arise.

## **What are the legal implications?**

- 32 The tender exercise was carried out in accordance with the Public Contracts Regulations 2015 by way of competition under a Dynamic Purchasing System, the YPO Insurance Placement DPS. The original procurement of the YPO Insurance Placement DPS was undertaken on a competitive basis in line with the Public Contracts Regulations 2015 and awarding a call off contract to the organisation under the YPO Insurance Placement DPS is fully compliant with those regulations. The tender has been evaluated in accordance with the evaluation criteria set out in the tender documents. Following the tender evaluation, the successful contractor has been identified.
- 33 This decision is a significant operational decision taken as a direct consequence of the key decision giving authority to procure by the Director of Resources in July 2022 ([D55478](#)).

## **Options, timescales and measuring success**

### **What other options were considered?**

- 34 Doing nothing is not an option as the current contract for leasehold insurance expires on 31<sup>st</sup> March 2023, leaving right to buy leaseholders uninsured from 1<sup>st</sup> April 2023 if no cover is put in place.
- 35 There is no alternative 'in house' provider of insurance, nor is this a risk that the Council would wish to assume for itself due to the potential financial costs involved. This was not therefore a viable alternative to arranging insurance externally.
- 36 Advice was taken from the Council's broker as follows;
- There is little prospect of a successful procurement over a shorter period as it would not be commercially viable;
  - an open tender exercise was highly unlikely to have secured any additional bids as the relevant providers in the market are all members of the DPS.

**How will success be measured?**

38 The contract will be awarded and operational. Appropriate contract management will take place throughout the contract term.

**What is the timetable and who will be responsible for implementation?**

39 The existing contract expires on 31<sup>st</sup> March 2023, therefore a new contract is required to commence on 1<sup>st</sup> April 2023.

**Appendices**

- None.

**Background papers**

- None.