



Executive
15 March 2010

**Report from the Director of
Finance and Corporate Resources**

Wards affected:
ALL

**Authority to tender contract for insurance of leaseholder
“right to buy” properties**

Forward Plan Ref: F&CR-09/10-22

1.0 Summary

- 1.1 This report seeks authority under Contract Standing Orders 88 and 89 to invite tenders for a single provider framework agreement for the provision of building insurance for private dwellings sold by the Council to tenants under the Right to Buy scheme.
- 1.2 The framework agreement will commence on 1 August 2010 and will be for a period of 3 years.

2.0 Recommendations

- 2.1 The Executive to give approval to the pre - tender considerations and the criteria to be used to evaluate tenders for a framework for the provision of insurance for private dwellings sold by the Council to tenants pursuant to the Right to Buy scheme as set out in paragraph 3.4 of the report.
- 2.2 The Executive to give approval to officers to invite tenders and evaluate them in accordance with the approved evaluation criteria referred to in 2.1 above.

3.0 Detail

- 3.1 Private dwellings (consisting of flats and maisonettes) sold under lease by the Council under the Right to Buy scheme require leaseholders to pay a share of the costs in the form of service charges. These charges are for maintaining the structure and shared parts of the block as well as our costs for providing services, to include buildings insurance. Under each lease the Council has to maintain buildings insurance. The cover is for usual householder's buildings

insurance covering the usual perils to include fire and subsidence. The current policy has a small deductible on claims relating to water damage and a £1000 deductible on subsidence claims. The deductible is paid by the leaseholder in the event of a claim. Currently, the insurance policy covers 3462 flats, and the current method of charging premiums is on the number of bedrooms. In the event of the property being sold the cover carries on as the lease provides that the freeholder (the Council) arranges cover. During the proposed three year term, insurance will be provided for further properties sold to tenants under the Right to Buy scheme. The framework to be tendered is to be specifically for buildings insurance for properties sold under the Right to Buy scheme and will not include insurance for other Council properties including those in the same building as insured properties. The Council remains the freeholder and as such is responsible for the exterior of the buildings where the properties are located. Contents insurance is arranged separately by the householder.

- 3.2 The current contract was awarded to Aspen in 2007 (with the Executive's approval which was granted on the 14th June 2007) and will expire on the 31st July 2010. The new arrangement will provide buildings insurance cover in respect of individual properties as of the date when the existing cover for the property comes up for renewal.
- 3.3 Whilst it is anticipated that the framework will be made available to other London Borough Councils who are members of the West London Alliance (see paragraph 6.4 below), evaluation of the submitted compliant tender responses will be undertaken by officers of Brent Council.
- 3.4 In accordance with Contract Standing Orders 89 and 90, pre-tender considerations have been set out below for the approval of the Executive.

Ref.	Requirement	Response
(i)	The nature of the service.	A single supplier framework agreement for provision of buildings insurance for "Right to Buy" properties. It is anticipated that the framework will be made available to other London Borough Councils who are members of the West London Alliance (see paragraph 6.4 below). Brent Council will call off the framework as soon as it is awarded, to allow provision of insurance to commence from 1 August 2010.
(ii)	The estimated value.	£1,620,000 (£540,000 per year) for 3 years, being the anticipated value of the cover placed by Brent Council under the framework agreement
(iii)	The contract term.	Commencing on 1 August 2010, 2010 for 3 years

Ref.	Requirement	Response	
(iv)	The tender procedure to be adopted	<p>The services are Part A services under the Public Contract Regulations 2006 (The Classic Directive). Formal tendering using the Restrictive Procedure as set out in the Regulations will be adopted.</p> <p>Additionally in order to attract local providers, this contract will be advertised on the Council's website.</p>	
v)	The procurement timetable.	<p>Indicative dates are:</p> <p>Adverts placed</p> <p>Expressions of interest returned</p> <p>Shortlist drawn up in accordance with the Council's approved criteria</p> <p>Invite to tender</p> <p>Deadline for tender submissions</p> <p>Panel evaluation and interviews</p> <p>Panel decision</p> <p>Report recommending Contract award circulated internally for comment</p> <p>Executive approval</p> <p>Mandatory minimum 10 calendar day standstill period if Part A service contract— notification issued to all tenderers and additional debriefing of unsuccessful</p>	<p>16 th March 2010.</p> <p>16th April 2010.</p> <p>28th April 2010.</p> <p>29th April 2010.</p> <p>8th June 2010.</p> <p>14th June 2010.</p> <p>18th h June, 2010.</p> <p>21st June 2010.</p> <p>July, 2010.</p> <p>July, 2010.</p>

Ref.	Requirement	Response	
		tenderers	
		Contract start date	1st August 2010
(vi)	The evaluation criteria and process.	<p>Shortlists are to be drawn up in accordance with the Council's Contract Procurement and Management Guidelines namely the pre qualification questionnaire and thereby meeting the Council's financial standing requirements, technical capacity and technical expertise. Thereafter once candidates have been selected for tender, full documentation will be sent and thereafter the panel will evaluate the tenders against the following criteria:</p> <p>50 % price 50% quality</p> <p>Quality consisting of:</p> <ul style="list-style-type: none"> - Ability to meet the specification (30%) - Customer Care to incorporate claims handling (10%) - Service Levels (10%) 	
(vii)	Any business risks associated with entering the contract.	No specific business risks are considered to be associated with entering into the proposed contract. Financial Services and Legal Services have been consulted concerning this contract.	
(viii)	The Council's Best Value duties.	The Procurement process will ensure Best Value and compliance are achieved.	
(ix)	Any staffing implications, including TUPE and pensions.	The service is currently provided by an external provider and there are no implications for existing Council staff.	
(x)	The relevant financial, legal and other considerations.	See sections 4 and 6 below. Members are also asked to note that officers will remain mindful of the need for consultation as identified in sections 6.6, 6.7 and 6.8 below and in particular the timeframes identified in those sections. There remains the possibility that as a result of the Council's obligations regarding stakeholder observations, the commencement of the framework arrangements occurs after 1 August 2010. If this is the case, officers will consider an extension of the existing contract in light of the Council's standing orders.	

3.5 The Executive is asked to give its approval to these proposals as set out in the recommendations and in accordance with Standing Order 89.

4.0 Financial Implications

4.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works contracts exceeding £1million shall be referred to the Executive for approval to invite tenders and in respect of other matters identified in Standing Order 90.

4.2 The estimated value of this contract is £1,620,000 for the duration of the three year contract.

4.3 It is anticipated that the cost of this contract will be funded through leaseholder's service charges, thus having no other financial implications for the Council.

4.4 it is not proposed to charge participating Councils for their use of the framework and there are no other financial considerations.

5.0 Staffing Implications

5.1 These services are currently provided by an external provider engaged by the Council and there are no implications for Council staff arising from retendering the services by way of the proposed framework.

6.0 Legal Implications

6.1 The Council's power to purchase insurance is primarily under section 111 of the Local Government Act 1972 as being ancillary or incidental to its main functions (although there are some specific express powers to insure). As identified in previous reports, the Council would be in a position of unacceptable risk if it did not have adequate insurance. It is also under an obligation to insure under the terms of each Right to Buy lease.

6.2 The anticipated value of the Council's call-off contract over its lifetime (£1.62 million) is higher than the EU Procurement Regulations threshold for services. Insurance services are classified as Part A services and so the tendering and award of the framework is governed by the Public Procurement regime as set out in the Public Contracts Regulations 2006. Given the anticipated value of the framework, the procurement and award of the framework is also subject to the Council's own Standing Orders in respect of High Value contracts and the Council's Financial Regulations and accordingly the approval of the Executive is required to invite tenders and to the pre tender considerations set out at paragraph 3.4.

6.3 The proposed framework will be procured and tendered in accordance with the authority's Contract Standing Orders which require a formal tendering process with advertising of the proposed contract.

- 6.4 The contract is being procured as a single supplier framework agreement as it is anticipated that the Council will invite other members of the West London Alliance (comprising the London Boroughs of Brent, Ealing, Hammersmith & Fulham, Harrow, Hillingdon Hounslow and Royal Borough of Kensington and Chelsea) to use the framework as “participating authorities”. It is not proposed to levy a charge to other local authorities using the framework, and officers will ensure that the OJEU notice in respect of the framework is drafted to contemplate the use of the framework by these local authorities. Legal Services will be instructed to prepare the terms and conditions under which other local authorities may use the framework, with a view to protecting the Council’s interests.
- 6.5 In order to provide the insurance services the Council requires, it is expected that the Council will enter into a call-off contract under the framework on the commencement date of the framework (1 August 2010) for a period of three years, in order to provide the insurance cover described in section 3 of this report. It is not expected that further call-off contracts will be required, although the nature of a framework is such that there will be a mechanism for further call-offs by the Council should the need arise.
- 6.6 With regard to leaseholder consultation requirements relating to service charges, the consultation requirements are set out in regulation 5(2) and Schedule 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (S.I. 2003/1987) governing long term agreements in excess of twelve months where public notice is required. These provisions take effect in these circumstances because the contract for the insurance of these leasehold Right to Buy properties is for a term of more than twelve months and the expected contribution from each leaseholder is likely to be more than £100.00 per annum. If the consultation requirements are not followed, the maximum that could be recovered in service charges in respect of the insurance contract would only be £100.00 per annum per leaseholder. If the consultation requirements are complied with, the Council and Brent Housing Partnership (BHP), as the Council’s managing agent, will be able to recover the costs of the insurance contract from the leaseholders of the Right to Buy properties.
- 6.7 The consultation requirements as set out in Schedule 2 of the above-mentioned 2003 Regulations involve a two stage process. The first stage is for BHP, on behalf of the Council, to serve a notice of its intention in writing to enter into an agreement regarding the provision of insurance for the Right to Buy properties on the leaseholders and any recognized tenants’/residents’ association. The notice must state that the reason why the landlord is not inviting recipients of the notice to nominate persons from whom the Council should try to obtain an estimate for the contract is that public notice for the tender for the contract will be given. The notice must also state a description of the “relevant matters” relating to the contract or specify a venue and time where the “relevant matters” can be inspected. The notice must also state the Council’s reasons for considering it necessary to enter into an insurance contract and invite the making, in writing, of observations relating to the proposed contract and specify the address to which such observations may

be sent, that they must be delivered within the “relevant period”, which is 30 days beginning with the date of the notice, and the date on which the “relevant period” ends. Where observations are made by those persons and organizations which receive such a notice, the Council must have regard to those observations . These requirements are set out in paragraph 1 of Schedule 2 of the above-mentioned 2003 Regulations. This notice was served on February 1 to BHP.

6.8 The second stage of the consultation process involves the preparation of a proposal on behalf of the Council regarding entering into the insurance contract relating to the Right to Buy properties and serving a notice on the leaseholders and resident(s) association(s) giving notice in writing of the Council’s proposal. The proposal needs to give details of the proposal relating to the proposed insurance contract including the parties to the proposed contract, the duration of the contract, and other details as set out in paragraph 4 of Schedule 2 of the above-mentioned 2003 Regulations. The notice must set out the proposal in writing and invite the making, in writing, of observations relating to the proposal and specify the address to which such observations may be sent, that they must be delivered within the “relevant period”, which is 30 days beginning with the date of the notice, and the date on which the “relevant period” ends. Where observations are made by those persons and organizations which receive such a notice, the Council must have regard to those observations. Where observations are made by those persons and organizations which receive such a notice, the Council must have regard to those observations. Also, within 21 days of receipt of the observations, BHP (on behalf of the Council) must state its response to the observations must by notice in writing to the persons by whom the observations were made. Ideally, this notice would be served after the Panel Decision and before the Executive meeting which decides to award the contract so as to allow the Executive to consider the observations when making a decision as to which company should be awarded the insurance contract. In the circumstances however, where the existing contract is due to expire on 31 July 2010, officers consider that an appropriate course of action would be for the executive to approve the award of the framework agreement in July 2010 (as per item (v) in the table appearing at paragraph 3.4) following tender evaluation with the award to be subject to the proviso that the framework agreement will not be entered into unless the Director of Finance and Corporate Resources is satisfied that no concerns raised by leaseholders require the award decision to be reviewed by the Executive. Members are asked to note that this is the process which was adopted in awarding the existing contract to Aspen by the executive on 14 June 2007.

6.9 Once the tendering process is undertaken Officers will report back to the Executive in accordance with Contract Standing Orders, explaining the process undertaken in tendering the framework and recommending award.

7.0 Diversity Implications

7.1 Officers have screened the proposals in this report, and believe that there are no diversity implications

8.0 Other implications

8.1 None

9.0 Background Papers

10.0 Contact Officer(s)

Karen Dobson, Senior Category Manager, Procurement and Risk Management Unit, Room 5, Town Hall Annex, Forty Lane, Wembley, HA9 9AD.

Tel: 0208 937 1628

E-mail: Karen.Dobson@brent.gov.uk

Richard Walsh, Insurance Manager, Procurement and Risk Management Unit, Room 5, Brent Town Hall Annex, Forty Lane, Wembley HA9 9HD.

Tel: 0208 937 1163

E-mail: Richard.Walsh@brent.gov.uk

DUNCAN McLEOD
Director of Finance and Corporate Resources