

Committee: Cabinet	Date: 2 nd December 2009	Classification: Unrestricted	Report No:	Agenda Item:
Report of: Corporate Director of Resources Originating officer(s) Minesh Jani/Steve Rouvray		Title: Procurement of Council Insurances via a Consortium of London Councils Wards Affected: All Wards		

1. SUMMARY

- 1.1 This report outlines recent developments regarding the cessation of insurance cover via LAML following the outcome of litigation.
- 1.2 It is now intended that Tower Hamlets Council enters into a joint procurement arrangement with seven other London Councils, to set up an Insurance Consortium to purchase the Council's main liability, property and terrorism insurances.

2. RECOMMENDATIONS

2.1 **Cabinet is recommended to:-**

1. Note the outcome of the legal challenge to the London Authorities Mutual (LAML)
2. Note that short term temporary insurance cover is in place until 31st December 2009
3. Approve the long-term procurement of Insurance Services via a purchasing consortium from 1st January 2010.
4. Delegate to the Corporate Director of Resources the authority to agree the detailed arrangements for participation in a purchasing consortium and the procurement of replacement insurance cover.

3. BACKGROUND

- 3.1 The insurance market for local authority risks has historically had a limited number of providers, which has resulted in reduced competition and higher rates. In early 2007 Tower Hamlets, along with nine other London Councils set up a limited insurance company guaranteed by capital to counter the limited options being offered by the public sector insurance market at the time.
- 3.2 Extensive legal advice was sought which gave comfort that the powers to set up the organisation were provided by Section 2 of the 2000 Local Government Act, commonly known as the “well being powers”. A management company was appointed to carry out day to day running of the company and a board of directors, made up of officers from some of the respective Councils and two independent directors.
- 3.3 A procurement exercise was carried out and re-insurers were appointed. Under this arrangement LAML provided cover for the first £1m above each authorities excesses for property and liability. Tower Hamlets has a £2m property excess and £300k liability excess.
- 3.4 Following a legal challenge a recent judgement in the Court of Appeal found that the participation of local authorities in LAML to be both ultra vires and in breach of procurement rules. As a result LAML cover ceased and temporary insurance cover was obtained.
- 3.5 An application has been made to appeal to the newly established Supreme Court. The issue is also now with the Government who are in the process of amending legislation.

4. DETAILS OF INSURANCE CONSORTIUM

- 4.1 Following the demise of LAML the former member Councils, including Tower Hamlets, were keen to build on the shared service approach. In particular the risk management initiatives and shared best practice of the former LAML members.
- 4.2 The experience of a group of Fire and Rescue authorities in 2008 was that by forming a consortium they were able to appeal to a wider selection of insurers and achieved a better response than had they procured separately. The improved response resulted in a greater number of insurers responding as well as additional significant financial savings.
- 4.3 As a result a number of boroughs are forming a Consortium for the purchase of insurance from the commercial market. The core of the Consortium is made up of former LAML members however there has been interest from several other boroughs that were not involved in LAML.

- 4.4 The credit crunch had resulted in falling investment returns for insurers and a resulting reduction in capacity to underwrite risk. The market is expected to harden which could result in higher premiums in future.
- 4.5 The local authority market is increasingly being seen as a more attractive proposition due to its stability. Those authorities who have a good understanding of their risks along with robust management processes in place to manage risk are increasingly being seen as an attractive proposition.
- 4.6 The London Borough of Croydon has agreed to act as lead authority for the consortium on behalf of all of the Consortium members. A Memorandum of Understanding has been entered into whereby all of the boroughs participating in the Consortium authorise the lead authority to act on their behalf regarding the procurement. A working group has been established which will assist the lead authority and will take part in the procurement including the assessment of tender responses and selection of the preferred bidders.
- 4.7 Because of the ultra vires decision temporary insurance cover has been taken out until 31st December 2009 after which it is planned that the Consortium will start on 1st January 2010.
- 4.8 A procurement exercise has been carried out using Croydon's quotation process and an external insurance broker, Oxygen, was appointed to approach the wider insurance markets.
- 4.9 It is proposed that via the Consortium that tenders for insurance cover are obtained for a two year long-term agreement contract with the option of extending the cover for a further one year plus one year.
- 4.10 In the main, this will be to provide appropriate levels of insurance cover, whilst ensuring required levels of service, a competitive price and continuous improvement in line with the Council's Better and Cheaper agenda.
- 4.11 It is anticipated that financial savings will be made by procuring insurances in this way, in addition to sharing risk initiatives and insurance data. Setting up a consortium is a well used vehicle for sharing services and care has been taken here to follow the procurement process.
- 4.12 It is therefore considered likely that a better response will be received from the insurance market to local authority procurement on a Consortium basis rather than each authority procuring insurance cover separately.

A report was passed to the Competition Board on 18th July 2009. Attached as Appendix 1.

5. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 5.1 The report sets out the position of the authority following a legal challenge by the insurance industry to the procurement of the LAML. Tower Hamlets was not a party to the court action, but in consequence the LAML has been liquidated and all its member authorities are now seeking alternative insurance arrangements.
- 5.2. The consortium arrangement is considered the next best option and is financially more beneficial than each authority going its own way. It is anticipated that the savings projected from using the LAML will be achieved through the consortium given the current state of the insurance market.
- 5.3. It is, of course, essential that the authority makes adequate arrangements to manage risk, including providing itself with insurance cover where appropriate.

6. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

- 6.1 As set out in the body of the report a number of London local authorities reached the conclusion that financial benefits could be achieved if a different approach to the procurement of insurance cover was adopted. In essence the LAML was designed to be a vehicle whereby local authorities self insured whilst at the same time undertaking a commercial operation to provide insurance cover.
- 6.2 During the course, of the establishment of the LAML, the London Borough of Brent was undertaking a procurement exercise to secure insurance cover. When the LAML was formerly established Brent terminated that procurement exercise and placed its insurance business with the LAML. One of the organisations, which had been involved in the procurement exercise, challenged the actions of Brent.
- 6.3 The legal challenge considered two discreet points. The first was whether local authorities had a legal power to establish an insurance company and the second was whether Brent were entitled to place their insurance business with the LAML. The conclusion reached was no in each case. The reasoning of the court was that the provision of insurance was not something that was a function of local authorities. Whilst the well being powers allow local authorities to undertake activities which benefit their immediate area the provision of insurance cover for other local authority areas was not an activity that the well being powers were designed to permit. At the same time, the courts held that Brent could not avoid complying with public procurement requirement and merely place its business with the LAML because the LAML was not completely controlled by the Brent or other local authorities.

- 6.4 As a result, of the court decision, it has been necessary to cease the operation of the LAML and put in place temporary arrangements. The details of the temporary arrangements are set out in the body of the report and were undertaken pursuant to officer delegated powers.
- 6.5 Longer term the Council has entered into a procurement arrangement with a number of other local authorities. In essence, the proposal involves the procurement of alternative long term insurance services. The approach, which has been adopted, is to establish a consortium of local authorities who will invite companies to bid for providing insurance services in various categories. The benefits for the local authorities in such an approach are that because of the value of the contract there may be the ability to achieve a better price given the value of the contract when compared to the value of only one local authority's business.
- 6.6 The process will be that the London Borough of Croydon will lead on the project and undertake the administrative work required when inviting tenders. All the members of the consortium will enter into the eventual contract. Legal advice on the procedures to be followed has been obtained from external lawyers but is subject to review by the in-house lawyers of all the local authorities who are party to the consortium.

7. ONE TOWER HAMLETS CONSIDERATIONS

- 7.1 The envisaged financial savings might contribute to the Community Plan goals.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 No immediate considerations

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 This is a risk management report and the risks are set out in the report.

10. EFFICIENCY STATEMENT

No additional funding is anticipated.

**Local Government Act, 1972 Section 100D (As amended)
List of "Background Papers" used in the preparation of this report**

Brief description of “back ground papers”

Name and telephone number of holder
and address where open to inspection.

Competition Board decision

Attached

Minesh Jani/Steve Rouvray

Ext 0738/4049

11. APPENDICES

Appendix 1-Competition Board decision 19th October 2009