

To: Finance, Resources and Customer Services Policy Board

On: Friday 10 December 2021

Report by: The Chief Executive

Heading: Contract Works and Primary Public Liability insurance for the Clyde Waterfront and Renfrew Riverside (CWRR) Project

1. Summary

- 1.1 The purpose of this report is to request that the Finance, Resources and Customer Services Policy Board homologate a decision of the Programme Director – City Deal and Infrastructure and Head of Policy and Commissioning to procure the Contract Works and Primary Liability insurance for the Clyde Waterfront and Renfrew Riverside (CWRR) Project on 1st November 2021 outside the board cycle due to a contractual obligation for the Council to place an Owner Controlled Insurance Policy prior to site works starting for the CWRR design and construction works.
- 1.2 This procurement exercise was conducted as a negotiated procedure in accordance with 33.1(a) of the Public Contract (Scotland) Regulations 2015 and the Council's Standing Orders Relating to Contracts 2017.
- 1.3 It was necessary to proceed to place the policy in advance of obtaining a board approval due to late notification from the CWRR contractor of a commencement date of 1st November 2021.
- 1.4 The costs of the Insurance Contract are contained within the overall budget for the CWRR project as reported to Leadership Board in February 2021.

2. **Recommendations**

The Finance, Resources and Customer Services Policy Board is requested to:

- 2.1 Homologate the decision taken by the Programme Director – City Deal and Infrastructure and Head of Commissioning to procure the Contract Works and Primary Liability insurance for the Clyde Waterfront and Renfrew Riverside (CWRR) Project from Berkshire Hathaway and Co-insurers.
- 2.2 Note the Contract value will be £775,651.00 excluding Insurance Premium Tax (£868,729.00 including Insurance Premium Tax).
- 2.3 Note that the insurance will be in place until completion of the CWRR design and construction works anticipated to be early 2025.

3. **Background**

- 3.1 The Council is contractually obliged to procure an Owner controlled insurance policy (OCIP) as part of the terms and conditions of the CWRR design and construction works contract. The CWRR design and construction works project was approved by the FRCS Policy Board on 5th March 2021.
- 3.2 Under an OCIP, the Employer places insurance in the joint names of himself, funders, Contractor and all sub-contractors of any tier working on the Project. With an OCIP the Employer can secure broader cover, reduce the administrative burden and retain control of the protection of their assets and liabilities. Advantages of this type of programme include certainty of cover, savings in time and administration, reductions in the exposure for errors and omissions, avoids delays if a dispute as to causal responsibility arises (between different insurers). Improved cash flow and control over incidents, losses and claims – which impinges upon each of the above points.
- 3.3 An Invitation to Tender (ITT) was published to the open market in May 2021; the closing date for tender submissions was 17th June 2021. By the closing date and time no bids were received and only 1 tenderer registered an interest in the ITT. The tenderer was contacted to ascertain why they did not return a bid and the reason given was that the Council's requirements did not align to their core business.

- 3.4 The Public Contracts (Scotland) Regulations 2015 regulation 33.1(a) states that where no suitable tenders have been submitted in response to a procedure with a call for competition, the Council is able to use the negotiated procedure without prior call for competition, provided that the initial conditions of the contract are not substantially altered. In accordance with Council's Standing Orders relating to Contracts 14.2 and 14.4, the Head of Policy and Commissioning must also be satisfied this is a suitable approach.
- 3.5 A request was submitted to and approved by the Strategic Commercial Procurement Manager to instruct Aon UK Limited (Aon), the Council's insurance advisers and broker, to seek quotations for the agreed project insurances.
- 3.6 After initial engagement with a number of insurers for the Contract Works and Primary Public Liability insurance, indicative bids were received from two insurers – Munich Re and Berkshire Hathaway. Neither insurer offered to provide 100% capacity which is the market normal for large construction projects of this nature. After assessment the two bids received by Aon, it was considered that the initial offer from Berkshire Hathaway best met the needs of the project and the Council.
- 3.7 The Council, Aon, the CWRR Contractor (John Graham Construction Limited t/a GRAHAM) and the Contractors designers and sub-contractors engaged in further discussion and clarification with the insurer's underwriters and technical specialists – bridge design and hydrologists.
- 3.8 In September 2021, final proposals from Berkshire Hathaway were submitted to the Council with Aon's recommendation that these best met the needs of all parties to the project and of the Council in particular. Details of the proposed cover were also made available to the Contractor and their insurance advisers. Aon were instructed to seek offers to complete to 100% placement. The schedule of insurers is as follows:

Insurer	Percentage of placement
Berkshire Hathaway (lead)	25%
Swiss Re	20%
QBE	15%
HDi Global-SE	10%
Munich Re	10%
Generali	5%
Total	100%

- 3.9 A recommendation to place the insurance could not be submitted during the normal board cycles because confirmation of 100% placement and

the CWRR Contractor's start date were required to conclude the Insurance contract following which the insurance required to commence immediately. The start date was confirmed to the Council on 1 November triggering the contractual obligation to place the OCIP with immediate effect.

- 3.10 Due to the nature of this requirement, no contractual community benefits were sought or secured with the insurance providers.

Implications of the Report

1. **Financial** - Costs in respect of this Contract will be funded from the existing City Deal funding package.
2. **HR & Organisational Development** - No TUPE implications have arisen or are anticipated.
3. **Community/Council Planning –**
 - **Working together to improve outcomes** – this Contract will ensure the Council continues to protect assets and liabilities.
4. **Legal** - This procurement was carried out in accordance with the Public Contracts (Scotland) Regulations 2015 and the Council's Standing Orders Relating to Contracts.
5. **Property/Assets** – The procurement of the Contract Works and Primary Public Liability insurance ensures protection of Council assets and property.
6. **Information Technology** – None.
7. **Equality & Human Rights -**
 - (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because for example it is for noting only. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the

results of the assessment will be published on the Council's website.

8. **Health & Safety** – None.
9. **Procurement** – The procurement procedures outlined within this report ensure that the Council meets its statutory requirements in respect of procurement procedures, efficiency and modern Government.
10. **Risk** –insurance policies were assessed by Aon UK Limited as part of the evaluation for the procurement.
11. **Privacy Impact** - No Privacy Impact Assessment requirements were identified within this procurement.
12. **Cosla Policy Position** – No Cosla Policy Position implications have arisen or are anticipated.
13. **Climate Risk** – The level of impact associated with provision of this service is considered to be low risk.

List of Background Papers

None.

Author: Rebecca Park, Category Manager- City Deal and Infrastructure,
rebecca.park@renfrewshire.gov.uk