

DMPC Decision – PCD 1182

Title: Supply of Pyrotechnic / Distraction Devices

Executive Summary:

This decision seeks approval for the award of three contracts procured via the negotiated procedure without competition for the supply of distraction/pyrotechnic devices. Due to the nature of the equipment they cannot be supplied by other providers and alternatives either do not exist or there is an operational requirement which means alternatives cannot be used. The total multi-year value of the proposed contracts is £1,300,014 and this is funded from within existing MPS budgets.

Recommendation:

The Deputy Mayor for Policing and Crime is recommended to award a contract to:

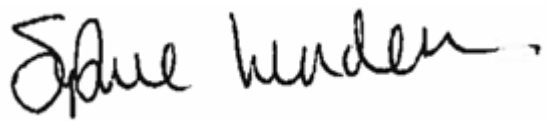
1. Supplier One via the negotiated procedure for operational equipment. The initial term of the contract is 36 months with options of two 12-month extension. Estimated Total upper Contract Value (for the full 5 years) is £1,080,000 (£216,600pa) and will be funded from existing MPS/CT grant budget streams.
2. Supplier Two via the negotiated procedure for operational equipment. The term of the contract is 36 months only. Estimated Total upper Contract Value is £115,014 (£38,338pa) and will be funded from existing MPS/CT grant budget streams.
3. Supplier Three via the negotiated procedure for operational equipment. The term of the contract is 36 months only. Estimated Total upper Contract Value is £105,000 (£35,000pa) and will be funded from existing MPS/CT grant budget streams.

Deputy Mayor for Policing and Crime

I confirm I have considered whether or not I have any personal or prejudicial interest in this matter and take the proposed decision in compliance with the Code of Conduct. Any such interests are recorded below.

The above request has my approval.

Signature



Date

21/04/2022

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE DMPC

1. Introduction and background

- 1.1. Long term contracts for the provision of these devices is necessary to ensure a secure supply to match training and operational requirements.

2. Issues for consideration

- 2.1. The distraction devices (detail is contained in the restricted section of this report) are a fundamental tool used for the firearms units of Armed Response Vehicles (ARV) and Counter Terror Specialist Firearms Officer (CTSFO). These teams rely upon this capability operationally and are required to be trained upon their use to ensure their safe and effective deployment.
- 2.2. Providing critical non-lethal operational tactics, these devices assist in various high-risk scenarios including serious crime and terrorist threats. The training of officers in the proper use of these devices will ultimately create a safer London.
- 2.3. The arrangement to purchase these devices for the next 3 years will afford the MPS the time to re-test the market with the intention of creating diversity of supply and the ability to run an open competition.

3. Financial Comments

- 3.1. The total estimated cost of the three proposed contract awards is £1,300,014 over multiple years. These costs will be met from within the existing MPS budgets.

4. Legal Comments

- 4.1. The Mayor's Office for Policing and Crime (MOPAC) is a contracting authority as defined in the Public Contract Regulations 2015 (the Regulations). All awards of public contracts for goods and/or services valued at £189,330 or above shall be procured in accordance with the Regulations. This report confirms the value of the proposed contract exceeds this threshold. Accordingly, the Regulations are engaged.
- 4.2. Regulation 32 permits MOPAC to use the Negotiated procedure without prior publication of an OJEU notice in a limited number of circumstances.
- 4.3. Recommendation 1 - for Pyrotechnics/Distracton Devices.
 - Regulation 32(2)(b)(ii) provides the negotiated procedure without prior publication of an OJEU notice may be used for public supply contracts where the supplies can be supplied only by a particular economic operator where competition is absent for technical reasons,
 - Regulation 32(2)(b)(iii) provides the negotiated procedure without prior publication of an OJEU notice may be used on the grounds of the protection of exclusive rights.

- Both exemptions only apply where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.
- 4.4. The MPS assure that these devices are currently the only devices approved for use and is exclusive to a particular reseller. Whilst other devices exist in the market they could not be used because they are not approved for use. On these bases, recommendation 1 can be lawfully approved as either exemption would apply.
 - 4.5. Recommendation 2 and 3 - Pyrotechnics/Distracton Devices.
 - 4.6. Regulation 32(5)(b) provides the negotiated procedure without prior publication may be used for public supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance.
 - 4.7. In the case of Regulation 32(5)(b), the duration of the contract, as well as that of recurrent contracts, shall not, save in exceptional circumstances, exceed 3 years.
 - 4.8. The MPS assure that the cost and impact of procuring alternative items in respect of potential write-offs and retraining currently limit the MPS options within this area. The contract duration is for 3 years. On this basis, recommendations 2 and 3 can be lawfully approved as the exemption would apply.
 - 4.9. Paragraph 4.13 of the Scheme provides the Deputy Mayor for Policing and Crime has delegated authority to approve all contract exemptions valued at £100,000 or above

5. Commercial Issues

- 5.1. The Supplier for recommendation one (this information is contained in the restricted section of the report) is the sole UK/EU reseller of the devices purchased from them. This is due to exclusive arrangements with the manufacturer, which is common practice for this firearms industry.
- 5.2. The devices used (this information is contained in the restricted section of the report) are currently the only devices approved for use. These products are aligned nationally to both other police forces and military for interoperability. There would be significant cost and time implications associated with any change to the devices supplied. This would impact on training delivery and the operational capability of the MPS as all Officer's would require training on any new devices. A change could not be made independent of the National Teams, Forces or Military and would need to go through Defence Science and Technology Laboratory (DSTL) and Scientific Advisory Committee on the Medical Implications of Less-lethal Weapons (SACMILL). It is therefore anticipated that a longer term contract is required due to the complex nature of the capability and the wider reaching impact.

- 5.3. The devices currently supplied by the suppliers for recommendations two and three (this information is contained in the restricted section of the report) are tested and approved for use. MO19 can only safely use the existing known brands that have been tried and tested and safe for use within the parameters of our training facilities. Any change to training devices would require significant testing and for all MPS Firearms Instructors to undergo additional training (and update all associated training packs and recording systems). With increased training demands, this would be a significant additional cost and disruption to current training plans.
- 5.4. Due to the limitations of the marketplace and the inability to buy alternative products it is hard for the procurement or contract to directly support London Anchor Institutions Charter. However the MPS is working more generally with the Suppliers to understand how their organisation can assist the MPS in supporting recovery in London and narrowing the social and economic inequalities in the capital.
- 5.5. The storage and use of Distraction Devices is closely controlled and the disposal of the devices considers the MPS Environment Policy as well as the disposal of hazardous waste. The Suppliers comply with ULEZ (Ultra Low Emission Zone), operate recycling options for packaging and are also accredited or actively seeking accreditation for ISO14001. This will assist in delivering environmental benefits for London and Londoners

6. GDPR and Data Privacy

- 6.1. MOPAC will adhere to the Data Protection Act (DPA) 2018 and ensure that any organisations who are commissioned to do work with or on behalf of MOPAC are fully compliant with the policy and understand their GDPR responsibilities.
- 6.2. The MPS assure that project does not use personally identifiable data of members of the public, so there are no GDPR issues to be considered

7. Equality Comments

- 7.1. MOPAC is required to comply with the public sector equality duty set out in section 149(1) of the Equality Act 2010. This requires MOPAC to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations by reference to people with protected characteristics. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.2. The MPOS assure that an Equality Impact Assessment (EIA) is in place in respect of distraction devices in order to mitigate, where possible, negative impact to groups or individuals with protected characteristics.

8. Background/supporting papers

- Appendix 1 MPS Report - Supply of Pyrotechnic / Distraction Devices

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOIA) and will be made available on the MOPAC website following approval.

If immediate publication risks compromising the implementation of the decision it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary.

Part 1 Deferral:

Is the publication of Part 1 of this approval to be deferred? NO

If yes, for what reason:

Until what date:

Part 2 Confidentiality: Only the facts or advice considered as likely to be exempt from disclosure under the FOIA should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a **Part 2** form – YES

ORIGINATING OFFICER DECLARATION

Tick to confirm statement (✓)

Financial Advice:

The Strategic Finance and Resource Management Team has been consulted on this proposal.

✓

Legal Advice:

The MPS legal team has been consulted on the proposal.

✓

Equalities Advice:

Equality and diversity issues are covered in the body of the report.

✓

Commercial Issues

Commercial issues are covered in the body of the report.

✓

GDPR/Data Privacy

GDPR compliance issues are covered in the body of the report .

✓

Drafting Officer

Alex Anderson has drafted this report in accordance with MOPAC procedures.

✓

Director/Head of Service:

The interim MOPAC Chief Finance Officer and Director of Corporate Services has reviewed the request and is satisfied it is correct and consistent with the MOPAC's plans and priorities.

✓

Chief Executive Officer

I have been consulted about the proposal and confirm that financial, legal and equalities advice has been taken into account in the preparation of this report. I am satisfied that this is an appropriate request to be submitted to the Deputy Mayor for Policing and Crime.

Signature



Date 08/04/2022



MAYOR OF LONDON
OFFICE FOR POLICING AND CRIME

Supply of Pyrotechnic / Distraction Devices

MOPAC Investment Advisory & Monitoring meeting 1st April 2022

Report by Emma Rice on behalf of the Chief of Corporate Services

Part 1 – This section of the report will be published by MOPAC. It is classified as OFFICIAL – PUBLIC

EXECUTIVE SUMMARY

This paper requests approval for the award of 3 contracts for distraction devices for policing use. Due to the nature of the equipment they cannot be supplied by other providers and alternatives either do not exist or there is an operational requirement which means alternatives cannot be used.

The contracts are being let under the negotiated procedure in accordance with *Regulation 32 (2)(b)(ii)* “competition is absent for technical reasons” for Supplier One and *Regulation 32 (5)(b)* “for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance” for Suppliers Two and Three.

The value of the contracts are as follows;

Supplier One	£1.08M for a 36 months contract with the ability to extend by up to a further 24 months
Supplier Two	£0.12M for a 36 month contract
Supplier Three	£0.11M for a 36 month contract.

1. Recommendations

The Deputy Mayor for Policing and Crime, via the Investment Advisory and Monitoring meeting (IAM), is asked to approve the following recommendations:

- 1.1 Approval to award a contract to Supplier One via the negotiated procedure for operational equipment. The initial term of the contract is **36 months with options of two 12-month extension**. Estimated Total upper Contract Value (for the full 5 years) is **£1,080,000 (£216,600pa)** and will be funded from existing MPS/CT grant budget streams.
- 1.2 Approval to award a contract to Supplier Two via the negotiated procedure for operational equipment. The term of the contract is **36 months only**. Estimated

Total upper Contract Value is **£115,014 (£38,338pa)** and will be funded from existing MPS/CT grant budget streams.

- 1.3 Approval to award a contract to Supplier Three via the negotiated procedure for operational equipment. The term of the contract is **36 months only**. Estimated Total upper Contract Value is **£105,000 (£35,000pa)** and will be funded from existing MPS/CT grant budget streams.

Time sensitivity

A decision is required from the Deputy Mayor by the end of April 2022. A decision within this timeframe will ensure continuity of supply.

Non-confidential facts and advice to the Deputy Mayor for Policing and Crime

2. Introduction and background

Outlined below is the strategic and operational context for this proposal:

- 2.1 The MPS ARV's (Armed Response) and CTSFO's (Counter Terrorism Specialist Firearms Officers) are specially trained to an incredibly high standard to identify, locate and confront any terrorist threats. Attacks in recent years within London, including London Bridge (June 2017) and Palace of Westminster (March 2017), highlights the ongoing risk that such a threat is real. With the UK the current threat level is at 'Severe' (as of January 2022), it is still highly likely that there could be further attacks on London and across the UK.
- 2.2 The distraction devices are a fundamental tool used for the Firearms units of ARV's and CTSFO. These teams rely upon this capability operationally and are required to be trained upon their use to ensure their safe and effective deployment.
- 2.3 In the training environment, they simulate real life tactical scenarios and they need to be as realistic as possible to ensure Officers can perform their roles (undistracted) within the same circumstances they would be required to in a real life scenario.

3. Issues for consideration

The key issues the Board need to take account of are:

- 3.1 To note that Supplier One (this information is contained in the restricted section of the report) is the sole UK/EU reseller of the devices purchased from them. This is due to exclusive arrangements with the manufacture, which is common practice for this Firearms industry. The devices used (this information is contained in the restricted section of the report) are deemed a specialist munition within armed policing and as such have a strict governance procedure with national approval through the Defence Science and Technology

Laboratory (DSTL) and The Scientific Advisory Committee on the Medical Implications of Less-lethal Weapons (SACMILL). They are currently the only devices approved for use. These products are aligned nationally to both other police forces and military for interoperability. There would be significant cost and time implications associated with any change to the devices supplied. This would impact on training delivery and the Operational capability of the MPS as all Officer's would require training on any new devices. A change could not be made independent of the National Teams, Forces or Military and would need to go through DSTL and SACMILL. It is therefore anticipated that a longer term contract is required due to the complex nature of the capability and the wider reaching impact.

- 3.2 The devices currently supplied by Supplier two and three (this information is contained in the restricted section of the report) are tested and approved for use. MO19 can only safely use the existing known brands that have been tried and tested and safe for use within the parameters of our training facilities. Any change to training devices would require significant testing and for all MPS Firearms Instructors to undergo additional training (and update all associated training packs and recording systems). With increased training demands, this would be a significant additional cost and disruption to current training plans.
- 3.3 The MPS is without any long-term contract for the supply of the devices and it is imperative we address this commercially to ensure a secure supply to match our training and operational needs. This requirement is essential to ensure that MO19 can effectively meet and sustain the operational and training demands to all Firearms Commands.
- 3.4 Continuing to purchase these devices for the next 3 years will afford us the time to re-test the market with the intention in creating diversity of supply and the ability to run an open competition.

4. Contributes to the MOPAC Police & Crime Plan 2017-2021¹

The supply of distraction devices contributes to the delivery of the Police & Crime Plan by:

- 4.1 Providing critical non-lethal operational tactics, thereby assisting in various high-risk scenarios including serious crime and terrorist threats. The training of officers in the proper use of these devices will ultimately create a safer London.

5 Financial, Commercial and Procurement Comments

5.1 Summary of Costs

- 5.1.1 The contract with Supplier One has an estimated total upper Contract Value of £1,080,000.

¹ [Police and crime plan: a safer city for all Londoners | London City Hall](#)

5.1.2 The contract with Supplier Two has an estimated total upper Contract Value of £115,014.

5.1.2 The contract with Supplier Three has an estimated total upper Contract Value of £105,000.

5.2 Funding

5.2.1 Funding for these contracts will come from existing Metropolitan Police Service and Counter Terrorism grant budget streams.

5.3. Procurement Route

5.3.1 It is intended that MPS Commercial will award a contract using the negotiated procedure without prior advertisement in accordance with;

5.3.2 Regulation 32 (2)(b)(ii) “competition is absent for technical reasons” for the contract with Supplier One

5.3.3 Regulation 32 (5)(b) “for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance”; for the contracts with Supplier two and Supplier three.

5.3.4 Due to the limitations of the marketplace and the inability to buy alternative products it is hard for the procurement or contract to directly support **London Anchor Institutions Charter**. However the MPS is working more generally with the Suppliers to understand how their organisation can assist the MPS in supporting recovery in London and narrowing the social and economic inequalities in the Capital. However there are green initiatives (set out below) which will support in delivering a cleaner greener London.

5.3.5 The storage and use of Distraction Devices is closely controlled and the disposal of the devices considers the MPS Environment Policy as well as the disposal of hazardous waste. The Suppliers comply with ULEZ (Ultra Low Emission Zone), operate recycling options for packaging and are also accredited or actively seeking accreditation for ISO14001. This will assist in delivering environmental benefits for London and Londoners.

5.4 Legal Comments

5.4.1 The Mayor’s Office for Policing and Crime (MOPAC) is a contracting authority as defined in the Public Contract Regulations 2015 (the Regulations). All awards of public contracts for goods and/or services valued at £189,330 or above shall be procured in accordance with the Regulations. This report

confirms the value of the proposed contract exceeds this threshold. Accordingly, the Regulations are engaged.

5.4.2 Regulation 32 permits MOPAC to use the Negotiated procedure without prior publication of an OJEU notice in a limited number of circumstances.

5.4.3 Recommendation 1 - for Pyrotechnics/Distracton Devices.

5.4.3.1 Regulation 32(2)(b)(ii) provides the negotiated procedure without prior publication of an OJEU notice may be used for public supply contracts where the supplies can be supplied only by a particular economic operator where competition is absent for technical reasons,

5.4.3.2 Regulation 32(2)(b)(iii) provides the negotiated procedure without prior publication of an OJEU notice may be used on the grounds of the protection of exclusive rights.

5.4.3.3 Both exemptions only apply where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.

5.4.3.4 It is stated in this report that they are currently the only devices approved for use and is exclusive to a particular reseller. Whilst other devices exist in the market they could not be used because they are not approved for use. On these bases, Recommendation I can be lawfully approved as either exemption would apply.

5.4.4 Recommendation 2 and 3 - Pyrotechnics/Distracton Devices.

5.4.4.1 Regulation 32(5)(b) provides the negotiated procedure without prior publication may be used for public supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance.

5.4.4.2 In the case of Regulation 32(5)(b), the duration of the contract, as well as that of recurrent contracts, shall not, save in exceptional circumstances, exceed 3 years.

5.4.4.3 It is stated in this report that the cost and impact of procuring alternative items in respect of potential write-offs and retraining currently limit the MPS options within this area. The contract duration is for 3 years. On this basis, Recommendation II can be lawfully approved as the exemption would apply.

5.4.5 Paragraph 4.13 of the Scheme provides the Deputy Mayor for Policing and Crime has delegated authority to approve all contract exemptions valued at £100,000 or above.

6 Equality Comments

6.1 An EIA is in place in respect of distraction devices in order to mitigate, where

possible, negative impact to groups or individuals with protected characteristics.

7 Privacy Comments

- 7.1 The MPS is subject to the requirements and conditions placed on it as a 'State' body to comply with the European Convention of Human Rights and the Data Protection Act (DPA) 2018. Both legislative requirements place an obligation on the MPS to process personal data fairly and lawfully in order to safeguard the rights and freedoms of individuals.
- 7.2 Under Article 35 of the General Data Protection Regulation (GDPR) and Section 57 of the DPA 2018, Data Protection Impact Assessments (DPIA) become mandatory for organisations with technologies and processes that are likely to result in a high risk to the rights of the data subjects.
- 7.3 The Information Assurance and Information Rights units within MPS will be consulted at all stages to ensure the project meets its compliance requirements.
- 7.4 The project does not use personally identifiable data of members of the public, so there are no GDPR issues to be considered.

Background/supporting papers

Not applicable

Report author: Ria Oxford / Emma Rice, Head of Commercial, 07554223135

Part 2 – This section refers to the details of the Part 2 business case which is NOT SUITABLE for MOPAC Publication.

The Government Security Classification marking for Part 2 is:
OFFICIAL-SENSITIVE [COMMERCIAL]

Part 2 of the paper for Distraction Devices is exempt from publication for the following reasons:

- Exempt under Article 2(2) (a) of the Elected Local Policing Bodies (Specified Information) Order 2011 (Data Protection Section 43 – Commercial Interests).
- The relevant sections under the FOIA that would exempt this information from disclosure, for example:
 - **Commercial Interest Section 43**

The paper will cease to be exempt upon the sixth anniversary of the expiry of the contract.