

## DMPC Decision – PCD 1289

**Title: Breathalyser Support and Maintenance**

### Executive Summary:

This decision concerns a Single Tender Action for the maintenance and servicing of the 40 Evidential Breath Machines (EBMs) that are currently situated across the MPS estate. The Business Justification requests continuing these arrangements through a new contract for a 2 year agreement with the opportunity to extend for a further year (a maximum of 3 years) at a contract value of £340k (£113k pa) with Intoximeters UK Ltd.

The MPS has a statutory requirement to enforce drink drive legislation and the EBM process provides the evidential information required to make a charging decision.

This contract is critical for ensuring that the breathalyser machines produce sufficient evidence for front line policing decisions, charging those suspected of being involved in a collision, those suspected of committing a moving traffic offence and those drivers suspected of having consumed alcohol or being under the influence of alcohol.

The existing maintenance contracts held by Intoximeter UK will expire in September 2022. This proposed contract will provide continuity for those services.

### Recommendation:

The Deputy Mayor for Policing and Crime is recommended to:

1. Approve the award of a contract via Single Tender Action for the support and maintenance of Evidential Breath Machines (EBM) to 'Intoximeters UK Ltd' for total estimated value of £340,000 for 3 years (£113,000 pa) which will be funded from Met Detention supplies and services revenue budget. The proposed contract term is a two year term with a one year extension option.

### 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**

**28/09/2022**

A handwritten signature in black ink, appearing to read "Spivey Under", is written on a light grey rectangular background.

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

### **1. Introduction and background**

- 1.1. The MPS standardised on an EBM instrument manufactured by 'Intoximeters UK Ltd' in 1999 and purchased a large stock to be sited in most custody suites across the MPS estate and some training sites. As custody suites have closed over time, EBM's have been decommissioned, meaning the MPS now has 40 operational instruments.
- 1.2. Continued service and support is required to keep all this breathalyser equipment in working order and to ensure suitable evidence and audit details can be obtained. Thus, the need to provide a service contract to maintain and repair Intoximeter's EBMs, provide gas cylinders across the MPS estate to enable local calibration, and to provide training provision on a continuous basis to the MPS is essential.
- 1.3. The MPS has a statutory requirement to enforce drink drive legislation. After arrest for a drink driving related offence the motorist must be taken to a police station where an evidential breath test can be performed, using an Evidential Breath Machine (EBM). It is the result of the EBM test that determines whether or not the motorist has exceeded the specified alcohol limit in breath. This determines if the motorist is charged or not.
- 1.4. Any instrument used by policing for breathalysing, has to be Home Office Type approved and there is only one approved supplier for an evidential level machine at custody. Evidential and non-evidential breath testing is managed by Defence Science Technology Lab (DSTL) to an accredited level. This creates a high quality evidential standard but is also a barrier to entry into this marketplace and therefore no new entrants have been seen for many years.

### **2. Issues for consideration**

- 2.1. The Home Office originally assessed the instrumentation used by policing in England and Wales 10-20 years ago. The suitability for use with the general public would have been part of the assessment criteria used to provide the necessary approval. Without Home Office approval, no instrumentation to support road traffic alcohol legislation can be used by policing in England and Wales. There has been no change to the way in which this instrumentation is used to breathalyse members of the public since the original Home Office assessment, nor since the last service contract was procured in 2013.
- 2.2. Met Detention has consulted with its Health and Safety lead and there are no concerns. The manufacturing guidelines are followed and there is a copy with every machine. There is a cleaning requirement for infection prevention and an inbuilt cleaning 'purge' process protecting each user.
- 2.3. Given the age of the historic EBM technology, it is accepted that alternative provision will need to be purchased within the next few years to provide modern breathalyser

equipment for front line policing. It is anticipated that once budget is identified and the market sufficiently develops new (Home Office approved) devices there will be scope to upgrade via a competitive tender process.

- 2.4. At this time there are no viable alternatives that meet the current requirement for DSTL accreditation. It is the MPS' intention to monitor the marketplace for any development of new accredited evidential breath test machines during the life of this new contract.

### **3. Financial Comments**

- 3.1. Met Detention will fund Intoximeter's maintenance cost of £113k pa from their existing supplies and services budgets.

### **4. Legal Comments**

- 4.1. The Mayor's Office for Policing and Crime (MOPAC) is a contracting authority as defined in the Public Contracts Regulations 2015 (the Regulations). All awards of public contracts for goods and/or services valued at £213,477 or above must be procured in accordance with the Regulations. This report confirms the value of the two proposed contracts each exceed this threshold. Accordingly, the Regulations are engaged.
- 4.2. Regulation 32 provides for limited grounds where MOPAC may negotiate a contract with a sole supplier without advertising the opportunity in the Official Journal of the European Union. Specifically, 32(2)(b) provides it is permitted where the goods and/or services can only be provided by that supplier due to competition being absent for technical reasons, where no reasonable alternative exists and the absence of such competition is not the result of an artificial narrowing down of the competition by the MOPAC.
- 4.3. This report confirms that the support and maintenance of the devices can only be provided by the specific economic operators referred to and that no reasonable alternative products exist. On the basis that this is correct, the proposed awards will be compliant within Regulation 32.
- 4.4. Paragraph 4.13 of the MOPAC Scheme of Delegation and Consent provides that 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 current three year maintenance contract will expire in September 2022. There are no further foreseen extensions permitted within this agreement.

- 5.2. The negotiated procedure without advertising (single tender action) will be used for this procurement in accordance with public contract regulation 32 2b (ii) as the support and maintenance of the devices can only be provided by a specific economic operator and therefore competition is absent due to technical reasons.
- 5.3. This is the only commercial viable option given the incumbents are the only providers that have the necessary scope of accreditation by DSTL to service repair & calibrate evidential breath testing instruments.
- 5.4. This commercial strategy allows continued use of existing devices. Furthermore this strategy allows sufficient time for the market to evolve to a competitive level while the MPS identify adequate budget for an upgrade of its equipment.
- 5.5. The table below summarises the costs of the Intoximeter contract:

Revenue	2022/23	2023/24	2024/25	2025/26	Total
	£ (000's)	£ (000's)	£ (000's)	£ (000's)	£ (000's)
Budget	57	113	113	57	340
Total Planned Spend	57	113	113	57	340
Variance to Budget	0	0	0	0	0

- 5.6. The new contract contributes to delivering the London Anchor Institutions' Charter by;
  - a. Accelerating delivery of a cleaner, greener London through the environmental initiatives mentioned at the 'Environment Implications' section of this report.

## 6. GDPR and Data Privacy

- 6.1. The contract does not use personally identifiable data of members of the public, so there are no GDPR issues to be considered. The screening questions have been completed and a DPIA is not required because there will not be any processing under the contract.

## 7. Equality Comments

- 7.1. As this document is seeking funding for an existing function, there are considered to be no negative equality or diversity implications arising from this process negating the requirement to present any mitigation. Any approved suppliers will be evaluated for acceptable equality and diversity statements, as well as their ability to meet the MPS requirements under the Equality Act 2010 as suppliers to MOPAC. Any evaluation exercise will consider their ability to act as a responsible employer and meet employment obligations deemed commensurate with wider GLA objectives.
- 7.2. In addition, it should be noted that the MPS supports the Mayor's Responsible Procurement Policy including: Enhancing Social Value, Encouraging Inclusion, Diversity and Equality, Embedding fair employment practices, Enabling skills, training and

employment opportunities, promoting ethical sourcing practices and improving environmental sustainability.

## **8. Background/supporting papers**

### **8.1. Report**

**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 – NO

**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**

The proposal is in keeping with the GLA Group Responsible Procurement Policy.

✓

**GDPR/Data Privacy**

- GDPR compliance issues are covered in the body of the report.
- A DPIA is not required.

✓

**Drafting Officer**

Craig James has drafted this report in accordance with MOPAC procedures.

✓

**Director/Head of Service:**

The Interim Chief Finance Officer 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 26/09/2022**

*Hanahuchard.*



## Breathalyser Support and Maintenance

MOPAC Investment Advisory & Monitoring meeting 7<sup>th</sup> September 2022

Report by CI Philip Palmer 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 Business Justification concerns a Single Tender Action for the maintenance and servicing of the 40 Evidential Breath Machines that are currently situated across the MPS estate. The BJP requests continuing these arrangements through a new contract for a 2 year agreement with the opportunity to extend for a further year (a maximum of 3 years) at a contract value of £340k (£113k pa) with Intoximeters UK Ltd.

**The MPS has a statutory requirement to enforce drink drive legislation and the EBM process provides the evidential information required to make a charging decision.**

This contract is critical for ensuring that the breathalyser machines produce sufficient evidence for front line policing decisions, charging those suspected of being involved in a collision, those suspected of committing a moving traffic offence and those drivers suspected of having consumed alcohol or being under the influence of alcohol

The existing maintenance contracts held by Intoximeter UK will expire in September 2022. This proposed contract will provide continuity for those services.

### **Recommendations**

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

- 1. Approve the award of a contract via Single Tender Action for the support and maintenance of Evidential Breath Machines (EBM) to 'Intoximeters UK Ltd' for total estimated value of £340k for 3 years (£113k pa) which will be funded from Met Detention supplies and services revenue budget. The proposed contract term is a two year term with a one year extension option.**

### **Time sensitivity**

A decision is required from the Deputy Mayor by 23rd September 2022. This is because the current contract expires on the 30<sup>th</sup> September 2022 and we will require a week to put in place the new contract.

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

### **Introduction and background**

- 1. The MPS standardised on an EBM instrument manufactured by 'Intoximeters UK Ltd' in 1999 and purchased a large stock to be sited in most custody suites across the MPS estate and some training sites. As custodies have closed over time, EBM's have been decommissioned, meaning we now have 40 operational instruments.**
- 2. Continued service and support is required to keep all this breathalyser equipment in working order and to ensure suitable evidence and audit details can be obtained. Thus, a need to provide a service contract to maintain and repair Intoximeter's EBMs, provide gas cylinders across the MPS estate to enable local calibration, and to provide training provision on a continuous basis to the MPS is essential.**
- 3. The MPS has a statutory requirement to enforce drink drive legislation. After arrest for a drink driving related offence the motorist must be taken to a police station where an evidential breath test can be performed, using an Evidential Breath Machine (EBM). It is the result of the EBM test that determines whether or not the motorist has exceeded the specified alcohol limit in breath. This determines if the motorist is charged or not.**
- 4. Any instrument used by policing for breathalysing, has to be Home Office Type approved and there is only one approved supplier for an evidential level machine at custody. Evidential and non-evidential breath testing is managed by Defence Science Technology Lab (DSTL) to an accredited level. This creates a high quality evidential standard but is also a barrier to entry into this marketplace and therefore we have not seen new entrants for many years.**

### **Risk (including Health and Safety) Implications**

- 5. The Home Office originally assessed the instrumentation used by policing in England and Wales 10-20 years ago. The suitability for use with the general public would have been part of the assessment criteria used to provide the necessary approval. Without Home Office approval, no instrumentation to support road traffic alcohol legislation can be used by policing in England and Wales. There has been no change to the way in which this instrumentation is used to breathalyse members of the public since the original Home Office assessment, nor since the last service contract was procured in 2013.**
- 6. Met Detention has consulted with its Health and Safety lead and there are no concerns. The manufacturing guidelines are followed and there is a copy with every machine. There is a cleaning requirement for infection prevention and an inbuilt cleaning 'purge' process protecting each user.**

### **Issues for consideration**

- 7. Given the age of the historic EBM technology, it is accepted that alternative provision will need to be purchased within the next few years to provide modern breathalyser equipment for front line policing. It is anticipated that once budget is identified and the market sufficiently develops new (Home Office approved) devices there will be scope to upgrade via a competitive tender process.**
- 8. At this time there are no viable alternatives that meet the current requirement for DSTL accreditation. It is the MPS' intention to monitor the marketplace for any**

development of new accredited evidential breath test machines during the life of this new contract.

## Contributes to the MOPAC Police & Crime Plan 2022-25<sup>1</sup>

9. The maintenance and support for breathalysers contributes to delivering the Police & Crime Plan through Increasing Trust and Confidence by creating safer, more confident communities by reducing risk and harm on London's roads.

## Financial, Commercial and Procurement Comments

10. The current three year maintenance contract will expire in September 2022. There are no further foreseen extensions permitted within this agreement.
11. The negotiated procedure without advertising (single tender action) will be used for this procurement in accordance with public contract regulation 32 2b (ii) as the support and maintenance of the devices can only be provided by a specific economic operator and therefore competition is absent due to technical reasons.
12. This is the only commercial viable option given the incumbents are the only providers that have the necessary scope of accreditation by DSTL to service repair & calibrate evidential breath testing instruments.

### Future Opportunities

13. This commercial strategy allows continued use of existing devices. Furthermore this strategy allows sufficient time for the market to evolve to a competitive level while the MPS identify adequate budget for an upgrade of our equipment.
14. The table below summarises the costs of the Intoximeter contract:

Revenue	2022/23	2023/24	2024/25	2025/26	Total
	£ (000's)	£ (000's)	£ (000's)	£ (000's)	£ (000's)
Budget	57	113	113	57	340
Total Planned Spend	57	113	113	57	340
<b>Variance to Budget</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

15. Met

Detention will fund Intoximeter's maintenance from their existing supplies and services budgets.

16. The new contract contributes to delivering the **London Anchor Institutions' Charter**<sup>2</sup> by;
  - a. Accelerating delivery of a cleaner, greener London through the environmental initiatives mentioned at the 'Environment Implications' section of this report.

## Legal Comments

17. The Mayor's Office for Policing and Crime (MOPAC) is a contracting authority as defined in the Public Contracts Regulations 2015 (the Regulations). All awards of public contracts for goods and/or services valued at £213,477 or above must be procured in accordance with the Regulations. This report confirms the value of the

<sup>1</sup> [Police and crime plan: a safer city for all Londoners | London City Hall](https://www.london.gov.uk/coronavirus/londons-recovery-coronavirus-crisis/anchor-institutions-charter)

<sup>2</sup> <https://www.london.gov.uk/coronavirus/londons-recovery-coronavirus-crisis/anchor-institutions-charter>

two proposed contracts each exceed this threshold. Accordingly, the Regulations are engaged.

18. Regulation 32 provides for limited grounds where MOPAC may negotiate a contract with a sole supplier without advertising the opportunity in the Official Journal of the European Union. Specifically, 32(2)(b) provides it is permitted where the goods and/or services can only be provided by that supplier due to competition being absent for technical reasons, where no reasonable alternative exists and the absence of such competition is not the result of an artificial narrowing down of the competition by the MOPAC.
19. This report confirms that the support and maintenance of the devices can only be provided by the specific economic operators referred to and that no reasonable alternative products exist. On the basis that this is correct, the proposed awards will be compliant within Regulation 32.
20. Paragraph 4.13 of the MOPAC Scheme of Delegation and Consent provides that the Deputy Mayor for Policing and Crime has delegated authority to approve all contract exemptions valued at £100,000 or above.

#### **Equality Comments**

21. As this document is seeking funding for an existing function, there are considered to be no negative equality or diversity implications arising from this process negating the requirement to present any mitigation. Any approved suppliers will be evaluated for acceptable equality and diversity statements, as well as their ability to meet the MPS requirements under the Equality Act 2010 as suppliers to MOPAC. Any evaluation exercise will consider their ability to act as a responsible employer and meet employment obligations deemed commensurate with wider GLA objectives.
22. In addition, it should be noted that the MPS supports the Mayor's Responsible Procurement Policy including: Enhancing Social Value, Encouraging Inclusion, Diversity and Equality, Embedding fair employment practices, Enabling skills, training and employment opportunities, promoting ethical sourcing practices and improving environmental sustainability.

#### **Privacy Comments**

23. The contract does not use personally identifiable data of members of the public, so there are no GDPR issues to be considered. The screening questions have been completed and a DPIA is not required because there will not be any processing under the contract.

#### **Real Estate Implications**

24. There are no real estate implications in respect of the proposed contract.

#### **Environmental Implications**

25. Met Detention will continue to demonstrate good practice by re-using parts from older EBM machines. Once all the equipment is hopefully refreshed post 2025, Met Detention and Commercial will work with the environment team and the suppliers to seek opportunities for responsible disposal/re-use methods as part of the re-tender process.

- 26. Met Detention will consider the MPS Environmental Policy and will require from the company an understanding of their Environmental Management System and sustainable disposal options when the equipment reaches end of life.**

**Background/supporting papers**

27. Not applicable

Report author: Philip Palmer, Chief Inspector, 07785 451515