



MAYOR OF LONDON
OFFICE FOR POLICING AND CRIME

Asbestos Management Services Purchase Order (PO) Uplift

MOPAC Investment Advisory & Monitoring meeting 21st August 2023

Report by Vince Fihosy on behalf of the Chief People and Resources Officer

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

Executive Summary

This Business Justification paper asks for contract value uplift for Asbestos Management Services Contract, to allow the already approved first option year of the contract term to be exercised.

The initial Term of current contract in place for Asbestos Management Services with Pennington Choices Ltd ends on 28th February 2024. DMPC decision PCD1201 enabled an uplift in value for the first of the 2 option extension years to Feb 2025. Owing to higher spending driven by operational demand and estate strategy revisions, a further uplift is required to continue services.

Because the value exceeds the threshold for delegated authority but comply with Public Contracts Regulations 2015 (PCR 2015) under provisions of Regulation 72, approval is sought from DMPC for an uplift in contract value.

There is no impact on budget because this uplift is based on current spend. It would simply mean that the existing budget, during the extension year, is spent with the current supplier rather than forcing an early re-procurement which would bring risk to budget as current market conditions could see a cost increase.

Recommendations

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

1. Approve an uplift in the value of Services with Pennington Choices Ltd by £291,958.49, which is 35% of the original Contract value for the seven-year term.
 - a. This is to adjust the contract's initially under-estimated annual spend to the current rate of annual spend. The new value of the Contract using only the first option year extension will be £1,522,697.49 against the originally approved value £837,079 for the 5+2 term and the approved uplift value of £393,660(PCD1201).
 - b. The uplift is against the approved contract value and no additional funding will be required as the spend is managed within MPS existing budgets.

A re-procurement process will be commenced in Feb 2024, which coincides with the end of the 5th Year of the contract, to provide twelve-month procurement period aligned with the expiry of the sixth year on 28th Feb 2025.

Noting that:

- a) Currently Pennington Choices Ltd. provides the Services ensuring full legal compliance across all MOPAC properties and projects undertaken on their behalf in accordance with the 'Control of Asbestos Regulations 2012'. This contracts initial term will be expiring 28th Feb 2024. The contract has 2 unilateral optional extension years available. It is desirable for the first unilateral extension year be exercised with a re-procurement initiated under a separate business justification paper.
- b) Due to the actual annual spending exceeding that of originally forecasted, this paper seeks approval for an increase in the value of the contract to allow the previously approved extension year to be exercised.
- c) The requested uplift in value is in full compliance with the Public Contracts Regulations 2015 (PCR 2015) under provisions of Regulation 72(1)(b).
- d) The first year of the initial term included exceptional costs for full Management surveys (a dutyholder requirement across all MOPAC properties). The planned costs in subsequent years are for re-inspection (a reoccurring annual dutyholder requirement at all MOPAC properties where asbestos is known or suspected), which are less work and therefore a lower cost. Year 1 planned fee circa £114.7K Year 2 planned fee circa £33.9K. Average monthly costs do not represent the exceptional spend in Year 1 of the Contract.
- e) Analysis (averaging for years 1 to 4) of the base data records additional work carried out prior to construction activity and needed to ensure legal compliance. These Refurbishment and Demolition (R&D) surveys represent £83,317 PA of current spend, of which is capital funded. Capital spend against the contract is 38% of total spend.

Time sensitivity

A decision is required from the Deputy Mayor by 08/09/2023 to enable contract extension notice to be issued and purchase order value to be uplifted in accordance with contract timelines and to enable procurement planning for the next contract to be established. Continuation of these services is critical to the compliance of the estate and the support of operational policing.

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

Introduction and background

- a. Following a competitive tender process completed in 2019 by KBR on behalf of the Authority, the Authority entered a contract with Pennington Choices Ltd on 1st March 2019 for the provision of the Services.
- b. The contract was awarded as 1 lot by the Mayor's Office for Policing and Crime (MOPAC), commencing on 1st March 2019. The total value of the five-year initial term is £597,913. There are two individual option years giving a total 7-year contract value of £837,079. The contract has been called-off from a £2,837,079 framework agreement open to all GLA members.
- c. Pennington Choices Ltd have been in contract for a period of 4 years of the initial 5-year contract term. Their performance has been good having passed contractual all KPIs consistently throughout the term of the contract to date and they have responded supporting a number of high profile operational events i.e. Croydon Gas explosion.

Proposed Strategy

To facilitate the use of the first, already approved, unilateral optional year of the originally approved term of 5 +1 +1 years, approval is requested to increase the value of the contract by an additional total value of £291,958.49 which is **35%** of the original contract value for the 7 year term.

This can be achieved through PCR 2015 regulation 72(1)b.

The proposed arrangements and the benefits envisaged:

a) Increase the value of the contract.

The uplift to the contract will allow the Authority to reach the initial term of 5 years plus 1 extension year (total of 5 + 1 years). However, a re-procurement process will be commenced in Feb 2024 to align with the expiry of the 6 of 7 years to 28th Feb 2025.

The following benefits are envisaged.

- Allows the Authority to retain a performing supplier until the end of the 6th year, as intended, rather than having to re-procure early.
- The Authority will achieve cost certainty as the costs are fixed (subject to AWE inflation)
- Avoids significant duplication of costs by not having to retender the service line early than planned.
- Avoids anticipated higher cost through re-procurement during a period of high inflation where initial fixed cost period attracts risk pricing from the market.

Issues for consideration

a) Monthly Spend Rate against Initial and Full Contract Terms

- Based on the current average spend rate the PO value against the initial contract term of 5 years plus 2 option years will be fully consumed as of Q1 2024.
- Approval of this strategy and uplift paper will mitigate significant duplication of costs in having to run a re-procurement process earlier than planned. Based on current market rates there is a risk that any new contract pricing would increase, and the Authority would lose the benefit of the competitive rates secured in 2019.

b) Spend Rate against Contract Fees

- Current spending level is significantly higher than that of the contracted values based on the 2019 contract award.
- The annual average spend predicted at contract commencement was estimated at £76K per annum. Actual annual costs over the initial four year period have averaged at £229K per annum
- The total percentage increase on spending against the original contracted value is circa 307%.

c) Overspend on Reactive Services (Key Reasons)

- The financial model developed by the Integrator originally relied upon reactive

spend data analysed between August 2017 and July 2018, delivered through the previous supplier Environtech. This was not representative of the increased scope of reactive services that were included within the new contract.

- Previously Refurbishment and Demolition (R&D) surveys were largely delivered through construction consultants, separate and distinct from the scope of services delivered through the previous incumbent.
- In the period up to end of year 4, the cost of R&D surveys amounted to £407K, of which £266K, was capital funded, but not accounted for when estimating the original contract value.
- Increased demand for R&D surveys associated with Estate Transformation is the principle reason for exceptional spend.
- Additional construction activity through accelerated Net Carbon Zero projects
- Significant construction activity in relation to Programme 10 (CTOC)
- Retention of property earmarked for disposal and therefore requiring continued asbestos management.
- These reasons do not differ from the initial uplift but the timeframe on re-procurement has moved back one year as the economic climate has made a delay desirable.
- Exit of the original Integrator (KBR) and mobilisation of a new Property Integrator (Sodexo) during the last year has impacted on project planning delivery and financial reporting.
- Higher than anticipated inflationary pressures through AWE uplift after the fixed price period expiry.

Risks and Mitigations

There are several risks relevant to this procurement strategy. The Integrator will manage the risks as we move through the procurement process and implement the proposed mitigations. The main risks associated with the recommended approach are summarised below.

Ref	Category	Risk Description	Date Raised	Risk Rating		Risk Level	Mitigating Action / Proposal to Manage
				Probability	Impact		
1	Commercial	Inflation: There is a risk inflation rises above the current AWE level leading to an additional cost over and above the contingency built into the contract uplift.	01-Feb-23	Medium	Medium	5	<ol style="list-style-type: none"> 1. Authority to build in enough contingency into the uplift to factor in inflation over the 2 years. 2. FM Integrator to monitor AWE inflation via ONS and provide update to the Authority.

2	Commercial	PCR Challenge: There is a risk that the market may challenge any uplift in contact value if >50%	01-Feb-23	Low	Low	1	<ol style="list-style-type: none"> 1. MPS to ensure robust legal advice is taken to mitigate this. 2. Uplift shall be considered in the context of regulation 72. 3. Modification notice to be published citing a Major change of contract within the regs to ensure PCR compliance
3	Commercial	Monthly Spend Rate There is a risk that spending increases further due to unknown change control, e.g., change in Estate strategy, Met turnaround plan (new Met for London) creating an increase in project related surveys.	01-Feb-23	Medium	Medium	5	<ol style="list-style-type: none"> 1. Appropriate commercial risk percentage to be added to the uplift value 2. FM Integrator to monitor run rates and provide updates to the Authority. 3. Large change will be the subject of separate papers and Governance.

Impact			
HIGH	6	7	9
MED	3	5	8
LOW	1	2	4
	LOW	MED	HIGH

The following strategic options have been considered to satisfy the business need and this paper recommends the uplift to Pennington Choices Ltd PO value to cover the Services until 28th April 2025 as per option 2 below.

Option to satisfy business requirement	Estimated Cost	Pros	Cons	Risk Indicator
1. Uplift Contract to reach the end of the base term (5 years)	0	<ul style="list-style-type: none"> Allows the Authority to retain a performing supplier until the end of the initial 5-year term, rather than having to terminate and re-procure early. The Authority will achieve cost certainty as the costs are fixed (subject to AWE inflation) Avoids significant duplication of costs by not having to retender the service line early than planned. 	<ul style="list-style-type: none"> Authority exposed to potential market increases through a retender earlier than required. Duplication of re-procurement costs early than planned (OJEU value will be exceeded at end of year 5) Insufficient mobilisation time to due to potential limited TUPE of staff resulting in delays due to vetting new staff 	<u>Not Recommend</u>
2. Uplift the contract to enable the planed 1 year extension	£291,958.49 (Uplift plus 1 Year Cost)	<ul style="list-style-type: none"> Allows the Authority to retain a performing supplier until the end of the 6-year term, rather than having to terminate and reprocure early. 	<ul style="list-style-type: none"> Authority exposed to potential market increases through a retender earlier than required. 	<u>Recommend</u>

		<ul style="list-style-type: none"> The Authority will achieve cost certainty as the costs are fixed (subject to AWE inflation) Avoids significant duplication of costs by not having to retender the service line Mitigates risk of new entrant to estate and poor performance 	<ul style="list-style-type: none"> Committing to re-procurement costs 1 year earlier than planned 	
3. Extend and Uplift Contract for 2 Years	£616,005.98 (Uplift plus 2 Year Cost)	<ul style="list-style-type: none"> Allows the Authority to retain a performing supplier until the end of the 7-year term, rather than having to terminate and re-procure early. The Authority will achieve cost certainty as the costs are fixed (subject to AWE inflation) Avoids significant duplication of costs by not having to retender the service line Mitigates risk of new entrant to estate and poor performance 	<ul style="list-style-type: none"> OJEU value will be exceeded 	Not Recommend
3. Do Nothing – allow Contract to expire naturally	£393,660 Remaining PO Value	<ul style="list-style-type: none"> None noted 	<ul style="list-style-type: none"> The PO value against the full contract term of 7 years would be fully consumed as of March 2024 Duplication of re-procurement costs early than planned Requires Authority to terminate and retender Service line 	Not Recommend

Contributes to the MOPAC Police & Crime Plan 2022-25¹

This request enables currently embedded services that are essential to the compliance of the estate, enable and support estate transformation projects and maintain facilities needed to enable operational policing to function. The provision of stability of service during what may be a period of change in the estate and stability in terms spend also support the operational functions of the Met.

Commercial and Procurement Comments

The Authority requires the provision of a full (reactive and planned) Asbestos Management Service. The reactive and planned service shall be provided on a 24/7/365 basis across the MPS estate, the estate covers the 32 boroughs of the Greater London area, and a number of other locations. Services provided by this contractor include:

- Full property management surveys

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

- Property annual re-inspection surveys
- Response to incidents of suspected asbestos containing materials discovered or disturbed
- Air testing and laboratory analysis
- Intrusive surveys before construction or demolition activity
- Due diligence surveys for acquisition or disposal of property
- Independent testing, before, during and after any asbestos removal works

Proposed PO Contract Uplift Value required

- Uplift Required to PO Value for a six-year term (5 + 1): £291,958.49

The increase in the value of contract for the six-year term (5+1 years) represents an uplift of 35% of the value of the contract. The second optional year extension will not be exercised to allow the Authority to stay within the 50% uplift limit as set out in section 72(1)b of PCR2015.

The increase in the value of the contract is required because spend against the contract value has increased for a number of reasons. These include:

- A desire to use Pennington Choices Ltd for all surveys to ensure all information on asbestos containing materials was on one system and fed through to the centrally held asbestos register to allow the dutyholder to better manage the information. This meant that Digital Data & Technology and Construction instructed Pennington Choices Ltd over other contractors to survey prior to capital works. This increased the spend against the contract value but also improved information held and therefore legal compliance.
- An accelerated construction programme including, Forward Works, Facelift and Net Zero Carbon necessitating additional surveys and consultancy services not included at time of PCD 1201
- Retention of disposal properties, a number of which contain asbestos and therefore the need to continue re - inspection surveys and air monitoring.

Value for Money

The Authority seeks this route as it has been identified as the strategy for providing the best value for money and to ensure the continued high operational performance to the MPS, for the following reasons:

- Exercising the extension of the contract by one year and uplifting the value will mitigate significant duplication of costs in having to run a re-procurement process whilst extension options are available to the Authority.
- Allows sufficient planning to realign the scope of the services to the estate strategy.
- Enabling the planned extension by 1 year will mean that the MPS will benefit from the competitive rates secured in 2019 noting that current market indices have increased above inflation.
- Ensures a continuous service of a crucial contract for the management and safety of the MPS estate maintaining full legal compliance on behalf of the MOPAC with the control of asbestos regulations 2012
- Enabling the planned extension for 1 year will mean the concerns regarding the Integrator's limited capacity, the system changes as well as the general teething issues we have experienced with the integrator can be addressed and rectified.

- The uplift is compliant with regulation 72(1)(b) as re-procurement would cause significant inconvenience or substantial duplication of costs for the contracting authority. The extension of this service line avoids significant duplication of costs by not having to retender. The extension will allow the Authority to create a procurement strategy for future contracts that is developed to deliver the best possible service and value for money. Furthermore, the authority will achieve cost certainty as the costs are fixed (subject to AWE inflation) as well as mitigating risk of new entrant to estate and poor performance.
- The previous uplift had anticipated including the first year extension but has fallen short due to the unforeseen overspend. It is not commercially advantageous to terminate earlier than anticipated as detailed above.

Financial

The request for an uplift is against the approved contract value and no additional funding will be required. Contract Expenditure is managed within MPS existing Planned and Reactive Maintenance budget of £53m and this contract value uplift means the 24/25 FY budget allocated to this service line will be spent with the incumbent supplier rather than a new supplier. The contract Value is over current budget as it includes inflation, which is managed and reviewed annually within the Medium Term Financial Plan (MTFP) and potential growth for example the Met Turnaround plan (new Met for London), would be part of a separate Business Case where necessary.

These contracts deliver work from a number of funding streams, so the contract value includes significant headroom. For example, capital funded work up to 17th February 2022 was circa £248.8K. This equates to 38% of the total spend. The average actual expenditure is greater than envisaged when the contract was awarded, this is due to factors beyond the Authority's control.

Due to price volatility, inflation is excluded from budget and planned expenditure is currently within the allocated budget for Asbestos management therefore the PSD is not asking for additional budget.

Budget and expenditure tables are included in the restricted section of this document (Part2). The tables identify the key contract values and both historic and anticipated future spend from all budget lines, details the budget, and spend within the Property Services budget lines. The data identified therein is been obtained from the Integrator Finance team and covers contractual payments for this Service line.

Legal Comments

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, and modifications to, public contracts for goods and/or services valued at £213,477 or above shall be procured in accordance with the Regulations. This report confirms the value of the recommendations exceed this threshold.
2. Regulation 72 provides a limited number of circumstances when a contract shall be modified compliantly.
3. An increase of 35% is within the limit of 50% in regulation 72(1)(b). This report also confirms the impacts of changing contractor and the technical challenges that would bring. On that basis, regulation 72(1)(b) would apply.

4. Regulation 72(3) requires contracting authorities that have modified a contract in the case described 72(1)(b) shall send a notice to that effect, in accordance with regulation 51, for publication.
5. Paragraph 4.13 of the MOPAC Scheme of Delegation provides that the Deputy Mayor of Policing and Crime (DMPC) has delegated authority to approve all unforeseen variations and extensions to contracts with an original value of £500,000 or above, when the variation or extension is greater than 10% of the original value and / or is for a period of more than 12 months.

Equality Comments

1. As this relates purely to a value uplift for an existing contract there are considered no negative equality or diversity implications arising from this process negating the requirement to present any mitigation.
2. Support to Anchor institutes will be identified in the re-procurement paper. As this paper relates to contract uplift only, there are no change, however those and other responsible procurement values are reflected in the way the contract is managed.

Privacy Comments

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.
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.
3. The Information Assurance and Information Rights units within MPS will be consulted at all stages to ensure the contract change meets its compliance requirements.
4. The contract does not use personally identifiable data of members of the public, so there are no GDPR issues to be considered. This is not a new project or programme and purely relates to the contract value of an existing contract.

Real Estate Implications

1. This change supports the Estate Strategy by ensuring compliance and function of the estate. Stability created by continuation of existing arrangements also supports a period of change.

Environmental Implications

1. The MPS Environment Policy and the Environment and sustainability strategy will be taken into consideration with any change in contract arrangements and the projects it delivers.

Background/supporting papers

1. There are no supporting papers.

Report author: David Field, head of Facilities Management

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 '**Asbestos Management Services – Contract value uplift to accommodate additional spend within approved contract term**' (BJP), is exempt from publication for the following reasons:

- Commercial Interest Section 43

The paper will cease to be exempt until 1 March 2025. Any request for information under FoIA would need to be assessed on a case by case basis, no matter what or when the original decision was made, as the circumstances may have changed eg information no longer commercially sensitive.