

## DMPC Decision – PCD 566

### Title: Forensic Marketplace Short Term Stabilisation

#### Executive Summary:

This paper sets out the need for urgent additional investment in contracted Traditional Forensic Services, for short-term stabilisation of the Forensic Marketplace. This is to address acute Forensic Marketplace fragility and imminent risk of major disruption to services, loss of forensic capacity, and minimise risks to Criminal Justice outcomes for the MPS.

A national approach to stabilising the Forensic Marketplace has been developed by the Forensic Capability Network (FCN) Commercial team working with the National Police Chiefs Council (NPCC), all Regional Forces, and in consultation with Forensic Service Providers (FSPs) with police contracts. This has resulted in a proposed two-phase approach; the first commencing immediately with price uplifts to all contracts (calculated on a fair and consistent basis) for a period of one year, followed by a longer-term sustainable solution (developed during the first phase).

Approval is now requested for the MPS to agree to the national approach and implement the recommended price uplifts to the MPS contract for Traditional Forensic Services, commencing from the 1st April 2019.

#### Recommendation:

The Deputy Mayor for Policing and Crime is recommended to:

1. Approve a short-term one year uplift to contracted prices under Agreement SS31502; Traditional Forensic Services supplied by Eurofins Forensic Services Limited (EFS). This would result in an increased spend of circa £1.84M for the financial year 2019/2020. This will be funded from the additional £84M funding received as part of the 19/20 police grant settlement; £3M was allocated initially for Forensics Marketplace stabilisation via the bidding process to support the allocation of the additional £84m. As £1.84M is now required, £1.16M will be released to be reallocated to fund other bids.
2. Note that a further review of contracted prices and the forensic marketplace will be carried out during 2019/2020. This is to ensure that services are sustainable for the longer-term and also represent value for money to the Authority. The outcome of this review may result in a further request for Decision by the Deputy Mayor.

**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**

*Stephen Lunde*

**Date**

*10/4/19*

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

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

- 1.1. The National Forensic Marketplace is in a state of acute financial pressure. This has largely been driven by successive cuts in police budgets and extremely competitive tendering at below cost prices by Forensic Service Providers (FSPs) desperate to retain market share. Unless urgent action is taken to support stabilisation of the Forensic Marketplace, there is a high risk of massive disruption to services resulting from long-term loss of capacity, significantly extended turnaround times, and risk to criminal justice outcomes for the MPS.

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

- 2.1. Since the closure of the Forensic Science Service in 2012, all services in the "Traditional" or "Physical" forensic sector (as distinct from Digital Forensics) have been the subject of significant organised regional tender activity. As such, they have a high compliance to accreditation standards and the specified service requirements of the police customer.
- 2.2. Whilst this approach has enabled cost reductions, policing's approach to tendering in more recent years has led to a significant and unsustainable downward pressure on pricing.
- 2.3. The fragility of the Forensic Marketplace was most keenly felt when Key Forensic Services (KFS) entered into administration, in January 2018. At the time, it was agreed by the NPCC, Association of Police and Crime Commissioners (APCC) and the Home Office (HO) that the threat posed to the integrity of the two thousand live cases and their archive of all former cases within the company meant that intervention was required.
- 2.4. Since September 2018, it has come to light that the financial issues facing the Forensic Market Place have again become so critical that there is a real risk that if action is not taken, one or more FSPs may choose to exit the Forensic Marketplace imminently.
- 2.5. To address this risk, a national approach to stabilizing the Forensic Marketplace has been developed by the FCN Commercial team working with the NPCC, all Regional Forces, and in consultation with Forensic Service Providers (FSPs) with police contracts. This has resulted in a proposed two-phase approach; the first commencing immediately with price uplifts to all contracts (calculated on a fair and consistent basis) for a period of one year, followed by a longer-term sustainable solution (developed during the first phase).

### **3. Financial Comments**

- 3.1. The forecasted financial impact of the recommended uplifts is £1.84M for the period 2019/2020, commencing on 1st April 2019. This represents less than 1.4% of the total contract value. This will be funded from the additional £84M funding received as part of the 19/20 police grant settlement; £3M was allocated initially for Forensics Marketplace stabilisation via the bidding process to support the allocation of additional £84m. As £1.84M is now required, £1.16M will be released to be reallocated to fund other bids.

#### **4. Legal Comments**

- 4.1. The Competitions and Markets Authority has been consulted on the approach to the national stabilisation plan, and no concerns were raised.
- 4.2. The implications of the Public Contract Regulations have been considered. Legal Counsel's opinion (provided to the Chief Constable of Dorset Police and shared with the MPS) is that the short-term contract price uplifts will be justified on the basis of the pressing public interest in maintaining and securing supply and the independent financial assessments verifying the severity of the financial pressures faced by FSPs.
- 4.3. Counsel referred to regulation 72(1)(c) of the Public Contracts Regulations 2015, meaning that the contract variation to increase prices may be justifiable due to unforeseen circumstances. Therefore, care should be taken to ensure that the total value of the increased payments does not exceed 50% the total expected value of the original contract, in accordance with regulation 72.
- 4.4. It should be noted that Counsel's opinion is that a longer term contract variation (for the remainder of the term of the contract and any roll over period) would be of greater concern as a longer term variation would be more difficult to justify.
- 4.5. Counsel also advised that the period of contract variation (12-24 months) should be used to allow the Authority to advertise and negotiate new contracts in compliance with the Public Contracts Regulations 2015.
- 4.6. Further information is contained in the restricted section of this report.

#### **5. GDPR and Data Privacy**

- 5.1. Implementing the recommended uplifts will not require the use or processing of personally identifiable data of members of the public, so there are no GDPR issues to be considered.

#### **6. Equality Comments**

- 6.1. As this paper relates to ensuring the continuity of an existing service, this work does not change any aspects relating to equality or diversity.

#### **7. Background/supporting papers**

- 7.1. 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 – YES

**ORIGINATING OFFICER DECLARATION**

	Tick to confirm statement (✓)
<b>Financial Advice:</b> The Strategic Finance and Resource Management Team has been consulted on this proposal.	✓
<b>Legal Advice:</b> The MPS legal team has been consulted on the proposal. required.	✓
<b>Equalities Advice:</b> Equality and diversity issues are covered in the body of the report.	✓
<b>Commercial Issues</b> Commercial issues are not applicable	✓
<b>GDPR/Data Privacy</b> <ul style="list-style-type: none"><li>GDPR compliance issues are covered in the body of the report</li><li>A DPIA is not required.</li></ul>	✓
<b>Director/Head of Service:</b> The Chief Finance Officer has reviewed the request and is satisfied it is correct and consistent with the MOPAC's plans and priorities.	✓

**OFFICER APPROVAL****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

R. Lawrence

Date

4/4/19

2011-11-11

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**MOPAC**MAYOR OF LONDON  
OFFICE FOR POLICING AND CRIME**Forensic Marketplace Short Term Stabilisation and Additional Investment****MOPAC Investment Advisory & Monitoring Meeting - March 2019****Report by Chris Porter on behalf of the Deputy Commissioner**

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

**EXECUTIVE SUMMARY**

This paper sets out the need for urgent additional investment in contracted Traditional Forensic Services, for short-term stabilisation of the Forensic Marketplace. This is to address acute Forensic Marketplace fragility and imminent risk of major disruption to services, loss of forensic capacity, and minimise risks to Criminal Justice outcomes for the MPS.

A national approach to stabilising the Forensic Marketplace has been developed by the Forensic Capability Network (FCN) Commercial team working with the National Police Chiefs Council (NPCC), all Regional Forces, and in consultation with Forensic Service Providers (FSPs) with police contracts. This has resulted in a proposed two-phase approach; the first commencing immediately with price uplifts to all contracts (calculated on a fair and consistent basis) for a period of one year, followed by a longer-term sustainable solution (developed during the first phase).

Approval is now requested for the MPS to agree to the national approach and implement the recommended price uplifts to the MPS contract for Traditional Forensic Services, commencing from the 1<sup>st</sup> April 2019.

**Recommendations**

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

1. **Approve a short-term one year uplift to contracted prices under Agreement SS31502; Traditional Forensic Services supplied by Eurofins Forensic Services Limited (EFS). This would result in an increased spend of circa £1.84M for the financial year 2019/2020. This will be funded from the additional £84M funding received as part of the 19/20 police grant settlement; £3M was allocated initially for Forensics Marketplace stabilisation via the bidding process to support the**

**allocation of the additional £84m. As £1.84M is now required, £1.16M will be released to be reallocated to fund other bids.**

- 2. Note that a further review of contracted prices and the forensic marketplace will be carried out during 2019/2020. This is to ensure that services are sustainable for the longer-term and also represent value for money to the Authority. The outcome of this review may result in a further request for Decision by the Deputy Mayor.**

#### **Time sensitivity**

A decision is required from the Deputy Mayor by **23/04/2019**. EFS would need to make system changes by 01/04/2019 in order to apply the recommended uplifts from the commencement date of 01/04/2019. However, it is possible that EFS could apply a one-off uplift to their April invoice instead, if a decision is confirmed by 23/04/2019.

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

#### **Introduction**

- 1. The National Forensic Marketplace is in a state of acute financial pressure. This has largely been driven by successive cuts in police budgets and extremely competitive tendering at below cost prices by Forensic Service Providers (FSPs) desperate to retain market share. Unless urgent action is taken to support stabilisation of the Forensic Marketplace, there is a high risk of massive disruption to services resulting from long-term loss of capacity, significantly extended turnaround times, and risk to criminal justice outcomes for the MPS.**

#### **Background\***

[\*Details provided by the FCN Commercial team]

- 2. Since the closure of the Forensic Science Service in 2012, all services in the "Traditional" or "Physical" forensic sector (as distinct from Digital Forensics) have been the subject of significant organised regional tender activity. As such, they have a high compliance to accreditation standards and the specified service requirements of the police customer.**
- 3. Whilst this approach has enabled cost reductions, policing's approach to tendering in more recent years has led to a significant and unsustainable downward pressure on pricing. In 2016, the MPS tender was one of three large policing tenders, which had a collective market value of 70%, undertaken at the same time with no national oversight or assessment of national impact. When the new contracts went live in early 2017 it is estimated that the total market value fell from £65M to £53M for the delivery of the same services - a drop of nearly 20%.**
- 4. The fragility of the Forensic Marketplace was most keenly felt when Key**



Forensic Services (KFS) entered into administration, in January 2018. At the time, it was agreed by the NPCC, Association of Police and Crime Commissioners (APCC) and the Home Office (HO) that the threat posed to the integrity of the two thousand live cases and their archive of all former cases within the company meant that intervention was required. To that end, funding was provided to ensure a managed wind down of the company allowing staff and accreditation to be maintained long enough to complete the live cases and to secure the integrity and future of the archive.

5. Funding was also provided to other FSPs to deliver the significant additional capacity required to absorb the day-to-day work that KFS would have undertaken. There was significant disruption to services at a national level with submission caps required and backlogs created as well as a need for significantly extended turnaround times (TRTs).
6. In March 2018, KFS was purchased from administration by CorpAcq and most contracts were novated to the new company. The funding enabled the immediate issues at KFS, in relation to their work in progress, to be safely managed and delivered. The purchase of KFS by CorpAcq also provided additional financial investment into the company. However, neither of these funding streams addressed the wider market instability nor responded to the FSPs concerns around the financial viability of their policing contracts.
7. In the same month, FSPs presented a paper to the NPCC, APCC and HO stating that the financial position of all suppliers was unsustainable. The Association of Forensic Science Providers (AFSP) also presented to a special meeting of the Forensic Market Place Strategy Group (FMSG) stating that a pricing uplift of 20-30% was needed or the market was unsustainable.
8. Since September 2018, it has come to light that the financial issues facing the Forensic Market Place have again become so critical that there is a real risk, if action is not taken, one or more FSPs may choose to exit the Forensic Marketplace imminently.
9. To address this risk, a national approach to stabilizing the Forensic Marketplace has been developed by the FCN Commercial team working with the NPCC, all Regional Forces, and in consultation with Forensic Service Providers (FSPs) with police contracts. This has resulted in a proposed two-phase approach; the first commencing immediately with price uplifts to all contracts (calculated on a fair and consistent basis) for a period of one year, followed by a longer-term sustainable solution (developed during the first phase).
10. It is recommended that the MPS join the national approach to stabilisation, and implement the recommended price uplifts to the MPS contract for Traditional Forensic Services, commencing from the 1st April 2019.

Further information is contained in the restricted section of this report.

### **Issues for consideration**

- The acute financial issues currently faced in the national forensic marketplace;
- The severe national under-capacity in key areas of forensic services, particularly drugs and toxicology;
- The imminent risk of one or more major Forensic Service Providers (FSPs) exiting the marketplace;

In the event of market contraction within the forensic marketplace the following risks will materialise;

- The MPS' supplier EFS not having sufficient capacity to meet all MPS forensic needs (a proportion of work is currently subcontracted);
- Lack of capacity at a national level to meet policing's forensic needs;
- Risk to Criminal Justice outcomes, if MPS unable to meet critical custody time limits and/or court dates, and in some cases unable to provide forensic analysis at all due to lack of capacity;
- Risk relating to archive – failure to preserve cases and loss of evidence;
- Risk of weakened bargaining power of the MPS to control both terms and price of services in the future, if there is lack of alternative suppliers and demand for services exceed supply.

#### **Contributes to the MOPAC Police & Crime Plan 2017-2021<sup>1</sup>**

Forensic Services plays a critical role in the investigation of serious crime, bringing offenders to justice and exonerating the innocent. The stabilisation plan will ensure the continuity of Traditional Forensic Services provision in the immediate term, and enable sustainable plans to be put in place for future provision.

#### **Financial, Commercial and Procurement Comments**

The forecasted financial impact of the recommended uplifts is £1.84M for the period 2019/2020, commencing on 1<sup>st</sup> April 2019. This represents less than 1.4% of the total contract value. This will be funded from the additional £84M funding received as part of the 19/20 police grant settlement; £3M was allocated initially for Forensics Marketplace stabilisation via the bidding process to support the allocation of additional £84m. As £1.84M is now required, £1.16M will be released to be reallocated to fund other bids.

The Competitions and Markets Authority has been consulted on the approach to the national stabilisation plan, and no concerns were raised.

The implications of the Public Contract Regulations have been considered. Legal Counsel's opinion (provided to the Chief Constable of Dorset Police and shared with the MPS) is that the short-term contract price uplifts will be justified on the basis of the pressing public interest in maintaining and securing supply and the independent financial assessments verifying the severity of the financial pressures faced by FSPs.

Counsel referred to regulation 72(1)(c) of the Public Contracts Regulations 2015,

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

meaning that the contract variation to increase prices may be justifiable due to unforeseen circumstances. Therefore, care should be taken to ensure that the total value of the increased payments does not exceed 50% the total expected value of the original contract, in accordance with regulation 72.

It should be noted that Counsel's opinion is that a longer term contract variation (for the remainder of the term of the contract and any roll over period) would be of greater concern as a longer term variation would be more difficult to justify.

Counsel also advised that the period of contract variation (12-24 months) should be used to allow the Authority to advertise and negotiate new contracts in compliance with the Public Contracts Regulations 2015.

Further information is contained in the restricted section of this report.

#### **Legal Comments**

Legal Counsel's opinion on the national approach to stabilisation and has been taken into consideration. Information is contained in the restricted section of the report.

#### **Equality Comments**

As this paper relates to ensuring the continuity of an existing service, this work does not change any aspects relating to equality or diversity.

#### **Privacy Comments**

Implementing the recommended uplifts will not require the use or processing of personally identifiable data of members of the public, so there are no GDPR issues to be considered.

#### **Real Estate Implications**

No impact.

#### **Environmental Implications**

No impact.

#### **Background/supporting papers**

None.

Report author:

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**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 Forensic Marketplace Short Term Stabilisation and Additional Investment** is exempt from publication for the following reasons:

- Exempt under the Commercial Interest Section 43 of the FOIA

The paper will cease to be exempt on the completion of the contract.