

REQUEST FOR DMPC DECISION – DMPCD 2017 PCD 343

Title: The Provision of a Performing Rights Society Licence

Executive Summary:

This paper request for a single tender action to commence in order to renew the current PRS licence for a further 12 month period from 1 April 2018 to 31 March 2019.

PRS Ltd is the only supplier of the licence and is a non-profit association. The MPS is legally required under the Copyright Designs and Patents Act (CDPA) 1988 to obtain a licence from PRS Ltd to permit the playing of music in its buildings, this is based on the number of staff employed.

This paper also requests that MOPAC delegate authority to the MPS Director of Commercial Services to instigate a single tender action for future annual renewals and to award subsequent contracts to PRS Ltd providing that the annual cost is no more than £250k.

Recommendation:

The DMPC is asked to

1. Approve a single tender action procurement exercise for the renewal of a Performing Rights Society (PRS) licence for 2018/19 to PRS Ltd (the only provider of the licence).
2. Approve the cost of the new annual licence at £179,318 for the period 1 April 2018 to 31 March 2019, funding is available within existing budgets.
3. Delegate authority to the MPS Director of Commercial Services to enter into a contract with a single supplier (PRS Ltd: the only provider of the licence).
4. Delegate authority to the MPS Director of Commercial Services to instigate a single tender action for future annual renewals and to award subsequent contracts to PRS Ltd providing that the annual cost is no more than £250K.

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

19/03/18

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

Decision required – supporting report

1. Introduction and background

- 1.1. PRS Ltd is the only supplier of the licence. The MPS is legally required under the Copyright Designs and Patents Act (CDPA) 1988 to obtain a licence from PRS Ltd to permit the playing of music in its buildings, this is based on the number of staff employed.
- 1.2. The licence legally protects the MPS for music played on its premises, including music played on televisions, radios, in rest areas, gymnasiums, canteens and employees having radios on in the background.

2. Issues for consideration

- 2.1. PRS Ltd is the only supplier of the licence and is a non-profit association. The requirement currently sits outside of the Service Integration and Management (SIAM) Towers model, the contract (once awarded) will be managed by Locally Delivered Support Services (LDSS).
- 2.2. The absence of a PRS music licence would be considered unauthorised and an infringement of the CDPA 1988.
- 2.3. MPS have explored the option for a multi-year deal with PRS Ltd. However PRS Ltd can currently only offer annual licences.
- 2.4. The MPS will have an ongoing requirement to hold a Licence from PRS Ltd. To avoid the requirement to seek annual approval from MOPAC for the single tender action / contract award it is requested that the MPS Director of Commercial Services be granted the authority to award the contract to PRS Ltd in future years subject to the annual cost not exceeding £250K.

3. Financial Comments

- 3.1. The cost of the new annual licence is £179,318.65 for the period 1 April 2018 to 31 March 2019, funding is available within existing budget.
- 3.2. The licence fee calculation incorporates the total numbers of MPS staff/police employees on an annual basis and can be contained within existing budgets.

4. Legal Comments

- 4.1. Under the CDPA 1988 all exploitation of copyright in music must be in accordance with permission of the copyright holder in the workplace.
- 4.2. The MOPAC is a contracting authority as defined in the Public Contracts Regulations 2015 (the Regulations). When awarding contracts for services, supplies or works above the relevant threshold all contracting authorities must do so in accordance with the Regulations. This report confirms that the PRS licence fee exceeds the relevant services threshold of £181,302 for goods and services (as from 1 January 2018). Accordingly, the Regulations are engaged. Regulation 32(2)(b)(iii) permits a contracting authority to negotiate directly with a sole economic operator without prior publication of an Official Journal of the European Union (OJEU) notice when, for reasons connected with the protection of exclusive rights, including intellectual property rights, the public contract may be awarded only to a particular economic operator.

4.3. This report confirms that PRS is the only economic operator legally capable of granting this licence. Therefore, the MOPAC can obtain a licence directly from PRS in full compliance with the Regulations under paragraph 4.13 of the MOPAC Scheme of Delegation, authority must be sought from the DMPC for all contract exemptions valued at £100,000 or above.

5. Equality Comments

5.1. Any equality and diversity implications linked to the provision of the PRS licence are considered under the Copyright, Design and Patents Act (CDPA) 1988.

6. Background/supporting papers

6.1. Report

Public access to information

Information in this form is subject to the Freedom of Information Act 2000 (FOIA) and other legislation. Part 1 of this form will be made available on the MOPAC website within 1 working day of approval. Any facts/advice/recommendations that should not be made automatically available on request should not be included in Part 1 but instead on the separate Part 2 form. Deferment is only applicable where release before that date would compromise the implementation of the decision being approved.

Part 1 Deferral:

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

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 rational for non-publication.

Is there a part 2 form – Yes

If yes, for what reason: EXEMPT under Article 2(2)(a) of the Elected Local Policing Bodies (Specified Information) Order 2011.

ORIGINATING OFFICER DECLARATION:

Head of Unit: The Head of Strategic Finance and Resource Management has reviewed the request and is satisfied it is correct and consistent with the MOPAC's plans and priorities.	<input checked="" type="checkbox"/>
Legal Advice: The MPS legal team has been consulted on the proposal.	<input checked="" type="checkbox"/>
Financial Advice: The Head of Strategic Finance and Resource Management has been consulted on this proposal.	<input checked="" type="checkbox"/>
Equalities Advice: No Equality and Diversity issues identified.	<input checked="" type="checkbox"/>

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

16/03/18

THE PROVISION OF A PERFORMING RIGHT SOCIETY LICENCE

MOPAC Investment Advisory Board 22/03/2017

Report by Lee Kitchen 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

The Business Justification Paper (Part 2) details the request for a single tender action to commence in order to renew the current PRS licence for a further 12 month period from 1 April 2018 to 31 March 2019.

Approval from the Board is required to award the annual renewal to PRS Ltd (the only supplier of the licence) and all single tender actions which exceed £100k require award approval from PIB and IAB (if called in).

This Part 1 Paper also requests that MOPAC delegate authority to the MPS Director of Commercial Services to instigate a single tender action for future annual renewals and to award subsequent contracts to PRS Ltd providing that the annual cost is no more than £250K

Recommendations

The Deputy Mayor for Policing and Crime, via the Investment Advisory Board (IAB), is asked to:

1. **Approve a single tender action procurement exercise for the renewal of a Performing Rights Society (PRS) licence for 2018/19 to PRS Ltd (the only provider of the licence).**
2. **Approve the cost of the new annual licence at £179,318 for the period 1 April 2018 to 31 March 2019, funding is available within existing budgets.**
3. **Delegate authority to the MPS Director of Commercial Services to enter into a contract with a single supplier (PRS Ltd: the only provider of the licence).**
4. **Delegate authority to the MPS Director of Commercial Services to instigate a single tender action for future annual renewals and to award subsequent contracts to PRS Ltd providing that the annual cost is no more than £250K.**

Time sensitivity

A decision is required from the Deputy Mayor by 31/03/2018. This is because the current licence expires on the 31/03/2018.

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

1. PRS Ltd is the only supplier of the licence. The MPS is legally required under the Copyright Designs and Patents Act (CDPA) 1988 to obtain a licence from PRS Ltd to permit the playing of music in its buildings, this is based on the number of staff employed.
2. The licence legally protects the MPS for music played on its premises, including music played on televisions, radios, in rest areas, gymnasiums, canteens and employees having radios on in the background.

Issues for consideration

3. PRS Ltd is the only supplier of the licence and is a non-profit association. The requirement currently sits outside of the Service Integration and Management (SIAM) Towers model, the contract (once awarded) will be managed by Locally Delivered Support Services (LDSS).
4. The absence of a PRS music licence would be considered unauthorised and an infringement of the CDPA 1988.

Contributes to the MOPAC Police & Crime Plan 2017-2021¹

5. The year on year cost reduction of the annual licence (based on future reduction in police/staff numbers) and ongoing savings are linked to the Police & Crime Plan, Greater Pressure on Budgets - Page 16 of the report.

Financial, Commercial and Procurement Comments

6. The cost of the new annual licence is £179,318.65 for the period 1 April 2018 to 31 March 2019, funding is available within existing budget
7. The cost for the annual renewal (2018 to 2019) is reduced by £8,144.72 at £179,318.65, compared with the previous cost of the 2017 to 2018 annual licence at £187,463.30.
8. The licence fee calculation incorporates the total numbers of MPS staff/police employees on an annual basis and can be contained within existing budgets.
9. The annual licence fee will be further reduced year on year, if staff/police numbers reduce within each 12 month period.

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

10. We have explored the option for a multi-year deal with PRS Ltd. However PRS Ltd can currently only offer annual licences, as their tariffs are inflated annually and their systems do not currently have the mechanism to be able to calculate rates beyond a 12 month period.
11. The MPS will have an ongoing requirement to hold a Licence from PRS Ltd. To avoid the requirement to seek annual approval from MOPAC for the single tender action / contract award it is requested that the MPS Director of Commercial Services be granted the authority to award the contract to PRS Ltd in future years subject to the annual cost not exceeding £250K.

Legal Comments

11. Under the CDPA 1988 all exploitation of copyright in music must be in accordance with permission of the copyright holder in the workplace.
12. PRS in Music represents copyright holders in musical works and on behalf of their members, grant group licences to entities in order that licencees can lawfully exploit copyright music.
13. Accordingly the MOPAC is required by law to hold a valid PRS licence if it is to play music, including live performances, on its premises. In addition, when playing recorded music a valid PPL licence is required. Failure to hold a valid licence whilst music is 'played in public' will expose the MOPAC to a risk of legal action for copyright infringement.
14. The MOPAC is a contracting authority as defined in the Public Contracts Regulations 2015 (the Regulations). When awarding contracts for services, supplies or works above the relevant threshold all contracting authorities must do so in accordance with the Regulations. This report confirms that the PRS licence fee exceeds the relevant services threshold of £181,302 for goods and services (as from 1 January 2018). Accordingly, the Regulations are engaged. Regulation 32(2)(b)(iii) permits a contracting authority to negotiate directly with a sole economic operator without prior publication of an Official Journal of the European Union (OJEU) notice when, for reasons connected with the protection of exclusive rights, including intellectual property rights, the public contract may be awarded only to a particular economic operator.
15. This report confirms that PRS is the only economic operator legally capable of granting this licence. Therefore, the MOPAC can obtain a licence directly from PRS in full compliance with the Regulations under paragraph 4.13 of the MOPAC Scheme of Delegation, authority must be sought from the DMPC for all contract exemptions valued at £100,000 or above.

Equality Comments

16. Any equality and diversity implications linked to the provision of the PRS licence are considered under the Copyright, Design and Patents Act (CDPA) 1988.

Privacy Comments

17. Not applicable.

Real Estate Implications

18. The licence permits the MPS to legally play music on its premises, including music played on televisions, radios, in rest areas, gymnasiums, canteens and employees having radios on in the background.

Environmental Implications

19. Any environmental implications linked to the provision of the PRS licence are considered under the CDPA 1988.

20. Any risks (including Health and Safety) Implications linked to the provision of the PRS licence are considered under the CDPA 1988.

Background/supporting papers

21. Not applicable.

Report author:

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Report owner:

Clare Rose - Local Service Delivery Manager, LDSS

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

The Business Justification Paper is included in Part 2 (separate attachment) and is exempt from publication for the following reasons:

- Part 2 is exempt from publication under Article 2(2)(a) of the Elected Local Policing Bodies (Specified Information) Order 2011.
- The FOIA that would exempt this information from disclosure are:

Section 1 - Decisions Required - page 3 - last bullet point (**Section 43: Commercial Interests**).

Section 2 - Strategic Case - page 4 (**Section 43: Commercial Interests**).

Section 3 - Economic Case - page 5 (**Section 43: Commercial Interests**).

Section 4 - Commercial Case - page 6 - paragraphs 2 and 3 (**Section 43: Commercial Interests**).

Section 5 - Financial Case - page 7 - (**Section 43: Commercial Interests**).

Appendix 1 - Investment Criteria (Tables 1 and 2) (**Section 43: Commercial Interests**).

Part 2 will cease to be exempt until 6 years from the end date of the contract: 1 April 2026.

