

## DMPC Decision – PCD 1103

**Title: Novation of Contracts**

### Executive Summary:

MPS currently has contracts with Capita Secure Information Solutions Limited for Managed Radio Services and for the National Strategy for Police Information Systems (NSPIS). Capita has agreed the sale of its Secure Solutions and Services (SSS) business to NEC Software Solutions UK Limited, so these contracts will transfer, first of all into Capita SSS Ltd and then to NEC Software Solutions Ltd. This requires formal novation of the contracts. As this is a novation of existing contracts and services this work does not change any agreed contractual commitments to cost, governance and responsible procurement. The novation of both contracts will not commit the MPS to any expenditure.

These novations will be subject to all appropriate due diligence being undertaken in respect to Capita SSS Ltd. and NEC, noting that if the novation proceeds and NEC acquire Capita SSS Limited, NEC shall have control of the supplier company.

### Recommendation:

The Deputy Mayor for Policing and Crime is recommended to:

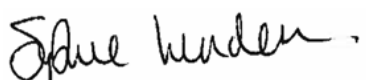
1. Consent to the novation of the Managed Radio Services (MRS) and National Strategy for Police Information Systems (NSPIS) contracts from Capita Secure Information Solutions Limited to Capita SSS Ltd. Any such novation will be subject to MPS completing due diligence investigations into the technical and commercial viability of Capita SSS Ltd.
2. Further consent to the Managed Radio Service and NSPIS contracts to be novated from Capita SSS Limited to NEC if NEC successfully acquire Capita SSS Ltd, subject to:
  - i. MOPACs consent for 1 above;
  - ii. all appropriate due diligence being undertaken in respect to NEC;

### 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**

**16/12/2021**



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

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

- 1.1. On the 1st October 2021, Capita agreed the sale of its Secure Solutions and Services (SSS) business to NEC Software Solutions UK Limited.
- 1.2. The contracts between NEC Software Solutions and Capita in connection with the sale of SSS have now been exchanged and the intention is for the sale to complete around the end of 2021, subject to the necessary consents and approvals.
- 1.3. The SSS business currently sits in Capita Secure Information Solutions Limited (“CSIS”) which is a wholly owned subsidiary of Capita plc. CSIS also houses other Capita businesses. Prior to sale, Capita intend to transfer the entire SSS business to a new company within the Capita group which has been set up for this purpose. This company is called Capita (SSS) Limited (Company Number: 13052116).
- 1.4. NEC Software Solutions UK is currently working with 17 different police forces to improve decision making at the frontline, using NEC CONNECT Software. Software Solutions UK is part of the NEC Corporation.
- 1.5. Capita are contractually required to obtain the consent of the Authority in the event it wants to assign, novate, transfer, dispose of transfer its obligation to a new supplier or sub- contractor. The Authority can, at its discretion, withhold its consent.
- 1.6. The Authority can exercise the termination option on the basis it believes: there is a significant risk of degradation to services, the contract is assigned to a supplier it is in dispute with, would be controlled by a foreign country or on grounds or perception there is a risk to National security, public safety and it’s assignment brings the MPS into/risk of disrepute or undermines public confidence. The MPS must serve notice of termination within 6 months of the change control being submitted by Capita.
- 1.7. MPS are currently seeking further information from Capita in regard to the financial standing and technical ability of Capita SSS Ltd to perform the contract. Any novation would be subject to this information satisfying MPS Commercial Services that Capita SSS Ltd are suitable and capable of performing the services.

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

- 2.1. If the novation and sale to NEC is rejected by MOPAC the contract could either:
  - a. be terminated by MOPAC (by applying one of the reasons for termination set out in 8 above); or
  - b. remain with Capita Secure Information Solutions Limited, who may be unable to deliver the contract if the relevant staff and resources have moved to Capita SSS.
- 2.2. MPS must ensure the continuation of radio services so termination of the contract is not an option. There is limited time to replace Capita in the event MPS do not consent to the novation/assignment to NEC Software Solution.

### **3. Financial Comments**

- 3.1. As this is a novation of an existing contract (service) this work does not change any agreed contractual commitments to cost, governance and responsible procurement. The novation of both contracts will not commit the MPS to any expenditure.

### **4. Legal Comments**

- 4.1. The Mayor's Officer for Policing Crime 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 £189,330 or above will be procured in accordance with the Regulations.
- 4.2. Paragraph 4.13 of the MOPAC Scheme of Delegation and Consent provides that the Deputy Mayor for 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. This propose novation is an unforeseen variation of the contracts.
- 4.3. Paragraph 4.14 of the Scheme provides that the DMPC reserves the right to call in any proposal to award a contract valued at £500,000 or above.

#### **Legal Implications (by TLT LLP)**

- 4.4. 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 £189,330 or above shall be procured in accordance with the Regulations. This report confirms the value of the novations exceed this threshold.
- 4.5. Regulation 72(1)(d)(ii) provides a contract may be modified compliantly where a new contractor replaces the one to which the MOPAC had initially awarded the contract as a consequence of universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the Regulations.
- 4.6. TLT advise the above test is met for both of the proposed novations and any subsequent acquisition of Capita SSS Ltd by NEC.
- 4.7. The MOPAC Scheme of Delegation and Consent provides the Deputy Mayor for Policing and Crime ("DMPC") has delegated authority to approve novations of contracts valued at £500,000 and above.

## **5. Commercial Issues**

- 5.1. The current contract details for these services with Capita Secure Information Solutions Limited are:
- Managed Radio Service – started 1/10/18 for a period of 2 years with 2 one year extension periods, for £6.65m p.a.
  - NSPIS contract – started 1/4/20 for 18 months with a 2 year extension period, for £2.3m p.a.
- 5.2. MPS have sought a Parent Company Guarantee from Capita Group in respect of the financial standing of Capita SSS Ltd.

## **6. GDPR and Data Privacy**

- 6.1. 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.
- 6.2. 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 organizations with technologies and processes that are likely to result in a high risk to the rights of the data subjects.
- 6.3. 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.
- 6.4. The MPS assure that the Radio Managed Services Contract does not use personally identifiable data of members of the public, so there are no GDPR issues to be considered. The NSPIS contract has existing DPIA requirements which will not change as a result of this novation.

## **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. MPS assure that no negative impact has been identified to any individual and/or group safeguarded by a protected characteristic and those who are not.

## **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 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 15/12/2021**



MAYOR OF LONDON  
OFFICE FOR POLICING AND CRIME

## Novation of Contract

### MOPAC Investment Advisory & Monitoring meeting November 2021

#### Report by Commercial Services: Peter Thurley 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*

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

Consent to the novation of the Managed Radio Services and National Strategy for Police Information Systems (NSPIS) contracts from Capita Secure Information Solutions Limited to Capita SSS Ltd. Any such novation will be subject to MPS completing due diligence investigations into the technical and commercial viability of Capita SSS Ltd.

Noting: if the novation proceeds and NEC acquire Capita SSS Limited, NEC shall have control of the supplier company.

Further consent to the Managed Radio Service and NSPIS contracts to be novated from Capita SSS Limited to NEC if NEC successfully acquire Capita SSS Ltd, subject to:

- a. MOPACs consent for 1 above;
- b. all appropriate due diligence being undertaken in respect to NEC;

##### **Recommendations**

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

1. Consent to the novation of the Managed Radio Services (MRS) and National Strategy for Police Information Systems (NSPIS) contracts from Capita Secure Information Solutions Limited to Capita SSS Ltd. Any such novation will be subject to MPS completing due diligence investigations into the technical and commercial viability of Capita SSS Ltd.

Noting: if the novation proceeds and NEC acquire Capita SSS Limited, NEC shall have control of the supplier company.



2. Further consent to the Managed Radio Service and NSPIS contracts to be novated from Capita SSS Limited to NEC if NEC successfully acquire Capita SSS Ltd, subject to:
  - i. MOPACs consent for 1 above;
  - ii. all appropriate due diligence being undertaken in respect to NEC;

### **Time sensitivity**

The deeds consenting to novation require signature by MOPAC and Capita. Capita originally requested a decision by 1st December 2021 as Capita are planning to transfer staff to Capita SSS Ltd on 1<sup>st</sup> December 2021. Capita have now accepted that a decision before close for Christmas is a more realistic timescale. In order to get a decision and signatures a decision by 13<sup>th</sup> December is required.

Capita have provided written confirmation that services will continue during the novation process.

Negotiations with Capita are progressing to ensure commercial benefit is obtained as part of the novation.

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

### **Introduction and background**

3. On the 1st October 2021, Capita agreed the sale of its Secure Solutions and Services (SSS) business to NEC Software Solutions UK Limited.
4. The contracts between NEC Software Solutions and Capita in connection with the sale of SSS have now been exchanged and the intention is for the sale to complete around the end of 2021, subject to the necessary consents and approvals.
5. The SSS business currently sits in Capita Secure Information Solutions Limited ("CSIS") which is a wholly owned subsidiary of Capita plc. CSIS also houses other Capita businesses. Prior to sale, Capita intend to transfer the entire SSS business to a new company within the Capita group which has been set up for this purpose. This company is called Capita (SSS) Limited (Company Number: 13052116).
6. NEC Software Solutions UK is currently working with 17 different police forces to improve decision making at the frontline, using NEC CONNECT Software. Software Solutions UK is part of the NEC Corporation.
7. Capita are contractually required to obtain the consent of the Authority in the event it wants to assign, novate, transfer, dispose of transfer its obligation to a new supplier or sub- contractor. The Authority can, at its discretion, withhold its consent.
8. The Authority can exercise the termination option on the basis it believes: there is a significant risk of degradation to services, the contract is assigned to a supplier it is in dispute with, would be controlled by a foreign country or on grounds or perception there is a risk to National security, public safety and it's assignment brings the MPS into/risk of disrepute or undermines public confidence. The MPS

must serve notice of termination within 6 months of the change control being submitted by Capita.

9. MPS are currently seeking further information from Capita in regard to the financial standing and technical ability of Capita SSS Ltd to perform the contract. Any novation would be subject to this information satisfying MPS Commercial Services that Capita SSS Ltd are suitable and capable of performing the services.

### **Issues for consideration**

10. If the novation and sale to NEC is rejected by MOPAC the contracts could either:
  - a. be terminated by MOPAC (by applying one of the reasons for termination set out in 8 above); or
  - b. remain with Capita Secure Information Solutions Limited, who may be unable to deliver the contract if the relevant staff and resources have moved to Capita SSS.

MPS must ensure the continuation of radio services so termination of the contract is not an option. There is limited time to replace Capita in the event MPS do not consent to the novation/assignment to NEC Software Solution.

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

11. Approval of the novation will mitigate disruption of business as usual projects and support.
12. "We will make the investment necessary to ensure that officers and staff of the MPS have the digital equipment they need to operate effectively and efficiently in modern London"

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

13. As this is a novation of existing contracts (service), this work does not change any agreed contractual commitments to cost, governance and responsible procurement. The novation of both contracts will not commit the MPS to any expenditure.
14. MPS have sought a Parent Company Guarantee from Capita Group in respect of the financial standing of Capita SSS Ltd.

### **Legal Comments**

15. The Mayor's Officer for Policing Crime 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 £189,330 or above will be procured in accordance with the Regulations.

Paragraph 4.13 of the MOPAC Scheme of Delegation and Consent provides that

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

the Deputy Mayor for 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. This proposed novation is an unforeseen variation of the contracts.

Paragraph 4.14 of the Scheme provides that the DMPC reserves the right to call in any proposal to award a contract valued at £500,000 or above.

#### Legal Implications (by TLT LLP)

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 £189,330 or above shall be procured in accordance with the Regulations. This report confirms the value of the novations exceed this threshold.

Regulation 72(1)(d)(ii) provides a contract may be modified compliantly where a new contractor replaces the one to which the MOPAC had initially awarded the contract as a consequence of universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the Regulations.

TLT advise the above test is met for both of the proposed novations and any subsequent acquisition of Capita SSS Ltd by NEC.

The MOPAC Scheme of Delegation and Consent provides the Deputy Mayor for Policing and Crime ("DMPC") has delegated authority to approve novations of contracts valued at £500,000 and above.

#### Equality Comments

16. 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.
17. MPS assure that no negative impact has been identified to any individual and/or group safeguarded by a protected characteristic and those who are not.

#### Privacy Comments

- 18.** 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.

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 organizations with technologies and processes that are likely to result in a high risk to the rights of the data subjects.

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.

The MPS assure that the Radio Managed Services Contract does not use personally identifiable data of members of the public, so there are no GDPR issues to be considered. The NSPIS contract has existing DPIAs requirements which will not change as a result of this novation.

#### **Real Estate Implications**

- 19.** Not applicable.

#### **Environmental Implications**

- 20.** No impact

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

- 21.** None

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