

GREATER **LONDON** AUTHORITY

REQUEST FOR DEPUTY MAYOR FOR FIRE & RESILIENCE DECISION – DMFD124

Title: Respiratory Protective Equipment Contract Award

Executive summary:

The London Fire Commissioner (LFC) seeks consent from the Deputy Mayor for Fire and Resilience for expenditure outlined in the Part 2 form. This expenditure is required for the purposes of progressing the procurement of Respiratory Protective Equipment (RPE), also known as breathing apparatus, for the London Fire Brigade. A procurement exercise has been undertaken and a preferred bidder selected; legal proceedings against the LFC were initiated by an unsuccessful bidder, necessitating further expenditure set out in this decision.

The London Fire Commissioner Governance Direction 2018 sets out a requirement for the London Fire Commissioner to seek prior consent before '*[a] commitment to expenditure (capital or revenue) of £150,000 or above*'. The Direction also provides the Deputy Mayor with the authority to '*give or waive any approval or consent required by [the] Direction*'.

Decision:

The Deputy Mayor for Fire and Resilience consents to the LFC committing to expenditure on the basis set out in the Part 2 report.

Deputy Mayor for Fire and Resilience

I confirm that I do not have any disclosable pecuniary interests in the proposed decision.

The above request has my approval.

Signature:



Date:

20 August 2021

PART I – NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1. As set out in DMFD109 dated 16 March 2021, the Deputy Mayor for Fire and Resilience authorised the London Fire Commissioner to commit capital expenditure up to the value of £6,000,000 for the purchase of Replacement Respiratory Protective Equipment (RPE).
- 1.2. This authorisation was given following completion of the recent OJEU procurement process set out in LFC-0480 and FRB-198 with the preferred bidder identified as MSA (Britain) Ltd (“MSA”). The consequence of MSA being the preferred bidder was that the incumbent supplier of RPE since 1997 Draeger Safety UK Limited (“Draeger”) were ultimately unsuccessful. As a result, Draeger commenced proceedings against the LFC procurement exercise.
- 1.3. The basis of Draeger’s claim dated 23 April 2021 is that they allege the procurement process undertaken breached the Public Contracts Regulations 2015 (“PCR 15”) and as a result an automatic suspension has been put in place which prevents LFC from awarding the new contract to MSA.
- 1.4. The LFC made an application to court to lift the automatic suspension on the basis of urgency to award the contract.
- 1.5. The automatic suspension hearing took place on 14th July 2021 with two matters lodged before the court:
 - an application by LFC, for the lifting of the automatic suspension which arose on issue of a procurement challenge by Draeger pursuant to regulation 96(1)(a) of PCR 15;
 - an application by Draeger for an expedited trial.
- 1.6. The judgement was handed down on Wednesday 4 August 2021 and the Judge determined that the “balance of convenience lies in maintaining the automatic suspension and giving directions for an expedited trial in October 2021.”
- 1.7. The directions ordered are as follows:
 - Expedited Trial date: 21 October 2021 with an estimated length of trial of 5 days (sitting days: Thursday 21 October 2021 and Monday 25 to Thursday 28 October 2021).
- 1.8. Officers from LFC General Counsel and Procurement have discussed the range of options available with Counsel and these are set out in the part 2 report and provide the background and rationale behind the recommendation above.

2. Objectives and expected outcomes

- 2.1 The ultimate objective is to successfully discharge all of the duties required to reach the position where a new contract for RPE can be entered into at the earliest opportunity.
- 2.2 Expected outcomes will be the determination of the costs and resources required to complete the actions recommended above and as set out in Part 2.

3. Equality comments

3.1 The Public Sector Equality Duty under section 149 of the Equality Act 2010 requires decision-takers in the exercise of all their functions to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Equality Act 2010 (in summary, the Act makes discrimination, etc, on the grounds of a protected characteristic unlawful)
- advance equality of opportunity between people who share a protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, and sexual orientation.

3.2 There are no specific equality implications arising from this report. The matters set out in this report concern the LFC position in respect of the litigation.

4. Financial comments

4.1 These are set out in the Part 2 report.

5. Legal comments

5.1 These are set out in the Part 2 report.

Appendices and supporting papers:

None

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after approval or on the defer date.

Part 1 Deferral:**Is the publication of Part 1 of this approval to be deferred? Yes**

The LFC requires a deferral period in order that its negotiating position is not compromised.

Until what date: 1 October 2021

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act 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:

Drafting officer to confirm the following (✓)

Drafting officer

Richard Berry has drafted this report with input from the LFC and in accordance with GLA procedures and confirms the following:

✓

Assistant Director/Head of Service

Niran Mothada has reviewed the documentation and is satisfied for it to be referred to the Deputy Mayor for Fire and Resilience for approval.

✓

Advice

The Finance and Legal teams have commented on this proposal.

✓

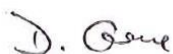
Corporate Investment Board

This decision was approved on an urgent basis in consultation with the Chief of Staff and will be noted by the Corporate Investment Board on 23 August 2021.

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature



Date

20 August 2021