

DMPC Decision – PCD 540

Title: Road Traffic Alcohol Support Single Tender Actions

Executive Summary:

This paper recommends approval to award two contracts for via a single tender action for Breathalyser Equipment support and maintenance.

The proposed term for both contracts is 1 year with a two 1-year extension options. Total combined value is estimated to be £515k.

MPS has a statutory requirement to enforce drink drive legislation. There is a continuing need to provide a service contract to maintain and repair the Electronic Screening Devices (ESD) and Evidential breath machines (EBM) and provide gas cylinders across the MPS estate to enable local calibration, and to provide training provision to the MPS.

Recommendation:

The Deputy Mayor for Policing and Crime is recommended to:

1. Approval to award a contract via Single Tender Action for the support and maintenance of Electronic Screening Devices (ESD) to Lion Laboratories Ltd for total estimated value of £175k for 3 years which will be funded from Forensic supplies and services revenue budget.
2. Approval to award a contract via Single Tender Action for the support and maintenance of Evidential breath machines (EBM) to Intoximeters for total estimated value of £340k for 3 years which will be funded from Forensics supplies and services revenue budget.

The proposed contract term for both contracts is 1 year with a two 1-year extension options.

3. Approval to commence contract action via Competitive Procurement process for upgrading of Electronic Screening Devices (ESD) and Evidential breath machines (EBM) once the market develops.

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

Shirley Under

Date

12/03/2019

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

1. Introduction and background

- 1.1. There is a continuing need to provide a service contract to maintain and repair the Electronic Screening Devices (ESD) and Evidential breath machines (EBM) and provide gas cylinders across the MPS estate to enable local calibration, and to provide training provision to the MPS. The MPS has a statutory requirement to enforce drink drive legislation. After arrest the motorist must be taken to a police station where an evidential breath test can be performed, using an Evidential Breath Machine (EBM). It is the result of the EBM test that determines whether or not the motorist has exceeded the specified alcohol limit in breath. This determines if the motorist is charged or not.

2. Issues for consideration

- 2.1. Continued service and support are required to keep the two different types of breathalyser equipment calibrated and in working order and to ensure suitable evidence and audit details can be obtained. There is also a continued need for Lion Laboratories to deliver training courses for new Police Officers.

3. Financial Comments

- 3.1. The estimated value of the contract is £515k, which will be funded from Forensics supplies and services revenue budget.

4. Legal Comments

- 4.1. As defined in the Public Contracts Regulations 2015 (the Regulations). All awards of public contracts for goods and/or services valued at £181,302 or above will be procured in accordance with the Regulations.
- 4.2. Regulation 32 provides for limited grounds where MOPAC may negotiate a contract with a sole supplier without advertising the opportunity in the Official Journal of the European Union. Specifically, 32(2)(b) provides it is permitted where the goods and/or services can only be provided by that supplier due to competition being absent for technical reasons, where no reasonable alternative exists, and the absence of such competition is not the result of an artificial narrowing down of the competition by the MOPAC.
- 4.3. This report confirms that the support and maintenance of the devices can only be provided by the specific economic operators referred to and that no reasonable alternative products exist.
- 4.4. Paragraph 4.13 of the MOPAC Scheme of Delegation and Consent provides that the Deputy Mayor for Policing and Crime has delegated authority to approve all contract exemptions valued at £100,000 or above.

5. Commercial Issues

- 5.1. The negotiated procedure without advertising (single tender action) will be used for this procurement in accordance with public contract regulation 32 2b (ii) as the support and maintenance of the devices can only be provided by the specific economic operators and therefore competition is absent due to technical reasons.
- 5.2. This is the only commercially viable option given the incumbents are the only providers that have the necessary scope of accreditation by UKAS to service repair & calibrate their Home Office Type approved evidential breath testing instruments.

6. GDPR and Data Privacy

- 6.1. The proposal to purchase the equipment does not use personally identifiable data therefore there are no GDPR issues to be considered.

7. Equality Comments

- 7.1. There are no equality or diversity implications arising from this report.

8. Background/supporting papers

- 8.1. MPS 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

	<i>Tick to confirm statement (✓)</i>
Financial Advice: The Strategic Finance and Resource Management Team has been consulted on this proposal.	✓
Legal Advice: Legal advice is not required.	✓
Equalities Advice: Equality and diversity issues are covered in the body of the report.	✓
Commercial Issues Commercial issues are covered in the body of this report	✓
GDPR/Data Privacy A DPIA is not required.	✓
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.	✓

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

12/03/2019



MOPAC

MAYOR OF LONDON
OFFICE FOR POLICING AND CRIME

MPS Road Traffic Alcohol Support

MOPAC Investment Advisory Board 1st 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 report is to seek approval to award two contracts for via a single tender action for Breathalyser Equipment support and maintenance.

The proposed term for both contracts is 1 year with a two 1-year extension options. Total combined value is estimated to be £515k.

1. Recommendations

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

- a) Approval to award a contract via Single Tender Action for the support and maintenance of Electronic Screening Devices (ESD) to Lion Laboratories Ltd for total estimated value of **£175k** for 3 years which will be funded from Forensic supplies and services revenue budget.
- b) Approval to award a contract via Single Tender Action for the support and maintenance of Evidential breath machines (EBM) to Intoximeters for total estimated value of **£340k** for 3 years which will be funded from Forensics supplies and services revenue budget.

The proposed contract term for both contracts is 1 year with a two 1-year extension options.

- c) Approval to commence contract action via Competitive Procurement process for upgrading of Electronic Screening Devices (ESD) and Evidential breath machines (EBM) once the market develops.

2. Time sensitivity

A decision is required from the Deputy Mayor by 8th March 2019. This is because the existing contract will expire at the end of March 2019 and sufficient time is required to agree new contract.

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

The MPS has a statutory requirement to enforce drink drive legislation. In order to provide a legal basis to justify stopping a motorist, Additionally the MPS is committed to the annual summer and Christmas National and European anti-drink drive campaigns. The ESD and EBM are fundamental to the success of these campaigns. The Department of Transport provisional statistics for 2016 estimate that over 6000 collisions within Great Britain involved drink driving.

4. Introduction and background

- 4.1 There is a continuing need to provide a service contract to maintain and repair the Electronic Screening Devices (ESD) and Evidential breath machines (EBM) and provide gas cylinders across the MPS estate to enable local calibration, and to provide training provision to the MPS.
- 4.2 The MPS has a statutory requirement to enforce drink drive legislation. In order to provide a legal basis to justify stopping a motorist, it is necessary to perform a screening test, using a measuring instrument (an ESD) commonly referred to as a breathalyser. Section 6 of the Road Traffic Act 1988 provides police officers with the power to conduct preliminary breath tests to identify whether a person driving is likely to have excess alcohol in their body. This power allows officers to test those suspected of being involved in a collision, those suspected of committing a moving traffic offence and those suspected of having consumed alcohol or being under the influence of alcohol. Such a test will also therefore eliminate, at the earliest opportunity, those who are almost certainly not offending. If a positive result is obtained, this provides the legal basis for arresting the motorist.
- 4.3 After arrest the motorist must be taken to a police station where an evidential breath test can be performed, using an Evidential Breath Machine (EBM). It is the result of the EBM test that determines whether or not the motorist has exceeded the specified alcohol limit in breath. This determines if the motorist is charged or not.

5. Issues for consideration

Continued service and support is required to keep the two different types of breathalyser equipment calibrated and in working order and to ensure suitable evidence and audit details can be obtained. There is also a continued need for Lion Laboratories to deliver training courses for new Police Officers.

6. Contributes to the MOPAC Police & Crime Plan 2017-2021¹

The use of breathalyser testing equipment helps to reduce death and serious injury on our roads. This directly supports the Mayors aspirations for healthy streets and the committed 'vision zero' approach to reducing road dangers.

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

7. Financial

- 7.1 The table below illustrates the costs associated with this contract. These costs are estimated and have not been negotiated until this route to market is approved.

Breathalyser Maintenance	New Estimated Costs 2019-20	2020-2021	2021-2022
EBM's	£113,845	£113,845	£113,845
ESD's	£56,375	£57,784	£59,202

- 7.2 Spend levels will always fluctuate for this contract as while the fees are fixed for call-out charges the total cost fluctuates depending on the actual repair and support costs change when equipment falls out of there warranty and into the routine service contract.
- 7.3 Overall demand is linked to operational requirements to effectively enforce drink driving legislation thus we cannot reduce the number of assets without affecting front line capability.

8. Commercial and Procurement Comments

- 8.1 The current maintenance contracts will expire in March 2019. There are no further foreseen extensions within these agreements. Commercial have engaged with Lions and Intoximeters and they are confident that they can continue to support and maintain the existing devices for up to a further 36 months.
- 8.2 The negotiated procedure without advertising (single tender action) will be used for this procurement in accordance with public contract regulation 32 2b (ii) as the support and maintenance of the devices can only be provided by the specific economic operators and therefore competition is absent due to technical reasons.
- 8.3 This is the only commercial viable option given the incumbents are the only providers that have the necessary scope of accreditation by UKAS to service repair & calibrate their Home Office Type approved evidential breath testing instruments.
- 8.4 This commercial strategy allows continued use of existing devices and has contractual flexibility by way of annual review. More importantly, it allows sufficient time for the market to evolve to a competitive level while the MPS before we tender for new equipment.
- 8.5 Commercial plan to commence a procurement process once the Home Office approves the two devices we know are in development. This is anticipated to be in the next 2 years.

9. Legal Comments

- 9.1 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 public contracts for goods and/or services valued at £181,302 or above must be procured in accordance with the Regulations. This report confirms the value of the two proposed contracts each exceed this threshold. Accordingly, the Regulations are engaged.
- 9.2 Regulation 32 provides for limited grounds where MOPAC may negotiate a contract with a sole supplier without advertising the opportunity in the Official Journal of the European Union. Specifically, 32(2)(b) provides it is permitted where the goods and/or services can only be provided by that supplier due to competition being absent for technical reasons, where no reasonable alternative exists and the absence of such competition is not the result of an artificial narrowing down of the competition by the MOPAC.
- 9.3 This report confirms that the support and maintenance of the devices can only be provided by the specific economic operators referred to and that no reasonable alternative products exist. On the basis that this is correct, the proposed awards will be compliant within regulation 32.
- 9.4 Paragraph 4.13 of the MOPAC Scheme of Delegation and Consent provides that the Deputy Mayor for Policing and Crime has delegated authority to approve all contract exemptions valued at £100,000 or above.

10. Equality Comments

Equality and Inclusion have reviewed this report from an equality and diversity perspective and have not identified any external or internal impacts in relation to the Equality Act 2010 and the protected characteristics.

11. Privacy Comments

This information is contained in the restricted section of the report'.

12. Real Estate Implications

There are no real estate implications.

13. Environmental Implications

Forensic Services will continue to demonstrate good practice by re-using parts from older EBM machines. Once all the equipment is refreshed post 2021, Forensics and Commercial will work with the environment team and the suppliers to seek opportunities for responsible disposal/re-use methods as part of the re-tender process.

14. Background/supporting papers

None

Report author: Dean Ames, Forensic Drug Operations Manager – 0203 276 2033 and Natalie Aumeer, Commercial Category Manager 0207 161 1553.

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 Breathalyser Support and Maintenance is exempt from publication for the following reasons:

The relevant sections under the FOIA that would exempt this information from disclosure in the Commercial Interest Section 43

The paper will cease to be exempt until the information is no longer commercially sensitive after the completion of the contract.

