

Operational Contingency Arrangements (OCA): Future Contract 2023 to 2029

Report to:

Operational Delivery Board
Investment & Finance Board
Commissioner's Board
Deputy Mayor's Fire and Resilience Board
Investment & Finance Board
London Fire Commissioner

Date:

29 July 22
25 August 22
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Report by:

Pat Goulbourne, Assistant Commissioner Operational Resilience and Control

Report classification:

For decision

For publication

PART ONE

Non-confidential facts and advice to the decision-maker

Executive Summary

The London Fire Brigade (Brigade) has a duty under the Civil Contingencies Act 2004 to plan for the purpose of ensuring, “so far as is reasonably practicable”, that if an emergency were to occur, the Brigade would still be able to continue to perform its functions. The current arrangements, known as Capital Guard, are the contingency measures implemented during times when gaps in normal service provision, operational response, and control, are experienced.

This report sets out the recommendations for a new contract to provide for the operational contingency crews (OCC) during periods of workforce disruption. This follows a tendering process that has been completed as part of a wider project for operational contingency arrangements (OCA).

For the Deputy Mayor

That the Deputy Mayor for Fire and Resilience authorises the London Fire Commissioner to commit revenue expenditure of up to the amount set out in the Part Two report for the purposes of entering into and, on the expiration of the initial term, extending the contractual arrangements set out in this report with the successful supplier.

This LFC decision will only be taken after further consultation with the Greater London Authority’s finance and legal advisers and Corporate Investment Board.

For the London Fire Commissioner

The LFC approves the expenditure as set out in the in Part Two of this report and delegates authority to the Assistant Director Procurement and Commercial to enter into and, on the expiration of the initial term, extend the contractual arrangements set out in this report with the successful supplier.

1 Introduction and Background

- 1.1 The Brigade has a duty under the Fire and Rescue Services Act 2004 (FRSA), section 7, in relation to firefighting, protecting life and property in the event of fires in its area, and in doing so, it must secure the provision of personnel, services and equipment necessary to efficiently meet all normal requirements. A duty also applies under section 8, of the FRSA, in respect of road traffic collisions. Section 9 of the FRSA deals with additional ‘emergencies’ other than fires and road traffic accidents.
- 1.2 Furthermore, under section 2 of the Civil Contingencies Act 2004 (CCA), the Brigade must formulate and maintain plans, for “emergencies” for the purpose of ensuring, “so far as is reasonably practicable”, that if

an emergency were to occur, the Brigade would still be able to continue to perform their functions. Such emergencies include an event or situation that threatens serious damage to human welfare, the environment or war, terrorism, or security of the United Kingdom.

- 1.3 To comply with this legislation and to ensure an emergency provision was in place, in 2014 the Brigade entered a contract with Securitas Security Services (UK) Ltd to establish an emergency fire crew capability contract (EFCC). These arrangements support internal provisions known as Capital Guard, these are the contingency measures implemented during times when normal service provision, operational response, and control, are not able to be provided. This includes events such as flu pandemics or strike action taken by a representative body.
- 1.4 The contract expired in November 2020 and extension arrangements were triggered that has enabled the service to continue for a maximum of three years This extension is due to end in November 2023 and as such a new arrangement needs to be put in place.
- 1.5 The existing contract is worth £4.6 million per annum in 2021/22 and £4.8 million in 2022/23. This is to maintain a steady state. Further costs are incurred if the capability is required to be stood up and deployed.
- 1.6 The EFCC contract secures the provision of trained operational contingency crews, command support teams and contingency control call handling staff needed to a response in times of activation of Capital Guard. This is a necessary control measure for periods of service disruption which is an identified risk in the LFC corporate risk register and national security risk assessment.
- 1.7 In order to support the Capital Guard arrangements, it is proposed that a further contract is agreed to provide these contingency crews for periods of workforce disruption and that from the point of implementation the service personnel provided by that Contractor should be referred to as the Operational Contingency Crews (OCC). This is to signify the change in arrangements and to avoid any confusion with professional firefighters during periods when the capability is stood up.
- 1.8 The new contract will be for a period of six years with an option to extend for a further three years.
- 1.9 The recent tendering process has reached evaluation stage using a new operational specification for the requirements of LFC. Though numerous changes have been made to this specification the underlying themes of this new specification which differentiate it from the previous specification are as follows:
 - 1.10 The new specification has removed the requirement for the Contractor to approach incidents in defensive mode by default. Instead, this has been replaced with an emphasis on having a capability with the ability to assess every incident for its needs and to respond accordingly in defensive or offensive mode. This is necessary to adapt to the changing risk in the built environment and from climate change.
 - 1.11 The new specification has removed the specific requirement to have command support teams (CST) in separate vehicles for deployment to incident. Instead, the requirement is now for suitable and sufficient command and control to be available for every incident. However, how the contractor decides to fulfil this obligation is up to them.
 - 1.12 The new specification has removed detailed guidance about how individuals should be trained or recruited and instead replaced these with references to national guidance and best practice in the fire sector. This represents a key change in the tone where the specification previously focused on outputs required of the Contractor it now focuses on them delivering the outcomes expected.
 - 1.13 In order to manage the future contract more effectively, there is now a new requirement on the contractor for them to implement their own assurance framework. Whilst this includes provision of LFC to carry out independent assurance, the increased responsibility on the contractor to provide this

themselves is consistent with LFC's own strategic direction and conveys greater ownership over the quality of service provided, to the provider itself.

- 1.14 The new specification builds on lessons learned from previous periods of workforce disruption and has sufficient flexibility to be deployed from either fire stations or alternative locations if required. As modelling suggests the best attendance times will be achieved from maximising the number of deployment locations so the use of the LFC estate will be the default option unless the decision is made that operational effectiveness would benefit from the use of alternative locations.
- 1.15 The timetable is influenced by the need to have a replacement contract in place prior to the expiry of the current provision in November 2023 that cannot be extended. A replacement contract can supersede the current arrangements at an earlier date if it is ready to be implemented at the discretion of the London Fire Commissioner (LFC). A notice period of six months is required for the current contract. An implementation period of up to a year is preferable for the contractor.

Project Phase	Task	Time Frame	Start date
Tender Period	Governance process		July to Sep 22
	Clarification and Evaluation of tenders	3 Months	Aug-Sep 22
	Award report drafting	2 Months (Parallel to Evaluation)	Aug-Sep 22
	Reporting period	4 months	August – November 2022
	Standstill period	10 days	Nov-22
	Contract Award		Nov-22
Implementation & lead up to go live	Implementation period		November 2022 – November 2023
	Go Live with new provider / contract		Nov-23

2 Objectives and Expected Outcomes

- 2.1 This contract will deliver a retender of the current EFCC arrangements to replace the existing contract with a new contract for OCC. This fulfils a key objective of the paper first presented at Commissioner's Board on 10 March 2021. It must be in place at the latest by 13 November 2023, when the current extended contract terminates on 12 November 2023. There is also a significant implementation process required prior to this date.
- 2.2 To enable the Brigade to continue to function in times of total staff loss or other interruptions to service delivery in line with Fire and Rescue Services Act (FRSA) 2004, Civil Contingencies Act (CCA 2004, Fire Services National Framework (FSNF) 2018. The replacement OCC contract will enable the Brigade to meet its legal requirements by the end of the existing contingency arrangement contract on 12 November 2023.
- 2.3 The project will seek to secure areas of improvement in all aspects of OCC contingency arrangements and will be regularly monitored and governed through Key Performance Indicators (KPI) and utilising the assurance framework which will be in place by the implementation date.

- 2.4 The procurement process for the EFCC contract is a significant corporate undertaking noted in the corporate risk register and requires sufficient support to manage the process from across the organisation.
- 2.5 The future OCC arrangements require a more bespoke response by the Contractor. Their service personnel are no longer responding to incidents in Delta (defensive) mode by default. Rather the arrangements require the contractor to be able to respond in either Delta (defensive) or Oscar (offensive) mode and to provide adequate command and control to risk assess this for every incident.
- 2.6 The future OCC arrangements will default to using the LFB estate as the attendance locations. These locations are the geographical areas which the appliances are distributed from, and which currently are limited by the third-party provider (the Territorial Army) to 13. By utilising the LFB estate an optimum spread of appliances can be achieved.
- 2.7 The current standards for EFCC crews are based on first appliance attending in 10 minutes, the second appliance attending in 15 minutes and 95% of all first attendances within 20 minutes. Modelling indicates that this would be possible with the use of a minimum of 22 locations which is not possible with the current arrangements, but the future proposal would facilitate.
- 2.8 Sufficient flexibility is included in the proposed arrangements that LFC could require the contractor's service personnel to ride across 32 fire appliances rather than 27. As this would still provide a minimum of five service personnel per appliance, this is in keeping with standard practice in the sector. As the appliances are provided by LFB there is also minimal additional cost associated with this request, but it would allow LFC to deploy OCC from up to 32 locations. However, it should be noted that the default position will be for the contractor to ride with six per appliance as per current arrangements.
- 2.9 The table below indicates the benefits of the improved attendance times in the future contract and the flexibility which exists to achieve even lower attendance times if the LFB wishes to utilise 32 fire appliances in contingency arrangements.

	1st appliance	2nd appliance
Current EFCC standard	10 mins	15 mins
27 fire stations	8 mins 28 seconds	12 mins 55 seconds
32 fire stations	7 mins 45 seconds	12 mins 5 seconds

- Further benefits of using the LFB estate have been identified as the currency of operational risk information on the mobile data terminals (MDTs) is dependent on the network connection at stations.
- While some arrangements will need to be made for LFB employees at selected stations to undertake standbys for shifts which cover start and finish time of industrial action there is minimal disruption to LFB operations with the use of the estate. One of the key benefits is that appliances selected for use by contingency crews would no longer have to be removed from regular use for the duration of the action. They would remain operationally available outside of direct periods of industrial action.

3. Equality comments

- 3.1 The LFC and the Deputy Mayor for Fire and Resilience are required to have due regard to the Public Sector Equality Duty (section 149 of the Equality Act 2010) when taking decisions. This in broad terms involves understanding the potential impact of policy and decisions on different people, taking this into account and then evidencing how decisions were reached.

- 3.2 It is important to note that consideration of the Public Sector Equality Duty is not a one-off task. The duty must be fulfilled before taking a decision, at the time of taking a decision, and after the decision has been taken.
- 3.3 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage, and civil partnership (but only in respect of the requirements to have due regard to the need to eliminate discrimination), race (ethnic or national origins, colour or nationality), religion or belief (including lack of belief), sex, and sexual orientation.
- 3.4 The Public Sector Equality Duty requires decision-takers in the exercise of all their functions, to have due regard to the need to:
- eliminate discrimination, harassment and victimisation and other prohibited conduct
 - advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it
 - foster good relations between people who share a relevant protected characteristic and persons who do not share it.
- 3.5 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic where those disadvantages are connected to that characteristic
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
 - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3.6 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 3.7 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- tackle prejudice
 - promote understanding.
- 3.8 The opportunity to review arrangements for the OCC capability is an opportunity to consider how this response can be provided with greater regard to the known risks and characteristics of London. Thereby providing a contingency arrangement which better reflects the needs of London and Londoners. The emphasis on using the existing LFB estate as attendance locations is intended to provide better equity of cover than is currently possible by using third party locations to deploy from.
- 3.9 An Equality Impact Assessment (EIA) has been carried out and has identified several adverse impacts. Following meetings with the Equalities team and further consultation with community safety the adverse impacts are all believed to be around the groups who are already vulnerable to fire. For these groups there is an inherent risk for any period where fire cover is reduced from normal business.
- 3.10 The groups identified in the EIA and the data drawn from Community Safety will be used to inform the departmental products. This is a work-stream which will take place before implementation of the new arrangements and which will aim to mitigate some of the increased risk by implementing further control measures for these groups.

4. Other considerations

Procurement

- 4.1 The procurement route undertaken is a one stage Open Procedure in line with the Public Contract Regulations (as amended). It is not anticipated due to the nature of this contract and the current market that there will be a large number of potential tenderers and so a restricted procedure was not required.
- 4.2 The procurement and legal resource required for this project has been considerable, with the necessary procurement manager funded as part of the project during the drafting stage of the documentation. The project is now supported by an additional Procurement Project Manager as a development opportunity within the Procurement Department with the Head of Commercial - Operations leading this Procurement
- 4.3 Tenders were received on 16th August. Following this a thorough evaluation process will be undertaken with representatives from Operational Resilience, Training and Development, Fleet & OSG, Health and Safety and People Services. It is anticipated that the evaluation process will be completed by 30 September 2022 to allow sufficient time to award and secure a full year implementation process with a view to the new arrangement being in place prior to the deadline of 13 November 2022.
- 4.4 This implementation and launch of this project will be key and will require dedicated resource from a range of Brigade Departments. A formal project plan will be published following award.
- 4.5 Once implementation commences a full review of Capital Guard will be required to ensure all products meet with the new requirement. All Departments who own products will have to engage in the process which will be led by Operational Resilience.

Sustainability

- 4.6 The procurement activity will be undertaken in accordance with the Public Contract Regulations (as amended), LFC's Scheme of Governance and the GLA group Responsible Procurement policy. Where new policies and/or corporate projects arise, they are subject to the Brigade's sustainable development impact assessment process (SDIA).
- 4.7 The nature of the Contract means that for any periods during which it has been deployed the Contractors carbon footprint is likely to be significantly lower than that which LFB would normally operate with due to the more modest size of the workforce in operation as well as the reduction in estate use and vehicle movements.

Strategic Drivers

- 4.8 The London Fire Commissioner (LFC) has a duty to provide contingency arrangements to cater for periods of industrial action or other occasions when normal resourcing arrangements are unable to be met.
- 4.9 Following a briefing paper (OCA) which was presented at CB on 10 March 2021 it has been decided that a blended approach should be pursued with a view to replacing and improving the current EFCC arrangements by November 2023.
- 4.10 The proposals in this paper focus on the operational contingency arrangements provided by the Contractor for the core service. This is part of a wider project to consider all contingency arrangements and further work on resilience contracts and provision of specialist assets will be forthcoming as part of that wider project for Operational Contingency Arrangements (OCA).

Workforce Impact

- 4.11 As this paper outlines the need to engage with the Representative Bodies there is an impact upon the workforce.
- 4.12 The area of contingency arrangements for periods of industrial action is a sensitive topic which must be explored with care and due consideration to avoid unnecessary confrontation with representative bodies.

Communications comments

- 4.13 The LFC workforce will need to be informed that the future arrangements will be referred to as Operational Contingency Crew (OCC) rather than Emergency Fire Crew Capability (EFCC).
- 4.14 Arrangements for how the OCC and LFC crews will work alongside each other are not expected to change from previous arrangements so there are no new operational training requirements which will require communication.
- 4.15 Communication to LFC staff is expected to be required at two key junctures. On implementation of the new arrangements and prior to any expected deployment of such arrangements. It is envisaged that previous mediums would be sufficient, and that Hotwire and Big Learning can be used to do this.

5. Financial comments

- 5.1 This report recommends that annual revenue funding is agreed to cover the implementation of the new arrangements for Operational Contingency Crews (OCC). This will be incurred in the 2023/24 financial year and end in the 2029/30 financial year.
- 5.2 Full details of the upper cost envelope are contained within Part Two of this report due to the commercial sensitivity.

6. Legal comments

- 6.1 Under section 9 of the Policing and Crime Act 2017, the London Fire Commissioner (the "Commissioner") is established as a corporation sole with the Mayor appointing the occupant of that office.
- 6.2 Section 1 of the Fire and Rescue Services Act 2004 ("FRSA") states that the Commissioner is the fire and rescue authority for Greater London.
- 6.3 Section 7 of the FRSA places a duty on the Commissioner to make provision for the purposes of extinguishing fires in its area and protecting life and property in the event of fires in its area.
- 6.4 In making provision, the Commissioner must, in particular, secure the provision of the personnel, services, and equipment necessary efficiently to meet all normal requirements (i.e., requirements for normal fire risks in their area) as regards protecting life and property, including during abnormal times. A similar duty is imposed upon the Commissioner in respect of rescuing people in the event of road traffic accidents in its area under s.8 FRSA. There is a broad operational discretion as to how to make the required provision.
- 6.5 The above duties are 'target duties'. In the case of such 'target duties' there is not an absolute standard that must be attained. There will not necessarily be a breach if there is just and reasonable excuse, which may be constituted by a temporary lack of provision on account of industrial action or other circumstances such as sickness caused by a pandemic. The grounds for non-provision must, however, objectively be considered to be 'compelling and reasonable'. Everything must be done that can reasonably be done to remedy the situation, including taking reasonable steps to provide cover, and making contingency plans that are reasonably reliable.

- 6.6 The Commissioner also has duties under the Civil Contingencies Act 2004 (“CCA”) to carry out contingency planning for emergencies. In particular the Commissioner must assess the risk of an ‘emergency’ occurring (the definition of which includes an event or situation which threatens serious loss of human life/injury/homelessness/ damage to property) and maintain plans for the purpose of ensuring so far as reasonably practicable that if such an emergency (as defined above) occurs, the Commissioner is able to continue to perform its functions. These duties apply in relation to emergencies (as defined) if the emergency would be likely to seriously obstruct the Commissioner in the performance of its functions.
- 6.7 Additionally, when carrying out its functions, the Commissioner is required to have regard to the Fire and Rescue National Framework for England (“National Framework”) prepared by the Secretary of State (FRSA, section 21). The National Framework states that:
- Fire and rescue authorities must have effective business continuity arrangements in place in accordance with their duties under the Civil Contingencies Act 2004. Within these arrangements, fire and rescue authorities must make every endeavour to meet the full range of service delivery risks and national resilience duties and commitments that they face.*
- 6.8 Although the above duties do not distinguish between life and property, life must be accorded a higher priority than property. The right to life under Article 2 of the European Human Rights Convention is absolute whereas property rights are qualified.
- 6.9 To fulfil these duties, including notably the requirements of the National Framework the Commissioner may enter into contractual arrangements with third parties. This report sets out the nature of those contractual arrangements. The procurement activity will be undertaken in accordance with the Public Contract Regulations (as amended), LFC’s Scheme of Governance and the GLA group Responsible Procurement policy.
- 6.10 Under section 327D of the GLA Act 1999, as amended by the Policing and Crime Act 2017, the Mayor may issue to the Commissioner specific or general directions as to the manner in which the holder of that office is to exercise his or her functions. By direction dated 1 April 2018, the Mayor set out those matters, for which the Commissioner would require the prior approval of either the Mayor or the Deputy Mayor for Fire and Resilience (the “Deputy Mayor”).
- 6.11 Paragraph 2.1(b) of Part 3 of the direction requires the prior approval of the Deputy Mayor for Fire shall be obtained before a decision is taken for a commitment to expenditure (capital or revenue) of £150,000 or above as identified in accordance with normal accounting practices.
- 6.12 This report will include a request to commit expenditure of over £150,000 and once the cost envelope is known, the Deputy Mayor’s prior approval will be required. The cost envelope will be provided to the Finance and Investment Board to consider prior to this report progressing to the Commissioner and Deputy Mayor to take the decisions set out in this paper.
- 6.13 The Commissioner’s Scheme of Governance reserves to the Commissioner the following decision-making powers: “To agree all matters that have a significant impact on the organisation or service delivery, as determined by a Director”. Consequently, internal decision making on this report rests with the Commissioner.

List of appendices

Appendix	Title	Open or confidential*
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1	None	
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Part two confidentiality

Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part Two form, together with the legal rationale for non-publication.

Is there a Part Two form: YES

Originating officer declaration

Reporting officer to confirm the following by using 'x' in the box:

Reporting officer

GC Charlie Hanks has drafted this report and confirms the following:

1. Assistant Director/Head of Service
AC Pat Goulbourne has reviewed the documentation and is satisfied for it to be referred to Board for consideration

X

2. Advice
The Finance and Legal teams have commented on this proposal:
Tom Davies Legal Advisor, on behalf of General Counsel (Head of Law and Monitoring Officer).
Kat Kosa Financial Advisor, on behalf of the Chief Finance Officer.

X

X