

**CABINET MEMBER FOR SAFER & STRONGER COMMUNITIES
11 APRIL 2011**

**REQUEST FOR EXEMPTION FROM CONTRACT
PROCEDURE RULES – PERSONAL PROTECTIVE EQUIPMENT FOR
FIREFIGHTERS**

Report by Chief Fire Officer

Introduction

1. This report seeks an exemption from Rule 13 of the Contract Procedure Rules, to submit tenders for the goods, services or works required by the Council. The reason is that the council, through no fault of its own, will not have a supply of personal protective equipment for firefighters unless this exemption is granted. This places an unacceptable risk on the council to meet its statutory duty to both firefighters as employees and in turn the public who depend on our staff to provide a safe and effective emergency response service.

Background

2. In 2001, a contract was let to Lion Apparel for the provision of personal protective equipment (PPE) for firefighters within Oxfordshire Fire and Rescue Service (OFRS). This contract was for 7 years and was due to terminate on 31 August 2008. Due to the affordability and suitability of the subsequent national PPE contract (Integrated Clothing Project - ICP), OFRS took the option within the original Lion Apparel contract to extend by 2 years, with a view to transferring to a new regional (South East) PPE contract that was being procured at the time, as an accepted alternative to ICP (approved by CLG)
3. Time delays in this collaborative regional tendering process eventually required the Service to request a further 6-9 month contract extension - up until May 2011 - to allow its completion. The exemption was approved by resolution of the Cabinet Member for Safer & Stronger Communities on 10 May 2010 and sanctioned a contract extension of the estimated value of £149,715 (6 month extension with an option to extend for 3 months)

Current

4. As the implementation of this regional contract was being finalised, it was subject to challenge (on the basis that the tender had been awarded on certain items of PPE but other fire services were considering choosing alternatives that increased the price). This was resolved but delayed the roll out to all services.

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5. The original SE contract award criteria were established at the beginning of the tender process in September 2009, with tenders being received by January 2010. This was prior to any indication from national government regarding either the scale or the depth of cuts to local government spending. The extent of these cuts was unforeseen by OFRS and has led to it re-examining the costs of this contract in more detail. In fact, the full extent of the national budget settlement was only made clear to OCC in December last year – leading to full Council approval of the 2011/12 budget in mid February of this year. This has resulted in OFRS being given a budget settlement over the next four years that requires it to find £919k in efficiency savings against a £24.675m annual budget by Year 3 (2013/14).
6. In terms of the cost analysis to Oxfordshire over the full 8 years of purchasing within the SE framework, these are as follows:
 - Initial costs per firefighter were initially 23% higher in Year-1 of the contract than under the current Lion contract, but this was the best value tender and was agreed by the evaluation panel (as the existing OFRS contract had been running for 10 years with no inflationary increases).
 - However, additional costs (i.e. linked to Retail Price Index and recruitment) - which had been built in to the new contract - showed a disproportionate increase in costs for new recruits, rising year-on-year over the life of the contract.
 - With an average turnover of 50 recruits per year this would lead to expenditure in Year-8 of the contract to OFRS in excess of £450,000 per annum, (compared to the current budget of £210,000).
7. Advice has been received regarding an alternative framework contract with YPO which indicated that this could be used for a fully managed service for up to 8 years - as long as the contract was entered into before the framework agreement ended.
8. Thus at this point in early 2011, it was concluded that in view of significant budgetary constraints the only affordable course of action would be to undertake a mini competition using YPO framework as research indicated this could result in an arrangement which mitigated the financial pressures. Putting together an appropriate “Invite To Tender” and evaluation process would take about 6-8 months to successfully complete before any contract award was possible.
9. The other alternative of undertaking an entirely new tender exercise would - based on previous experience - take in the region of 12 months to award (as happened with the SE contract) and be more costly, as OCC would need to commit significant procurement resources to complete the tender exercise, as opposed to using an established framework contract.

10. Consideration has also been given as to whether to specify all new equipment or whether it would provide a more cost effective solution if some items of the existing kit were retained. It was decided after some thought that the existing kit needed to be replaced due to its age.
11. As a consequence, OFRS has commenced the new mini competition procurement process using the YPO and the final specification is currently being prepared, requiring the bidders to supply 3 full alternative proposals, with their bids. This should be with the YPO by the beginning of April 2011 for the proposal to be issued. Bids should be evaluated and a contract should be in place by the end of August 2011.
12. As the original extension (that was agreed from August 2010) runs out at the end of May 2011, an alternative needs to be put in place pending the letting of the new contract and its implementation in the Service - to ensure that as a minimum the existing PPE is maintained in terms of laundering, replacement and repair, as well as being subject to effective asset tracking and quality control systems. As this kit is currently the property of the provider - and is provided under a fully managed service (which includes storage, loan stock, full asset management, laundering, repair and fair wear and tear replacement - at the cost of the supplier) - it is proposed that an exemption from the contract procedure rules is granted and a further agreement is entered into with the existing supplier to provide this service - as this is the only way to ensure continuity of service and minimise the risk to firefighter safety.
13. A separate tender exercise for an interim solution is not a tenable option because there is no practical prospect of it being concluded by the end of May 2011. In short, the risk of a gap in service continuity and the potential impacts of that in terms of the resilience of the Service are too high. The new interim agreement is proposed to run from June 2011 for 9 months¹. Initial discussions have taken place regarding the proposed costs for this service and it is likely to be in line with the current monthly payments of the existing contract (£15,719.33 per month), which are fully-costed within current budgets.

Probity and Value for Money

14. This request is for an exemption from the contract procedure rules to ensure that PPE for firefighters can continue to be maintained, whilst a mini competition tender exercise for a fully managed service is completed that also addresses the proposed reduction in service budget.
15. It was previously agreed that at the cessation of the contract in June 2011 the PPE ownership would pass to the Service. It was intended that the PPE would be redeployed to a number of uses. However, now with the intention of entering into another agreement with the current supplier, it would be agreed that the PPE continue to belong to the supplier until the new cessation date.

¹ Made up of an initial 3 months to allow the contract to be let and then 2 further 3 month blocks depending on the roll out schedule of the willing tenderer

16. The expected monthly expenditure of £15,719.33 is still in line with the costs of the original contract 10 years ago and represents exceptional value for money due the fact that the contract was let on the basis of no RPI indexation. The daily rate per fire-fighter is less than £1 per day.
17. As previously mentioned, a mini competition tender exercise is currently underway for a new fully managed PPE contract and this is being undertaken in full compliance with the Public Contract Regulations 2006 and thereby the council's contract procedure rules - ensuring that there is open competition for all potential future partners.

Consequences if the Proposed Action is not Approved

18. If the proposed action is not approved then there is a significant risk to firefighter safety. This is through the potential of having no facility for laundering, replacing or repairing PPE. The knock-on effect of this is that since firefighters would not have appropriate PPE they would not be able to enter premises resulting in risk to public safety – and impact on OFRS's statutory duty to extinguish fires and effectively manage the health and safety arrangements for its employees.
19. The tendering exercise for a fully managed service is being given priority but is not likely to be completed until July/August. Additionally, there will need to be a programme to roll out the supply of new PPE and this needs to be done thoroughly to ensure the kit fits appropriately.

Future Procurement Strategy

20. The future procurement strategy, as explained above, is for a fully compliant mini competition to be let under the YPO framework.

Legal Appraisal and Financial Appraisal

21. Please see Annex 1 attached.

RECOMMENDATION

22. **The Cabinet Member for Safer & Stronger Communities is recommended to approve this exemption from the Council's Contract Procedure Rules in view of the emergency situation now brought about beyond the reasonable control of the council.**

DAVID ETHERIDGE
Chief Fire Officer

Background Papers: Nil

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March 2011

Financial Appraisal

1. Background details in relation to overall financial and budgetary position. (FBP)

The budget for 2011/12 is £240,305. It covers the monthly costs plus an allowance for providing clothing for over 40 new recruits per annum. This budget is more than adequate for the continuation of the existing contract.

2. Assessment of business case. (FBP)

The Fire & Rescue Service has made a strong case for extending the existing contract until a new contract can be let and the roll out of new equipment is completed.

3. Assessment of financial risk to the council. (FBP)

There would be significant financial as well as operational risks if this extension did not go ahead. Any alternative interim solution would have higher procurement costs including opportunity costs.

4. Assessment as to whether exemption specified is appropriate in terms of effective procurement by the council. (AHF (Proc)) –

Agree to the exemption, however in relation to the report I would argue that that the service should have been planning for budget reductions from July 2010 when savings targets for 2011/12 to 2014/15 were set by Cabinet. Though I would agree that, for 2011/12, exact allocations were not known until December 2010 when the draft Local Government Finance Settlement was announced and that Council agreed the final budget for 2011/12 on 15th February. All the other reasons for the exemption are valid.

5. Where necessary, identification of action to be taken before recommendation for exemption can be made in Financial Appraisal.

None identified

6. Whether additional changes are necessary in procurement practice for future contracts.

None identified

7. Recommendation as to whether exemption should be granted. (FBP and AHF (Proc))

FBP & AHF: it is recommended that exemption should be granted.