

## **CABINET MEMBER FOR SAFER & STRONGER COMMUNITIES – 10 MAY 2010**

### **REQUEST FOR AN EXEMPTION FROM THE TENDERING REQUIREMENTS UNDER THE CONTRACT PROCEDURE RULES IN RESPECT TO PERSONAL PROTECTIVE EQUIPMENT (PPE) FOR THE FIRE & RESCUE SERVICE**

**Report by Director for Community Safety & Shared Services and  
Chief Fire Officer**

#### **Purpose of the Report**

1. This report requests an exemption from the tendering requirements in the Contract Procedure Rules. Specifically, this relates to the proposed extension of an existing contract beyond its current contract term.

#### **Reason why the Annex is Exempt**

2. The public should be excluded during consideration of the annex to this report because discussion of it in public would be likely to lead to the disclosure to members of the public present of information in the following categories as prescribed by Part 1 of Schedule 12A to the Local Government Act 1972 (as amended):
  3. *Information relating to the financial and business affairs of any particular person including the authority withholding that information*

and since it is considered that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, in that such disclosure might prejudice the commercial position of Lion Apparel Ltd.

#### **Background**

3. In 2001 a contract was let 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.
4. In 2005, in order to deliver Fire & Rescue Service (FRS) procurement at a national level, the Secretary of State established a national body – Firebuy Ltd – to drive the National Procurement Strategy forward. Firebuy then initiated the Integrated Clothing Project (ICP). This was intended to create a national identity for firefighters and a contract that would provide significant efficiency savings and quality service for all FRAs.

5. The preferred bidder for the Firebuy contract was announced in March 2007, but due to legal challenge the contract was not available until May 2008.
6. Following evaluation of the ICP contract OFRS decided, along with all other South East region FRSs, that the ICP contract could not meet the Service's needs.
7. Within the OFRS existing contract with Lion Apparel Ltd there was an option to extend for 2 years and an extension for 6 months was felt appropriate in August 2008 to February 2009. A further 18 months' extension was taken on 1 March 2009 to 31 August 2010.
8. OFRS along with the South East region had intended to "call off" under the Yorkshire Purchasing Organisation (YPO) Framework agreement due to be awarded in February 2009. However, nearing the time to call off, OFRS & Kent F&R legal departments identified that the framework would contravene contract rules if we were to call off for longer than 4 years. For financial reasons it was considered essential that the contract duration was longer than this period.
9. In June 2009 Kent Fire & Rescue on behalf of the South East sought exemption from the mandatory use of the Firebuy ICP contract through a business case submitted to Communities and Local Government (CLG). Subsequently, this was approved by CLG allowing the creation of a regional procurement approach.

### **Current Position**

10. The potential to use the existing framework agreement through YPO was not suitable because it was a 4 year framework agreement and to make the contract cost efficient across the region, at least a 7 year agreement was needed.
11. This has resulted in a full tender exercise being undertaken as a South East collaboration of 9 Fire and Rescue Services (FRS). Kent Fire and Rescue Service, with procurement advice from Oxfordshire's County Procurement Team (funded via the South East Fire Improvement Partnership), led this procurement exercise. With expressions of interest from other FRSs resulting in 22 Services now intending to make use of the contract, the cost benefits of this collaborative approach are widely acknowledged. Tenders are currently being evaluated and the contract is due to be operational from 12 April 2010. This procurement process is fully compliant with all contract procurement law and is seen as a best practice procurement process.
12. The current OFRS contract extension with Lion Apparel Ltd ends on 31 August 2010. Whilst the official new framework commencement date is April 2010, the lead-in times for the new contract are anticipated to be between 6 and 10 months. In addition to this lead-in period, a full sizing exercise for all of Oxfordshire's operational staff will be required as a prerequisite.

## Reason For Requesting An Exemption From Tendering Under The Contract Procedure Rules

13. It was originally anticipated that by the extension of the earlier contract there would be a seamless transition from one contract to the replacement contract ensuring continuity of PPE availability. However, due to the delay in the collaborative tendering process and previous inability to use the Yorkshire Procurement Organisation call off contract, the ability to guarantee continuing provision of PPE is in question. This places an unacceptable level of risk on the operational effectiveness of the service should there be any delay in either the letting of the contract or the implementation of it.
14. On a contingency basis, it is considered necessary to identify options to minimise this risk.

### Options

#### Option 1:

- Let the existing contract run to the end of August 2010 and move to the new contract from then;
- **Risks** – If the existing provider does not win the new contract (as has subsequently occurred), there may be difficulties during the exit period or if the contract expires before the new one is operational e.g. kit not maintained, new kit not provided, old kit recalled from present provider at the end of the lease period;
- **Benefits** – The benefits would be a continuous service moving from one contract to another and the earliest provision of the newer PPE which has a higher level of protection to wearers;
- **Analysis** – The risk of the new contract not being operational from August 2010 is too great for this option to be taken forward independently. There needs to be a contingency in place to provide business continuity.

#### Option 2:

- Agree a short-term transitional arrangement with the new contract provider to ensure some aspects of PPE are provided before a full roll out;
- **Risks** – Significant logistic issues e.g. the sizing/measuring process, inability to ensure compatibility between differing items of PPE, reliance on current contractor goodwill and the difficulty in agreeing contract terms for the short-term period;

- **Analysis** – The focus for the new contract will be on roll out within that contract. Although the new provider will be keen to develop the relationship, they may not have the capacity to run a transitional contract in parallel. This option would also not be feasible if there was a delay in the contract award. In that situation, there would be no legal basis for a short-term contract.

### Option 3:

- **Extend** the existing contract with the existing supplier for a defined period which, whilst sufficient to ensure continuity of PPE provision and seamless transfer to the new supplier, is for as short a period as possible. It is intended that this would be for a 6 month period with an option for a further extension for a further 3 months.
- **Risks** – Continued use of ageing PPE which, whilst compliant and serviceable, has a lower level of protection available to wearers than that provided by the new PPE. There is some potential for challenge from competitors.
- **Benefits** – Continuity of service – Essential PPE is provided enabling firefighters in OFRS to remain operational and deliver an essential service to citizens. Ability to undertake a detailed and more effective sizing and measuring process to reduce implementation difficulties as the PPE is deployed.
- **Analysis** – Whilst there are some risks to this option, they are far outweighed by the benefits. The PPE provider is already operational and working effectively. Kit is provided and maintained and is still fit for purpose. The potential for external challenge is considered minimal as all potential suppliers have been party to the larger contract process and recognise the need for contingency provisions of this nature.

### Implications

15. The Contract Procedure Rules cannot be followed for option 2 as there is not sufficient time between contract award and the termination of the existing contract to allow for a parallel transitional contract, which would still require a lead-in time, sizing exercise and willingness from, as at yet, an unknown winning contractor.
16. The Contract Procedure Rules cannot be followed for option 3 as there is insufficient time to undertake a new tendering exercise or a replacement short-term contract. In addition, any other supplier can be reasonably expected to incur significant costs in setting-up a short-term contract that would result in very high contract charges which would have to be passed on to OFRS as part of the lease costs.

## **Probity and Value for Money**

17. The current PPE provider has informally identified that continuation of the current contract is possible on the basis of the current financial contract. The figure can be compared to the values within the current tender responses. On this basis, the continuation of the current arrangements identifies a potential saving and therefore the extension of the current contract will reduce overall costs.

## **Consequences If The Proposed Action Is Not Approved**

18. The consequences of not having a contingency in place to ensure seamless transition to the new contract are; a potential inability to provide an effective Fire and Rescue Service and a failure to meet the statutory duties of the Fire Authority under the Fire and Rescue Service Act 2004.

## **Future Procurement Strategy**

19. As stated above, the replacement PPE contract is fully compliant with all procurement contract rules.

## **Financial Appraisal**

20. The Finance Business Partner has identified the following from his financial appraisal:
  - Option 1: This presents no financial risk.
  - Option 2: There will almost certainly be a significant short-term additional cost to Oxfordshire Fire & Rescue Service, which is not quantifiable at this time.
  - Option 3: As a contract extension is likely to be agreed at the current price, there should be no financial risk to the Authority.

21. The Finance Business Partner recommends the granting of the exemption.

## **Legal Appraisal**

22. See separately attached Legal Appraisal (Refer Annex 1).

## **Equality and Diversity, Health & Safety**

23. OFRS have considered if any specific health and safety (H&S), equality and diversity (E&D) or environmental implications arise from this report. Current PPE meets all appropriate H&S and E&D requirements and will be disposed of under a methodology which supports the Authority's environmental requirements. The replacement PPE contract has been tendered with specific requirements relating to health and safety, equality and diversity and its environmental implications. In all areas these are to a higher standard than the current PPE. As a consequence and with recognition that the contract

exemption is sought on either a short term or contingency basis, the Service is satisfied that there are no implications that will arise from this decision.

## **RECOMMENDATION**

24. **The Cabinet Member for Safer & Stronger Communities is RECOMMENDED to approve an exemption from the tendering requirements of Oxfordshire County Council's Contract Procedure Rules and to:**
- (a) *approve an extension to the existing contract with Lion Apparel Ltd for a period of 6 months, with an option to withdraw sooner if that is feasible;***
  - (b) *delegate authority to the Director for Community Safety and Shared Services and Chief Fire Officer to extend the contract for a further 3 months should the new contract not be operational in sufficient time to allow for a seamless transition.***

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Background Papers: Nil

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