

DMPC Decision – PCD 801

Title: Extension of Price Uplifts for Forensic Marketplace Stabilisation

Executive Summary:

This paper sets out the case for extending price uplifts under the Authority's Physical Forensics Managed Service Provider Contract (Agreement SS31502), to align with the recommendations of the National Police Chiefs Council (NPCC) and to maintain stability in the forensic marketplace.

The total cost of the recommended uplifts exceed the £500k delegated authority level of the MOPAC Scheme of Consent and Delegation, and therefore requires Deputy Mayoral approval.

Recommendation:

The Deputy Mayor for Policing and Crime is recommended to:

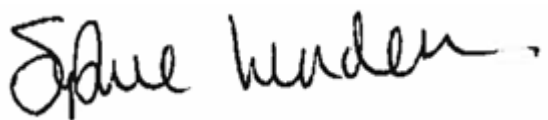
1. Approve an extension of contract price uplifts to the end of the initial term of Agreement SS31502, expiring 15 December 2023. This would result in an estimated increase of £6.517m to the total contract value, based on current forensic submission volumes continuing at the same rate for the remainder of the contract term.
2. Note that a one-off budget uplift of £1.8m was agreed in 2020/21 for market stabilisation costs and if there is any unused budget uplift it is planned to roll this forward into future years as a reserve to mitigate any future unforeseen market stabilisation costs (subject to approval at year end).
3. Note that a separate paper is being prepared to address the potential cost impact of an increase in forensic submission volumes related to the planned increase in Officer numbers over the next 3 years.

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



Date

20/08/2020

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

1. Introduction and background

- 1.1. In late 2018, the physical forensics marketplace faced a real and imminent risk of collapse; with two of the three main forensic service providers (FSPs) in the country on the brink of exiting the market due to financial distress. In response to this existential threat, NPCC Gold and Silver Groups were convened, supported by the Forensic Capability Network (FCN), and a two-phased national approach to market stabilisation was agreed.
- 1.2. In March 2019, the Deputy Mayor approved adoption of Phase 1 of the national approach; to apply short-term (one-year) uplifts to contracted prices. Phase 2 of the national approach was to be developed after an FCN review of the forensic marketplace during 2019. It was anticipated that a long-term stabilisation strategy would be ready to be implemented following expiry of Phase 1, and the Deputy Mayor was asked to note that a further request for decision on next steps might be required as a result of this.

2. Issues for consideration

- 2.1. The forensics marketplace remains highly fragile, having suffered 5 critical incidents within a time span of just 3 years.
- 2.2. The NPCC has recommended that law enforcement agencies:
 - maintain the external Physical Forensic marketplace at no less than the current spend levels per annum by preserving both prices and volumes.
 - adopt a “holding position” until 2022, either extending current contracts or aligning local activities with the national approach, to provide forensic service providers (FSPs) with much needed stability and prevent further challenges or destabilisation of the marketplace.
- 2.3. The price uplift extension period requested in this paper goes beyond the NPCC recommended holding position period of ‘until 2022’, but a benchmarking exercise will be carried out in 2022 to ensure that the Authority continues to receive value-for-money and remains competitive with national pricing levels.
- 2.4. Further information is contained in the restricted section of the report.

3. Financial Comments

- 3.1. The total impact of the extended price uplifts is estimated at £6.517m, based on current forensic submission volumes continuing at the same rate for the remainder of the initial contract term.

- 3.2. A one-off £1.8m contract budget uplift in 2020/21 will mitigate the impact of the forecast increase in spend on the Eurofins' contract in 2020/21. It is planned that any unused 2020/21 budget uplift will be rolled forward into future years if required, subject to year-end approvals. Based on current knowledge, the forecast for the remainder of Eurofins' contract including market stabilisation price uplift impact for future years can be managed within the Eurofins contract budget. However, if forecast spend was to increase, this could result in a cost pressure in Forensics.

4. Legal Comments

- 4.1. The Mayor's Office for Policing and Crime is a contracting authority as defined in the Public Contract Regulations 2015 (the Regulations). All awards of/variations to public contracts valued at £189,330+ are subject to the Regulations 2015.
- 4.2. Paragraph 4.8 of the MOPAC Scheme of Delegation and Consent provides that the Deputy Mayor of Policing and Crime has delegated authority to approve business cases for revenue or capital expenditure of £500,000 and above.
- 4.3. Paragraph 4.13 of the MOPAC Scheme of Delegation and Consent provides that the Deputy Mayor of Policing and Crime has delegated authority to approve all unforeseen variations and extensions to contracts with an original value of £500,000 or above, when the variation or extension is greater than 10% of the original value and/or is for a period of more than 12 months.
- 4.4. Part 2 of this report identifies the legal considerations regarding recommendation 1.

5. Commercial Issues

- 5.1. Together with the previously approved £8.3m increase for the Forensic Backlog Recovery Plan and £1.84m increase for Forensic Marketplace Short-Term Stabilisation, the extended price uplifts would represent a total £16.66m or 12% increase against the original published contract value of £139m.
- 5.2. The forensic marketplace is no longer at imminent risk of collapse, but this is certainly due to the price uplifts which were applied across police contracts nationally in 2019, and which to date have continued to be maintained across all police contracts.
- 5.3. If contract prices were to revert to pre-uplift levels, which an independent financial review verified as unsustainable in January 2019, it would be reasonable to expect that the forensic marketplace will revert to the pre-price-uplift critical state of fragility within a short period of time. Arguably, this is the same and continuation of the unforeseen circumstances which provided grounds for modification a year ago and should therefore be permitted.

- 5.4. In addition, both the cyber-attack on Eurofins Forensic Services (EFS)in June 2019 and the current COVID19 pandemic are critical events that the Authority could not have foreseen and provide possible further grounds for contract modification.
- 5.5. As an extension to an existing service this work does not change any aspects relating to responsible procurement.
- 5.6. Further information is contained in the restricted section of the report.

6. GDPR and Data Privacy

- 6.1. Implementing the recommendation will not require the use or processing of personally identifiable data of members of the public, so there are no GDPR issues to be considered.

7. Equality Comments

- 7.1. As this paper relates to ensuring the continuity of an existing service, this recommendation does not change any aspects relating to equality or diversity. There will be no impact on service users/employees, therefore an Equality screening is not necessary at this time.

8. Background/supporting papers

- 8.1. 'Forensic Marketplace Short Term Stabilisation and Additional Investment' business justification paper, published March 2019. Decision ref. PCD 566.

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: n/a

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: The MPS legal team has been consulted on the proposal.	✓
Equalities Advice: Equality and diversity issues are covered in the body of the report.	✓
Commercial Issues The proposal is in keeping with the GLA Group Responsible Procurement Policy.	✓
GDPR/Data Privacy <ul style="list-style-type: none"> • GDPR compliance issues are covered in the body of the report. • 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.	✓

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

Date 29/7/20

**Extension of Price Uplifts for Forensic Marketplace Stabilisation****MOPAC Investment Advisory & Monitoring meeting 23rd July 2020****Report by Claire Luu on behalf of the Director of Forensic Services****Part 1 – This section of the report will be published by MOPAC. It is classified as OFFICIAL – PUBLIC*****EXECUTIVE SUMMARY***

This paper sets out the case for extending price uplifts under the Authority's Physical Forensics¹ Managed Service Provider Contract (Agreement SS31502), to align with the recommendations of the National Police Chiefs Council (NPCC) and to maintain stability in the forensic marketplace.

The total cost of the recommended uplifts exceed the £500k delegated authority level of the MOPAC Scheme of Consent and Delegation, and therefore requires Deputy Mayoral approval.

Recommendations

The Deputy Mayor for Policing and Crime is asked to:

- 1. Approve an extension of contract price uplifts to the end of the initial term of Agreement SS31502, expiring 15 December 2023. This would result in an estimated increase of £6.517m to the total contract value, based on current forensic submission volumes continuing at the same rate for the remainder of the contract term.**
- 2. Note that a one-off budget uplift of £1.8m was agreed in 2020/21 for market stabilisation costs and if there is any unused budget uplift it is planned to roll this forward into future years as a reserve to mitigate any future unforeseen market stabilisation costs, subject to approval at year end.**
- 3. Note that a separate paper is being prepared to address the potential cost impact of an increase in forensic submission volumes related to the planned increase in Officer numbers over the next 3 years.**

¹ Formerly referred to as 'Traditional Forensics' at Contract award. Now known as 'physical forensics', as distinct from Digital Forensics, and concerned with the forensic analysis of physical evidence traditionally examined within a laboratory environment, including DNA, Drugs, Toxicology, Questioned Documents, Pathology, and an array of other specialist and niche scientific services.

Time sensitivity

A decision is required from the Deputy Mayor by 06 August 2020. This is because the extension of price uplifts, if approved, would need to be retrospectively applied in arrears from 01 June 2020.

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

Introduction and background

1. In late 2018, the physical forensics marketplace faced a real and imminent risk of collapse; with two of the three main forensic service providers (FSPs) in the country on the brink of exiting the market due to financial distress. In response to this existential threat, NPCC Gold and Silver Groups were convened, supported by the Forensic Capability Network (FCN), and a two-phased national approach to market stabilisation was agreed.
2. In March 2019, the Deputy Mayor approved adoption of Phase 1 of the national approach; to apply short-term (one-year) uplifts to contracted prices. Phase 2 of the national approach was to be developed after an FCN review of the forensic marketplace during 2019. It was anticipated that a long-term stabilisation strategy would be ready to be implemented following expiry of Phase 1, and the Deputy Mayor was asked to note that a further request for decision on next steps might be required as a result of this.

Issues for consideration

3. The forensics marketplace remains highly fragile, having suffered 5 critical incidents within a time span of just 3 years.
4. The NPCC has recommended that law enforcement agencies:
 - maintain the external Physical Forensic marketplace at no less than the current spend levels per annum by preserving both prices and volumes.
 - adopt a “holding position” until 2022, either extending current contracts or aligning local activities with the national approach, to provide forensic service providers (FSPs) with much needed stability and prevent further challenges or destabilisation of the marketplace.
5. The price uplift extension period requested in this paper goes beyond the NPCC recommended holding position period of ‘until 2022’, but a benchmarking exercise will be carried out in 2022 to ensure that the Authority continues to receive value-for-money and remains competitive with national pricing levels.
6. Further information is contained in the restricted section of the report.

Contributes to the MOPAC Police & Crime Plan 2017-2021²

7. The recommended extension of price uplifts contribute to delivering the Police & Crime Plan by safeguarding the provision of forensic services for the medium to long term future to 2023.

Financial, Commercial and Procurement Comments

Financial

8. The total impact of the extended price uplifts is estimated at £6.517m, based on current forensic submission volumes continuing at the same rate for the remainder of the initial contract term. Together with the previously approved £8.3m increase for the Forensic Backlog Recovery Plan³ and £1.84m increase for Forensic Marketplace Short-Term Stabilisation, this would represent a total £16.66m or 12% increase against the original published contract value of £139M.
9. A one-off £1.8m contract budget uplift in 2020/21 will mitigate the impact of the forecast increase in spend on the Eurofins' contract in 2020/21. It is planned that any unused 2020/21 budget uplift will be rolled forward into future years if required, subject to year-end approvals. Based on current knowledge, the forecast for the remainder of Eurofins' contract including market stabilisation price uplift impact for future years can be managed within the Eurofins contract budget. However, if forecast spend was to increase, this could result in a cost pressure in Forensics.

Commercial and Procurement

10. The forensic marketplace is no longer at imminent risk of collapse, but this is certainly due to the price uplifts which were applied across police contracts nationally in 2019, and which to date have continued to be maintained across all police contracts.
11. If contract prices were to revert to pre-uplift levels, which an independent financial review verified as unsustainable in January 2019⁴, it would be reasonable to expect that the forensic marketplace will revert to the pre-price-uplift critical state of fragility within a short period of time. Arguably, this is the same and continuation of the unforeseen circumstances which provided grounds for modification a year ago and should therefore be permitted.
12. In addition, both the cyber-attack on Eurofins Forensic Services (EFS) in June 2019 and the current COVID19 pandemic are critical events that the Authority could not have foreseen and provide possible further grounds for contract modification.

Responsible Procurement

² [Police and crime plan: a safer city for all Londoners | London City Hall](#)

³ Business Justification Paper 'Contract Price Uplifts for Additional Forensic Work' approved by PIB in June 2019, and accepted without being called in by IAM.

⁴ Smith & Williamson LLP forensic accountancy financial review of FSPs accounts, January 2019.

13. As an extension to an existing service this work does not change any aspects relating to responsible procurement.

Other

14. Further information is contained in the restricted section of the report.

Legal Comments

15. The Mayor's Office for Policing and Crime is a contracting authority as defined in the Public Contract Regulations 2015 (the Regulations). All awards of/ variations to public contracts valued at £189,330+ are subject to the Regulations 2015. Part 2 of this report identifies the legal considerations regarding recommendation 1.
16. Paragraph 4.8 of the MOPAC Scheme of Delegation and Consent provides that the Deputy Mayor of Policing and Crime has delegated authority to approve business cases for revenue or capital expenditure of £500,000 and above.
17. Paragraph 4.13 of the MOPAC Scheme of Delegation and Consent provides that the Deputy Mayor of Policing and Crime has delegated authority to approve all unforeseen variations and extensions to contracts with an original value of £500,000 or above, when the variation or extension is greater than 10% of the original value and/or is for a period of more than 12 months.
- 18.

Equality Comments

19. As this paper relates to ensuring the continuity of an existing service, this recommendation does not change any aspects relating to equality or diversity. There will be no impact on service users/employees, therefore an Equality screening is not necessary at this time.

Privacy Comments

20. Implementing the recommendation will not require the use or processing of personally identifiable data of members of the public, so there are no GDPR issues to be considered.

Real Estate Implications

21. No impact.

Environmental Implications

22. No impact.

Background/supporting papers

- 'Forensic Marketplace Short Term Stabilisation and Additional Investment' business justification paper, published March 2019. Decision ref. PCD 566.

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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 [Extension of Price Uplifts for Forensic Marketplace Stabilisation](#) is exempt from publication for the following reasons:

- Exempt under the following sections of the FOIA:
 - Commercial Interest Section 43 of the FOIA ; and
 - Legal Professional Privilege Section 42 of the FOIA

The paper will cease to be exempt on the expiry of the contract.