

**SURREY COUNTY COUNCIL**

**CABINET**

**DATE: 24 JUNE 2014**

**REPORT OF: MRS HELYN CLACK, CABINET MEMBER FOR COMMUNITY SERVICES**

**LEAD OFFICER: RUSSELL PEARSON, CHIEF FIRE OFFICER**

**SUBJECT: TO REVIEW AND DISCUSS THE CONTRACT ARRANGEMENTS FOR CONTINGENCY CREWING AND FOR THE PROVISION OF SPECIAL RESCUE CAPABILITIES**



**SUMMARY OF ISSUE:**

Surrey Fire and Rescue Authority (SFRA) has a legal requirement to provide contingency cover according to the Fire and Rescue Services Act 2004, National Framework and Civil Contingencies Act 2004.

In 2012, SFRA entered into a contract with a private provider for specialist rescue on a day-to-day basis, and contingency crewing, run as a pilot (for proof of an innovative concept). The pilot has been extended until 31 March 2015.

The pilot contract has been successful and the Cabinet is asked to give approval to commence a full tender process for a long term contract for the provision of this service which should obtain better value for money and enable further innovative ways of working.

**RECOMMENDATIONS:**

It is recommended that Cabinet approves:

SCC Procurement and Surrey Fire and Rescue Service (SFRS) to commence the tendering for a new contract that delivers value for money and innovative ways of working, for the delivery of contingency crewing and specialist rescue capabilities, from 31 March 2015, when the current extended contract ends.

**REASON FOR RECOMMENDATIONS:**

- SFRA remains compliant with legal requirements (Fire and Rescue Services Act 2004, National Framework and Civil Contingencies Act 2004).
- SFRS could develop opportunities for the supply of specialist rescue capabilities to / with partners.
- This move assists progress on the SFRS transformation agenda, and by broadening the contract scope would meet the increasing financial pressures and create a partnership to deliver new and innovative ways of working for the benefit of all Surrey residents.

## **DETAILS:**

### **Background**

1. Surrey Fire and Rescue Authority (SFRA) is in the process of refreshing its current Public Safety Plan (PSP) which will set out a framework within which alternative models for service delivery can be evaluated and will set the Service's long term vision against changing environmental, national and local demands. The plan will take into account recommendations relating to adapting to provide more effective and efficient services.
2. The increasing financial pressures faced by public services emphasise the need to consider alternative models of delivery and operation to support the broadening range of activities delivered by the fire and rescue service.
3. In addition to strategic challenges that require SFRS to consider alternative ways of working, SFRA also need to meet the service requirement under the Fire and Rescue Services Act 2004, the associated National Framework and the Civil Contingencies Act 2004 for the provision of contingency crewing during industrial action or due to degradation of capability (for example, the a large proportion of the workforce succumbing to pandemic flu).
4. In October 2012, Surrey County Council's Cabinet approved for SFRS to let a contract (as a pilot scheme) for the provision of contingency crewing and other rescue capabilities to support SFRS to meet specialist rescue requirements for example surface and sub-surface water rescue/recovery, high level working and cave or other confined space rescue. Since December 2012, SFRS have had a contract in place for the provision of contingency crewing and specialist rescue delivery on a day to day basis. This extended contract ends on 31 March 2015.

### **Conclusion**

5. The pilot contract has worked successfully and SFRS wish to continue to have contingency crewing and specialist rescue capabilities in place, provided through a new contract.

### **Options**

6. Based on the information above, the Service has considered three options and the Cabinet are asked to approve proceeding with Option 3.

#### **Option 1: Ceasing third party Contingency Arrangements**

7. It is a statutory requirement, under the Fire and Rescue Services Act 2004 and Civil Contingencies Act 2004 for SFRA to provide contingency crewing insofar as is reasonably practicable (please see the Legal Implications section below).
8. The Fire and Rescue National Framework for England published by the DCLG on 11 July 2012 states that all Fire and Rescue Authorities must have effective business continuity arrangements in place in accordance with their duties under the Civil Contingencies Act 2004 and to meet the full range of service delivery risks: such business continuity plans should not be developed on the basis of Armed Forces assistance being available. In order for SFRS to continue to

meet its statutory obligations if the contract was terminated, the Council would need to identify different ways to meet these obligations.

9. The Service could seek legal advice and develop a “no-strike” clause in the contract of employment linked to a remuneration, which may provide contingency internally for any industrial action.
10. **This option is not aligned with the legal requirements, therefore, unless a contractual “no-strike” clause within the firefighter’s contracts of employment can be developed, it is not recommended.**

#### **Option 2: Continuing with current provision**

11. In 2012, a waiver was given to set up a contract for specialist and contingency crewing for SFRS, which meant that a full tender process was not needed.
12. The arrangement with the current supplier could be continued to deliver current services (contingency crewing, specialist rescue). By maintaining the status quo, SFRA would meet its legal obligations for contingency crewing but could not achieve the planned Medium Term Financial Plan (MTFP) savings.
13. **The option is not recommended, as funding within the MTFP needs to be created through efficiencies to establish the budget for this service and any contract extension would put the Council at risk of breaching the EU Procurement rules. .**

#### **Option 3: Putting in place new Contingency Arrangements**

15. SFRS could seek to tender a contract that continues the provision for contingency crewing and specialist rescue services, but which also allows the services to be provided on a 24/7 basis. The development of innovative ways of working could create the MTFP savings required to fund the contract.
16. SFRS are recommending Cabinet to approve option 3 (to create a new model of delivery which will broaden the scope of the existing contract and develop innovation within the service through the development and integration of the use of contingency contract’s capacities and capabilities (see Part 2 for details).
17. **This option is recommended, as it is the only option that has the ability to deliver the optional model required to enable the sustainable funding of the contract.** The tender process will ensure that the strategic direction of the Authority is met whilst ensuring value for money and will be undertaken in accordance with EU procurement regulations.
18. The Equality Impact Assessment (EIA) process we follow is the tool we use to provide evidence on how we meet our equality duties as a public sector authority.
19. The aim of the contract will be determined during the tender process. The contract will be for an initial five year period with an option for a two year extension. The usual break clauses will apply during the contract period.

### **CONSULTATION:**

20. SFRS have been liaising closely with internal stakeholders, including Fire and Rescue Service Advisory Group, SFRS Chief Officer's Group, (COG) SCC Procurement and SCC Finance. The recommended option has also been shared with staff and their representative bodies, including the Fire Brigade Union (FBU), who did not support this proposal but acknowledge that SFRA have a statutory duty to have contingency crewing in place.
21. The proposal has been scrutinised by the Communities Select Committee at their meeting on 19 May 2014 and it is fully supported.

### **RISK MANAGEMENT AND IMPLICATIONS:**

22. Option 1 has not been pursued as it would put the Service in breach of its legal requirements, (Civil Contingencies Act 2004, Fire and Rescue Services Act 2004), however, a "no-strike" clause could be developed following legal advice. Option 2 - extension of the current contract would be in conflict with procurement regulations which state we must open this contract up to a competitive tender. This option would also not meet the MTFP requirements, therefore, a new contract will seek further innovative ways of working, providing the services required with value for money.
23. Contracting the provision of contingency crewing, specialist rescue and other services, presents the following risks:
  - Cultural and operational integration of the contractor – communication across service and combined exercises with operational personnel, Health and Safety issues to be addressed.
  - Staff dissatisfaction/FBU - full consultation with all representative bodies before the appointment of a contractor.
  - SCC reputation – the full support of Cabinet for new concept would appear to be essential.
  - Nationally - there is no benchmark to compare or evaluate the new contract and its delivery against.
  - Regionally - ensure that the contractor possesses interoperability capabilities.
24. Procurement will work with the Service in developing the contract arrangements to minimise the risks such as having a robust contract management planning, ensuring legal requirements are adhered to ,, requirements which fully reflect service needs, financial evaluation of tenders and exit strategy

### **Financial and Value for Money Implications**

25. The MTFP has been based upon Option 3. Following the tender exercise, provided that the cost of the new contract can be contained within the budget available and the new contract enables the planned efficiency savings to be achieved, this option enables the service to meet the assumptions built into the MTFP.
26. The cost of the new contract cannot be stipulated with full certainty at this point, as there is no comparable model in the country to test the market or benchmark

costs. The tender process identifies the likely cost based on tender negotiations and establishing detailed contractual specifications (at this stage the costs are assumed to be likely to be in line with the cost of the pilot project). The final costs will not be clarified until the results of the tender process have been assessed. See Part 2 for further details.

#### **Section 151 Officer Commentary**

27. From a financial point of view, this paper sets out an appropriate way forward, given that extension of the current option would not meet the MTFP, whilst the new contract under broader arrangements does have the potential to deliver what is required financially under the MTFP.
28. Until the new contract tender is complete, there is an achievability risk of providing contingency cover and to the delivery of the planned efficiency savings in the MTFP. This factor will form an important part of the evaluation exercise
29. The financial factors therefore support the recommendation for Option 3, that a tender is sought under broader arrangements. The outcomes can then be assessed to determine whether it is financially viable to continue with this means of meeting the Council's contingency obligations. Until that outcome has been secured, there is an achievability risk of providing contingency cover and to the delivery of the planned efficiency savings in the MTFP.

#### **Legal Implications – Monitoring Officer**

30. Only Fire Authority Fire fighters are legally allowed to force entry into a building (Fire and Rescue Services Act 2004 (Sec 44 (2) (a))). During strike action this has been addressed by operating mixed crewing on appliances so that there is a SFRS officer available to attend incidents and direct operations.
31. SFRA must comply with the core functions identified in the Fire and Rescue Services Act 2004. These include extinguishing fires in its area and protecting life and property in the event of fires in its area. In order to do so the FRA must “secure the provision of the personnel, services and equipment necessary to efficiently meet all normal requirements”, each of which must be taken into account.
32. The Civil Contingencies Act 2004 places a duty on Fire and Rescue Authorities (FRA) to put in place business continuity management arrangements to ensure that they can continue to exercise their functions in the event of an emergency so far as reasonably practicable. As a result Cabinet must take into account that SFRS need to continue to exercise its functions as a FRA to a satisfactory standard.
33. Section 21 of the Fire and Rescue Services Act 2004 requires FRAs to comply with the Fire and Rescue National Framework for England (FRNF) (revised by the DCLG in July 2012) The FRNF provides an overall strategic direction for fire and rescue authorities) which must be complied with by SFRA. Key priorities for fire and rescue authorities in the new framework include:
  - identifying and assessing the full range of foreseeable fire and rescue related risks their area faces

- making provision for prevention and protection activities and responding to incidents appropriately
- working in partnership with their communities and a wide range of partners locally and nationally to deliver their service; and
- being accountable to communities for the service they provide.

34. In making their decision Members should have due regard to the Council's public sector equalities duty and Cabinet needs to take account of the Equalities Impact Assessment due to be submitted alongside the final recommendations to appoint a contractor in December 2014.
35. Following receipt of instructions, Legal Services will advise upon the conditions of contract, means of procurement and compliance with the Public Contracts Regulations.

#### **Equalities and Diversity**

36. As a public sector organisation we have legal obligations under the Equality Act 2010 and associated Public Sector Equality Duty (PSED) .
37. The Equality Impact Assessment will be undertaken and any recommendations will be taken into account to ensure we continue to meet our Public Sector Authority.

#### **Other Implications:**

38. No further implications have been identified, in terms of:
- Corporate Parenting/Looked After Children
  - Safeguarding responsibilities for vulnerable children and adults
  - Public Health
  - Climate change
  - Carbon emissions

#### **WHAT HAPPENS NEXT:**

39. Should the recommendation be approved, SCC Procurement will commence to lead on the tendering process:
- July 2014 – Publish advertisement for tender
  - 15 December 2014 – Recommendation to appoint contract presented to Cabinet

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#### **Contact Officer:**

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#### **Consulted:**

FRAG, COG, Procurement, SFRS staff and FBU

#### **Annexes:**

None

**Sources/background papers:**

- Fire and Rescue Services Act 2004
  - Civil Contingencies Act 2004
  - Fire and Rescue National Framework for England July 2012
  - SCC Cabinet Paper (23 October 2012) Surrey Fire and Rescue Service Specialist Rescue and Contingency Capability
  - SCC Cabinet Paper (26 November 2013) Specialist Rescue and Contingency Crewing extension
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