



# THE POLICE & CRIME COMMISSIONER FOR CLEVELAND

## DECISION RECORD FORM

**REQUEST:** For PCC approval.

**Title:** Emergency Boarding and Glazing Services Contract

**Executive Summary:** The Emergency Boarding and Glazing contract provides boarding and glazing services to properties which are insecure as a result of a crime. This service also includes when a warrant has been issued and a door/window has been put through as a way of gaining access to a property.

An open tender has been carried out as per the Public Procurement Regulations 2015. An open tender is a competitive exercise whereby a tender is advertised and all bidders expressing an interest can access the tender documentation and submit a bid.

The successful bidder will be due to commence work on behalf of named forces within the Tender from the 1<sup>st</sup> July 2017 and will be at an average cost of £120,150 per annum as outlined within the appendix.

The appendix to this decision record form contains full details of the procurement process and outcome.

**Decision:** That the Police and Crime Commissioner notes

- the procurement process used to appoint a supplier for Emergency Boarding and Glazing.; and
- the consideration given by Cleveland Police to the legal position which underpins these arrangements.

And that the Police and Crime Commissioner approves the procurement methods used and recommendations put forward by the Evaluation Team to award the contract to Bidder 1.

**OPCC Lead Officer:** Amanda Wilkinson

**Contractor Details (if applicable):** Boing Rapid Secure Ltd

**Implications:**

Has consideration been taken of the following:	Yes	No
Financial	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Legal	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Equality & Diversity	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Human Rights	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sustainability	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Risk	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**(If yes please provide further details below)**

## Decision Required – Supporting Information

Financial Implications: (Must include comments of the PCC's Chief Finance Officer where the decision has financial implications)

The agreed budget for 2017/18 for the Emergency Boarding and Glazing is £45,000.

The below table provides a comparison of Year 1 across both bidders:

Bidder 1	Bidder 2
£120,150	£148,100

This cost was calculated using an average based on the approximate number of jobs per Year. These figures were obtained from Finance and calculated.

Bidder 1 is the favoured supplier following the tender analysis. The cost detailed above breaks down into individual areas, Cleveland £46,800 per year (based on 600 jobs), Northumbria £54,600 per year (based on 700 jobs) and Cumbria £18,500 (based on 200 jobs).

With the current provider we are spending approximately £48,000 per annum. It is anticipated that the spend will decrease as both bidders confirmed an 80% success rate in recovering costs from property owner/occupiers in the current contracts they hold with various Police Forces.

A clause has been included within the documentation that states, should the bidder fail to reclaim costs from the owner/occupier of the premises each named force would agree to pay a compensation fee as opposed to the full boarding amount. This would only be done if the provider supplies a representative of the force (for Cleveland this would sit within Finance) evidence to show how many attempts of contact had been made to try to recover these costs.

Legal Implications: (Must include comments of the Monitoring Officer where the decision has legal implication)

Having read this report and having considered such information as has been provided at the time of being asked to express this view, the Chief Executive is satisfied that this report does not ask the PCC to make a decision which would (or would be likely to) give rise to a contravention of the law. The Commissioner's attention is drawn to Cleveland Police's analysis of the legal underpinnings of the emergency boarding and glazing arrangements.

### Equality and Diversity Implications

TUPE Implications have been considered as part of the tender process and does apply to one member of staff.

### Human Rights Implications

There are no Human Rights implications associated with the award of this contract.

### Sustainability Implications

There are no sustainability implications associated with the award of this contract.





## **Report of the Chief Constable to the Police and Crime Commissioner for Cleveland – June 2017**

**Status: For Decision**

### **Procurement Report for the Emergency Boarding & Glazing**

#### **1. Purpose**

- 1.1 On 1<sup>st</sup> October 2013 Keepmoat were awarded the Emergency Boarding and Glazing contract following a competitive tendering exercise.
- 1.2 The Emergency Boarding and Glazing contract provides boarding and glazing services to properties which are insecure as a result of a crime. This service also includes when a warrant has been issued and a door/window has been damaged as a way of gaining access to a property.
- 1.3 In early 2016 Keepmoat provided notification that they wished to terminate the contract as it was no longer economically viable for them to continue to provide the service. The notice to terminate was three months.
- 1.4 There was insufficient time for a full competitive exercise to be conducted prior to expiration of the notice period; therefore a contract for 12 months was awarded under the Operational Emergency criteria of an exemption to contract standing orders. This route was taken as a way to test the market and see how viable this contract would be under a new supplier.
- 1.5 The contract was awarded to Orbis who had a local presence and had experience of delivering this service to Police Scotland.

#### **2. Recommendations**

- 2.1 That the Police and Crime Commissioner note the Procurement process used to appoint a supplier for Emergency Boarding and Glazing.
- 2.2 The Police and Crime Commissioner approve the procurement methods investigated and recommendations put forward by the Evaluation Team to award the contract to Bidder 1.

### 3. Background

- 3.1 A national contract awarded by the MET Police is currently in place for Emergency Boarding and Glazing. Following a review of the national contract a decision was made to test the market to provide opportunities for local providers to tender. Contact was made with other Local Forces and Cumbria and Northumbria agreed to participate in a collaborative contract with Cleveland as the lead.
- 3.2 An open tender was carried out using EU Supply as the tender portal, advertising the contract in Contract Finder and OJEU as per the Public Procurement Regulations 2015. An open tender is a competitive exercise whereby a tender is advertised and all bidders expressing an interest can access the tender documentation and submit a bid.
- 3.3 In March 2017, an advert was placed in the European Journal and the Bluelight E-tendering system inviting suppliers to bid for the service. Eight suppliers initially expressed an interest in the tender, however only two suppliers submitted a response by the closing date and time of 12 noon on 3<sup>rd</sup> May 2017.
- 3.4 The evaluation criterion was 60% in favour of quality and 40% focussed on price. It was considered that a quality service particularly in relation to work being carried out on members of the public's property and to maintain public relations the primary focus for the selection of a provider.
- 3.5 The evaluation team, evaluated the two bids in line with the evaluation criteria, as per the table below:

Criteria	Weighting	Bidder 1 Score	Bidder 2 Score
Price	40%	40%	34.34%
Quality	60%	47%	42%
<b>Total</b>	<b>100%</b>	<b>87%</b>	<b>76.34%</b>

### 4. Implications

#### 4.1 Finance

4.1.1 Cleveland's agreed budget for 2017/18 for the Emergency Boarding and Glazing is £45,000.

4.1.2 The below table provides a comparison of price for Year 1 across both bidders:

Bidder 1	Bidder 2
£120,150	£148,100

4.1.3 This cost was calculated using an average based on the approximate number of jobs per year. These figures were obtained from Finance and calculated.

- 4.1.4 Bidder 1 is the favoured supplier following the tender analysis. The cost detailed above breaks down into individual areas, Cleveland £46,800 per year (based on 600 jobs), Northumbria £54,600 per year (based on 700 jobs) and Cumbria £18,750 (based on 200 jobs). These costs have been worked out as an average cost based on various figures provided by Bidder 1.
- 4.1.5 With the current provider Cleveland are spending approximately £48,000 per annum. It is anticipated that the spend outlined in point 4.1.4 will decrease as both bidders confirmed an 80% success rate in recovering costs from property owner/occupiers in the current contracts they hold with various Police Forces.
- 4.1.6 The Specification does provide within paragraph 5 that no liability should attach to the PCC in the event that Cleveland police have exercised a lawful power of entry to premises, there is confirmation that responsibility for the Contractor's charges will pass to the PCC if damage has resulted from any unlawful activity on the part of Cleveland Police. Whilst the specification and the accompanying pricing schedule could be more specific in this regard, it is understood that where primary responsibility rests with Cleveland Police, exactly the same charge will be made by the contractor as to an owner/occupier. There is therefore no discrepancy between the position of an owner/occupier and the PCC in relation to costs, where liability can plainly be said to attach to one or the other.
- 4.1.7 Within the contract also contemplates the situation in which costs should be recoverable from the owner/occupier, but where despite the contractor's best efforts, the debt remains unrecovered. Were such a situation to remain without amelioration, it would be entirely likely that the PCC would struggle to identify an enthusiastic contractor. It has been common for some time in contracts relating to this activity for the Force (or PCC) to provide some comfort to the contractor in the event that they are not able to recover their outlay from the owner/occupier. A section is included whereby on the basis that the supplier has explored all avenues of reclaiming the costs from the owner/occupier, following their collection procedure and can provide evidence of this, the named forces would provide a compensation payment (£90.00) to ensure the suppliers costs are met for work carried out. The named forces are only subject to this payment in the instance of failed collection from owner/occupier. However, as indicated above, in all instances in which a named force has unlawfully gained access to a property the cost would be the same to the force as to a member of the public at £120 per opening.

## 4.2 Legal

- 4.2.1 The forces standard Terms and Conditions have been used.
- 4.2.2 in light of the obligations placed upon a police force by virtue of paragraph 6.13 of Code B to PACE, it is suggested that the payment of a reasonable "compensation" sum by the PCC in the event that the contractor cannot recover monies from the owner/occupier, can be seen as a necessary means of securing the services of a suitable contractor, thereby enabling compliance with the relevant statutory requirement. In the absence of a suitable outsourcing arrangement, responsibility for securing the premises would, after all, fall upon the police force concerned..

4.2.3 The specification confirms that the PCC will not be liable to the contractor in relation to the principal debt which arises upon the boarding and glazing work being carried out (other than in those circumstances in which the police have acted unlawfully). This provision would seem sufficient to displace the normal contractual assumption that, the police having requested the contractor to carry out the work, would be liable in contract for the cost of such work.

4.2.4 the situation in which the owner/occupier has been successfully contacted and has confirmed that he wishes the contract to attend, then the contractual position is quite clear and the owner/occupier is clearly liable for the contractor's costs. In situations in which the owner/occupier cannot be contacted, (and this is likely to be the situation contemplated in the second bullet point in paragraph 6.13 of Code B), then as indicated below, the basis upon which the police will commission the boarding at work on behalf of the owner/occupier is that of agency necessity. In addition, given the long-standing nature of the arrangements contemplated within the Specification, it might also be argued that the absent owner/occupier's liability also arises through custom and usage.

4.2.4 The legal situation with regard the liability of the owner / occupier may arise in a number of different situations as follows:-

- a) Lawful entry where evidence found
- b) Lawful entry where evidence not found

Under the relevant provisions of the Police and Criminal Evidence Act 1984 and associated Code of Practice, a legal interpretation can be made that the owner/ occupier would be liable for the reasonable costs of boarding up/ glazing, providing the search was lawful and the force used to gain access was reasonable, proportionate and necessary regardless of whether evidence was recovered or not. If a valid complaint was made and upheld, the police could pay by way of ex gratia payment.

- c) Property left insecure by third party e.g. burglary

In this case, the police would be reliant on the doctrine of "agency of necessity". For this to apply, the agent (police) would usually have to be entrusted with the property. If the burglary was reported to the police and the house left insecure as a result of it, it is arguable that the police have a duty of care to secure the property. Secondly, there would have to be an emergency which there would be in this scenario. Thirdly, the agent (police) would have to be acting in the interests of the owner/ occupier and lastly, it must be impossible to get hold of the owner/ occupier to give them the opportunity to have the property boarded up/glazed themselves.

- d) Entry on the basis of concern for safety

The police would have to be able to attach the right of entry in these circumstances to the right piece of legislation.

Section 17(1)(e) of PACE gives the police the power to enter and search premises without a warrant, in order to '**save life or limb**' or prevent serious damage to property meaning serious bodily injury

There is also a common law power of entry to deal with a **breach of the peace**. In general, the power of the police to enter premises to prevent a breach of the peace only applies in emergencies. It is therefore unlikely to be justified in the majority of welfare-related case.

If Section 17(1) (b) can be shown to apply (**arrest without a warrant for an indictable offence**), then the police do have the power to enter premises.

Section 24 of the Act deals with the **power to arrest a person, without a warrant, who is committing, is about to commit, or has committed an offence**. The police will need reasonable grounds for believing an arrest is necessary for one of the reasons listed in Section 24, before being able to act. Two key reasons that may be relevant in terms of safeguarding are:

*to protect a vulnerable person likely to be harmed or at risk of being harmed if the person in question is not arrested and other arrangements for the prevention of harm cannot be made to prevent a person from causing physical injury to another person.*

If a local authority has reasonable cause to suspect that an adult is being subjected to abuse or neglect, the question will be whether this translates, under Section 24, into knowledge and reasonable grounds for suspicion; that the abuse constitutes a criminal offence; and whether it is therefore necessary to arrest the person for one of the reasons listed in Section 24.

So in the case of entry due to the concern for welfare, as long as the police acted in good faith and their entry is lawful, the boarding up/ glazing is yet again justified by the "agent of necessity" principle already explained above.

Note however in all cases detailed above, the boarding-up/ glazing cost has to be **reasonable** - and the work has to be only the **minimum necessary**.

4.2.5 Resulting from the legal position outlined in 4.2.4 above, it is suggested that clause 5 of the specification be amended as follows:-

*5.3 The costs of the service will be met by the owner/ occupier/ tenant/ agent of the property. No costs will fall to the PCC unless authorised to do so by an authorised representative of the PCC of the relevant police force*

*5.4 The PCC are not responsible for the costs of boarding/ glazing under the following circumstances:-*

*5.4.1 Where lawful entry has been made under the provisions of the Police and Criminal Evidence Act 1984 and / or it's associated Codes of Practice OR*

*5.4.2 Where the property has been left insecure as a result of the actions of a third party such as in the case of a burglary or criminal damage OR*



*5.4.3 Where lawful entry to the property has been made for any other lawful reason*

*AND it is not reasonably practicable to contact the owner/ occupier of the property to allow them to make their own arrangements for boarding/ glazing and such boarding / glazing is necessary to secure the property in the best interests of the owner/ occupier*

*5.5 The PCC may be liable for the costs of boarding/ glazing in certain circumstances to be determined at the discretion of an authorised representative of the PCC of the relevant police force on a case by case basis. Such circumstances may include where unlawful entry has been made to the property, for example, where forced entry is made to an incorrect address and/or the securing of a property where damage has been caused and the property is a crime scene*

4.3 Diversity & Equal Opportunities

TUPE Implications have been considered as part of the tender process and TUPE does apply to one member of staff. All bidders were notified and this has been taken into account prior to submitting their bids. Bidder 1 does have a contingency plan in place with providers able to provide the service in the interim.

4.4 Human Rights Act

There are no Human Rights implications associated with the award of this contract.

4.5 Sustainability

There are no sustainability implications associated with the award of this contract.

4.6 Risk

The risk associated with the tight timescales is reduced as providers are already available in all areas to carry out any work. Vetting is already in place for this provider for Northumbria.

**5. Conclusions**

5.1 The Evaluation Team is confident that the procurement exercise has been conducted in a fair, comprehensive, thorough and transparent process.

5.2 The tender process has proven to deliver value for money therefore the evaluation team recommends that the PCC awards the contract for Emergency Boarding and Glazing to Bidder 1.

Iain Spittal  
Chief Constable

Evaluation team:

Buyer and Fleet Assistant – Cleveland Police  
Finance Business Partner – Sopra Steria  
Head of Procurement – Cumbria Police

Procurement Officer – Cumbria Police  
Procurement Officer – Northumbria Police