UNISON

London Fire and Emergency Planning Authority

HIGH RISK OUTSOURCING OF A CRITICAL FIRE SERVICE

Protective Equipment Group: London Fire Brigade

European Services Strategy Unit
(Continuing the work of the Centre for Public Services)

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March 2014

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3. **High health and safety standards** are essential and must be maintained. The **bond of trust between fire fighters and PEG staff is essential for the fire service,** which in turn must **fulfil public trust that fire rescues will not be impeded by equipment failure.**

4. There is a real danger that a private **contractor facing financial pressures begins to 'sweat the assets' by joint use of PEG and vehicle fleet staffing levels**. This could increase the risk of PEG operational failures.

5. The **fracturing of fire service functions** with the loss of an integrated service.

6. **The financial savings forecast at the time of contract award are unlikely to be achieved**. The savings claims in the high profile strategic partnerships have not been achieved, most fell short by a large margin.

7. T**he cost of managing and monitoring contracts is constantly under-estimated** (Audit Commission, 2008), which leads either to increasing contract management resources and reducing savings forecasts, or to a very high-risk strategy of limiting monitoring in the hope that the contractor performs to the contract.

8. The inclusion of PEG in a 21-year contract is a high level risk resulting in **the loss of in-house capability of a critical fire brigade function.**

9. Finally, all but one of the 65 strategic partnership contracts **have failed to meet additional income generation and job creation targets**

The only way to ensure that PEG continues its 30-year track record of providing a safe, effective, resilient and sustainable service is to retain in-house provision.

Evaluation of PEG in-house option

Firstly, the PEG element of private sector bids must be evaluated separately from the vehicle fleet element of the bid in order to ensure like-for-like evaluation.

Secondly, the property element in both options should be evaluated separately to ensure the evaluation of the core PEG service delivery is on a like for like basis.

Thirdly, short-term improvements in the PEG in-house option may be contrasted with long-term changes contained in bids.

Finally, the outsourcing risks to LFEPA are under-estimated in order to justify a procurement outcome.

A series of **critical risks** are identified together with other criteria necessary to ensure a like-for-like comparison – see Table 2.

Employment impact

The government has now made it easier for employers to cut terms and conditions and ignore collective agreements with trade unions. The regulations also make it easier for employers to make staff redundant.

UNISON is concerned that a private contractor may seek to use zero hour contracts to cut labour costs. This would raise new risks for PEG and impose financial hardship on staff.

UNISON is concerned about the potential reduction in the PEG skill base. In this context it is recommended that LFEPA launch an apprenticeship scheme in PEG, which would provide training and employment to support the sustainability of skills and expertise.

An Equality Impact Assessment has not been undertaken for PEG. This should be remedied as a priority.

Recommendations

The UNISON LFEPA branch recommends:

1. The LFEPA should not award a contract for the Protective Equipment Group and should retain the service in-house.

2. The LFEPA and Protective Equipment Group management to establish a Service Innovation and Improvement Planning group consisting of management, staff and trade union representatives to draw up a Service Innovation and Improvement Plan for the future delivery of the service. It will be monitored and reviewed with regular reports to Resources Committee.

3. Examine the options for the provision of new premises for PEG.

4. Introduce an apprenticeship scheme in PEG to provide training and employment opportunities for young people as part of succession planning to retain skills and expertise.

5. Enable PEG to expand the provision of its technical services and expertise to other organisations, either through shared services projects or the formal procurement process with income generated accounted for in the PEG budget.

6. Consolidate the PEG as a centre of excellence and ensure the retention of skills through succession planning.

7. Ensure that a new employer strictly abides by employment policies transferred under TUPE to protect terms and conditions for the length of the contract and to prevent the emergence of a two-tier workforce.

8. Require the contractor to seek admitted body status to the relevant fire service pension scheme.

9. Improve transparency with the release of policies, plans and information that are in the public interest and to facilitate workforce and trade union participation.

Part 1

Outsourcing the Protective Equipment Group

PEG is a critical service

The Protective Equipment Group (PEG) provides a highly specialised and technical service, which includes the provision of maintenance, testing and assurance in accordance with European safety standards and manufacturers warranties and guidelines. It is department within the London Fire Brigade providing specialist equipment, expertise and services in relation to protective equipment and critical assets, employs 35 staff and operates 24/7/365 to LFEPA and other emergency services.

PEG produces, maintains, tests and manages an extensive inventory of equipment ranging from respiratory and chemical protection to high line and water rescue. It currently responsible for over 2,000 sets of telemetry equipped breathing apparatus, 6,000 high-pressure cylinders and 1,700 gas tight suits. It produces and maintains about 100km of lay flat hose, provides about 100,000 high-pressure breathable air cylinder re-charges and 800 on-site quantitative face-fit tests per annum (LFEPA Pre Qualification Questionnaire, 2013).

Procurement process

Following the failure of the (Premier Fire Service Limited - previously AssetCo) PFI maintenance contract of the London Fire Brigade fleet in 2012, the London Fire and Emergency Planning Authority (LFEPA) awarded an interim 18-month maintenance contract to Babcock International Group PLC. Babcock had earlier been awarded a 25-year LFEPA fire service training contract.

Originally the Protective Equipment Group was not included in the Prior Indicative Notice for procurement contract, but was added shortly before the Contract Notice was issued on 22 April 2013.

UNISON considered this to be a ‘sweetener’ for the interim contractor although this was rejected by LFEPA (FEP 2048A). It was certainly a cost saving measure that avoided a separate procurement process for the PEG.

A procurement process for the 21-year fleet maintenance contract was divided into three lots:

> Lot 1: Fleet and Operational Equipment Items Management, Maintenance and Sourcing and Procurement Contract, including Protective Equipment and Critical Assets.
>
> Lot 2: Fleet and Operational Equipment Items Management, Maintenance and Sourcing and Procurement Contract.
>
> Lot 3: Protective Equipment and Critical Assets Management, Maintenance and Sourcing and Procurement Contract.

Rejection of Lot 3

Only two companies applied for the PEG only option (Lot 3) one of which failed the PQQ process achieving a technical score of less than 50%. Since this only one bidder *“…there was no competition”* so officers recommended abandoning the PEG only option (Contract update, 1 July 2013). This was approved by Resources Committee.

This bidder joined together with another provider in responding to the option for a combined contract for vehicles and equipment and PEG (Lot 1). LFEPA allowed this bidder to proceed because the technical elements of the PEG sections of this response were of a higher standard, although the PEG elements of the technical scores for both bidders under the combined option were lower than the vehicle and equipment elements.

The bidders were advised to improve the PEG element of their bid in the dialogue stage of the procurement process.

This is equivalent to rolling the dice with the PEG service. It also raises questions about the extent to which this bidder received advice and support from LFEPA in order to submit an acceptable bid in order to maintain the mirage of competition.

There is now only one bidder for Lot 1, most likely the incumbent company operating the interim fleet contract. If this is the case, it means **there is no competition for Lot 1,** which includes PEG (see Part 3).

"No recommendation will be made to change the way this service is provided without ensuring that it is safe, effective, resilient and sustainable" (FEP 2048A, 18 March 2013).

Part 2

Why the Protective Equipment Group should remain in-house

PEG is a **critically important function** that should not be outsourced for the following reasons:

10. **Critical risks in the maintenance, testing, assurance and management of the London Fire Brigade's critical frontline assets** (see details in Table 1, Part 3).

11. **The high risks of contract failure**. The systemic failure of the PFS/AssetCo contract was not an unusual event. At least 17 other PFI contracts with a capital cost of over £13bn have been terminated in the last decade. Furthermore, 65 strategic partnership contracts awarded up to 2013 - large, long-term service contracts similar to the LFEPA training and fleet management/maintenance contracts - have a 22% failure rate. They include corporate services, planning, police, education and property services contracts and they have a significantly higher failure rate than PFI contracts (Whitfield, 2014). The failure rate combines contract terminations, major reductions in the scope of contracts, and significant problems in contracts. The failure rate has already increased in 2014 with the announcement of termination of the Lancashire County Council and Liverpool City Council contracts with BT, thus increasing the failure rate to **23.7%.**

    These contracts primarily cover basic/routine public service delivery **with significantly fewer and less critical risks than those in outsourcing PEG.**

12. **High health and safety standards** are essential and must be maintained. Equipment failure has never been held responsible as the cause of fire deaths, only inadequate training of fire crews. This **bond of trust between fire fighters and PEG staff is essential for the fire service**, which in turn must **fulfil public trust that fire rescue will not be impeded by equipment failure.**

13. There is a real danger that a private **contractor facing financial pressures begins to 'sweat the assets' by joint use of PEG and vehicle fleet staffing levels**. This could increase the risk of PEG operational failures.

14. The **fracturing of fire service functions** with the loss of an integrated service. Higher costs are likely to be incurred in managing and monitoring contracts and the potential for increased costs charged by contractors to achieve the required level of coordination.

15. **The financial savings forecast at the time of contract award are unlikely to be achieved**. The savings claims in the high profile strategic partnerships have not been achieved, most fell short by a large margin. For example, the Somerset CC, Taunton Deane BC and Avon and Somerset Police joint venture with IBM the savings were £16.2m against a target of £192m for Somerset CC by the 31 December 2012 and over half way through the ten-year contract. The forecast total cashable savings is £58.3m, just 30% of the contract target (Whitfield, 2014). Furthermore, the contract price at the contract award rarely remains constant and usually increases as contractors use various techniques to increase income.

16. T**he cost of managing and monitoring contracts is constantly under-estimated** (Audit Commission, 2008), which leads either to increasing contract management resources and reducing savings forecasts, or to a very high-risk strategy of limiting monitoring in the hope that the contractor performs to the contract. The recent LFEPA

officer recommendation to move to 6-monthly reporting of Babcock's training contract so early in the 25-year contract when the contractor is incurring significant financial deductions for performance failures is revealing. It might have reduced contract management costs but would have significantly reduced political oversight and accountability of contractor performance. The Resource Committee narrowly rejected this recommendation (FEP and minutes).

17. The inclusion of PEG in a 21-year contract is a high level risk resulting in **the loss of in-house capability of a critical fire brigade function.**

18. Finally, all but one of the 65 strategic partnership contracts **failed to meet additional income generation and job creation targets** (the only success was achieved by one contractor that transferred a national contract from one city to another).

The only way to ensure that PEG continues its 30-year track record of providing a safe, effective, resilient and sustainable service is to retain in-house provision.

If there are any doubts whatsoever, then the PEG service should remain in-house.

Part 3

The PEG Public Sector Comparator is not an in-house bid

> *"A full cost benefit analysis of the alternative options including the risks and costs associated with each will be undertaken before reaching any conclusion"* (FEP 2048A, 18 March 2013).
>
> *"…the Protective Equipment PSC [Public Sector Comparator] will be used to assess both the Quality and Price offered by the in-house provision of the Protective Equipment Services. Should the PEG in-house service outscore Option 1 following the best value review, then the recommendation to Authority will be to award the winning option 2 MEAT Tenderer ….with the PEG service remaining in-house"* (Vehicle and Equipment PFI & Emergency Fire Crews Contract, Dermot Greene, LFEPA, 29 January 2014 email to UNISON)

A PSC is a significantly more limited evaluation compared to a full cost benefit analysis. However, LFEPA has frequently referred to a PSC or comparator, so this report assumes the PSC methodology will be used. The use of different terms to describe the evaluation of the PEG in-house option indicates a degree of confusion within LFEPA and/or communications with trade unions.

UNISON and other LFEPA trade unions have consistently sought to be involved in the development of the in-house option and its evaluation, but this has been refused by LFEPA.

Comparing like-for-like

The evaluation of the in-house PEG option with a detailed private sector bid combining fleet maintenance and PEG raises several important issues. The PEG option is NOT an in-house bid and this needs to be constantly reasserted in the evaluation process.

In these circumstances the in-house PEG faces several disadvantages:

Firstly, the failure of PQQ submissions for the PEG only provision (Lot 3) on the grounds of poor submissions and low scores raises significant questions of their inclusion in a combined bid. If the bidder scored below expectations on the PEG only option, what has improved their capability of successfully operating the PEG and the vehicle fleet contract?

The PEG element of private sector bids must be evaluated separately from the vehicle fleet element of the bid in order to ensure like-for-like evaluation. Technical drift must be avoided at all costs when a bidders performance in one part of the bid is taken to reflect their potential performance in other parts of the bid, in this case a critical fire brigade function.

Secondly, the property options in the in-house PEG may be under-developed, but are compared with more detailed options in private sector bids. In these circumstances the property element in both options should be evaluated separately to ensure the evaluation of the core PEG service delivery is on a like for like basis.

Thirdly, short-term improvements in the PEG in-house option may be contrasted with long-term changes contained in bids.

Finally, the outsourcing risks to LFEPA are under-estimated in order to justify a procurement outcome.

Table 1 contains criteria that should be used in the evaluation of the PEG in-house option and private sector bids.

Table 1: **Comparison of in-house PEG option with bids**

No	Criteria for comparison of in-house option with bids
1	**Like-for-like basis:** it is essential that the comparison is fair and equitable – see the four issues discussed on page 9.
2	**Critical risk analysis:** assess strategic, operational, financial, contract management, employment, and democratic governance risks and critically assess the extent to which risks are retained, shared and transferred. Critical risks include: * Supply and provision of critical assets including procurement of replacements. * Equipment management – infrastructure compliance; scheduling, recall and replacement to maintain operational capability. * Equipment inspection, servicing, testing and certification, planning and management. * Management of strategic reserves if risk critical equipment in relation to major and catastrophic incidents. * Frontline support 24/7 of risk critical assets to incidents, guidance and replacement. * Potential loss of flexible resilience. * Planned and unplanned maintenance of protective equipment at workshops and fire stations. * Health and safety – immediate 24/7 expertise, liaison with manufacturers to identify potential areas of equipment failure, face-tests. * Research and development of equipment and product development. * Collection and delivery of equipment in blue light responses. * Equipment servicing. * Design, selection and provision of protective equipment to meet demands of diverse workforce. * Resilience to meet surge demand in event of prolonged, major or catastrophic incidents. * Robust continuity processes to support the LFB's business continuity work and major event planning. * Maintenance of services to support LFB arrangements and suppliers. * Support to other emergency service partners for PEG related services. * Compliance and delivery of services in accordance with Mayor's Responsible Procurement policy. * Management, maintenance and refurbishment of premises.
3	**Pricing of risk transfer:** the pricing of risk transfer is usually critical in determining value-for-money and should be carefully examined to ensure it is justified and correctly priced.
4	**Ensure the in-house option reflects current arrangements:** the in-house option should fully reflect current staffing levels, operational systems and arrangements. This must be accurate because it forms the baseline for future demand of PEG services and service improvements.
5	**Ensure the in-house option does not under-estimate the ability of PEG to improve and innovate:** a pessimistic assumption for in-house change and an over-optimistic assumption in external bids can lead to a significant over-statement when comparing quality and costs over 21 years.
6	**Rigorously assess the total cost of the contract:** The bid price is rarely the actual cost of the service. It should include estimates of contractor's additional charges sought via variation orders and other claims for additional work, unforeseen circumstances and delays.
7	**Operational impact assessment:** planned changes to the design, management and delivery of PEG should be assessed to prevent any reduction in the scope, quality and accessibility of training.
8	**Rigorous analysis of savings claims:** need to identify the source, evidence and assumptions underpinning claims by private contractors to achieve financial. Average savings from outsourcing have varied between 6.5% and 8.3% over the last two decades based on government studies (Audit Commission, 2008) Large, long term strategic

	partnership contracts have failed to meet savings and employment targets (Whitfield, 2010 and 2014). The timing of any savings must also be assessed, because they can only be estimated for most of the contract period, and are likely to be reduced by contract variations and amendments. Bids will also contain a 6% - 12% profit margin for the contractor, in effect reducing service provision by this amount before other factors are taken into account.
9	**Fully assess the cost to LFEPA of PEG property options:** the full additional costs of privately financed capital works must be taken into account, together with additional operational costs.
10	**Take account of variant bids:** changes the scope, content and phasing of variant bids submitted by the private sector must be taken into account.
11	**Cost of concessions or hidden subsidies to a private contractor:** this often takes the form of rent-free accommodation or low-cost rental agreements that do not reflect the full cost to the authority. In contrast, the full cost is normally included in the in-house option.
12	**Carry out a sensitivity analysis to prevent optimism bias:** it is important to ensure that forecasts of demand, levels of activity, changes in training needs in bids are realistic and evidence based. Different levels of demand and activity can result in unequal comparisons.
13	**Cost of employment:** the labour costs in private sector bids should be rigorously interrogated to determine whether the bid contains sufficient financial resources in labour costs to continue to meet terms and conditions under the TUPE transfer obligations.
14	**Effect of changes in pension costs:** the financial implications of changes in pension schemes, employer and employee contributions and the quality of pensions must be identified and assessed.
15	**Third party or commercial income:** it is important that the in-house option includes plans for third party use and shared service delivery where this is feasible and viable. Fire service operational implications of private sector plans for third party use of LFEPA and external facilities should be fully assessed.
16	**Subcontracting:** the planned level of subcontracting of provision should be assessed, particularly with regard to quality, its management and potential hidden costs.
17	**Cost of contract management and monitoring:** the cost of contract management and monitoring varies between 1% – 3% of the contract value (Audit Commission, 2008). This excludes the retained client costs of identifying service needs, policies and planning provision.

Part 4

Employment impact

Changes to terms and conditions

If PEG is outsourced, staff will be transferred to a new employer under the TUPE transfer regulations. The 2006 TUPE Regulations have been amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014, which came into effect on 31 January 2014.

When a contract of employment incorporates terms and conditions from a collective agreement, the terms and conditions *"…may be varied from the date which is more than one year after the date of the transfer provided that after that variation, overall, the employee's contract is no less favourable to the employee than it was immediately before the variation"* (Department for Business, Innovation & Skills, 2014).

The employer could seek to agree changes to terms and conditions that are less favourable to the employee, *"…provided that the employee gets some other more favourable terms, so that overall, the employee is in a no less favourable position after the variation compared to immediately before it"* (ibid).

A new employer is not bound to any term of a collective agreement after the date of transfer if the employer is not a participant in the collective bargaining machinery.

The government has now made it easier for employers to cut terms and conditions and ignore collective agreements with trade unions. The regulations also make it easier for employers to make staff redundant. There are other important changes in the regulations, but they are not within the scope of this report.

Pensions

If an outsourcing option is selected it is essential that the LFEPA requires the contractor to seek admitted body status to the relevant fire service pension scheme.

Zero hour contracts

UNISON is concerned that a private contractor may seek to use zero hour contracts to cut labour costs. This would raise new risks for PEG and impose financial hardship on staff. The sanctioning of one case under 'exceptional circumstances' could be used to widen the use of these employment contracts.

PEG skill base

UNISON is concerned about the potential reduction in the PEG skill base. In this context it is recommended that LFEPA launch an apprenticeship scheme in PEG, which would provide training and employment to support the sustainability of skills and expertise.

Lack of an Equality Impact Assessment

An Equality Impact Assessment has not been undertaken for PEG. This should be remedied as a priority.

Part 5
Recommendations

The UNISON LFEPA branch recommends:

10. The LFEPA should not award a contract for the Protective Equipment Group and should retain the service in-house.

11. The LFEPA and Protective Equipment Group management to establish a Service Innovation and Improvement Planning group consisting of management, staff and trade union representatives to draw up a Service Innovation and Improvement Plan for the future delivery of the service. It will be monitored and reviewed with regular reports to Resources Committee.

12. Examine the options for the provision of new premises for PEG.

13. Introduce an apprenticeship scheme in PEG to provide training and employment opportunities for young people as part of succession planning to retain skills and expertise.

14. Enable PEG to expand the provision of its technical services and expertise to other organisations, either through shared services projects or the formal procurement process with income generated accounted for in the PEG budget.

15. Consolidate the PEG as a centre of excellence and ensure the retention of skills through succession planning.

16. Ensure that a new employer strictly abides by employment policies transferred under TUPE to protect terms and conditions for the length of the contract and to prevent the emergence of a two-tier workforce.

17. Require the contractor to seek admitted body status to the relevant fire service pension scheme.

18. Improve transparency with the release of policies, plans and information that are in the public interest and to facilitate workforce and trade union participation.

Appendix
Babcock training contract performance

The Training contract commenced on 1 April 2012 with a three-month customary abatement period in which the contract was monitored and assessed, but financial deductions were not imposed.

A comparison of performance between Quarter 2 in 2012/13 on the same quarter in 2013/14 shows **a 195% increase in financial deductions** – see Table 2. In other words, the level of poor performance in Quarter 2 in the second year of the contract virtually doubled since the same quarter in the first year.

The first full year of performance when financial deductions applied (Q2, 3 and 4 in 2012/13 and Q1 in 2013/14) resulted in a total of £208,710 deductions relating to key performance indicators – see Table 2.

The Quarter 3, 2013/14 (October to December) performance data is not yet available and has limited the performance comparison. It reinforces the Resource Committee's decision in November 2013 to reject the LFEPA officer recommendation to move to six monthly performance reporting (LFEPA, FEP 2154).

Table 2: **Quarterly financial deductions for Babcock training contract**

Quarter/Year	Financial Deductions (£)
1 2012-13	694,334 (notional)
2 2012/13	44,933
3 2012/13	70,077
4 2012/13	40,165
1 2013/14	53,535
2 2013/14	87,686
3 2013/14	n/a
4 2013/14	n/a

Source: LFEPA Training Contract Performance Reports – FEP 1967, 2047, 2102, 2140 and 2154

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