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CONFIDENTIAL 1) Mr Coles AM 4/2.

2) Prime Minister

pa
DMS
8/2

[Handwritten signature]

FCS is concerned that allowing the Met Police to buy a new ICL computer by single tender, will breach the EEC supplies directive, and thus weaken our negotiating position on the Internal Market.

FCS/84/39

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Implementation of Part III of Transport Act 1982: Acquisition of Computer by the Metropolitan Police

DMS
6/2

1. I understand that you intend to announce on 6 February that Part III of the Transport Act 1982 (relating to the creation of a new system of fixed parking penalties), will come into force in April 1986 and that in order to be able to meet this deadline, it will be necessary to procure a new ICL computer for the Metropolitan Police by single tender, as opposed to the competitive procedure required by the EC Supplies Directive and GATT.
2. I understand the reasons why you wish to make this announcement quickly and I am also aware of the practical difficulties that would be created by a delay in obtaining this computer. I am, therefore, not seeking to reopen your decision at this late stage.
3. I must, however, underline the serious risks that failure to observe the EC tender procedure will entail. As you know, the EC Supplies Directive and the corresponding GATT agreement require competitive tender for contracts of this kind. Although the Directive provides for exceptions, it is very doubtful that a convincing case could be made to show that the current contract falls within these exceptions. This has been dealt with in correspondence between the departmental Legal Experts and I will not go over the detail here.



4. Computers are a highly competitive business, and there must, therefore, be a real possibility that a rival firm will challenge the single procedure, probably by complaint to the Commission. You may be aware of a recent case in which Burroughs challenged a procurement decision by the Oxford Health Authority, with embarrassing consequences for HMG. The Commission are extremely diligent over breaches of Articles 30-36 and they have intervened in many cases where the breach of the rules has been far less obvious or serious. Of course, we would now have to put up the best defence we would to any challenge but you should be aware that an early Commission intervention in this case could oblige us to suspend the single tender procedure, thereby leading to even greater delay. No doubt you have taken this risk into account.

5. On a broader front, I am concerned that a failure by HMG to observe the rules, if it became publicly known, would be seriously at odds with the position we are taking in the Community on the Internal Market. We have strongly argued in the context of the post-Stuttgart negotiations that strengthening the Internal Market would lead to immediate and tangible benefits for the Community in ways which involve no budgetary expenditure. This is a point which is of considerable importance to our businessmen. The Manifesto of the Institute of Directors, for example, highlights the fact that the failure of Governments to open up public procurement to competitive tender has resulted in estimated additional costs of about £30 billion a year.



6. For these reasons, I hope that in future the need to conform with our international obligations on public procurement will be given full weight at the earliest possible stage.

7. I am sending copies of this minute to the Prime Minister, the Chancellor of the Exchequer, the Secretary of State for Trade and Industry and Sir Robert Armstrong.

A handwritten signature in dark ink, appearing to be 'G. Howe', written in a cursive style.

(GEOFFREY HOWE)

Foreign and Commonwealth Office
6 February 1984

1984
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CONFIDENTIAL



QUEEN ANNE'S GATE LONDON SW1H 9AT

9 February 1984

*nbpm
Dms
10/2*

Dear Foreign Secretary,

IMPLEMENTATION OF PART III OF TRANSPORT ACT 1982: ACQUISITION OF COMPUTER BY THE METROPOLITAN POLICE

Thank you for your minute of 6 February.

attached

I will be announcing tomorrow that I intend to bring Part III of the Transport Act 1982 into force not later than April 1986.

In order to achieve the April 1986 target it will be necessary, as you say, for the Metropolitan Police to procure a new ICL computer by single tender. As police authority for the Metropolitan Police I shall be prepared to authorise this. I will not be referring to the question of computer procurement in my announcement, nor do I think that this aspect is likely to arouse Parliamentary or press interest at this stage.

I am very conscious of the risks that single tender action may entail, and, as you will appreciate, I have considered this very carefully. I am equally conscious however that competitive tendering would mean a delay in implementation resulting in a certain loss of several million pounds of revenue from unpaid parking tickets. I am also conscious of the wider implications that such postponement would have for continuing traffic congestion in London.

I accept that Commission intervention might also result in delay. It should be borne in mind however that there has so far been no challenge under the EC Supplies Directive to the procurement of police computer systems in this country, although a number of these systems have been purchased by single tender action. I accept that, if a challenge were to be mounted, the case for single tender, although arguable, would not be strong.

I regret that it has proved necessary to set a date for implementation which entails single tender action on the part of the Metropolitan Police. You may be assured that I fully share your view of the general advantages of competitive tendering, both in the EC context and in the wider interests of efficiency, and I have of course no intention of treating this exceptional case as a precedent.

I am copying this minute to the recipients of yours.

*Yours sincerely,
Nigel Partridge*

Approved by the Secretary of State and signed in his absence

The Rt Hon Sir Geoffrey Howe, QC, MP

CONFIDENTIAL



10 FEB 1904



JH 907

Secretary of State for Trade and Industry

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22 February 1984

The Rt Hon Leon Brittan MP
Secretary of State for the Home
Department
Queen Anne's Gate.
London SW1 9AT

u bpm
DWB
23/2

D Leon.

IMPLEMENTATION OF PART III OF TRANSPORT ACT 1982; ACQUISITION OF
COMPUTER BY THE METROPOLITAN POLICE

I have seen the Foreign Secretary's minute of 6 February to you
and your reply on this subject.

2 I can, of course, appreciate your wish to see the new fixed penalties scheme implemented as soon as possible; and that, if the April 1986 date is to be met, you would need to procure the Metropolitan Police computer system by single tender. As the Foreign Secretary points out, however, there is a risk, albeit limited, of challenge by the Commission. Even if we are able to fend-off such a challenge on this particular occasion it would inevitably lose credibility with the Commission. And it seems that it was unnecessary that we should run this risk. I understand that there is every chance that ICL would have won the contract on compatibility grounds even if it had been put out to competitive tendering under the Supplies Directive.

3 With the advantage of hindsight, therefore, I think it is unfortunate that it was apparently not possible to persuade the police forces about the implementation of this part of the Act more swiftly after Royal Assent. That might have enabled us to avoid a situation where the UK is apparently seen to have bent the rules but where, in fact, a British company would anyway have probably won. This is particularly so when we will need as much negotiating currency as possible for procurements by single tender which may be coming up in the near future, and which we may want to defend on grounds other than urgency.

4 Copies of this letter go to recipients of yours.

NORMAN TEBBIT

Pouck : Policy : Jan 83

23 MAY 1984

