



## Procurement Sub (Finance) Committee

**Date:** MONDAY, 6 JULY 2020

**Time:** 1.45 pm

**Venue:** VIRTUAL PUBLIC MEETING (ACCESSIBLE REMOTELY)

<https://youtu.be/BLztk8NK8x4>

**Members:**

Deputy Hugh Morris, Finance Committee (Chairman)	Deputy Jamie Ingham Clark, Finance Committee
Deputy Robert Merrett, Finance Committee (Deputy Chairman)	Alderman Gregory Jones QC
Randall Anderson, Finance Committee	Jeremy Mayhew, Finance Committee
Deputy Roger Chadwick	Susan Pearson, Finance Committee
John Fletcher, Finance Committee	William Pimlott, Finance Committee
Michael Hudson, Finance Committee	Deputy Philip Woodhouse

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### Accessing the virtual public meeting

Members of the public can observe this virtual public meeting via the below link:

<https://youtu.be/BLztk8NK8x4>

**John Barradell**  
Town Clerk and Chief Executive

# **AGENDA**

## **Part 1 - Public Agenda**

1. **APOLOGIES**

2. **MEMBERS' DECLARATIONS UNDER THE CODE OF CONDUCT IN RESPECT OF ITEMS ON THE AGENDA**

3. **PUBLIC MINUTES OF THE PREVIOUS MEETING**

To agree the public minutes of the meeting held on 6<sup>th</sup> February 2020

**For Decision**  
(Pages 1 - 6)

4. **PROCUREMENT SUB-COMMITTEE WORK PROGRAMME - JULY 2020**

Report of the Chamberlain

**For Information**  
(Pages 7 - 8)

5. **CITY PROCUREMENT QUARTERLY PROGRESS REPORT**

Report of the Chamberlain

**For Information**  
(Pages 9 - 48)

6. **PERFORMANCE BONDS AND PARENT COMPANY GUARANTEES -  
RESOLUTION FROM: PROJECTS SUB (POLICY AND RESOURCES)  
COMMITTEE (25 JUNE 2020)**

Report of the Town Clerk

**For Information**  
(Pages 49 - 50)

7. **QUESTIONS ON MATTERS RELATING TO THE WORK OF THE SUB-COMMITTEE**

8. **ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT**

9. **EXCLUSION OF THE PUBLIC**

MOTION - That under Section 100(A) of the Local Government Act 1972, the public be excluded from the meeting for the following items on the grounds that they involve the likely disclosure of exempt information as defined in Part I of Schedule 12A of the Local Government Act.

**For Decision**

## **Part 2 - Non-Public Agenda**

### **10. NON-PUBLIC MINUTES OF THE PREVIOUS MEETING**

To agree the non-public minutes of the meeting held on 6<sup>th</sup> February 2020

**For Decision**  
(Pages 51 - 54)

### **11. OUTSTANDING MATTERS**

Report of the Town Clerk

**For Information**  
(Pages 55 - 56)

### **12. POWER PURCHASE AGREEMENT (PPA) FOR OFFSITE RENEWABLE ELECTRICITY - PROCUREMENT STAGE 1A MID TENDER PROGRESS REPORT**

Joint report of The City Surveyor and The Chamberlain

**For Decision**  
(Pages 57 - 62)

### **13. ROUGH SLEEPING OUTREACH SERVICE UPDATE**

Report of The Chamberlain

**For Decision**  
(Pages 63 - 66)

### **14. ACTION FRAUD AND NFIB - LATEST OFFER**

Report of The Chamberlain

**For Information**  
(Pages 67 - 88)

### **15. CONTRACT DISPUTE VERBAL UPDATE**

The Chamberlain to be heard.

**For Decision**

### **16. ANNUAL WAIVER REPORT 2019/20**

Report of the Chamberlain

**For Information**  
(Pages 89 - 92)

17. **CITY OF LONDON POLICE, DIGITAL INTERVIEW RECORDING PROJECT  
LESSONS LEARNED**

**For Information**  
(Pages 93 - 112)

18. **NON-PUBLIC QUESTIONS ON MATTERS RELATING TO THE WORK OF THE  
SUB-COMMITTEE**
19. **ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT AND  
WHICH THE SUB-COMMITTEE AGREE SHOULD BE CONSIDERED WHILST THE  
PUBLIC ARE EXCLUDED**

## **PROCUREMENT SUB (FINANCE) COMMITTEE**

**Thursday, 6 February 2020**

**Minutes of the meeting of the Procurement Sub (Finance) Committee held at the Guildhall EC2 at 1.45 pm**

### **Present**

#### **Members:**

Deputy Hugh Morris (Chairman)	Deputy Jamie Ingham Clark
Deputy Robert Merrett (Deputy Chairman)	Jeremy Mayhew
Randall Anderson	Susan Pearson
John Fletcher	William Pimlott
Michael Hudson	

#### **Officers:**

Christopher Bell	- Chamberlain's Department
Sandeep Dwesar	- Barbican Centre
James Murray	- City Surveyor's Department
James Rooke	- City Surveyor
Antoinette Duhaney	- Town Clerk's

#### **1. APOLOGIES**

Apologies for absence were received from Alderman Gregory Jones.

#### **2. MEMBERS' DECLARATIONS UNDER THE CODE OF CONDUCT IN RESPECT OF ITEMS ON THE AGENDA**

Randall Anderson and William Pimlott declared an interest in agenda item 7 on the grounds that they were Barbican Estate Residents.

#### **3. PUBLIC MINUTES OF THE PREVIOUS MEETING**

RESOLVED – That the public minutes and non-public summary of the meeting held on 27.11.19 be approved as a correct record subject to the correction to item 10 include the update from officers on the timescales for signing off the Procurement Strategy.

#### **4. PROCUREMENT SUB COMMITTEE WORK PROGRAMME 2020**

The Sub Committee considered a report of the Chamberlain setting out the forward programme of items for future meetings. During the course of debate Officers raised concern that the April of meeting was too close to the end of the financial year and officers would be focussing on year end reporting.

RESOLVED – That Officers explore the scope for moving the 9<sup>th</sup> March 2020 meeting to later in March and cancelling the meeting scheduled for 9<sup>th</sup> April.

5. **CITY PROCUREMENT QUARTERLY PROGRESS REPORT - QUARTER 3 - 2019/20**

The Sub Committee considered a report of the Chamberlain outlining performance across the Key Performance Indicators. A representative from the Barbican Centre attended for this item and gave assurances that measures were in place to reduce instances on non-compliance including earlier engagement with the Procurement Team and revisions to the Artist exemption Policy.

Officers also advised that processes were being streamlined and going forward, only waivers above the £50,000 threshold would require the Sub Committee's approval. Although performance had dipped slightly, notwithstanding the staff vacancies payments to SMEs would continue to be prioritised.

RESOLVED – That the progress of key strategic improvement projects and performance for Q1 – Q3 of 2019/20 financial year be noted.

6. **CHANGES TO PROCUREMENT CODE PART 1**

The Sub Committee considered a report of the Chamberlain requesting changes to the Procurement Code which would take effect from 1<sup>st</sup> April 2020. The main changes related to:

- Procurement thresholds and processes (Rule 15)
- Contracts lettings thresholds (Rule 16)
- Waiver process (Rule 25)
- Contract changes (Rules 30-33)
- Prompt payment (Rule 43)
- Responsible Procurement Policy (Rule 46)
- Social Value Panel (Rule 48)

During the course of debate and in response to questions from Members, the Sub Committee was advised that the proposed increase in the threshold under Rule 15 would also apply to waivers (Rule 25) and that many of the changes proposed were to align with other requirements such as EU and contract letting thresholds.

Following concerns raised by Members in respect of the removal of Rule 43, Officers gave assurances that the removal of this rule would not impact on the current practice of prioritising payments for SMEs but would reduce internal bureaucracy. Members were pleased that payments to SMEs would continue to be prioritised and requested that payments to SMEs be included as a target in future Quarterly Progress Reports in order to maintain oversight of performance in this area. Officers were supportive of this approach as a way of monitoring performance in this area whilst assessing the impact of the removal of Rule 43.

RESOLVED – That the proposed changes to the Procurement Code with effect from 1 April 2020 be approved.

**7. RESOLUTION FROM BARBICAN RESIDENTS CONSULTATION COMMITTEE (BRCC) 02.12.19 - HEATING INITIATIVES**

The Sub Committee considered a resolution from the Barbican Residents Consultation Committee (BRCC) meeting on 02.12.19 regarding energy saving initiatives.

Officers advised that the current supplier was contracted to provide fixed price energy for 12 months and that they had been involved in discussions with BRCC on this subject at the end of 2019. Officers suggested further discussions with BRCC over the coming months including benchmarking the existing contract to allow BRCC to make an informed decision on whether to make alternative arrangements for energy supply.

RESOLVED –

1. That it be noted that the Barbican Residential Committee supports the initiative of the BRCC's Underfloor Heating Working Party (UHWP).
2. That it be noted that the Barbican Estate Office has been asked to work with the UHWP to investigate the feasibility and commercial implications of a separate supply contract for the Estate, when compared to a joint one with the City, and to pursue negotiations should these investigations prove positive.
3. That Officer facilitate further discussions with BRCC over the coming months including benchmarking the existing contract to allow BRCC to make an informed decision on whether to make alternative arrangements for its energy supply.

**8. QUESTIONS ON MATTERS RELATING TO THE WORK OF THE SUB-COMMITTEE**

There were no questions.

**9. ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT  
Gateway 1/2/3/4 Fire Door Replacement Programme – Resolution from Projects Sub Committee (27.01.20)**

The Sub Committee considered a late paper from the Projects Sub Committee in respect of the speed at which the Fire Door Replacement Programme was being delivered.

Officers advised that all possible action was being taken to expedite matters but there was a process to adhere to and that the most appropriate approach was not necessarily the speediest. A member also commented that there were so many factors impacting on the process including different types of door, some of which required testing by overseas contractors and other fire safety concerns not related to doors.

The Sub Committee was satisfied that Officers were doing all possible to expedite the procurement process and

RESOLVED – That the importance attached by the Procurement Sub Committee to the expeditious procurement and delivery of the City of London Corporation's Fire Door Replacement Programme to ensure, as far as was possible, the highest standards of fire safety on the City's housing estates, be noted.

10. **EXCLUSION OF THE PUBLIC**

RESOLVED - That under Section 100(A) of the Local Government Act 1972, the public be excluded from the meeting for items 11 – 19 on the grounds that they involve the likely disclosure of exempt information as defined in Part I of Schedule 12A of the Local Government Act.

11. **NON-PUBLIC MINUTES OF THE PREVIOUS MEETING**

RESOLVED – That the non-public minutes of the meeting held on 02.12.19 be approved.

12. **WAIVER REPORT - BARBICAN ART GALLERY - ART TRANSPORTATION**

The Sub Committee considered a report of the Managing Director, Barbican Centre in respect of transportation of art exhibits.

13. **ALL FUNDS USE OF DEVELOPMENT MANAGERS AND JOINT VENTURES**

The Sub Committee considered a report of the Chamberlain proposing guidelines outlining guidelines for the use and procurement of Development Managers, Architects and Professional Teams in the City's direct development and refurbishment projects on the Investment Property Portfolio, and to outline key terms expected in Joint Venture Agreements on larger scale development opportunities.

14. **STAGES 1 (STRATEGY) & 2 (CONTRACT AWARD) COMBINED REPORT FOR PROVISION OF WATER SUPPLY AND SEWERAGE SERVICES**

The Sub Committee considered a joint report of the Chamberlain and the City Surveyor regarding the award of a contract for the provision of water supply and sewerage services for the City of London Corporation.

15. **STAGES 1 (STRATEGY) & 2 (CONTRACT AWARD) COMBINED REPORT FOR PROVISION OF ELECTRICITY AND GAS SUPPLIES**

The Sub Committee considered a joint report of the Chamberlain and the City Surveyor in respect of the recommended procurement strategy to be used in the selection of a preferred supplier and award of contract for the provision of electricity and gas supplies.

16. **CITY PROCUREMENT 2020/21 BUDGET**

The Sub Committee considered a report of the Chamberlain outlining the proposed City Procurement Budget for 2020/21.

17. **DISPUTE UPDATE**

The Sub Committee considered a report of the Chamberlain providing an update on negotiations in respect of delivering certain IT services.



**18. NON-PUBLIC QUESTIONS ON MATTERS RELATING TO THE WORK OF THE SUB-COMMITTEE**

There were no non-public questions.

**19. ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT AND WHICH THE SUB-COMMITTEE AGREE SHOULD BE CONSIDERED WHILST THE PUBLIC ARE EXCLUDED**

There was no non-public urgent business.

**The meeting closed at 2.58 pm**

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Chairman

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**Procurement Sub-Committee – Work Programme 2020**

Meeting:	06/07/2020	09/09/2020	07/10/2020	05/11/2020	07/12/2020
	<b>Strategy, Policy, Continuous Improvements and Performance</b>				
	*Annual Waiver report (for info) *City Procurement Quarterly Update Paper	* City Procurement KPI's (quarterly update) * City Procurement Risk Register	*P-card Update Paper * Benefits of the new Lloyds P-card contract		
	<b>Sourcing and Category Management</b>				
	*Power Purchase Agreement (under urgency) * Digital Interview Recording Solutions, CoLP, Lessons Learned (for info)	*Architects Stage 1 *Major Works Framework Project Management Services Stage 2 *Rough Sleeping Service - Stage 2 * Semi-independent / supported accommodation placements (16-25yrs), Stage 1 *Parking Enforcement – Stage 1 * Stage 1 & 2 report for Provision of Electricity and Gas Supplies	*Art Transport Services (Barbican) – Stage 2 *Organisation Business Solutions, Stage 1 Report	*Architects Stage 2 Award *Property Insurance, Stage 1 Report	* Approval to award Filming Location Agency Concession
	<b>Contract Management and Responsible Procurement</b>				
	* Contract Dispute Update report (for info) *Action Fraud and NFIB – Latest offer (for info)				

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<b>Committee(s)</b>	<b>Dated:</b>
Procurement Sub Committee Finance Committee	6 July 2020 21 July 2020
<b>Subject:</b> City Procurement Quarterly Progress Report End of year 2019-2020	<b>Public</b>
<b>Report of:</b> The Chamberlain	<b>For Information</b>
<b>Report author:</b> Chris Bell, Commercial Director	

## Summary

The report updates Members on the work of City Procurement, key performance indicators and areas of progress.

Performance for 2019/20 financial year is summarised below:

- Procurement savings at end of March 2020 totalled £7.88m (*exceeding the target of £7.27m*), made up of £1.75m Commercial Contract Management savings and £6.13m Sourcing & Category Management savings.
- Purchase order compliance was 98% (target of 97%).
- 93% of all supplier invoices were paid within 30 days (target of 97%)
- 85% of SME invoices were paid within 10 working days (target of 88%).
- 81% of invoices were received in True PDF format (target of 75%)
- Waiver trends:
  - Total number of waivers reduced by 11% compared to the previous financial year.
  - Non-compliant waivers decreased by 30% compared to the previous financial year.
  - A total of 21 Procurement Breach waivers were recorded in 2019/20 with a value of £1.63m.

## Recommendations

- Members are asked to note the report.

## Main Report

### Background

1. City Procurement has four main functions: Category Management/Sourcing, Commercial Contract Management, Accounts Payable, and Policy & Compliance. This report provides an update on the progress and current performance against the service KPIs set out in the Chamberlain's Business Plan in April 2019.

### Efficiency and Savings

2. City Procurement is set an annual savings target at the start of each year based on the contracts to be let during the financial year that have the potential to make efficiency or cost savings and contracts let in previous years that are generating guaranteed savings in the current year. Each contract is reviewed by the relevant Category Board to set the targets and each contract target considers historic

spend, scope changes, complexity, risk and industry benchmarks. The 2019/20 City Procurement target was £7.27m. This was made up of Sourcing savings target of £6.10m and in-contract savings of £1.17m.

### The Annual Savings Target elements explained

3. The 2019/20 annual savings target was set using two types of in-year savings:
  - **Previously let contracts generating savings (known as run rate)** – Savings already guaranteed for the current financial year from contracts let in previous years. This is for contracts that span different financial years and is typically for service contracts that are let for a 2-to-7-year period when the savings are spread across the contract life.
  - **New contracts let generating savings** – Savings targeted to be generated from new contracts let during the current financial year.

### 2019/20 Efficiencies and savings as at 31 March 2020

4. Sourcing & Category Management achieved procurement savings of £6.13m at the end of Q4. Additionally, Commercial Contract Management has achieved total efficiencies and savings to the value of £1.75m. This represents a total savings performance of £7.88m, exceeding the target by over £500k.

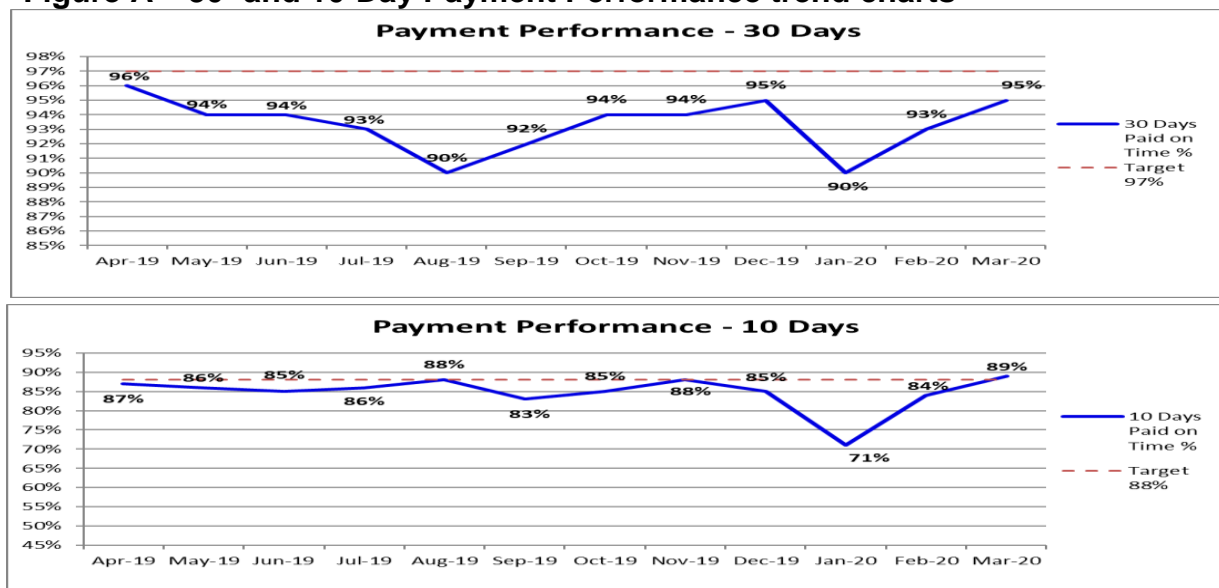
### Accounts Payable Performance – Compliance with No PO No Pay Policy

5. We continue to achieve high levels of compliance with 98% PO compliance for 2019/20, therefore exceeding our target of 97%.

### Payment Performance

6. The Corporation's 30-day invoices paid-on-time performance for 2019/20 is 93%, slightly below the target of 97%. Our 10-day SME invoice payment performance for FY 19/20 is 85%, falling just short of the 88% target. There have been a number of factors impacting results this year including carrying vacancies to balance budget, increased work for Accounts Payable assisting other parts of the organisation (including all Covid-19 relief payments) and some periods of down time in IT access to the payments systems.

**Figure A – 30- and 10-Day Payment Performance trend charts**



### Electronic Invoices Received

7. Of all the invoices received from suppliers in FY 19/20, 81% were in the desired True PDF format, exceeding our target of 75% set for the year. 86%, our highest figure to date, was achieved in March 2020 and shows that we are moving in the right direction.
8. With all Accounts Payable staff working from home since mid-March due to the COVID-19 pandemic, it has become imperative for invoices to be submitted electronically. During March, the Head of Accounts Payable emailed all suppliers who had submitted paper invoices in the 13 months prior, asking them to send all invoices via email to our central AP mailbox, to mitigate the risk of late payment.

### Waiver performance

9. The total number of waivers completed FY 19/20 is **194** (*compared to 217 in FY 18/19*), which breaks down as follows:
  - a. Compliant Waivers **150** (value £8.55m)
  - b. Non-Compliant Waivers **44** (value £2.49m)
    - i. Procurement Breaches (*subset of Non-compliant total*) **21** (£1.63m)
10. There has been a reduction of 11% in waivers with a 40% decrease in the total value, from £18.2m to £11m. A more detailed Annual Waiver report is being presented at this same committee.

### Freedom of Information (FOI) Requests

11. City Procurement has responded to 62 FOI requests in 2019/20, amounting to 117 hours of officer time. Analysing the make-up of FOIs for this year gives the following categorisation:

Nature of FOI Query	Instances
Contract or procurement exercise specific	26
Understanding our expenditure	18
Policy queries (including Brexit)	6
Compliance queries	5
Payment queries	4
Seeking sales opportunities	3
	<b>62</b>

12. This analysis shows that FOIs typically fall into one of two categories: either (a) they relate to specific contracts or procurement exercises, or (b) they seek to understand our general expenditure and spend profile. There has been a slight rise this year in Policy queries, mainly related to Brexit planning.

### Covid-19 Response and actions for City Procurement

13. Like much of the organisation, there has been a significant impact of the Covid-19 crisis on City Procurement. Below is a summary of new unplanned work that was undertaken by the division to support the Corporation and beyond since mid-March:

## Implementation of Government Procurement Policy Notices

14. During Covid-19 the Government has issued a series of temporary Policy Notices (*see Appendix 1 for the full Policy Notices issued*), some mandatory and some guidance that we have had to interpret and develop into local policies during the crisis. The subject matter and our actions are summarised below:
- a. **PPN 01/20 - Responding to Covid-19:** This covered topics such as procuring under extreme urgency, direct contract awards, accelerated procurement timescales, more powers to extend or increase scope in existing contracts and the likelihood of 'force majeure' being cited by suppliers in existing contract terms. **Our response** was to put in place a new temporary exemption code for urgent purchases under Covid-19 and issue clear guidance on revised procurement processes and contract items such as force majeure. The guidance can be seen at *Appendix 2*.
  - b. **PPN 02/20 - Supplier Relief due to Covid-19:** This mandatory notice issued directions for authorities to review its supply chain, identify at risk suppliers, where possible pay invoices quicker and if appropriate provide relief to suppliers in the way of advance payments under certain conditions. Our response to this was to:
    - i. Collate, assess and review the status of all our critical suppliers (665 in total).
    - ii. Issues a letter from the Commercial Director to all 665 suppliers outlining all of the government support and our local support and guiding them on how to access these (*see Appendix 3*)
    - iii. Change internal procedures to pay SMEs immediately on receipt of valid invoices and pay all suppliers within 20 days.
    - iv. Design an application, assessment and relief award process for advance payments. (*see Appendix 4*)
    - v. Design standard Contract Change terms to implement advance payment agreements under contract.
  - c. **PPN 03/20 – Use of Procurement Cards during Covid-19:** This was guidance to authorities to consider greater use of payment cards to assist ease pressure on invoice payments. Our response was to **not** make any changes to our processes. This was due to our already good payment performance, our robust payment card policy and processes and to ensure appropriate oversight of expenditure during Covid-19. We have been able to manage good payment performance throughout.
  - d. **PPN 04/20 – Recovery and transition from Covid-19:** Further guidance on measures to assist suppliers and maintain services during the recovery phase of Covid-19 until 31 October 2020. Our response is to maintain the current temporary policy, processes and targets outlined in response to the previous 3 policy notices.

## Supporting Urgent Department requirements

15. The main element of support to City Services, has been sourcing PPE and other urgent commodities or services for the organisation and the Covid-19 Strategic Coordination Group for London. We have been able to meet urgent demands consistently in a very difficult marketplace, and have quickly built up a panel of



suppliers to meet needs arising. This included large urgent orders for DCCS to support crucial services and suppliers. Both then and now, ensuring that services identify needs early is critical to ensure supply. It is expected that demand will remain high across London.

### **Impact on live and soon to commence procurement exercises**

16. The impact of Covid-19 has been very different across the range of goods, services and works contracts we are currently working on. Due to this, the Commercial Director has requested revised Category Strategies to reflect this. These draft strategies will be completed by the end of June 2020 and then presented and discussed at the various Category Boards before being approved. These strategies will consider whether to pause/defer certain procurements, extend existing arrangements, challenge the need or scope of procurement exercises and also take advantage of short-term market conditions that would be positive to the organisation. We will bring back the outcome of those exercises at September committee. This also has an impact on our targets for 2020/21, therefore we will present our target figures at this same committee.

### **Conclusion**

17. City Procurement continues to achieve a high level of performance during an extremely challenging year and operational environment. The two main savings targets were both realised and total savings achieved for the year was £7.88m. The payment performance figures are falling just short of their respective targets, but a few adverse factors have been identified and further investigation will be carried out with the aim of introducing measures to counteract these. Latterly, the impact of Covid-19 has created significant new additional work in terms of responding to the situation and new government policy notices. The current environment also has impacted our sourcing plan and ability to procure as normal, thus revised category strategies are being worked on with a revised plan and targets being presented for 2020-21 at the September Procurement Sub-Committee.

### **Report Author**

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# Procurement Policy Note - Responding to COVID-19

Information Note PPN 01/20

March 2020

### Issue

1. This Procurement Policy Note (PPN) sets out information and associated guidance on the public procurement regulations and responding to the current coronavirus, COVID-19, outbreak. The exact response to COVID-19 will be tailored to the nature, scale and location of the threat in the UK, as our understanding develops. However, it is already clear that in these exceptional circumstances, authorities may need to procure goods, services and works with extreme urgency. Authorities are permitted to do this using regulation 32(2)(c) under the Public Contract Regulations 2015.

### Dissemination and Scope

2. This PPN is applicable to all contracting authorities, including central government departments, executive agencies, non-departmental public bodies, local authorities, NHS bodies and the wider public sector. Together these are referred to in this PPN as 'contracting authorities.'

3. Please circulate this PPN across your organisation and to other relevant organisations that you are responsible for, drawing it to the specific attention of those with a commercial and procurement role.

### Timing

4. With immediate effect.

### Background

5. There will be a range of commercial actions that must be considered by contracting authorities in responding to the impact of COVID-19. In such exceptional circumstances, authorities may need to procure goods, services and works with extreme urgency. This is permissible under current public procurement regulations using regulation 32(2)(c).

6. This PPN and associated guidance covers options that may be considered in relation to procurements under the Public Contract Regulations 2015 (for the current financial thresholds, see PPN 06/19):

- direct award due to extreme urgency (regulation 32(2)(c));
- direct award due to absence of competition or protection of exclusive rights;
- call off from an existing framework agreement or dynamic purchasing system;

- call for competition using a standard procedure with accelerated timescales;
- extending or modifying a contract during its term.

7. Contracting authorities procuring under the Defence and Security Public Contracts Regulations 2011, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 will need to check similar provisions in those regulations

8. The COVID-19 outbreak is likely to give rise to supply chain disruption and contracting authorities may need to take action in response to supplier claims of 'force majeure' or contract 'frustration'. These and other issues will be covered in future PPNs.

### **Contact**

9. Further guidance on COVID-19 for individuals, employers and organisations is available on GOV.UK.

10. Enquiries about this PPN should be directed to the Crown Commercial Service Helpdesk on 0345 410 2222 or [info@crownccommercial.gov.uk](mailto:info@crownccommercial.gov.uk).

## **PUBLIC CONTRACT REGULATIONS - RESPONDING TO COVID-19**

### **Introduction**

There will be a range of commercial actions that need to be considered by contracting authorities in responding to the impact of COVID-19. In such exceptional circumstances, authorities may need to procure goods, services and works with extreme urgency. This is permissible under current public procurement regulations.

If you have an urgent requirement for goods, services or works due to COVID-19, and you need to procure this under the Public Contract Regulations 2015 (PCRs), there are various options available. These include:

- direct award due to extreme urgency;
- direct award due to absence of competition or protection of exclusive rights;
- call off from an existing framework agreement or dynamic purchasing system;
- call for competition using a standard procedure with accelerated timescales;
- extending or modifying a contract during its term.

Depending on the specific nature of your requirement there may be further options under the PCRs, such as the additional delivery of supplies from an existing supplier (regulation 32(5)), additional similar works or services from an existing supplier (regulation 32(9)), or using the services of a subsidiary of another contracting authority (regulation 12). These are not covered in this guidance and do have their own specific requirements.

You should ensure you keep proper records of decisions and actions on individual contracts, as this could mitigate against the risk of a successful legal challenge. If you make a direct award, you should publish a contract award notice (regulation 50) within 30 days of awarding the contract.

### **Direct award due to reasons of extreme urgency**

COVID-19 is serious and its consequences pose a risk to life. Regulation 32(2)(c) of the PCRs is designed to deal with this sort of situation.

Regulation 32(2) sets out the following:

*The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases: ...*

*(c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.*

*... the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.*

Therefore, in responding to COVID-19, contracting authorities may enter into contracts without competing or advertising the requirement so long as they are able to demonstrate the following tests have all been met:

- 1) There are genuine reasons for extreme urgency, eg:

- you need to respond to the COVID-19 consequences immediately because of public health risks, loss of existing provision at short notice, etc;
  - you are reacting to a current situation that is a genuine emergency - not planning for one.
- 2) The events that have led to the need for extreme urgency were unforeseeable, eg:
- the COVID-19 situation is so novel that the consequences are not something you should have predicted.
- 3) It is impossible to comply with the usual timescales in the PCRs, eg:
- there is no time to run an accelerated procurement under the open or restricted procedures or competitive procedures with negotiation;
  - there is no time to place a call off contract under an existing commercial agreement such as a framework or dynamic purchasing system.
- 4) The situation is not attributable to the contracting authority, eg:
- you have not done anything to cause or contribute to the need for extreme urgency.

Contracting authorities should keep a written justification that satisfies these tests. You should carry out a separate assessment of the tests before undertaking any subsequent or additional procurement to ensure that they are all still met, particularly to ensure that the events are still unforeseeable. For example, as time goes on, what might amount to unforeseeable now, may not do so in future.

You should limit your requirements to only what is absolutely necessary both in terms of what you are procuring and the length of contract.

Delaying or failing to do something in time does not make a situation qualify as extremely urgent, unforeseeable or not attributable to the contracting authority. This is because:

- the PCRs expect a contracting authority to plan its time efficiently so that it is able to use a competitive procedure;
- competitive alternatives (eg. an accelerated open procedure) can be completed quickly;
- case law has held that knowing that something needs to be done means it is foreseeable;
- a contracting authority's delay or failure to do something is likely to mean that the situation is attributable to the contracting authority.

It is important that contracting authorities continue to achieve value for money and use good commercial judgement during any direct award. Whilst prices may be higher than would be expected in a regular market, any abnormally high pricing should be approved by the appropriate commercial director. Additionally, contracting authorities are encouraged to consider contractual mechanisms to ensure that they have the ability to secure pricing reductions through the life of the contract. Where this is not possible, it is recommended a log should be kept and reasoning provided for future auditing.

## **Direct award due to absence of competition or protection of exclusive rights**

Regulation 32(2) of the PCRs also sets out that the negotiated procedure without prior publication may be used:

*(b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons: ...*

*(ii) competition is absent for technical reasons,*

*(iii) the protection of exclusive rights, including intellectual property rights,*

*... but only where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.*

Therefore, a contracting authority may make a direct award where the works, goods or services needed to respond to COVID-19 can only be supplied by a particular supplier because:

- competition is absent for technical reasons eg there is only one supplier with the expertise to do the work, produce the product or with capacity to complete on the scale required; or
- the protection of exclusive rights, including intellectual property rights eg:
  - the supplier owns those rights (including intellectual property rights);
  - it has the exclusive right to exploit intellectual property rights.

But this is only when:

- there is no reasonable alternative or substitute available; and
- the contracting authority is not doing something which artificially narrows down the scope of the procurement eg by over-specifying the requirement.

Contracting authorities should keep a written justification that satisfies these tests. You should carry out a separate assessment of the tests before undertaking any repeat procurement to ensure these tests have been met.

## **Call off from an existing framework agreement or dynamic purchasing system**

Central purchasing bodies, such as the Crown Commercial Service, offer public bodies access to a range of commercial agreements including framework agreements and dynamic purchasing systems (DPS).

It is possible to use one of these commercial agreements as long as:

- your contracting authority was clearly identified as a permitted customer in the original OJEU notice or the invitation to confirm interest;
- the goods, services or works to be procured fall within the scope of those covered by the contract, framework agreement or DPS;
- the contract, framework agreement or DPS was procured in accordance with the PCRs;
- the terms of the contract, framework agreement or DPS are suitable and meet your requirements without the need for significant changes.

A framework agreement will provide for direct awards, mini-competitions or both. You must follow the procedure for awarding a call off contract set out in the framework agreement. An award under a DPS has to be by mini-competition and the minimum time for receipt of tenders is 10 days.

### **Using a standard procedure with accelerated timescales due to urgency**

Contracting authorities can reduce the minimum timescales for the open procedure, the restricted procedure and the competitive procedure with negotiation if a state of urgency renders the standard timescales impracticable. The minimum time limits vary (see regulations 27(5), 28(10) and 29(10) respectively). For procurements under the open procedure, timescales can be reduced to 15 days for receipt of tenders plus the minimum 10 days for the standstill period.

There is no express requirement for the situation to be unforeseeable or not attributable to the contracting authority but you should set out in your OJEU notice a clear justification eg:

*“The COVID-19 outbreak has given rise to an urgent need for the supply of [description of what is being procured] because [explanation of urgency]. This does not give [name of contracting authority] sufficient time to comply with the standard [open procedure / restricted procedure / competitive procedure with negotiation] timescales for this procurement. [Contracting authority] considers this to be a state of urgency which it has duly substantiated. Accordingly, [contracting authority] is using the accelerated time limits permitted under the Public Contract Regulations 2015 (regulation [27(5) for the open procedure / 28(10) for the restricted procedure / 29(10) for the competitive procedure with negotiation]) in respect of this procurement”.*

Contracting Authorities can also consider the use of the Light Touch Regime for specific health and social care related services (see regulation 74-77). While contracting authorities are required to advertise contracts in OJEU and publish contract award notices, you are free to use any process or procedure you choose to run and are not required to use the standard procurement procedures (open, restricted etc). You are also free to set your own timescales as long as they are reasonable and proportionate.

### **Extending or modifying a contract during its term**

Regulation 72(1) sets out the following:

*Contracts ... may be modified without a new procurement procedure ... in any of the following cases:*

*(c) where all of the following conditions are fulfilled:*

- (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;*
- (ii) the modification does not alter the overall nature of the contract;*
- (iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.*



Contracting authorities should keep a written justification that satisfies these conditions, including limiting any extension or other modification to what is absolutely necessary to address the unforeseeable circumstance. This justification should demonstrate that your decision to extend or modify the particular contract(s) was related to the COVID-19 outbreak with reference to specific facts, eg your staff are diverted by procuring urgent requirements to deal with COVID-19 consequences, or your staff are off sick so they cannot complete a new procurement exercise. You should publish the modification by way of an OJEU notice to say you have relied on regulation 72(1)(c).

Multiple modifications are permissible, however each one should not exceed the 50% of the original contract value. You should also consider limiting the duration and/or scope of the modification and running a procurement for longer-term/wider scope requirements alongside it.

There are other grounds available under regulation 72 for extending contracts, including: if the proposed variation has been specifically provided for in the contract (regulation 72(1)(a)); where a change of contractor cannot be made for economic or technical reasons (regulation 72(1)(b)), and where the modifications are not substantial (regulation 72(1)(e))

If more than one ground is applicable this may lower the legal risk and therefore you should ensure all relevant grounds are included in your written justification.



Cabinet Office

## Procurement Policy Note - Supplier relief due to COVID-19

Action Note PPN 02/20

March 2020

### Issue

1. This Procurement Policy Note (PPN) sets out information and guidance for public bodies on payment of their suppliers to ensure service continuity during and after the current coronavirus, COVID-19, outbreak. Contracting authorities must act now to ensure suppliers at risk are in a position to resume normal contract delivery once the outbreak is over.

### Action

2. All contracting authorities should:
- Urgently review their contract portfolio and inform suppliers who they believe are at risk that they will continue to be paid as normal (even if service delivery is disrupted or temporarily suspended) until at least the end of June.
  - Put in place the most appropriate payment measures to support supplier cash flow; this might include a range of approaches such as forward ordering, payment in advance/pre-payment, interim payments and payment on order (not receipt).
  - If the contract involves payment by results then payment should be on the basis of previous invoices, for example the average monthly payment over the previous three months.
  - To qualify, suppliers should agree to act on an open book basis and make cost data available to the contracting authority during this period. They should continue to pay employees and flow down funding to their subcontractors.
  - Ensure invoices submitted by suppliers are paid immediately on receipt (reconciliation can take place in slower time) in order to maintain cash flow in the supply chain and protect jobs.

### Dissemination and Scope

3. This PPN is applicable to all contracting authorities, including central government departments, executive agencies, non-departmental public bodies, local authorities, NHS bodies and the wider public sector (excluding Devolved Administrations). Together these are referred to in this PPN as 'contracting authorities'. This PPN covers goods, services and works contracts being delivered in the UK.

4. Please circulate this PPN across your organisation and to other relevant organisations that you are responsible for, drawing it to the specific attention of those with a commercial and finance role.

## Timing

5. With immediate effect until 30 June 2020.

## Background

6. The current outbreak of COVID-19 is unprecedented and will have a significant impact on businesses of all sizes. Many suppliers to public bodies will struggle to meet their contractual obligations and this will put their financial viability, ability to retain staff and their supply chains at risk. Contracting authorities should act now to support suppliers at risk so they are better able to cope with the current crises and to resume normal service delivery and fulfil their contractual obligations when the outbreak is over.

7. It is vital that contracting authorities pay all suppliers as quickly as possible to maintain cash flow and protect jobs. Contracting authorities should also take action to continue to pay suppliers at risk due to COVID-19 on a continuity and retention basis. Contracting authorities can consider making advance payments to suppliers if necessary.

8. Central Government organisations should note that Managing Public Money prohibits payment in advance of need in absence of Treasury consent as this is always novel contentious and repercussive. However, in the circumstances Treasury consent is granted for payments in advance of need where the Accounting Officer is satisfied that a value for money case is made by virtue of securing continuity of supply of critical services in the medium and long term. This consent is capped at 25% of the value of the contract and applies until the end of June 2020. HM Treasury will review in mid-June whether this consent needs to be extended for a further period. Consent for payment in advance of need in excess of this amount should be sought from HMT in the usual way. This consent does not alleviate Accounting Officers their usual duties to ensure that spending is regular, proper and value for money or for other contracting authorities to conduct appropriate and proportionate due diligence to ensure such payments are necessary for continuity of supply of critical services.

9. Contracting authorities should aim to work with suppliers and, if appropriate, provide relief against their current contractual terms (for example relief on KPIs and service credits) to maintain business and service continuity rather than accept claims for other forms of contractual relief, such as force majeure.

10. Continuing to make payments to at risk suppliers will present risks including that, despite these exceptional actions, a supplier may still become insolvent. These risks will need to be managed by contracting authorities on a case by case basis.

## Contact

11. Further guidance on COVID-19 for individuals, employers and organisations is available on GOV.UK.

12. Enquiries about this PPN should be directed to the helpdesk at [info@crownccommercial.gov.uk](mailto:info@crownccommercial.gov.uk).

## **SUPPLIER RELIEF DUE TO COVID-19**

### **INTRODUCTION**

The public sector must act quickly and take immediate steps to pay all suppliers as a matter of urgency to support their survival over the coming months.

Where goods and services are either reduced or paused temporarily, authorities should continue to pay at risk suppliers to ensure cash flow and supplier survival. This could include, for example situations where:

- Services are cut short / reduced at short notice due to the impact of COVID-19 and non-payment could result in supply chains collapsing and/or significant financial implications for the supplier.
- It would be value for money and important to business continuity to continue to pay suppliers in the short term (regardless of whether you are able to reconcile at a later stage). This would ensure continuity of services when services can resume.

PPN 01/20 sets out how contracting authorities can amend contracts under Regulation 72 of the Public Contracts Regulations 2015<sup>1</sup>. Changes should be captured in contract variation or change note, and make clear that the changes relate only to the COVID-19 situation, include a review provision or time limit, and that it is the authority's decision when things should return to normal.

### **PAYMENT TO MAINTAIN BUSINESS CONTINUITY**

Contracting authorities should confirm with their at risk suppliers that they will continue to pay until at least the end of June, to ensure business and service continuity. Contracting can define their 'at risk suppliers' according to need. In general, this should override provisions in contracts that might require contracting authorities to pay suppliers on a decreasing scale as a result of, for example performance, force majeure or business continuity clauses.

There are a range of ways to support suppliers in maintaining cash flow during this period. Contracting authorities can continue to pay at usual contractual rates, or consider other options such as payment against revised/extended milestones or timescales, interim payments, forward ordering, payment on order or payment in advance/prepayment. Risks associated with advance or pre payment should be carefully considered and documented.

Where contracts operate 'payment by result' or are 'output / outcome' based, payments to suppliers should be made on the basis of a calculation of the average of the last three months invoices. Where possible, any payments made to suppliers during this emergency period should be adjusted to ensure profit margin is not payable on any undelivered aspects of the contract, however this should not delay payments being made.

Suppliers should identify in their invoices which elements of the invoiced amount relates to services they are continuing to supply (i.e. business as usual) and which amounts are attributable to the impact of COVID-19.

Payments should not be made to suppliers where there is no contractual volume commitment to supply, and contracting authorities should carefully consider the extent of payments to be made to suppliers who are underperforming and subject to an existing improvement plan.

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<sup>1</sup> Or equivalent procurement regulations

## **Transparency**

Contracting authorities and suppliers should work collaboratively to ensure there is transparency during this period. Suppliers in receipt of public funds on this basis during this period must agree to operate on an 'open book' basis. This means they must make available to the contracting authority any data, including from ledgers, cash-flow forecasts, balance sheets, and profit and loss accounts, as required and requested to demonstrate the payments made to the supplier under contract have been used in the manner intended.

For example, this might include evidence that staff have been paid the right amount and on time, and that cash continues to flow through the supply chain as quickly as possible. Contracting authorities should keep records of decisions and agreements made, and ensure suppliers maintain records to enable future reconciliation if necessary.

Suppliers should not expect to make profits on elements of a contract that are undelivered during this period and all suppliers are expected to operate with integrity. Suppliers should be made aware that in cases where they are found to be taking undue advantage, or failing in their duty to act transparently and with integrity, contracting authorities will take action to recover payments made.

## **Supplier capacity**

Many suppliers will not be able to fulfil their contracts due to action taken elsewhere in the public sector. For example, transport services for school children, due to the closure of schools. Wherever possible, contracting authorities should seek to re-deploy the capacity of those suppliers to other areas of need; this can be implemented via a time-bound variation to the original contract under regulation 72 of the Public Contract Regulations (see PPN 01/20).

## **OTHER CONTRACTUAL RELIEF**

Contracting authorities should work with all suppliers to ensure business continuity is maintained wherever possible and that business continuity plans are robust and are enacted.

If a supplier seeks to invoke a clause relating to a form of contractual relief that would allow them to suspend performance, such as force majeure, contracting authorities should first work with the supplier to amend or vary contracts instead. These variations could include changes to contract requirements, delivery locations, frequency and timing of delivery, targets and performance indicators etc. Changes to the original terms should be limited to the specific circumstances of the situation, and considered on a case by case basis.

Other reliefs sought by a supplier could relate to any contractual obligation but usually takes the form of one, or both, of the following:

- an extension of time for contract performance (eg revised milestones dates or delivery dates, etc);
- a waiver or delay in the ability of the contracting authority to exercise a right and/or remedy (eg to claim liquidated and ascertained damages, service credits or terminate the contract)

Each claim for relief should be considered on a case by case basis, according to the nature of the goods/services/works being supplied, the challenges being faced, the contract terms and the constraints of any statutory requirements, for example the PCR to above-threshold contracts. You should seek specific legal advice as required.

Contracting authorities should take a pragmatic approach. These discussions and any temporary changes agreed should be recorded. The contract should return to its original terms as soon as the impact of the COVID-19 outbreak on the relevant contract is over.

Contracting authorities should not accept claims from suppliers who were already struggling to meet their contractual obligations prior to the COVID-19 outbreak.

### **Force Majeure**

Force majeure is a contractual term which may, (depending on the specific terms of the contract) allow one or both of the parties, when a specified event or events occurs beyond their control:

- to terminate the contract; or
- to be excused from performance of the contract, in whole or in part; or
- to be entitled to suspend performance for the period the event is continuing or to claim an extension of time for performance

It is important that force majeure clauses is not considered in isolation given its impact on other clauses such as exclusivity, liability, liquidated damages and termination rights. It may also be relevant to consider the governing law and jurisdiction clause as contracts subject to foreign law may be interpreted differently by the courts. It may also be an exclusion clause, which is subject to the Unfair Contract Terms Act 1977.

Contracting authorities are not bound to accept a supplier's claim for force majeure and can resist it. You should seek legal advice when dealing with a claim and continue to work with the supplier to maintain service continuity as far as possible. An attempt by a supplier to invoke a force majeure clause without valid cause may mean that the supplier is in breach of contract.

Force majeure clauses do not automatically entitle either party to claim relief. In some cases, a contract will not allow termination at all due to force majeure, and it cannot be forced.

### **Frustration**

It is unlikely a supplier will seek to frustrate a contract if they continue to be paid. However, unlike force majeure, frustration is rarely included as a provision in the contract. Instead, frustration arises where an event, for which the contract makes no sufficient provision, renders performance of the contract impossible or radically changes a party's principal reason for entering into the contract.

If a contract has been frustrated, it terminates automatically and the parties are excused from their future obligations. Any contractual obligations incurred before the time of frustration, such as for the contracting authority to pay outstanding charges to a supplier, remain enforceable. As neither party is at fault in respect of the frustration, neither may claim damages from the other for non-performance after the contract is declared frustrated.

However, the threshold for a contract being declared 'frustrated' is high and the fact that the contract will merely be more expensive to perform, or that the provider will have to perform the contract in a different way as a result of COVID-19 and/or its impact, are highly unlikely to constitute grounds for frustration in itself. You should seek legal advice if a supplier claims 'frustration'.

### **Excusing Causes, Relief Events and other options**

If included in a contract, excusing cause and relief event provisions generally give a supplier

relief from its contractual obligations, which contracting authorities may be able to use to provide relief, for example, to change the KPI regime, payment mechanism or reduce service level requirements. Some contracts may have other relief mechanisms. Whatever the regime, contracting authorities should maximising any commercial flexibilities within the contract, including agreeing new measures such as on meeting lead times, waiving or delaying exercising the authority's rights and/or remedies (e.g. to claim liquidated and ascertained damages, service credits or terminate the contract), revising milestones or delivery dates. In these circumstances, if there is one, use the contract change control procedure to keep records of any changes made and the decision making behind each one. If not, keep your own records.

## **ACCELERATING PAYMENT OF INVOICES**

Contracting authorities should pay suppliers as quickly as possible to maintain cash flow and protect jobs. The public sector must pay suppliers within 30 days under the Public Contracts Regulations 2015 but contracting authorities now need to accelerate their payment practice.

Contracting authorities should act now to ensure payment is made as quickly as possible to their suppliers, including:

- Targeting high value invoices where a prime is reliant on a supply chain to deliver the contract.
- Resolving disputed invoices as a matter of urgency; consider paying immediately and reconciling at a later date in critical situations.
- Take a risk based approach as to whether 2-way matching is always needed (rather than adopt regular 3-way matching against receipt and Purchase Order)
- Encourage suppliers to invoice on a more regular basis to help cash flow (eg every week rather than monthly)

Contracting authorities should consider the following additional contingency measures during the COVID-19 outbreak

### **Contingency measures - delegated authority to ensure invoices are not delayed**

With significant levels of staff absence possible, ensure you have appropriate contingencies in place including sufficient numbers of staff with delegated authority to promptly receipt / authorise an amount due for payment in business units as well as finance teams.

### **Contract Managers and Business Units**

Receipt for goods promptly, do not delay and ensure there is a contingency in place for delegated authority to approve in the event of staff shortages. Monitor flow down to ensure payment is cascading down the supply chain.

### **Verifying invoices as quickly as possible**

Verify an invoice as quickly as possible and do not send invoices back for minor administrative errors and risk causing delay in payment. Continue to undertake necessary checks, however, look to resolve any issues as a matter of urgency and reconcile any minor discrepancies in information at a later stage.

## **Payment Card Solutions**

Use of procurement/payment cards where possible to ensure businesses are paid as quickly as possible. Consider increasing the upper limit of spend, open up categories and ensure an appropriate number of staff have the authority to use.

## **Invoicing procedures clearly set out for your suppliers**

Be clear where suppliers should send their invoice, including email address and the process required. This should be clear on the authority's website. This will minimise the number of invoices with incorrect information and/or being issued to the wrong address. Issue a reminder to all your suppliers to help them best prepare and ask for invoices to be sent in electronically to avoid hard copies sitting in office buildings potentially unattended.





# Procurement Policy Note – Use of Procurement Cards

Action Note PPN 03/20

April 2020

## Issue

1. The COVID-19 outbreak has placed increased pressure on commercial and finance teams and increased importance on maintaining cashflow to suppliers. Increasing use of procurement cards can improve organisations' efficiency and accelerate payment to their suppliers while still ensuring robust controls.

## Action

2. In scope organisations should urgently engage with their procurement card provider to:

- Increase the single transaction limit to £20,000 for key card holders<sup>1</sup>, and
- Raise the monthly limit on spending with procurement cards to £100,000 for key card holders. Monthly spend on procurement cards in excess of £100,000 should be permissible to meet business needs.

3. By 30 April, in scope organisations should:

- Ensure an appropriate number of staff have the authority to use these cards;
- Open all relevant categories of spend to enable these cards to be used more widely.

4. Not all card holders will require a transaction limit of £20,000 or a monthly limit of £100,000. In scope organisations should work with their card provider to ensure appropriate limits are set for key card holders and are in line with this PPN.

5. The standard management information issued by card providers will allow in scope organisations to ensure their financial control policies are being adhered to. Nominated customer administrators are provided with a high level online statement and individual card holders receive a transaction level detailed statement. These should be routinely scrutinised to validate expenditure under each card. Administrators can use the online portal to interrogate/audit the card holders' transactions and run reports.

6. In scope organisations not currently using procurement cards should immediately put in place arrangements using the relevant Crown Commercial Service agreement (Lot 1 of [RM3828 Payment Solutions](#)).

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<sup>1</sup> Key card holders should be determined and authorised by the Department's Accounting Officer / Financial Director as per usual controls.

## Dissemination and Scope

7. This PPN applies to all Central Government Departments, their Executive Agencies and Non Departmental Public Bodies. These are referred to as 'in-scope organisations'. Please circulate this PPN within your organisation, drawing it to the attention of those with a financial, commercial and procurement role.

8. Other public sector contracting authorities may wish to apply the approach set out in this guidance note.

## Timing

9. With immediate effect.

## Background

10. This PPN supports the instructions set out in PPN 02/20 asking contracting authorities to pay suppliers as quickly as possible to maintain cash flow and protect jobs during the COVID-19 outbreak. Procurement cards allow authorities to pay suppliers instantly for goods and services.

11. The Public Contract Regulations 2015 already require the public sector to pay suppliers within 30 days from the date of a valid and undisputed invoice. However, it is now vital for contracting authorities to accelerate their payment practice and pay all suppliers as quickly as possible to maintain cash flow and protect jobs.

12. Increasing the use of procurement cards will enable the payment of suppliers to be more agile, whilst still retaining controls. A number of central government departments are already increasing use of procurement cards to ensure payment is made to suppliers as swiftly as possible during Covid19.

13. Using a procurement card for one off approved transactions can save time and money by removing the need for a Purchase Order to be produced, and for a new supplier to be set up on finance systems.

14. Increasing use of procurement cards adds resilience across the organisation during the current crisis (for example, the organisations inability to raise new purchase orders due to staff shortage to pay existing suppliers)

15. Procurement cards are considered to be the most efficient way for organisations to pay for goods and services. The NAO has estimated that using cards typically saves around 35% in transaction costs or £5 per transaction compared with traditional methods.<sup>2</sup>

16. In scope organisations under the Central Government Corporate Transparency Commitments are required to publish procurement card transparency data over £500 every month.

17. The Crown Commercial Service has published a pan-government policy for central government departments governing the use of payment cards on [GOV.UK](https://www.gov.uk/government/policies/crown-commercial-service).

## Contact

18. Enquiries about this PPN should be directed to the Crown Commercial Service Helpdesk on 0345 410 2222 or [info@crownccommercial.gov.uk](mailto:info@crownccommercial.gov.uk).

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<sup>2</sup> <https://www.nao.org.uk/report/the-government-procurement-card/>

## **USE OF PROCUREMENT CARDS**

### **INTRODUCTION**

Action is required to ensure procurement cards are used to best effect to speed up payment and ensure the right people in the public sector are able to access the goods and services they need quickly. Procurement Cards should be the preferred method for purchasing all goods and services, up to the card limit, unless existing departmental systems are faster. This does not alleviate Accounting Officers of their usual duties to ensure that spending delivers value for money and proportionate controls to payments are undertaken as necessary for continuity of supply of critical services.

### **INCREASING USE OF CARDS**

Accounting Officers and Finance Directors within in scope organisations have the authority and flexibility to increase their organisation's transaction and monthly limits in line with this PPN. Individual transaction limit of procurement cards should be raised to £20,000 for key card holders. Departments should determine any higher levels on an individual basis. In addition, the monthly limit on cards should be raised to £100,000 for key card holders. Again, this can be higher on an individual user basis.

In scope organisations should also take steps to ensure procurement cards are used more widely. This means ensuring more staff have access to using them and more categories of purchases on the cards are opened up to a greater range of goods and services. With significant levels of staff absence possible due to COVID-19, it is important to do this now to alleviate the pressures on processing invoices in the traditional way.

### **MAINTAINING CONTROLS**

Use of the procurement cards should be monitored and recorded in line with current card policies to minimise risks of inappropriate use. All transactions should continue to follow departmental processes and require explicit approval from appropriate staff members with delegated authority to commit the spend. These approval levels and the balance of pre and post payment checks should also be reviewed and revised as necessary.

Management information from card providers must be reviewed to ensure the correct accounting strings are being used and useful descriptions are entered on the ledger. Remedial action should be taken to correct these where necessary.

All procurement card transactions are protected by the chargeback guarantee and usual fraud measures apply should the card be used in conjunction with the agreed scheme rules, as laid out by Visa and MasterCard.

Departments should engage their finance, commercial, payroll and internal audit teams when implementing these changes.

The Ministry of Justice (MoJ) has already taken action on the use of procurement cards in response to Covid19. This included:

- raising the limits on all cards;
- opening up the merchant category groups across all cards;
- arranging for a small number of cards to be held by a central team to be used to support cost centres where no local cardholders are available; and
- issuing communications to cost centre owners that procurement cards may also be used if the need is so pressing that purchasers do not have time to raise a requisition.

## **FREQUENTLY ASKED QUESTIONS (FAQs)**

### **Q1 - How does this PPN impact existing arrangements with Lodge/Virtual Cards?**

A - Lodge/Virtual cards are a form of procurement card. This policy applies to all procurement cards.

### **Q2 - Can Departments still promote alternate payment methods, eg Faster Payments, BACs etc?**

A - Yes. The Government wants suppliers to be paid as quickly as possible. This may include other systems/mechanisms and departments should use whichever payment method is best placed in order to pay suppliers as quickly as possible.

### **Q3 - Can I pay suppliers providing any type of goods/services/contract via card? Will the higher limit apply to all merchant categories/groups/codes?**

A - The purpose of the PPN is to detail the broadening use of procurement cards in order to accelerate payment to suppliers. This includes opening up further categories of spend to enable cards to be used more widely, increasing transaction limits to £20,000, increasing monthly card limits to £100,000 whilst ensuring card policies continue to be adhered to. Departments will need to engage with their card provider to ensure the use of their procurement cards are aligned to the particular suppliers and merchant types identified by them and the appropriate merchant category groups/codes are agreed. Departments should aim to open up as many categories of suppliers and merchants as possible.

### **Q4 - Does this PPN apply to key card holders based abroad?**

A - The PPN is primarily aimed at card holders in the UK, but who the key card holders are is down to the organisation to determine.

### **Q5 - Will Departments have to request extensions to their lines of credit to enable this?**

A - No. Once departmental internal approvals are satisfied, Card Providers will review credit lines as customer requests for increasing credit limits are made.

### **Q6 - Will there be any mitigation for additional merchant fees incurred by suppliers?**

A - The focus of this PPN is to accelerate payments to suppliers. It is not envisaged that any additional 'merchant fees' will be incurred by suppliers if they are already accepting procurement cards as a method of payment.

### **Q7 - How should we apply this with respect to small companies who may lack Merchant Acquirers/Payment Processors?**

A: If able to accept procurement card payments, small companies should already have access to the necessary equipment and technology. Any business unable to accept card payments should alert departments and arrange for alternative payment methods as soon as possible.



## Procurement Policy Note – Recovery and Transition from COVID-19

Action Note PPN 04/20

June 2020

### Issue

1. This Procurement Policy Note (PPN) sets out information and guidance for public bodies on payment of their suppliers to ensure service continuity during the current coronavirus, COVID-19, outbreak. It updates and builds on the provisions contained in PPN 02/20.

### Action

2. All contracting authorities should:
- Review their contract portfolio, including where they are providing any contractual relief due to COVID-19 and, if appropriate to maintain delivery of critical services, continue or commence measures in line with PPN 02/20.
  - Work in partnership with their suppliers and develop transition plans to exit from any relief as soon as reasonably possible. This should include agreeing contract variations if operational requirements have changed significantly.
  - Work in partnership with their suppliers, openly and pragmatically, during this transition to ensure contracts are still relevant and sustainable and deliver value for money over the medium to long term.
  - Continue to pay suppliers as quickly as possible, on receipt of invoices or in accordance with pre-agreed milestone dates, to maintain cash flow and protect jobs.

### Dissemination and Scope

3. This PPN is applicable to all contracting authorities, including central government departments, executive agencies, non-departmental public bodies, local authorities, NHS bodies and the wider public sector (excluding the Devolved Administrations). Together these are referred to in this PPN as 'contracting authorities.' This PPN covers goods, services and works contracts being delivered in the UK (including PFI and PF2 contracts).

4. Please circulate this PPN across your organisation and to other relevant organisations that you are responsible for, drawing it to the specific attention of those with a commercial and finance role.

### Timing

5. Effective from 1 July to 31 October 2020.

## Background

6. As the Government moves into the next phase of the response to the COVID-19 outbreak, it is clear that this is not a short term crisis. It is possible that across the world, COVID-19 will circulate in the human population long-term, creating a risk of periodic epidemics. The Government will need to steadily redesign the current social distancing measures with new, smarter measures that reflect the level of risk at that point in time, and carefully wind down economic support schemes while people are eased back into work.

7. In this next phase, the supplier relief provisions set out in PPN 02/20 may still be appropriate. These provisions are intended to ensure Accounting Officers and contracting authorities are able to support suppliers at risk to be better able to cope with the crisis so they can resume delivery of critical services and fulfil their contractual obligations. This includes proactively considering and making payment in advance of need due to the impact of COVID-19 and/or providing relief against their current contractual terms, for example relief on KPIs and service credits, to maintain service continuity. The contracting authority has the final decision on whether it deems a supplier at risk and the form of any relief.

8. But contracting authorities and their suppliers now also need to work in partnership to plan an eventual exit from any relief and transition to a new, sustainable, operating model taking into account strategic and reprioritisation needs. In some cases, it is possible that the basic commercial assumptions that underpinned the viability of the original contract can no longer be maintained. Contracting authorities and their suppliers will need to work in partnership, openly and pragmatically, during this transition to ensure that contracts are still sustainable.

9. It may be necessary for the parties to discuss contract termination. If a contracting authority views a contract as no longer relevant or viable, they should work with the supplier to pursue termination based on the existing contractual remedies. Unreasonable expectations around transfer of risk and cost are likely to increase the probability of contract failures and may mean suppliers exit the market and weaken competition. The Outsourcing Playbook sets out how contracting authorities should constructively engage with suppliers.

10. Central Government organisations should note that Managing Public Money prohibits payment in advance of need in absence of Treasury consent as this is always novel, contentious and repercussive. However, in the circumstances Treasury consent is granted for payments in advance of need where the Accounting Officer is satisfied that a value for money case is made by virtue of securing continuity of supply of critical services in the medium and long term. This consent is capped at 25% of the total value of the contract and applies until the end of October 2020. Consent for payment in advance of need in excess of this amount should be sought from HMT in the usual way. This consent does not alleviate Accounting Officers from their usual duties to ensure that spending is regular, proper and value for money or for other contracting authorities to conduct appropriate and proportionate due diligence to ensure such payments are necessary for continuity of supply of critical services.

11. Suppliers to the public sector are not automatically entitled to payment or other relief under this PPN. Supplier relief payments are not intended to be an economic response to this emergency, nor to supplement or duplicate the wider business support measures that have been made available to UK businesses.

12. Continuing to make payments to suppliers will present risks including that, despite these exceptional actions, a supplier may still become insolvent. These risks will need to be

managed by contracting authorities on a case by case basis. A comprehensive record should be kept of all decisions, reasoning behind key decisions and actions taken, to support transparency and future scrutiny of value for money.

### **Contact**

13. Further guidance on COVID-19 for individuals, employers and organisations is available on GOV.UK.

14. Enquiries about this PPN should be directed to the Crown Commercial Service Helpdesk on [info@crownccommercial.gov.uk](mailto:info@crownccommercial.gov.uk).

## **RECOVERY AND TRANSITION FROM COVID-19**

### **INTRODUCTION**

This guidance updates and builds on *Procurement Policy Note 02/20 - Supplier Relief due to COVID-19* (PPN 02/20) published on 20 March 2020. PPN 02/20 and its accompanying guidance notes set out the actions contracting authorities should take to provide relief to suppliers at risk due to COVID-19 on a continuity and retention basis. This included considering payment scheduling, within existing budgets, to maintain critical service delivery as far as possible during this exceptional period. Contracting authorities could, and can still under PPN 04/20, consider making advance payments to these suppliers as necessary.

But as the Government now turns towards the recovery strategy, contracting authorities should also now start to plan with their suppliers how to exit any contractual relief and transition to a new, sustainable, operating model taking into account strategic and reprioritisation needs. Contracting authorities and their suppliers will need to work in partnership, openly and pragmatically, during this transition so that contracts are sustainable and value for money over the medium to long term. Contracting authorities should consider the guidance in the Government's updated Outsourcing Playbook, which sets out how contracting authorities and suppliers should work together.

### **PAYMENT TO MAINTAIN CONTINUITY**

Contracting authorities should review their contract portfolio and determine whether it is still appropriate to provide the contractual relief measures set out in PPN 02/20 in order to secure continuity of supply for critical services. They should also consider suppliers of critical services who may not previously have requested relief but may require it going forward.

There are a range of ways to support suppliers in maintaining cash flow during this period. Contracting authorities can continue to pay at usual contractual rates, or consider other options such as payment against revised/extended milestones or timescales, interim payments, forward ordering, payment on order or payment in advance/prepayment. Risks associated with advance or pre payment should be carefully considered and documented and contracting authorities should ensure compliance with PCR2015 or other regulations. Where necessary, the supplier should complete an Interim Payment Proposal as set out in the accompanying notes to PPN 02/20.

Payment in advance of need should be considered alongside other forms of relief such as relief on KPIs and service credits. Where other forms of contractual relief have been agreed, contracting authorities should now agree with their suppliers whether the contract milestones continue to be affected by the outbreak and when the contract can resume.

Where contracts operate 'payment by result' or are 'output / outcome' based, payments to suppliers should be made on the basis of a calculation of the average of the three months' payments prior to 1 March 2020 or whatever time period is deemed most appropriate by the contracting authority.

Where contracts are primarily revenue-generating and payment relief is not available within existing budgets, for example concession contracts, contracting authorities should work with these suppliers to identify commercial solutions that are specific and appropriate to the contract.



With regard to payments to suppliers of contingent workers who are unable to work due to COVID-19, the guidance remains as set out in the accompanying notes to PPN 02/20, except that contracting authorities may now have a reduced requirement for contingent workers due to changing operational priorities (for example, reduced building capacity due to social distancing). Contracting authorities should therefore review their contingent worker requirements and, where assignments are identified as no longer required, plan to exit from these assignments at the appropriate time.

Supplier relief payments are not intended to be an economic response to this emergency, nor to supplement or duplicate the wider support measures made available by the Government to UK businesses. They are intended to allow contracting authorities to consider cash flows and payment scheduling, within existing budgets, to support the continuity and retention of suppliers to ensure critical service delivery is maintained as far as possible during this exceptional period and when normal business resumes. Suppliers to the public sector are not automatically entitled to payment under this PPN. When considering the case for providing supplier relief, authorities should take account of, and ensure suppliers are sighted on, the other sources of government support that are available.

For central government organisations, consent for advanced payment more than the delegated amount should be sought from the HM Treasury in the usual way, as should all other 'novel, contentious or repercussive' expenditure commitments, where authority cannot be delegated.

## **TRANSPARENCY**

Contracting authorities and suppliers should continue to work collaboratively to ensure there is transparency during this period. Suppliers in receipt of public funds on this basis during this period must agree to operate on an 'open book' basis. This means they must make available to the contracting authority any data, including from ledgers, cash-flow forecasts, balance sheets, and profit and loss accounts, as required and requested to demonstrate the payments made to the supplier under contract have been used in the manner intended.

For example, this might include evidence that staff have been paid the right amount and on time, and that cash continues to flow through the supply chain as quickly as possible. Contracting authorities should keep records of decisions and agreements made, and ensure suppliers maintain records to enable future reconciliation if necessary.

Suppliers should not expect to make profits on elements of a contract that are undelivered during this period and all suppliers are expected to operate with integrity. Suppliers should be made aware that in cases where they are found to be taking undue advantage, or failing in their duty to act transparently and with integrity, contracting authorities will take action to recover payments made.

Suppliers must not be in receipt of multiple, duplicative relief under PPN 02/20 and 04/20 and under the Coronavirus Job Retention Scheme (CJRS). This means, if suppliers are in receipt of payments, suppliers should have ensured that all of the parts of the workforce identified to deliver the contract were not furloughed during this period (under CJRS). It is permissible for a supplier to receive partial payments for non-labour related costs and claim labour costs under the CJRS.

A comprehensive record should be kept by the contracting authority of all decisions, reasoning behind key decisions and actions taken to support transparency and future scrutiny.

## **TRANSITION PLANNING**

Where contracting authorities have made continuity and retention payments for contracts that have been interrupted, or have applied options such as payment against revised/extended milestones or timescales, interim payments, forward ordering, payment on order or payment in advance/prepayment, they should now work with the supplier to develop a transition plan ready to be implemented as soon as possible and before the end of October 2020.

This transition plan should be agreed by both parties and should include the following:

- A planned exit date for when any supplier relief will end; this should be kept under review to reflect the changing situation, eg local restrictions being reintroduced.
- If advanced payments have been made, the parties should agree if and when any outstanding goods or services are to be delivered.
- The process for reconciling payments made against costs as set out in the model interim payment terms accompanying PPN02/20.
- An assessment of any costs associated with implementing Public Health England guidance specifically in relation to delivering the public contract. This should be considered by the authority on a case by case basis.
- An assessment as to whether, as a result of COVID-19, the contract is still operationally relevant and viable and, if not, proposals for variation or termination.

In some instances, the contracting authority may decide that a contract is no longer relevant or viable. In these circumstances, the contracting authority and the supplier should discuss alternative options, for example applying a contract variation with clear actions and timescales to adapt the commercial model. Ultimately, it may be necessary for the parties to discuss contract termination. If a contracting authority views a contract as no longer viable, they should work with the supplier to pursue termination based on the existing contract remedies.

## **RESPONSIBLE BEHAVIOUR**

The Cabinet Office has published non-statutory guidance on responsible contractual behaviour in the performance and enforcement of contracts impacted by the Covid-19 emergency. This sets out how contracting authorities and their suppliers should strive to behave fairly in reviewing contracts where there has been a material impact from COVID-19. This includes being reasonable and proportionate in responding to performance issues and enforcing contracts (including dealing with any disputes), acting in a spirit of cooperation and aiming to achieve practical, just and equitable contractual outcomes having regard to the impact on the other parties, the availability of financial resources, the protection of public health and the national interest. In particular, legal disputes can be destructive to good contractual outcomes and the effective operation of markets. Contracting authorities and their suppliers are strongly encouraged to seek to resolve any emerging contractual issues responsibly before these escalate into formal intractable disputes, for example through negotiation, mediation or other alternative or fast-track dispute resolution processes.

## **ACCELERATING PAYMENT OF INVOICES**

Contracting authorities should pay suppliers as quickly as possible to maintain cash flow and protect jobs. The public sector must pay suppliers within 30 days under the Public Contracts Regulations 2015 but contracting authorities need to accelerate prompt payment practice during the crisis.

Contracting authorities should ensure payment is made as quickly as possible to their suppliers, including:

- Targeting high value invoices where a prime is reliant on a supply chain to deliver the contract.
- Resolving disputed invoices as a matter of urgency; consider paying immediately and reconciling at a later date in critical situations.
- Take a risk based approach as to whether 2-way matching might be appropriate (rather than adopt regular 3-way matching against receipt and Purchase Order)
- Encourage suppliers to invoice on a more regular basis to help cash flow (eg every week rather than monthly)

Contracting authorities should consider the following additional contingency measures during the COVID-19 outbreak.

### **Contingency measures - delegated authority to ensure invoices are not delayed**

With significant levels of staff absence possible, ensure you have appropriate contingencies in place including sufficient numbers of staff with delegated authority to promptly receipt / authorise an amount due for payment in business units as well as finance teams.

### **Contract Managers and Business Units**

Receipt for goods promptly, do not delay and ensure there is a contingency in place for delegated authority to approve in the event of staff shortages. Monitor flow down to ensure payment is cascading down the supply chain.

### **Verifying invoices as quickly as possible**

Verify an invoice as quickly as possible and do not send invoices back for minor administrative errors and risk causing delay in payment. Continue to undertake necessary checks, however, look to resolve any issues as a matter of urgency and reconcile any minor discrepancies in information at a later stage.

### **Payment Card Solutions**

Use of procurement/payment cards where possible to ensure businesses are paid as quickly as possible (see PPN 03/20). Consider increasing the upper limit of spend, open up categories and ensure an appropriate number of staff have the authority to use.

### **Invoicing procedures clearly set out for your suppliers**

Be clear where suppliers should send their invoice, including email address and the process required. This should be clear on the authority's website. This will minimise the number of invoices with incorrect information and/or being issued to the wrong address. Issue a reminder to all your suppliers to help them best prepare and ask for invoices to be sent in electronically to avoid hard copies sitting in office buildings potentially unattended.

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## Appendix 2 – Covid 19 Urgent Procurement Guidance and Temporary Policy Exemptions

### Procurement Code and Governance

Rules in the [Procurement Code](#) including Procurement Governance remains operational. The Procurement Team, Category Boards, and Committees are able to handle all procurement and contract decisions.

### Urgent Requirements due to COVID 19

City Procurement maintains a range of Corporate Contracts for supplies, services and works. In the first instance, officers should continue to use corporate contracts where possible.

Only in cases where no corporate contract exists for your requirement or isn't suitable, the 'Extreme Urgency' competitive procurement exemption may be used for a direct award.

City Procurement have assigned a specific exemption code to help fast track this process. Please include 'BE85' in the notes to buyer field when submitting your requisition on Oracle. The following will apply upon receipt of the requisition:

- **For spend up to £50,000** - responsibility for these contracts is devolved to the departments. **Please make sure you are issuing an Order Form along with the purchase order so suppliers sign up to our terms – [Standard Terms and Conditions](#)**. The order form completes the contract and ensures that the relevant terms such as insurance, GDPR, and payment terms are in place.
- **Over £50,000 up to OJEU thresholds (£189K for services and goods)** - when these requisitions are raised approval will be routed to Nicholas Richmond-Smith, Assistant Director, Sourcing & Category Management.
- **Over OJEU threshold (£189K for goods and services)** - please contact the relevant Senior Category Manager - Corporate Services: Matthew Jones; Facilities Services and Open Spaces: James Carter and Property & Construction: Michael Harrington.

If you have further questions please contact [cityproc.policycompliance@cityoflondon.gov.uk](mailto:cityproc.policycompliance@cityoflondon.gov.uk)

### Contract Changes

The terms in supplier agreements remain in force. For temporary changes to the scope of services and KPIS, Contract Managers should review the current contract terms to identify what is allowed and the procedures for doing this. Any changes must be documented on a change control form regardless of how small and short-term that they are expected to be.

If after reviewing the contract, you still have specific queries about how to operate the changes then please contact City Procurement on [chb-suggestions@cityoflondon.gov.uk](mailto:chb-suggestions@cityoflondon.gov.uk).

Contract Managers of suppliers that support critical front-line services should contact City Procurement immediately for guidance on [cityproc.ccm@cityoflondon.gov.uk](mailto:cityproc.ccm@cityoflondon.gov.uk).

## **Force Majeure**

Force Majeure (FM) is a contractual clause which would alter/terminate a contract when extraordinary/unforeseeable events prevent the contract from being fulfilled. The COVID-19 outbreak being classified by the WHO as a “Pandemic” means that the disruption from this event can rightfully be classified as outside the control of parties to a contract, and can have the effect of rendering the agreement null and void as of the date when the contract became impossible to complete.

Generally, it will be left to the terms of each contract to determine what (if any) action to take post the event or frustration. The contract therefore will be the first place to go to consider what happens. Some contracts, for example ones with long lead-in periods, may well have payments for milestones. In such cases where the milestones have been achieved and the event of FM takes place after the relevant milestone, payment ought to be made unless there are compelling reasons to refrain from paying.

In other cases including those where there are no specific provisions dealing with stage payments or where the City itself has incurred actual tangible costs and/or losses, it will be very much up to the parties to determine the consequences of a FM event and seek appropriate legal advice from the Comptroller & City Solicitor’s office. The Corporation may choose to work with suppliers and, if appropriate, provide relief against their current contractual terms (for example relief on KPIs and service credits) to maintain business and service continuity rather than accept claims for other forms of contractual relief, such as force majeure.

Dear Sir/Madam,

### Re: Coronavirus (COVID-19) Supplier Advice

As a key supplier to the City of London Corporation (including the City of London Police and Barbican Centre), I am writing to ensure you are apprised of the latest information in relation to the Coronavirus (COVID-19) outbreak. We recognise that this is a challenging time for our providers and we therefore want to make sure you have the latest information on the Corporation's response.

The Corporation is working hard to maintain its critical services, while adjusting its operations and working practices in line with the latest Government and public health guidance. This involves reprioritisation of our work and the redeployment of our workforce to deliver essential services.

Suppliers like your organisation are a crucial partner to the Corporation, and we will therefore want to discuss the challenges you are facing and how you can contribute to our local response.

#### General guidance

We will be sharing further information with you over the coming weeks and months, but we ask that you familiarise yourself with key guidance. The Government has a comprehensive list of resources on its dedicated website here: <https://www.gov.uk/coronavirus>. Advice is constantly being updated and a daily check is recommended. You can also set up email alerts. We would also encourage you to make sure you are aware of the range of measures to keep your staff safe and to protect others, including guidance on social distancing and shielding of vulnerable individuals.

The Corporation's latest information is available here: [City of London Covid-19 Business Advice](#). Local support for businesses includes:

- **Business rates relief** which will be applied automatically to businesses in the City of London so you will not need to apply.
- **A government grant scheme** to assist small businesses up to £51,000 which will be paid by the City Revenues Scheme directly to those businesses that qualify, and no application is required.
- **Rental relief for City of London businesses** to make rental payments more manageable. Rental payments for March to June quarter will be changed to monthly billing for directly managed premises.

#### Stress-test your operational readiness

We want to work with you to ensure business continuity during the current crisis and resumption of normal service delivery in due course. As part of this, we are reviewing business contingency plans with our suppliers, focusing on delivery of essential services. It is therefore important that your organisation reviews and updates your Business Continuity Plan and shares this with the nominated

contract manager within the Corporation. If you have not already had a discussion with your contract manager, they will be in touch to discuss contingency planning.

Over the coming weeks and months, we will want to ensure we have sufficient workforce capacity across our essential services. If you are contracted to deliver a non-essential service(s), please discuss with your contract manager how for example your staff could be furloughed in line with Government advice or alternatively redeployed to support the Corporation's critical services.

If you are unable to reach your usual contract manager or service contact, please email [CityProc.CCM@cityoflondon.gov.uk](mailto:CityProc.CCM@cityoflondon.gov.uk) advising details of your query, detailing your contract and service provision to the Corporation.

### **Contract payments**

To ensure service continuity during and after the current outbreak, the Corporation will be implementing the Government guidance on contract management of, and payments to, 'at risk' critical suppliers. The Corporation may consider your organisation to be 'at risk' if, as a result of the Coronavirus (COVID-19) outbreak:

- *you will struggle to meet contractual obligations, or*
- *your ongoing viability is at risk due to issues with cashflow or liquidity, a reduction in your workforce capacity and/or disruption to your supply chains*

The Corporation will work with suppliers to mitigate against these risks and may provide relief against current contractual terms, including exploring alternative payment terms to facilitate cashflow. If you consider your organisation to be 'at risk' you should alert your contract manager as a matter of urgency.

Additionally, the Corporation has temporarily accelerated payments during this critical time. Standard payment terms for the City Corporation are 30 days with an aim to pay SMEs in 10 days. Payment runs have been adjusted to pick up receipted/approved (i.e. ready-to-go) invoices with a due-date that falls within 10 days of the payment run which effectively means immediate payment terms for SMEs, and larger companies can be paid up to 10 days earlier than normal.

However, as the Accounts Payable team is having to work remotely at present, the Corporation is unable to process paper invoices and, in addition, it is not possible for us to produce cheques. To avoid delays to payments, invoices should be emailed to [cityproc.ap@cityoflondon.gov.uk](mailto:cityproc.ap@cityoflondon.gov.uk) and bank details can be sent to [cityproc.datateam@cityoflondon.gov.uk](mailto:cityproc.datateam@cityoflondon.gov.uk). Adding bank details to our records will require authentication.

### **Additional support**

The Government has announced a range of support measures for businesses, including a job retention scheme, deferral or suspension of various business tax payments, grant funding for small businesses, and loan schemes to respond to cashflow and liquidity pressures. Further details can be found on the gov.uk website.

In addition, the London Funders Alliance have pledged to support the VCSE sector and an emergency fund has been established to support organisations facing immediate financial pressures and uncertainty because of the Coronavirus (COVID-19) outbreak. Further details are available here: <http://covid19funders.org.uk>



The Corporation is keen to ensure its suppliers make best use of these initiatives; if you require assistance to access additional support, please liaise with your contract manager in the first instance.

As we face this unprecedented challenge, it is unquestionably a difficult time for everyone in the country, but if we work together, we will invariably secure a better outcome. Therefore, I would urge you to let us know urgently if you are facing difficulties, so that we can find a solution together.

Thank you for your continued support.

Yours faithfully,

**Chris Bell FCIPS**  
Commercial Director

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### Guidance for the Corporation's Contract Managers on applications for Supplier relief due to COVID-19

#### Procurement Policy Note - Supplier relief due to COVID-19

Colleagues across the Corporation are receiving requests from suppliers to provide support in various forms, including financial relief and changes to the scope of services. This update is being issued to provide guidance on how the Corporation will respond to these requests.

The Chancellor set out a package of measures to support public services, people and businesses through the period of disruption that is being caused by COVID-19:

<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses>

Subsequent to this, the Cabinet Office has issued a Procurement Policy Notice (PPN) 02/2020 - Supplier Relief Due to COVID-19:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/874178/PPN\\_02\\_20\\_Supplier\\_Relief\\_due\\_to\\_Covid19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874178/PPN_02_20_Supplier_Relief_due_to_Covid19.pdf)

This PPN gives consent to Contracting Authorities to make payments (up to 25% of contract value until June 30) in advance of need, to Critical Suppliers, where a value for money case can be evidenced. In addition to suppliers categorised as 'Critical', the Corporation will also review applications for relief from suppliers which are categorised as 'Important', providing enhanced assurance of the continuity of our supply chain when we return to business as usual.

The PPN also promotes faster payments to all suppliers to assist cash flow. Arrangements for this are being implemented by Accounts Payable and are not subject to a review on a case by case basis. To aid this effort, Officers must Receipt purchase orders in Oracle as soon as practicable when delivery of goods and services has been completed.

#### Categorisation of Suppliers

The categorisation of suppliers for administering the relief under PPN02 is being handled in two phases.

Phase one is complete, led by COVID-19 Gold Group. This has identified 101 suppliers to critical front-line services during this current emergency response period. All 101 have been categorised as Critical Suppliers "At Risk", able to apply for relief.

Phase two, led by Chief Officers, is due for completion close of play 24<sup>th</sup> April. It requires the categorisation of the strategic importance of all suppliers on the City's full open contracts register (goods and services). There are 615 contracts to be classified in line with set criteria, as **Critical**, **Important**, or **Needed** (but not essential). Supplier categorised as Critical and Important will be considered "At Risk", able to apply for relief.

The full supplier categorisation will be shared with you when this is completed and following its approval at Gold Group.

Relief in Works contracts will be handled under different arrangements which are being agreed and will be shared as soon as possible.

**Communication to Suppliers**

Suppliers “At Risk” will receive a letter from the Commercial Director, by way of email. A copy of this letter is attached for your reference.

- The phase one 101 Critical Suppliers were issued this letter on 21<sup>st</sup> April.
- The issue of the letter to the phase two Critical and Important suppliers will begin and hopefully be concluded week commencing 27<sup>th</sup> April.

**Application for Relief**

The application question bank is attached for your information, detailing the evidence that needs to be provided to review the case for relief and to justify the decision whether to grant such relief or not. The answers and the evidence will need to be gathered by the Corporation’s Contract Manager on behalf of the Supplier, prior to the Contract Manager submitting the application on a Microsoft Form, which is located here:

[https://forms.office.com/Pages/ResponsePage.aspx?id=zVjmn82zVkCFGtli\\_6lr6CFJIDVdRJOsNCvmutCytFUNFIRTENBSzRGMk9GRDFVSFU5OUFCS1hBTSQIQCN0PWcu](https://forms.office.com/Pages/ResponsePage.aspx?id=zVjmn82zVkCFGtli_6lr6CFJIDVdRJOsNCvmutCytFUNFIRTENBSzRGMk9GRDFVSFU5OUFCS1hBTSQIQCN0PWcu)

**Review and Decision**

Applications received will be reviewed weekly at Bronze Group for Finance & Contracts, chaired by the Deputy Chamberlain. The supporting documentation will be appraised to determine whether a value for money case has been made in line with the Transparency requirements of the PPN and that this can be evidenced under audit.

If a value for money case has been made, then authority to administer relief under PPN02 is delegated the ‘Accounting Officer’. At the Corporation, the Accounting Officer is the Deputy Chamberlain, who will confirm what relief will be provided to the supplier. Contract managers will be notified and should present any offer of relief to the supplier for their review.

**Administration of relief**

This will be by way of a time limited contract change notice, which will expire 30<sup>th</sup> June, in line with the terms of the PPN. If there is a change to the expiry date of the PPN, based on an updated Government guidance, you will be informed of any further steps that will need to be taken.

Suppliers should identify in their invoices which elements of the invoiced amount relates to services they are continuing to supply (i.e. business as usual) and which amounts are attributable to the impact of COVID-19.

**Further guidance and support**

Officers should email [cityproc.ccm@cityoflondon.gov.uk](mailto:cityproc.ccm@cityoflondon.gov.uk)

## RESOLUTION

FROM: PROJECTS SUB (POLICY AND RESOURCES) COMMITTEE      25 June 2020

TO:      PROCUREMENT SUB (FINANCE) COMMITTEE      6 July 2020  
         CAPITAL BUILDINGS COMMITTEE      15 July 2020

### **6. PERFORMANCE BONDS AND PARENT COMPANY GUARANTEES**

Members discussed the issue of performance bonds and parent company guarantees and the following points were made.

- The Property Projects Group Director noted that she had been in contact with the Sheriff to clarify the City's approach to performance bonds and parent company guarantees. The standard requirement of a performance bond was an on-demand bond of 10% of the contract and served to protect the employer should the contracted entity fail to meet its obligations. There were typically two types of bond: on-demand or conditional with the latter type of bond requiring evidence of contractor's default and loss to be provided by the client.
- The Chamberlain noted that performance bonds were not used by COL as a tool to check the financial standing of a contractor. The City had recently adopted a new process whereby potential contractors were both required to have a minimum turnover, and to undergo assessment by the City, as such, using requirement of a bond as an additional measure, could be disproportionate. The current assessment process establishes the 'risk appetite' on a contract, and then assesses the financial position of a bidder against that risk. Those with a high level of risk would be disqualified, and those graded 'amber' would be required to provide a bond or Parent Company Guarantee. This process notwithstanding, the City was mindful to be proportionate in applying the obligation to provide bonds. The question of how this would work in practice going forward would be considered by the Procurement Sub (Finance) Committee.
- The Chamberlain noted that there were protections in contract e.g. payment in stages, liquidated damages and a 'reserve' held back at end of contract.
- The Comptroller and City Solicitor added that Cabinet Office guidance stated that on-demand bonds should only be applied to high-value high-risk projects. This meant that conditional bonds were often the recommended approach which as noted previously did place a burden to provide evidence on the City. It was also common for contractors to include costs of bonds within overheads and profits – the City should request that bonds be reported as separate budget lines going forward.
- A Member queried whether this would make the costs of projects prohibitive for many contractors and whether a risk assessed balance could be struck when applying requirements for bonds. His preference would be for on-demand bonds as these would be a good indicator of the credit worthiness of potential contractors. (note earlier comment on being proportionate, where we already do checks)

- A Member commented that officers in City Procurement should be given the flexibility to decide whether bonds were appropriate on a case by case basis given it was a commercial decision.
- A Member agreed that a risk assessed approach was required and queried whether bonds were incorporated into existing City frameworks. In response, the Chamberlain noted that they could be built into the tender process but this could prove to be a disincentive for potential contractors. The Comptroller and City Solicitor noted that the JCT template contracts used under the City's Works Frameworks did include an option for performance bonds; and that potential bond requirements could be market tested with the Framework contractors in advance of a tender.
- A Member commented that the issue of bonds looked to be one for larger more high-risk contracts and cautioned against overcomplicating the project process. Members felt that it was important that the City's approach to bonds/performance guarantees was not out of step with the wider market.
- Given the issues raised related to business within the remit of the Procurement Sub (Finance) Committee and the Capital Buildings Committee, Members agreed that the minute of their discussions should be shared for information.

**RESOLVED**, that the minute of the Projects Sub-Committee's discussion regarding Performance Bonds and Company Guarantees be submitted to the Procurement Sub (Finance) Committee and Capital Buildings Committee for their consideration.

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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