



# 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@crowncommercial.gov.uk](mailto:info@crowncommercial.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.



Cabinet Office

# 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.



# Cabinet Office

## 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@crowncommercial.gov.uk](mailto:info@crowncommercial.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.