



Presentation — April 2020

Covid-19 – the impact on procurement processes and PPN 02/20

Pioneering — Bahrain — Construction — Public sector — Energy — Real estate — London — Tax — IT — Dubai — Manchester — Connecting — Knowledge — Pragmatic — Malaysia — Exeter — Thought leadership — Housing — Agile — Creative — Connecting — Private equity — Local government — Manchester — Environment — Focused — Islamic finance — Projects — Abu Dhabi — Corporate finance — Passionate — Team v — Employment — Regulation — Procurement — Expertise — Specialist — Planning — Investment — Committed — Delivery — IT — Governance — IP — Corporate — Infrastructure — Value — Development — Private wealth — Oman — Governance — Birmingham — Corporate finance — Dynamic — Pensions — Dispute resolution — Insight — Banking and finance — Arbitration — Diverse — Regeneration — Care — Communication

Issues for consideration

- Starting a new procurement
- Current procurements
- Contract award and signature
- PPN 02/20
- Challenges

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Dynamic — Pensions — Dispute resolution — Insight — Banking and finance — Arbitration — Diverse — Regeneration — Care — Communication

Key principles

- PPNs do not remove / relax PCR requirements
- Compliance with Regulation 18 key
- Breaches of PCR still enforceable through the Courts
- Good audit trails will be essential

Starting a new procurement

- No prohibition on new or planned procurement exercises
- Statutory duties / public functions still need to be fulfilled
- Soft market testing / bidder engagement
 - PINs
 - Bidder events by alternative means
 - Sector-specific considerations

Current procurements

- Adjustments to current timetable / tender documents
- Communications with bidders
- Negotiation / dialogue meetings
- Evaluation and moderation
- Clarification and interviews / site visits
- Cancellation

Contract award and signature

- Contract award
 - The successful bidder – are they still financially robust?
 - Decision-making procedures
- Signing the contract
 - Electronic signatures

PPN 02/20 – Supplier Relief

- Applies to all contracting authorities. Confirmation from CCS that Registered Providers of Social Housing have the discretion to comply
- Welsh Government has adopted this PPN/Scottish Government – SPPN 05/20
- All regimes: PCR2015, UCR2016, CCR 2016 and DSPCR2011
- Goods, works and services contracts
- Until 30 June 2020
- Pay all suppliers as quickly as possible
 - Already under an obligation of 30 days – PCR
- Can make advance payments to at risk suppliers

Suppliers “at risk”

- Continuity and retention payments
 - At risk suppliers to be paid until at least the end of June to ensure business and service continuity
- Who is “at risk”?
 - No definition under the PPN
 - At the discretion of the CA – case-by-case basis
 - Anticipated majority – “apply broadly” to “ensure service continuity, protect infrastructure, supply chains and jobs”

Continuity and retention payments

- Relief against contractual terms and payments are preferred by Government rather than claims for other forms of contractual relief (eg force majeure/frustration)
- Collaboration is key – prevent construction industry disappearing into disputes
- What do these payments look like?
 - Payment at usual contractual rates despite performance
 - Interim payments
 - Forward ordering
 - Payment in advance/prepayment
 - Converting payment by result into interim payments
 - No profit payments on undelivered aspects

Continuity and retention payments cont.

- Key is transparency: open-book accounting; CA access to books to check that payments are flowing down the supply-chain;
 - split out BAU/covid payment
 - Model Interim Payment Terms available
 - Collaborative approach to payments and accounting requirements
 - Don't have to pay if no volume guarantee
 - Advance/pre-payments: might not have to be paid back (FAQ15?)
 - Claw-back monies at a later date
 - Put in place a reconciliation plan/delivery at a later date
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Continuity and retention payments cont.

- Cannot recover twice for the same risk: cannot claim and furlough same employees under Coronavirus Job Retention Scheme (CJRS)
- If essential service and needs delivering: get another supplier on board and existing supplier should seek support through another scheme

PPN 03/20 – use of procurement cards

- Applies to central government departments, Executive Agencies, NDPBs – in-scope organisations
- Often used for low-value purchases across central government
- Instant payment and avoids need for purchase order, or for a new supplier to be set up on finance systems
- Focus is speeding up payments for all government suppliers – principles to be adopted across public sector

Challenges

- PCR limitation periods continue to apply
- HMCTS Guidance – court hearings should take place without delay, remotely, wherever possible
- “Protocol Regarding Remote Hearings” to be followed
- Adjournments
- Remote mediation / without prejudice meetings

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