LUPC and SUPC webinar
Guidance on COVID-19
Procurement Policy Notes

Stephanie Rickard - Partner
Objectives

• To provide an overview of the PPNs

• To provide guidance on how the PPNs work in practice

• To respond to FAQs and highlight areas for further clarification
Cabinet Office Procurement Policy Notes

- Procurement Policy Note 01/20: Responding to COVID-19
- Procurement Policy Note 02/20: Supplier relief due to COVID-19
  - Model Interim Payment Terms
  - Contingent workers
  - FAQs
  - Model Construction Terms and FAQs

N.B. PPNs are being regularly updated
The Procurement Framework

- Directive 2014/25/EU (during Transitional Period)
- Public Contracts Regulations 2015
- Concession Contracts Regulations 2016
Treaty Core Principles

Equal treatment
[Mutual recognition]

Proportionality

Non-discrimination

Transparency

Regulation 18 PCR 2015
What is The Status of The PPNs?

• Apply to ‘contracting authorities” in England

• Requirement to have regard to guidance issued by Cabinet Office

• What about overseas suppliers?

• What about non-contracting authorities?

• Remedies for non compliance
PPN 1/20: Responding to COVID-19
PPN 1/20

A reminder of available tools

- “Permission” to use the extreme urgency exemption
- Accelerated procedure
- Single source
- Frameworks/DPS
- Contract variation
Extreme Urgency

Reg 32 (2)(c)

• Procurement must be directly linked to and limited to extreme urgency

• Need to satisfy yourself that urgency not contributed to by contracting authority

• Requirement to publish Contract Award notice

• Likely to be limited to essential works, supplies and supplies
New Requirements

Practical Considerations

• How to carry out market testing?
• Is use of accelerated procedure reasonable?
• Accuracy of information
• Outsourcing contracts and TUPE
In-Flight Procurements

Practical Considerations

- Need to consider risk of substantial modification if you change process during procurement
- Suspending and abandoning procurements
- Extending existing contracts
Existing Contracts

Ground for extension and/or modification of contracts
- Reg 72 (1) (b) – Additional works, services and supplies
- Reg 72 (1)(c) – Contract variation due to unforeseen events
- **N.B. Thresholds**
  - Modification < 50% of original contract value
  - Below procurement thresholds

- Payment terms under PPN 2/20
PPN 2/20: Supplier Relief Due to COVID-19
PPN 2- Supplier Relief

Supplier Relief - What is Covered?

• Objective to preserve the supply chain to enable suppliers to resume normal contract delivery once outbreak is over
• Covers goods, services and minor works contracts
• Identify ‘at risk’ suppliers
• Pay suppliers as quickly as possible
PPN 2- Supplier Relief

Supplier Relief - What is Not Covered?

• Concession contracts

• No need to pay where no minimum volume commitment

• Where supplier unable to perform (due to furloughing staff)

• Where supplier in breach?

• Construction contracts (separate regime)

• Not grants e.g. research contracts
What measures should you take?

- Review all key contracts for goods, services and works to identify if subject to PPN
- Identify ‘at risk suppliers’ (even where goods / services likely to be disrupted)
- Consider what measures you can put in place to ensure supplier cash flow

Time for payment

How do we know if a supplier is ‘at risk’?

How long do we have to carry on paying?
Key Considerations

• Is delivery still possible?
• What service do you need?
• Can the services be redeployed?
• What are you receiving funding for?
• What are supplier’s losses?
PPN 2 – Making Interim payments

• Contractual payments - how do we calculate?

• Payments linked to supplier relief - Open book basis: data from ledgers, cash-flow forecasts, balance sheets and profit and loss accounts when requested

• Model Interim Payment Terms

• Reconciliation of payments and clawback

• Duty to mitigate

• Monitoring and audit
What Should You Be Doing Now?

• Start the dialogue - it is in your best interests that suppliers are in a position to be able to resume providing goods / services when things start returning to normal.

• Record your agreement by way of contract variation
PPN 2/20

Areas for Further Clarification

• Approach of other government departments e.g. DoE
• Additional considerations for charities
• Interrelation with other schemes
Record-Keeping

• Justification for approach
• Reg 84 reports
• What evidence do you need from the supplier?
• Think about legal privilege!
Key Messages

• Be transparent and maintain good communications throughout the process with bidders

• Record keeping/ internal assurance process to monitor procurement and contracts
How Can We Help?

• Top ranked under NLS framework - “One Stop Shop” lot

• VWV is open for business and we are working remotely

• To support you with the challenges you are facing, we have also developed a dedicated resource centre on our website, where we look at the steps you can take to protect your organisation and manage risk. Click here to read our latest blogs.
Stephanie Rickard
Partner
srickard@vww.co.uk
07384 251 896