



Caffael Masnachol / Commercial Procurement

# **Recovery and Transition from COVID-19 Procurement Advice Note (PAN) for the Welsh Public Sector**

June 2020

## **Issue**

1. This Procurement Advice Note (PAN) sets out information and guidance for public bodies in Wales in line with the UK Government Cabinet Office's [Procurement Policy Note \(PPN\) 04/20](#) on payment of their suppliers to ensure service continuity during and after the COVID-19 outbreak. It builds on the advice contained in PPN 02/20 (which expires on 30 June) and extends the provisions to 31 October. It has been tailored for Wales where applicable.

## **Action**

2. All contracting authorities in Wales 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 commercially sustainable for both parties, 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 PAN is applicable to all contracting authorities in Wales, including Welsh Government departments, NHS Wales bodies, Welsh Government Sponsored Bodies, local authorities and the wider public sector. Together, these are referred to in this PAN as 'contracting authorities'. This PAN covers goods, services and works contracts being delivered in Wales (including PFI and PF2 contracts).

4. Please circulate this PAN 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 UK Government and devolved administrations move 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, possibly causing periodic epidemics. The UK Government and devolved administrations are approaching lockdown in slightly different ways and at different speeds. UK 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. In addition to considering relief measures, contracting authorities and their suppliers now 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 so that contracts are commercially 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. This PAN, in line with PPN 02/20 and the principles of Managing Public Money, expressed in Wales through [Managing Welsh Public Money](#),\* notes that under normal circumstances payments in advance of need are rarely justified and are likely to attract external audit and Public Accounts Committee (PAC) criticism. However, in the context of the exceptional circumstances resulting from the COVID-19 emergency - and again in line with PPN02/20 - consent, capped at 25% of the value of the contract and applies until the end of October 2020, 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. In cases concerning payment in advance of need in excess of this amount, authorities should seek approval in accordance with their financial delegations / standing orders / financial instructions. This consent does not alleviate Accounting Officers in 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. For the Welsh Government, consent for advanced payment more than the delegated amount should be sought from Corporate Procurement Services (CPS) in the usual way, as should all other 'novel, contentious or repercussive' expenditure commitments, where authority cannot be delegated.

12. Suppliers to the Welsh public sector are not automatically entitled to payment or other relief under this PAN. 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.

13. 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.

\*Footnote: MWPM should be read in conjunction with Managing Public Money (published by HM Treasury) to understand the wider picture of funding and financial control at a UK level.

## **Contact**

14. Further guidance on COVID-19 for individuals, employers and organisations is available on [GOV.Wales](https://gov.wales).

15. Enquiries about this PAN should be directed to [VWPolicy@gov.wales](mailto:VWPolicy@gov.wales)

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

### **Introduction**

16. This guidance is based on PPN 02/20 - Supplier Relief due to COVID-19 (PPN02/20) published on 20 March 2020 and has been tailored for Wales. The Welsh Government confirmed it had adopted PPN 02/20 and recommended it to public sector bodies in Wales on 9 April. 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 this PAN - consider making advance payments to these suppliers as necessary.

As the UK Government and devolved administrations now turn towards the recovery strategy, contracting authorities should also 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 commercially sustainable for both parties and value for money over the medium to long term. Contracting authorities should consider the guidance in the UK Government's updated [Outsourcing Playbook](#), which sets out how contracting authorities and suppliers should work together.

### **Payment to maintain continuity**

17. 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 PCR 2015 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.

### **Contingent workers**

18. 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 UK

Government and devolved administrations to 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 PAN. 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.

## **Transparency**

19. 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 PPN 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**

20. 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 PPN 02/20.
- An assessment of any costs associated with implementing Public Health Wales guidance specifically in relation to delivering the public contract; this should be considered by the authority on a case by case basis.
- An assessment by both parties 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**

21. The UK Government's 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**

22. 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\* 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 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).

\*Footnote: The Late Payment of Commercial Debts (Interest) Act 1998 (as amended by the Late Payment of Commercial Debt Regulations 2002 (SI 1674) and the Late Payment of Commercial Debt Regulations 2013).

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

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

## **Acknowledgements**

23. The Welsh Government duly credits the UK Government's PPN 04/20 Recovery