

PROCUREMENT AND CONTRACTS BRIEFING

23 MARCH 2020

PURPOSE: To provide advice and guidance on the application of the public procurement regulations during the COVID-19 crisis. This briefing also highlights potential supply chain and contract fulfilment considerations/issues.

ACTION: To disseminate to commissioners and contract managers, and to engage with the procurement and contract monitoring team to discuss specific procurements/contracts where required.

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EMERGENCY PROCUREMENT PROCEDURES

To enable the public sector to respond to the current COVID-19 crisis, contracting authorities may need to utilise flexibilities available within procurement regulations to procure goods, services or works urgently.

There are a number of compliant procurement procedures available within the Public Contract Regulations 2015 (PCRs) which will enable us to do this:

- direct contract awards (whether due to extreme urgency, absence of competition or to protect exclusive rights);
- utilising an existing framework agreement;
- competitive tender process with accelerated timescales; and
- extending or modifying an existing contract during its term.

If the potential value of the urgent spend is below the threshold to trigger the PCRs (*please see tables 1 and 2 for details of the thresholds*), the council's own Contract Standing Orders (CSOs) will apply and direct awards can be made by seeking a waiver from the council's procurement board.

Whilst these procedures allow us to act quickly, the procurement rules still apply, and any application of the procedures set out above will need to be justifiable and will need to meet certain criteria set out in the PCRs. The procurement and contract monitoring team can advise on a case by case basis.

We must keep proper records of decisions and actions as this will mitigate against the risk of a successful legal challenge in the event that a supplier feels aggrieved by our application of these procedures. It is also important that we are still able to demonstrate value for money and use good commercial judgement when making direct contract awards, insofar as is possible.

CURRENT PROCUREMENTS

For contracts that are currently out to market, consideration may need to be given to the procurement timetables. Depending on the nature of the contract, suppliers may be working around the clock to maintain the delivery of key services and they will be focussing their efforts and resources on managing the situation. Questions we need to consider:

- Will these suppliers be in a position to be able to tender for contracts during the next few months?
- Will they be able to respond quickly to clarification questions?
- Will they be able to mobilise in the required timescales?
- Will evaluators be available to evaluate bids or participate in moderation meetings?

Timetables may have to be extended for each stage of the procurement process. For procurements that are not urgent or where a delay could be absorbed then consideration should be given to making changes to the process.

Please engage with your nominated procurement officer if you have any concerns or queries with your current procurements.

NEW PROCUREMENTS

Where we are planning new procurements, face to face engagement will not be able to go ahead for now - this will impact pre market engagement activity and tender presentations and consideration should be given to alternative ways to continue this activity; Prior Information Notices (PINs), market engagement questionnaires, telephone conferences or skype meetings where suppliers have the technology in place to do so.

Consideration should also be given as to whether this is the right time to commence the procurement process or whether there are other compliant options available to us to extend current arrangements (if applicable).

Please liaise with your nominated procurement officer to discuss your options.

EXISTING CONTRACTS

As the COVID-19 pandemic progresses we may find that existing suppliers are looking to fully or partially terminate contracts due to their inability to fulfil their contractual obligations. Suppliers will generally cite one of the following as their reason to terminate/partially terminate; **force majeure** (unforeseeable circumstances preventing the fulfilment of a contract) and/or **frustration** (termination based on a change of circumstances following contract award).

Commissioners and contract managers should start to assess their current contract portfolios and flag to the procurement and contract monitoring team where there is concern that this might happen. Equally, if a supplier contacts you regarding their inability to fulfil their contract, you must contact the procurement and contract monitoring team who will support you.

TABLE 1 – Contract Standing Order (CSO) thresholds

Threshold	Competition rules	Advertising Requirements
Below £10,000	No formal competition required, although quotes can be sought in order to demonstrate best value	No advert required
£10,001 - £25,000	Seek a minimum of 3 quotes	No advert required
£25,001 - £100,000	Formal Request for Quotation process Or use suitable framework agreement	E-tendering portal Contracts Finder
£100,001 – Relevant EU threshold	IWC Invitation to Tender process Or use suitable framework agreement	E-tendering portal Contracts Finder

TABLE 2 – Public Contract Regulations 2015 (PCR) thresholds

Threshold	Contract type	Competition rules	Advertising Requirements
£189,330 +	Goods/services	Competitive procurement process in accordance with chosen procedure in PCRs Or use suitable framework agreement	E-tendering portal Contracts Finder OJEU
£4,733,252 +	Works (property, civil engineering)	Competitive procurement process in accordance with chosen procedure in PCRs Or use suitable framework agreement	E-tendering portal Contracts Finder OJEU
£663,540 +	Schedule 3 services (Health and social care, education, legal services)	Competitive procurement process in accordance with chosen procedure in PCRs Or use suitable framework agreement	E-tendering portal Contracts Finder OJEU