

9 July 2020

TITLE OF REPORT: Procurement Policy Notes and Guidance for School

Purpose of the Report

To bring to Schools Forum guidance that has been provided to schools on the Procurement Policy Notes (PPN) 20/20 and 04/20.

Background

The Cabinet Office of the Government issued PPN02/20 on the 20 March 2020. This sets out guidance for public bodies on payment of their suppliers to ensure service continuity during and after the Covid-19 outbreak. PPN04/20 was issued 9 June 2020, further updated 25 June 2020, and builds on the provision in PPN02/20.

The Department for Education issued additional guidance for school spending as detailed in the Financial Support for Schools published 8 April 2020 and undated on 25 June 2020.

The Local Authority (LA) set up an officer working group to look at the implications for the LA and for maintained schools. Links to the government guidance are attached below, and the LA guidance can be found in appendix 1.

<https://www.gov.uk/government/publications/coronavirus-covid-19-financial-support-for-schools>

<https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19>

<https://www.gov.uk/government/publications/procurement-policy-note-0420-recovery-and-transition-from-covid-19#history>

Proposal

That Schools Forum notes the content of the report and the information in appendix 1.

Recommendation

It is recommended that Schools Forum notes the content of the report and the information in appendix 1.

For the following reason(s):

- To inform Schools Forum of the advice and guidance being provided to schools.

Appendix 1

GUIDANCE TO SCHOOLS ON PAYMENT OF SUPPLIERS DURING COVID-19

Central Government have issued a Procurement Policy Note - Supplier relief due to COVID-19 ([PPN 02/20](#) *click this link for full details*) which provides guidance on how the public sector should work with suppliers during this time and additional guidance for State funded Schools (19th May 2020) located at [State Funded Schools Guidance](#) (“the Guidance”)

The Guidance is advisory only. It does not bind you to do anything other than what you feel is appropriate under these challenging and complex circumstances.

The advice within this note is based on the Guidance. It is anticipated that Central Government will issue further guidance prior to the end of June 2020 to inform what action needs to be taken post this date.

If you are a maintained School (i.e. a community school, a Foundation or Trust School, a voluntary aided school or a voluntary controlled school) you will be deemed to be a contracting authority under which the guidance applies, as more than 50% of your income is derived from state funding. The guidance relates to contracts which have been procured under the Public Contracts Regulations 2015.

The Council is considering supplier requests on a case by case basis and your School may also wish to take this approach. However, the government guidance suggests that Schools should maintain a register of all contracts and this should be reviewed immediately to identify any suppliers who the school deem to be ‘at risk’.

Depending upon whether the supplier is a critical supplier to your School you may wish to support the supplier so they are able to cope with the current crisis and to resume normal service delivery and fulfil their contractual obligations when the School requires their Services following a re-opening of school provision.

It is essential that you make contact with the Council’s procurement team where you are accessing supplier contracts which are managed centrally by the local authority. Please contact Julie Nicholson via email at julienicholson@gateshead.gov.uk

Your school has been allocated a Finance Business Partner namely: Carole Smith- email Carolesmith@gateshead.gov.uk and it is suggested that involve the Business Partner in your decision making.

Evaluating requests for supplier relief

The DfE approach to evaluating suppliers is as follows and you may wish to adopt a similar approach to be taken by your school:

1. Assessment as to whether the Supplier has considered or requested other measures of assistance announced by government – this would involve asking the supplier if they have applied for any other types of support of relief, such as business grants, furlough schemes etc; Where a supplier has received other support this should be taken into consideration when making a decision to provide further supplier relief.
2. Assessing if the supplier is a critical supplier to your School – this would involve considering if the service or goods provided are critical to the school in the medium to long term and are important to business continuity to provide relief against the contract and whether the service or goods can be provided by an alternative provider etc;
3. Assessment as to whether the supplier is financially at risk as a result of COVID-19. A supplier may be deemed at risk where they are unable to provide their contractual obligations as a result of COVID-19 and are experiencing financial difficulties as a result.

You may need to ask more questions of the supplier to determine if they are experiencing financial difficulties. Any supplier agreeing to the provision of supplier relief will need to operate on an open book accounting basis where the school can request to see their accounts.

4. Commercial interventions which could assist to manage the supplier:

- payments for previously anticipated volumes (even if not met), or for the advanced order of materials where appropriate
- continuing to pay for services to suppliers who give their best endeavors to continue delivery despite performance being somewhat affected
- considering an extension of time for contract performance (for example, revised milestones or delivery dates)
- taking a more reasonable view on agreed lead times which, despite best endeavors, might not be met by suppliers, and ensure their payments are not negatively affected by that
- consider supplementing service delivery through your own resources, though this is likely to be difficult, but may help alleviate the challenges the supplier is suffering as a result of COVID-19

5. Financial interventions which could assist to manage the Supplier are:

- variation of payment mechanism - specifically beneficial where contracts are based upon the delivery of outcomes or outputs, you can vary the payment mechanisms to provide greater short term cash flow to the supplier, for example moving from payments on delivery of services, works or goods to aligning payments to the costs being incurred by the supplier, or breaking down milestone payments into multiple smaller payments
- increasing speed of payment - this PPN seeks to expedite this process and adjust normal financial controls, such as paying reconciled invoices before their due date
- prepayment of up to 25% of contract value - this specifically targets immediate cash flow issues but potentially creates a cash flow issue at a later date in the contract, so should be considered accordingly. For example, releasing a proportion of retained funds on capital projects, in lieu of actual defects being identified and remedied

Upon receiving an initial request from a supplier for Supplier Relief, it is possible that you may need to write to the supplier seeking further information from them in respect of their request before you can fully consider it. The Council are currently in the process of preparing a template standard letter and we have attached a working draft of the letter for your information which the School could adapt to assist in this process (Annex 1). The Council will share the template letter again with you once the template letter has been finalised by the Council, but you may wish to adapt the working draft attached at Annex 1 in the meantime.

SCHOOL MEAL CONTRACTS

The government has confirmed that it will continue to provide schools with their expected funding, including funding to cover free school meals and universal infant free school meals throughout the period of closure.

It is recommended that Schools continue to make payments to food suppliers that are considered at risk in relation to the cost of free school meals and universal infant free school meals.

The payment should be made on the basis of the last 3 months invoices and only where suppliers agree to act on an open book basis and make cost data available.

This does not apply to the cost of meals usually purchased by parents for children who are not eligible for free school meals.

RECORDING SUPPLIER RELIEF DECISIONS

It is essential that a record is kept within the School to record the supplier relief decision. The Council has a record of decision template (Annex 2) and you may wish to use this document to record the School's decision and have this signed by the Headteacher and Chair of Governors. Please could you ensure a copy of the decision is provided to your Finance Business Partner.

Appendix 3 is template to record all supplier relief decisions and should be maintained in a timely basis.

HOW TO AGREE SHORT TERM CHANGES TO CONTRACTS WITH SUPPLIERS

Where a school wishes to make any changes to a Contract in order to provide supplier relief to a contracted supplier this should be recorded in writing and signed by the parties as a temporary variation to the contract.

For either drafting variations to the contracts or seeking legal support in respect to the supplier relief decisions or interpretation of the Guidance, the School should contact the Council's legal services team under the Legal Services SLA – email the Commercial Legal Team on email LegalCommercialTeam@Gateshead.Gov.UK or seek independent legal advice if you have not signed up to the Council's legal services SLA.

Annex 1 Supplier Relief example letter – seeking further information

Dear **Supplier Name**

Re: Supplier Relief – [insert contract/agreement details]

Firstly, we would like to thank you for your ongoing support and commitment to maintain services and supplies to Gateshead Council during the current COVID-19 outbreak. We recognise that this is a very challenging time and we want explore ways that we can work with you in order to minimise disruption to services as much as possible.

We also appreciate that some suppliers may struggle to fully meet their full contractual obligations, and that we may need to alter our requirements, temporarily suspend some services, or change ways of working to do what is necessary for our community.

You may be aware that the Government issued a Procurement Policy Note (PPN 02/20 – Supplier Relief due to COVID-19) in March 2020 as guidance for Local Authorities to ensure service continuity during and after the COVID-19 outbreak. The Council may be able to offer some supplier relief (support) to those suppliers considered by the Council to be at risk. This will be considered on a case by case basis according to the nature of the services, goods or works being provided, the challenges being faced, the contracted terms and the constraints of any statutory requirements.

Every contract will have its own unique characteristics and therefore the relief available will vary case by case, but some examples could be as follows:

- 1) Accelerated invoice payment
- 2) Increased frequency of invoicing
- 3) Resolving disputed invoices as a matter of urgency; consider paying immediately and reconciling later in critical situations
- 4) Pay at usual contractual rates, regardless of service delivery
- 5) Forward Ordering
- 6) Payment in Advance
- 7) Interim Payments
- 8) Payment on order (not receipt)
- 9) Payments by results – Take an average over previous 3 months to determine monthly payment
- 10) Provide relief against normal KPIs and service credits
- 11) Re-deploy any unrequired capacity to other areas of need (e.g. Home to school transport)
- 12) Change to contract requirements (including extension to end date)
- 13) Change to delivery locations, frequency and timing of delivery
- 14) Changes to targets and performance indicators
- 15) Changes to the original terms should be limited to the specific circumstances of the situation and considered on a case by case basis
- 16) Extension of time for contract performance
- 17) Revised milestones dates or delivery dates
- 18) Waiver or delay in the ability of the contracting authority to exercise a right and/or remedy (claim for liquidated and ascertained damages, service credits or terminate the contract)

The Supplier Relief guidance under PPN 02/20 is in place until the end of June 2020. This may be extended further at a later date, if we are advised of this by Government.

In order for us to further consider your request for supplier relief **please complete the Supplier Relief Request Form** attached to this letter and return by email to **xxxx** We will assess the information you provide to us on the form on a case by case basis. Please be as clear and concise as possible as this will assist us in determining the best solution moving forward. We will then write

to you confirming if will be relief offered and, where applicable, will provide details of the contract variation.

Please note that that the Supplier Relief that may be offered will vary on a contract by contract basis. We may need to make pragmatic quick decisions with imperfect information so we must set out below some important obligations of suppliers. We may need to carry out cost reconciliation at a future date.

If the Council agrees to any Supplier Relief, it will be important to clearly set out any offer is conditional upon the following terms.

- 1) Ensure that business continuity is maintained wherever possible and that business continuity plans are robust and are enacted
- 2) Agree to act on an open book basis in order to support a subsequent reconciliation where necessary
- 3) Contracting authorities and suppliers should work collaboratively to ensure there is transparency
- 4) Strictly adhere to the Council's invoicing protocols
- 5) Make cost data available to the contracting authority during this period
- 6) Suppliers should continue to pay employees and flow down funding to their subcontractors
- 7) Make available 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
- 8) 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 (where applicable)
- 9) Suppliers maintain records to enable future reconciliation if necessary
- 10) Suppliers should not expect to make profits on elements of a contract that are undelivered
- 11) All suppliers are expected to operate with integrity
- 12) Suppliers must not make relief claims to another source of Government funding which results in the same relief being paid by Government twice

NB Any supplier found to be taking undue advantage, or failing in their duty to act transparently and with integrity, then contracting authorities will take action to recover payments made

Finally, we feel sure that everybody will work together to deliver the best outcomes for our community and that any agreed relief up to the end of June 2020 is offered on this basis.

Your best efforts to support the Council and our community are genuinely appreciated.

Yours sincerely,

Insert Signature

Name
Job Title

Supplier Relief - Interim payment proposal form

Company details

Company Name	
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Address	
Contact Name	
Contact Number	
Contact email address	

Contract details

Name of Contract	
Please provide details of the contract you provide to the School.	
Name of the officer in the School you normally deal with.	

Service disruption details

Please provide details of the service disruption you are experiencing in relation to Covid-19	
Please provide details of the supplier relief you are requesting from the School, detailing why you believe your company is at risk. Please see examples above.	
Please provide details of what any agreed supplier relief funding will be used for (please also complete cost breakdown template below)	
Please provide details of what additional support you feel the Council could offer to assist you with continuing to perform the contract.	
Please provide details of any other claims you	

intend to make under government (or other) schemes.	
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Estimate cost breakdown for use of supplier relief funding

Category (please add/delete as appropriate; below is guide only)	Detail (please provide detail against each category you are requesting relief against)	Weekly Amount (£ exc. VAT)
Direct Staff costs (e.g. salary costs, Employer NI, pension contributions)		
Indirect Staff costs - (e.g. mileage)		
Equipment		
Utilities		
Transport		
PPE		
Sub-contractor		
Overheads		
<i>Other-</i>		
<i>Other-</i>		
Profit		
TOTAL (Exc. VAT)		

Annex 2 – record of decision to grant supplier relief

[NAME OF SCHOOL]

RECORD OF DECISION

<p>Title: Supplier Relief Request - [name of requesting organisation]</p> <p>Parties: The Governing Body of [Name of School] and [name of supplier]</p> <p>Contract Title:</p> <p>Date of Original Contract:</p>
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<p>Details of Relief Requested:</p> <p>Value of Relief:</p> <p>Period of Relief:</p>

<p>Decision under Constitution Part 2 General Delegations to Managers:</p> <p>Having considered the request for Supplier Relief in accordance with Procurement Policy Note 02-20: Supplier relief due to COVID-19 we agree to provide the following relief: Relief Granted:</p> <p>Reasons for the relief:</p> <p><i>[give details why the council considers the relief is necessary, such as essential service provision to be retained, key supplier when lockdown ends etc]</i></p> <p>The relief is granted subject to the following conditions:</p> <p><i>[As part of the decision, is there any conditions, to the provision, such as open book accounting, providing additional services, regular meetings/communication]</i></p> <p>State Aid Considerations:</p> <p>In consultation with Corporate Services and Governance, the relief grant is not considered to be state aid for the following reasons:*</p> <p><i>Reference to the fact the contract has been procured and considered as a variation under Regulation 72 etc</i></p> <p>The relief is considered to be granted in a state aid compliant way using:</p> <p>GBER De-minimis Uk Government Umbrella Scheme under Commission Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak 2020/C 91 I/01</p>

Signature _____

Print Name _____

Position Headteacher

Date: _____

Signature _____

Print Name _____

Position Chair of the Governing Body

Date: _____

GUIDANCE TO SCHOOLS ON PAYMENT OF SUPPLIERS DURING COVID-19 AND TRANSITION ARRANGEMENTS

This note is supplemental to the Guidance Note to Schools (the 'Schools Note') dated 5th June 2020.

Central Government have issued a Procurement Policy Note (PPN) 04/20 Recovery and Transition from Covid-19. ([PPN 04/20](#) click this link for full details, published 9th June 2020). This updates and builds on the guidance contained in PPN 02/20 ([PPN 02/20](#)) which provides guidance on how the public sector should work with suppliers during this time and additional guidance for State funded Schools (19th May 2020) located at [State Funded Schools Guidance](#) ("the Guidance").

As mentioned in the last Schools Note, the Guidance is advisory only. It does not bind you to do anything other than what you feel is appropriate under these challenging and complex circumstances.

The advice within this note remains based on the Guidance.

If you are a maintained School (i.e. a community school, a Foundation or Trust School, a voluntary aided school or a voluntary controlled school) you will be deemed to be a contracting authority under which the Guidance applies, as more than 50% of your income is derived from state funding. The Guidance relates to contracts which have been procured under the Public Contracts Regulations 2015, but of course, as a School you may identify other at risk contracts which are critical to the delivery and running of the School.

The information contained in the last Schools Note still remains valid but the government's key messages given in PPN04/20 as we move into the transition stage are:

- Continue to monitor the contract portfolio to identify contracts and suppliers who may be at risk due to Covid-19.
- Where you have previously provided supplier relief during Covid which is due to expire on the 30th June 2020, consider whether that relief is still required post 30th June 2020 or whether alternative contractual arrangements need to be agreed with your supplier for a specific period of time which may be up to 31st October 2020.
- Consider whether any contracts are no longer relevant or viable as a result of Covid-19 and discuss termination of those contracts with the supplier in accordance with existing contractual remedies
- Work in partnership with the suppliers and develop transition plans to exit from any relief as soon as possible after the 31st October.

The Transition Plan

The Guidance suggests the Transition Plan should include the following:

- A planned exit date for when any supplier relief will end and this needs to be kept under review to reflect the changing Covid situation;
- 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;
- An assessment of any costs associated within implementing Public Health England guidance specifically in relation to delivering the contract in question on a case by case basis.

The Council continues to consider supplier requests on a case by case basis and your School may also wish to take this approach. However, as mentioned previously, the government guidance suggests that Schools should maintain a register of all contracts and this should be reviewed immediately to identify any suppliers who the school deem to be 'at risk'.

As mentioned in the previous Schools Note, for either drafting variations to the contracts or seeking legal support in respect to the supplier relief decisions or interpretation of any the Guidance, the School should contact the Council's legal services team under the Legal Services SLA – email the Commercial Legal Team on email LegalCommercialTeam@Gateshead.Gov.UK or seek independent legal advice if you have not signed up to the Council's Legal Services SLA.

It is essential that you make contact with the Council's procurement team where you are accessing supplier contracts which are managed centrally by the local authority. Please contact Julie Nicholson via email at julienicholson@gateshead.gov.uk

Your school has been allocated a Finance Business Partner namely: Carole Smith- email Carolesmith@gateshead.gov.uk and it is suggested that involve the Business Partner in your decision making.

SCHOOL MEAL CONTRACTS

The Guidance has not changed in respect to School meals contracts as detailed in the last Schools Note, as set out below:

The government has confirmed that it will continue to provide schools with their expected funding, including funding to cover free school meals and universal infant free school meals throughout the period of closure.

It is recommended that Schools continue to make payments to food suppliers that are considered at risk in relation to the cost of free school meals and universal infant free school meals.

The payment should be made on the basis of the last 3 months invoices and only where suppliers agree to act on an open book basis and make cost data available.

This does not apply to the cost of meals usually purchased by parents for children who are not eligible for free school meals.

Dated: 29th June 2020