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Guidance

# **Procurement Policy Notice (PPN) 02/20: Supplier relief due to COVID-19 – additional post-16 educational sector guidance**

Updated 13 May 2020

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## Introduction

This guidance is aimed at helping post-16 educational establishments in higher education (HE) and further education (FE), including sixth-form colleges, understand how PPN 02/20 - the guidance that applies across the public sector on how a public body should support suppliers through the COVID-19 outbreak - applies to them.

It focuses in particular on 2 important areas:

- helping to determine if you are a contracting authority - and therefore whether PPN 02/20 applies to you
- to provide you with some overarching principles and guidance on how you may choose to review and respond to supplier requests within the scope of the PPN

## Background to PPN 02/20

To ensure service continuity during and after the COVID-19 pandemic, all public sector contracting authorities have been advised by the government to support their at risk suppliers in a range of ways to ensure business and service continuity and to protect jobs. The measures set out in the PPN 02/20, issued on 19 March 2020, are to ensure suppliers are in a position to resume normal contract delivery once the COVID-19 outbreak is over. The PPN is time-limited and applies through to 30 June 2020.

The PPN is for contracted goods, services and work contracts, such as for building works, where there is a direct relationship between the contracting authority and its suppliers under a contract procured pursuant to the Public Contracts Regulations 2015 (or equivalent regulations). It does not apply to other funding mechanisms such as grants, or contracts supported by private income such as for transport provision.

While contracting authorities have a responsibility to their own suppliers, PPN 02/20 is advisory only, it does not bind contracting authorities to do anything other than what they feel is appropriate under these challenging and complex circumstances.

## Determining if you are a contracting authority

When considering how to implement the PPN, you first need to determine whether you are a contracting authority and, if you are, which of your suppliers may be at risk and fall within the scope of the supplier relief measures proposed in PPN 02/20.

Educational establishments such as in HE and FE (covering FE corporations, sixth-form college corporations, and likely bodies which conduct institutions designated under section 28 of the Further and Higher Education Act 1992 as being within the statutory FE sector) where the majority of income (more than 50%) is derived from state funding, will likely be ascribed the status of a contracting authority.

Additionally, the Public Contracts Regulations (PCR) 2015 definition of a contracting authority relevant to the education sector is that of 'bodies governed by public law', meaning bodies that have all of the following characteristics:

- they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character
- they have legal personality
- they have any of the following characteristics:
  - they are financed, for the most part, by the state, regional or local authorities, or by other bodies governed by public law
  - they are subject to management supervision by those authorities or bodies
  - they have an administrative, managerial or supervisory board, more than half of whose members are appointed by the state, regional or local authorities, or by other bodies governed by public law

Some HE and FE may be delivered by the voluntary organisations, community groups and social enterprises (VCSE) sector, such as charities and other non-profit-making entities, and derive more than 50% of their funding from state resources. In that case they may be contracting authorities within the PCR definition above, and so would be required to comply with the PCR and would fall within the scope of the PPN.

If you are in any doubt about your status as a contracting authority, you may wish to seek your own legal advice.

## **Reviewing and responding to supplier requests**

All contracting authorities, including the Department for Education (DfE), are working to implement PPN 02/20 to support suppliers at risk, and we realise this is a complex area for us all to manage.

When reviewing and responding to supplier requests, contracting authorities should take a pragmatic risk-based approach based on the advice within the PPN.

## **The Department for Education's 5-stage approach**

The DfE has chosen to take a 5-stage approach to evaluate its own suppliers who fall within the scope of PPN 02/20. This approach, which reflects the complexity and scale of the DfE's commercial arrangements, is intended to provide you with some overarching guidance and principles as to how you could choose to implement the PPN.

- stage 1: Assessment of whether the supplier has considered other measures announced by the government: This involves asking if they have explored and applied for, as applicable, all other forms of support available to them, including the wider government business support schemes. This is to avoid duplication of funding, such as providing both supplier relief under PPN 02/20 and payment of related workers that have been furloughed under the Coronavirus Job Retention Scheme (CJRS)
- stage 2: Assessment of whether they are a critical supplier to your organisation: The main consideration here is whether you feel the supplier provides services, goods or works that are critical in the medium and long term, and are important to business continuity to provide relief against the contract

- stage 3: Assessment of whether the supplier is financially 'at risk' as a result of COVID-19: In principle, a supplier is deemed at risk where they are unable to fulfil the contractual obligations of a contract due to COVID-19 and are experiencing financial difficulties as a result
- stage 4: Commercial interventions to manage supplier: It is important that commercial judgement is used when considering the type of support available pursuant to the PPN, which could include:
  - 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 endeavours to continue delivery despite performance being somewhat affected
  - considering an extension of time for contract performance (for example, revised milestones or delivery dates)
  - adjusting agreed lead times which despite best endeavours 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
- stage 5: Financial interventions: As with the commercial interventions, financial judgement should be used when considering any of the suggested options below:
  - 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, ahead of actual defects being identified and remedied

It is important that any commercial or financial changes or variations to contracts should be agreed in accordance with the change control clauses contained in the contracts, and documented, even if this takes place retrospectively. The Cabinet Office has developed a series of model clauses pertaining to COVID-19 (<https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19>).

There are a number of other important points to note when considering how best to implement PPN 02/20 for your organisation:

- whatever approach you decide best meets your needs, you need to ensure you apply the necessary financial and governance controls applicable to your organisation
- the PPN is very clear about the importance of transparency, and suppliers agreeing to act on an open book basis and make cost data available to you during this period, so please ensure they do so where relevant
- keeping a record of your agreed approach and supporting rationale, along with details of any payments made, assessment of risks or contractual changes, is important to show that you have an audit trail. This needs to be maintained throughout the period the PPN applies and retained

afterwards for any future audit purposes.

## **General PPN 02/20 guidance**

For more general guidance, refer to the Cabinet Office PPN and FAQ documents

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

If you have any questions about PPN 02/20, email [PPN0220.QUESTIONS@education.gov.uk](mailto:PPN0220.QUESTIONS@education.gov.uk).