



Updated guidance following expiry of Cabinet Office procurement policy notes PPN02/20 and PPN04/20, and on use of PPN01/20

For NHS trusts, NHS foundation trusts and clinical commissioning groups

March 2021

Summary

This guidance sets out how NHS organisations should respond to supplier requests for support now that Cabinet Office procurement policy notes PPN02/20 and PPN04/20 have expired. It also provides an update on the use of PPN01/20.

This guidance does not replace any primary or secondary care guidance issued in relation to 2020/21 contracting and should be read in conjunction with H2 guidance.

PPN01/20

The Cabinet Office issued guidance note **PPN01/20** on 18 March 2020 for public bodies on how to procure extremely urgent, unforeseeable requirements made necessary as a direct result of the COVID-19 outbreak including, in exceptional circumstances, using regulation 32(2)(c) under the Public Contract Regulations 2015.

The PPN sets out that in applying regulation 32(2)(c) organisations must ensure they satisfy the relevant tests, limit their requirements to what is absolutely necessary (both in terms of what they are procuring and the length of contract), and continue to achieve value for money and use good commercial judgement. In line with the previous guidance, organisations should seek legal advice if they are considering using this option.

It is important that all organisations ensure they keep proper records of decisions and mitigating actions and comply with the relevant transparency obligations.

This PPN was published around the time of the outset of the pandemic and continues to apply. It has no set expiry date. This PPN provides guidance on the use of regulation 32 (2) (c) of the Public Contracts Regulations 2015 ('PCR 2015') in response to COVID-19 where goods, works and services are to be procured with extreme urgency. The focus of the note is the use of regulation 32 (2) (c) but it also provides other options that may be considered in relation to procurements, such as direct award due to absence of competition or protection of exclusive rights (reg 32 (2) (b) PCR 2015, call off from an existing framework, call for competition using a standard procedure with accelerated timescales and extending or modifying an existing contract.

These options continue to be available under the PCR 2015 albeit their application, particularly regulation 32 (2) (c), needs to be carefully considered now that we are almost a year into the pandemic. That is, you must consider whether you have a robust justification that there are genuine reasons for urgency and that the circumstances were unforeseeable, meaning it is impossible to comply with the usual PCR 2015 timescales.

Updated position in relation to expired PPN02/20 and PPN04/20

Prompt payment

The NHS is an important customer to many businesses, and it is vital that we ensure that cash flows as promptly as possible, especially during COVID-19.

There were demonstrable improvements in payment compliance in the first half of 2020/21 but there is still room for further improvement. Therefore, all NHS organisations should continue to aim for:

- payment of all valid/undisputed invoices within contractual terms, usually 30 days of receipt of goods and service
- process part payments on the undisputed elements of all invoices currently on hold
- ensure that all invoice queries are resolved as soon as possible and ideally within seven days.

To ensure the changes to payment terms do not put unnecessary burden on government banking service and providers of financial services, we ask that all organisations:

- maximise the use of BACS/RFT payment runs where possible
- process payments early in the banking day
- use standard business processes to transact payments rather than Urgent Manual RFT, Chaps or Faster payments.

The financial regime in place continues to ensure sufficient cash is available to the NHS to implement these changes. This should continue to be the case once the block advance paid to providers is reversed later in the financial year. If any organisation does not have access to sufficient cash to improve or maintain payment times this should be escalated to regional teams.

Additional costs/under recovery of costs

The purpose of PPN02/20 and 04/20 was to ensure continuity of the supply chain during wave 1 of the COVID-19 incident. Two common issues identified by suppliers were:

- **Loss of income due to reductions in activity.** In truly exceptional circumstances and where resources were redeployed to other COVID activities, 'at cost' payments were made to suppliers where contracted activity was not delivered but substitute activity was. Systems have been allocated in advance funding to reflect the additional costs of COVID; therefore any future local decisions to redeploy resource (staff/premises, etc) from contracted activities must be funded from within available resource.
- **Additional costs of delivery due to COVID measures.** Trusts should ensure they have agreed the scope and cost of any additional costs with contractors and documented these via a change control process, with all parties demonstrating that they have considered alternatives and are fully utilising other available mitigation measures. Additional costs must be funded from within allocated resources.

The legal relationship with any contract remains between the supplier and the original contracting body. It is not recommended that contracts are amended from variable to blocks. Appropriate legal advice should be sought by the contract holder before any proposed contractual changes are entered into. Where contractual changes are required, the detailed approach to gathering evidence of costs incurred will be essential and changes to contracts should be fully documented.

Pre-payment

The expiry of the PPN notes requires that the NHS approach for pre-payments should revert to guidance contained within managing public money, which crucially does not ordinarily permit prepayments.

If any exceptional pre-payments were authorised under the terms of PPN02/20, they should have been reviewed by 31 October 2020 and not extended further. Any extension of agreements would be in breach of the guidance on managing public money.

Payment for goods and/or services not received

No new supplier relief arrangements under PPN04/20 should be instigated if they were not already in place by 30 June 2020. Any agreed supplier relief arrangements should have concluded a planned exit along with the expiry of the PPN on 31 October 2020.

No resources for supplier relief beyond 31 October 2020 are available either nationally or through system resource envelopes. The national team are in the process of conducting audits on those suppliers that were deemed strategically important. If your organisation had contracts in place with any of those suppliers, a short form questionnaire will be issued for completion in due course.

Questions

If you have any questions, please submit them to: england.nhsfinance-covidresponse@nhs.net