

Item: 4

Special General Meeting of the Council: 13 August 2020.

Supplier Relief Scheme.

Report by Executive Director of Corporate Services.

1. Purpose of Report

To consider continuation of the Supplier Relief Scheme to ensure service continuity and protect infrastructure, supply chains and jobs.

2. Recommendations

The Council is invited to note:

2.1.

That the Scottish Government and the Convention of Scottish Local Authorities released Scottish Procurement Policy Notes (SPPNs), which set out guidance for public bodies to consider in respect of supplier support to ensure service continuity during the current coronavirus outbreak and/or post virus.

2.2.

That, on 6 May 2020, the Council resolved that a programme of supplier relief be implemented to existing contractors to the Council, up to 30 June 2020, in accordance with the principles described in the Scottish Government and COSLA guidance.

2.3.

That updated guidance for public bodies, SPPN 8/2020, recommends that the Supplier Relief Scheme continue from 1 July 2020 and remain in place as long as is needed.

It is recommended:

2.4.

That the Council's existing programme of supplier relief should continue to be available as required by existing contractors beyond 30 June 2020.

2.5.

That, given the intention that the relief is not indefinite, relevant Executive Directors should work in partnership with contractors to develop transition plans, in accordance with the principles of the guidance issued by Scottish Government.

3. Background

3.1.

The Scottish Government issued three Procurement Policy Notes (SPPNs) as a consequence of the current COVID-19 outbreak.

- The Coronavirus (COVID-19) procurement regulations for public bodies SPPN 4/2020 which covers procurement related issues as a consequence of the coronavirus (COVID-19) outbreak <https://www.gov.scot/publications/procurement-regulations-during-covid-19-outbreak-sppn-4-2020/>.
- The Coronavirus (COVID-19): supplier relief SPPN 5/2020 which sets out guidance for public bodies to ensure service continuity during the current coronavirus (COVID-19) outbreak <https://www.gov.scot/publications/coronavirus-covid-19-supplier-relief/>.
- The Construction Policy Note 1/2020: Coronavirus (COVID-19): Impact on Construction Contracts <https://www.gov.scot/publications/coronavirus-covid-19-impact-on-construction-contracts-cpn-1-2020/>.

3.2.

On 6 May 2020, the Council resolved that a programme of supplier relief be implemented to existing contractors to the Council, up to 30 June 2020, in accordance with the principles described in the Scottish Government and COSLA guidance.

3.3.

The Scottish Government has produced further guidance in the form of SPPN 8/2020 extending the Supplier Relief Scheme beyond 30 June 2020. SPPN 8/2020 sets out guidance for public bodies on options to ensure service continuity during the current coronavirus (COVID-19) outbreak, to support recovery and transitioning of contractual arrangements. SPPN 8/2020, which came into effect on 1 July 2020 and will be kept under review, is available at the following link <https://www.gov.scot/collections/scottish-procurement-policy-notes-sppns/>.

4. Summary of key points of SPPN 8/2020

4.1.

SPPN 8/2020 was issued by the Scottish Government on 12 June 2020, with the key points summarised as follows:

- SPPN 8/2020 is supplementary to the guidance contained in SPPN 5/2020 and its associated FAQ document, which has been extended beyond its initial expiry date of 30 June 2020.
- As markets begin to open and it becomes safe to return to workplaces, public bodies and suppliers can now plan their transition to restart contracts.

- Supplier relief and supporting a transition to restart will continue to be important aspects of our wider economic response package.
- This SPPN, like SPPN 5/2020, applies to goods, services and works contracts.

4.2.

Actions included in SPPN 8/2020 for public bodies include the following:

- Review their contract portfolio, to consider whether supplier relief measures already in place remain appropriate, sustainable and reflective of any transitional support that may be needed in preparation for restarting the contract.
- Work in partnership with their suppliers in an open and transparent manner to develop transition plans to be implemented as soon as possible and in line with the opening up of markets and the Scottish Government's Route map through and out of lockdown. Plans should set out steps to transition out of relief, move to a more sustainable operating model, and include agreeing contract variations, where appropriate and necessary.
- Maintain accelerated payment practices to support cash flow as per SPPN 5/2020.
- Seek legal advice and consider state aid implications about all decision making, where deemed appropriate.
- Adhere to local finance and governance procedures.

5. Transition Plans

5.1.

The SPPN 8/2020 guidance advises that all contract portfolios should be reviewed immediately and transition plans implemented with suppliers as soon as possible with a view to restarting contracts in line with the opening up of markets and the Scottish Government's Route map through and out of lockdown. Public bodies should consider extending supplier relief to support delayed restarts of services they deem critical and supply chains.

5.2.

Transition plans should include the following:

- A planned exit date or conditions for when any supplier relief will end; and this should be kept under review to reflect the changing situation, for example, 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 SPPN 5/2020.
- An assessment by both parties as to whether the contract is still operationally and commercially viable and, if not, proposals for variation or termination.

6. Advance Payments

6.1.

As was set out in SPPN 5/2020, whilst the Scottish Public Finance Manual (SPFM) discourages payment in advance of need unless in exceptional circumstances, Scottish Government (SG) central finance and procurement consent was granted for payments in advance of need where the Accountable Officer was satisfied that a value for money case was made by virtue of securing continuity of supply of critical services in the medium and long term.

6.2.

This consent was capped at 25% of the value of the contract and applied until 30 June 2020. Under this current SPPN, and to aid any relief deemed necessary, that consent is now extended until individual public bodies are satisfied that lockdown restrictions have been lifted to the extent that the contract can safely restart.

7. Communication with contractors

7.1.

The Council's existing Supplier Relief Scheme, as agreed by the Council, at its Special General Meeting on 6 May 2020, has attracted a total of 15 applications to date and officers are awaiting formal applications from several more, including contractors who have approached service areas on an informal basis.

7.2.

Arrangements have also been made with a small number of contractors to vary contracts to accommodate changes in planned delivery dates or completion of key stages of projects; however these contract variations have satisfactorily been accommodated within existing contract clauses.

7.3.

Direct approaches from contractors who provide transport services have been received and these have been formalised and are currently under consideration. To date a small number of contractors providing other supplies and services to the Council have contacted contract managers and Procurement on an ad hoc basis.

7.4.

The Supplier Relief Scheme has been promoted by the Communications Team both on the Council's website and with regular social media posts. In addition, a separate email address, supplier.relief@orkney.gov.uk, has been set up to assist with co-ordination of applications submitted by suppliers to ensure a streamlined and coherent approach as possible to respond to supplier requests.

8. Corporate Governance

This report relates to governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

9. Financial Implications

9.1.

The general principle of provision of supplier relief under existing contracts would be covered by existing budget provisions. It is not anticipated that there should be any additional cost, above what is included in existing budgets or that supplier relief would result in the Council paying twice for a service.

9.2.

Supplier relief paid from service areas that are funded from core budgets that do not anticipate any income from fees and charges will have the impact that savings that might have been anticipated through non-delivery of the service are not realised.

9.3.

In service areas that are funded largely from fees and charges and where supplier relief is paid, may record losses. Those losses will occur not through the payment of supplier relief per se, but through the loss of income.

9.4.

It has been made clear in the supplier relief arrangements that have been established that the Council expects an open book arrangement with deductions to be made for any subsequent supplier relief obtained from other government schemes and for any variable costs such as fuel that have been saved whilst the service is not being delivered.

10. Legal Aspects

10.1.

Implementing a programme of supplier relief as suggested in the Scottish Procurement Policy Notes will assist the Council in discharging its procurement obligations in a manner consistent with the approach recommended by the Scottish Government.

10.2.

The model contract variation forms are a resource which the Council can use to implement this relief in a cost effective manner, which will assist the Council in discharging its statutory duty to achieve best value.

11. Contact Officers

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