



Procurement Policy Note – Onerous Practices in Procurement and Contracting

Action Note PPN 10/16 December 2016

Issue

1. Some suppliers are still reporting procurements being conducted in ways that result in disproportionate or inappropriate risk transfer between buyers and suppliers. Unnecessarily onerous requirements are not best practice and, while not commonplace, can stifle innovation and lead to increased costs for both parties.

Dissemination and Scope

2. This PPN and associated guidance applies to all Central Government Departments, their Executive Agencies and Non Departmental Public Bodies. These organisations are referred to in this PPN as 'In-Scope Organisations'. Please circulate this PPN within your organisations, drawing it to the attention of those with a purchasing role and those who have commercial dealings with suppliers.

Timing

3. In-Scope Organisations must apply the provisions of this Procurement Policy Note with immediate effect.

Action

4. In-scope organisations should conduct their public procurement and contracting activity in line with published guidance and best practice. This includes:
 - **Conducting effective pre-market engagement.** Pre-procurement engagement with the market (including talking to potential suppliers) is now expressly permitted under procurement law. Engaging with the market before starting the formal procurement process is essential good practice and helps to maximise value for money and encourage appropriate innovation.
 - **Ensuring accurate and reliable data** is available to suppliers during a procurement, and throughout contract delivery, particularly where this relates to forecasting volume,

managing demand and managing performance. Poor quality data can disproportionately affect risk transfer in the contract. Where there is an outgoing service provider, issues around data quality should be resolved prior to data transfer to a new supplier.

- **Awarding contracts on the basis of value for money** (i.e. the best mix of quality and effectiveness for the least outlay over the period of the use of the goods or services bought). This is set out in Annex 4.6 of HM Treasury's [Managing Public Money](http://www.gov.uk/government/publications/managing-public-money) (www.gov.uk/government/publications/managing-public-money) and the [Green Book](http://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government) (www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government). Life Cycle Costing (or other similar methods) should be used when cost is an award criterion.
- **Putting in place appropriate mechanisms for identifying and managing risks**, and avoiding a blanket approach, carefully considering risks inherent in the contract and discussing with suppliers pre-procurement. The approach should be proportionate. [PPN 02/13](http://www.gov.uk/government/publications/procurement-policy-note-02-13-supplier-financial-risk-issues) on supplier financial risk provides more information on use of Guarantees and Bonds where these are deemed appropriate and justifiable. (www.gov.uk/government/publications/procurement-policy-note-02-13-supplier-financial-risk-issues)
- **Using the guidance developed to support the Model Services Contract, to establish limits of liability in contracts.** In particular, ensuring:
 - detailed consideration of the likely commercial risks of each contract to be let and the proposed approach;
 - discussion of proposals for managing risk as part of early dialogue with the market and/or potential suppliers before the procurement begins;
 - tailoring liability provisions in contracts relative to the requirement, its value, and its complexity and avoiding unlimited liability provisions (unless these are required by law or can be clearly justified commercially);
 - considering the use of Deeds of Guarantee and Performance Bonds only in specific and justified circumstances where the contract is judged to be at high risk of supplier or performance failure. Key points include: is the contract with the ultimate parent company; is the balance sheet commensurate with the liabilities in the contract; what proportion of the net assets are represented by the maximum liability under the contract; are you confident that the assets are tied to the contracting party?
 - The guidance can be accessed here:- www.gov.uk/government/uploads/system/uploads/attachment_data/file/526362/MSC_Guidance_V1.0.pdf)
 - The Model Services Contract can be accessed here:- www.gov.uk/government/publications/model-services-contract

- **Adopting a collaborative approach to managing change in contract delivery** by working with the supplier early enough to resolve issues such as quality of service delivery, volumes, performance requirements or key performance indicators, and pricing or payment mechanisms, without creating unmanageable risks for either party and in line with established [contract management](#) tools and techniques (www.gov.uk/government/publications/commercial-capability-contract-management-standards)

Background

5. Government policy on procurement is published via GOV.UK in a series of Procurement Policy Notes. In-scope Organisations must ensure they implement policy and guidance as set out in each PPN and using the associated guidance. A full list of PPNs can be accessed [here](http://www.gov.uk/government/collections/procurement-policy-notes) (www.gov.uk/government/collections/procurement-policy-notes).

Contact

6. Enquiries about this PPN should be directed to the Crown Commercial Service Helpdesk (telephone 0345 410 2222, email info@crowncommercial.gov.uk).