



Department  
of Health

## Procurement News

### October 2017

Welcome to 'Procurement News'.

This newsletter is for all colleagues within the Department of Health and its ALBs who have an interest in procurement and commercial activities.

You may forward to colleagues within the health family.

If was forwarded to you, you can [sign up to receive future editions](#).

If you have anything to contribute, feedback or suggestions for future stories please [get in touch](#).

#### **Rick Webb**

Procurement Policy Manager  
Department of Health

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### **Crown Commercial Service customer updates: October 2017**

The latest issue (published 4<sup>th</sup> October) is available [here](#). This month there is news on:

- Security Alert
- CCS Aggregation
- Upcoming Events and Exhibitions
- New Brochures: Contact Centres, Tech Services 2, Estates Professional Services, Street and Outdoor Lighting and Demand Side Response
- New Frameworks: Supply, Delivery and Installation of Furniture and Associated Services (RM3812), Apprenticeship Training and Related Services (RM3823)
- Frameworks Expiring Shortly: Computer Based Testing Services (RM995), Wider Public Sector Travel Management Services (RM1034), ConsultancyONE (RM1502)
- Recently Expired Frameworks: Vehicle Conversion and Reconditioning Services (RM956), Provision of Electricity and Ancillary Services (RM999) and Estates Professional Services (RM928)

## Procurement Policy Notes (PPNs)

All Procurement Policy Notes (PPN's) are published [on the CCS website here](#).

No new PPNs have been published since the last edition.

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## CCS Health Temporary Staff Frameworks

CCS published an update to the temporary staff framework on the 11<sup>th</sup> September 2017. The framework looks at providing the NHS with a way to source agency staffing requirements which have been approved by NHS Improvement alongside a framework for workforce management. NHS trusts can find information about the approved frameworks [here](#).

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## Supplier Code of Conduct

The Government Commercial Function (GCF) has introduced a Supplier Code of Conduct. It sets out the behaviours expected of suppliers who are delivering services on behalf of government to complement best practice under the Civil Service Code and the Seven Principles of Public Life.

It is built upon the understanding that suppliers and government employees will treat each other with mutual respect to build trust and effective collaborative relationships focused on delivering services for the public.

The Code is split down into three main focus areas: Employees and Service users, Business Practices and Standards of Behaviour.

The complete document is available [here](#)

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## Central Government Spend with SMEs

The Government is committed to spending £1 in £3 with small and medium sized enterprises directly or indirectly in the supply chain by 2020.

An update has been published on the 2015/16 spend with SMEs split down by central government departments which can be found [here](#).

In total central government spent [£12.2 billion](#) with SMEs over this period. New measures are currently being proposed to encouraged more spend with SMEs including:

- Using transparency to encourage large businesses to employ more SMEs in the supply chain

- Improving visibility of opportunities available to SMEs in the supply chain
- Making prompt payment part of the selection process for larger suppliers (consultation is ongoing about the minimum value threshold for contracts for which this will apply)

These proposals will be subject to consultation in the coming weeks

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## **Modern Slavery Act 2015 Information Update**

Updates on Modern Slavery awareness and reporting requirements have been published with a focus on providing [transparency in supply chains](#) to help organisations understand their responsibilities and the responsibilities of their suppliers who are covered by the Act. The new document provides guidance including who is required to publish a statement.

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## **Contracts Finder Update**

Further enhancements are being planned for the Contracts Finder website for the second part of October to make it easier to advertise opportunities and for suppliers to find them.

The changes will include:

- A closing date for the Early Engagement notice. Where an existing notice exists on the system, these will be automatically close three months after their publication date.
- Look up facilities to allow awarded contracts to be searched by supplier
- Greater flexibility with the contract award, start and end dates
- All notices will include corporate identifiers for Contracts Finder buyers
- Suppliers will be able to search for opportunities which are specifically for SMEs/VCSE

Further updates will be provided by Contracts Finder when the updates go live.

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## **General Data Protection Regulations (GDPR)**

On the 25<sup>th</sup> May 2018 the GDPR will come into force in the EU. Before this date work needs to be done within all organisations to make sure that contracts and

agreements between data controllers and processors are compliant with the new regulations.

CCS is looking to publish a PPN with information on GDPR in November to coincide with the release of the updated data protection clause for contracts. Further information about the implications for CCS framework agreements will be published as well to clarify the steps that need to be taken by authorities who have benefitted from these agreements.

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## Efficient and Professional Public Procurement – Update from the European Commission

A new initiative from the European Commission has been unveiled this month to stimulate the economy and unlock investment in public procurement. The initiative has four main strands:

- **Definition of priority areas for improvement** (SMEs, Social and Environmental criteria, innovative procurements)
- **[Voluntary ex-ante assessment of large infrastructure Projects](#)** (The commission will provide advice and guidance service on procurements over €250 million)
- **[Recommendation of professionalisation of public buyers](#)** (ensuring that buyers have the business skills, technical knowledge and procedural understanding required)
- **[Consultation on stimulating innovation through public procurement](#)** (A targeted consultation has been launched to collect feedback on how innovation can be stimulated through the procurement of goods and services)

Further information can be accessed [here](#) or by clicking on the links above.

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## ISO 20400 Sustainable Procurement Assessment

The first ISO 20400 standard assessment for [sustainable procurement](#) has been carried out for a purchasing consortium for higher education facilities in London. It is believed to be the first in the UK Public Sector to be assessed. The London Universities Purchasing Consortium was assessed by Action Sustainability, the lead technical author for the British Standard on sustainable procurement BS8903 who is the UK delegator for the new ISO 20400 standard.

This comes after the news that Balfour Beatty became the first private company globally to be assessed to the standard. Balfour Beatty is a member of the Supply Chain School which is an initiative representing a common approach to sustainability within supply chains.

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## Procurement Policy Working Group Update

In September the Procurement Policy Working Group discussed current and ongoing topics impacting procurement activities including:

- The Prompt Payment Code
- GDPR
- Modern Slavery
- Simplified short T&Cs '10-pager' and standardisation of T&Cs
- IR35
- Apprenticeships
- Contracts and Grants
- Supplier code of practice
- Cartel/collusion detection
- Social Value
- Crown Copyright
- SMEs

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## Legal Article: Considerations for Future Proofing a Contract

*Article provided by Government Legal Department*

Contract changes including (but not limited to) increasing or decreasing the contracted services/works or supplies, extensions and changes to the contractor could be precluded by regulation 72 of the Public Contracts Regulations 2015 (as amended) (the PCR).

### Why is this relevant?

Failure to comply with the requirements of regulation 72 PCR could mean the contract is no longer that which was originally procured. This exposes SoS to the risk that an illegal direct award of contract has been made. In such circumstances a court could declare the contract ineffective, award damages to the challenging party and impose a civil financial penalty (fine) on SoS. Not only could this be costly for SoS but it could also cause DH/SoS severe reputational damage.

### How to mitigate these risks

OJEU Notice

1. use clear, precise and unequivocal terms to draw potential bidders' attention to the fact the contract may change;
2. in the same language set out what those changes could be; and
3. set out whether or not contract extensions will be needed and include in the total estimated value for the procurement what the estimated value of those extensions could be.

The form of contract and contract documents (which accompany the OJEU Notice):

1. Make sure that there is a well thought out and clear change control process in the contract which covers the types of changes which could occur during the contract term;
2. In the change control process set out how a change may be instructed and how the contract will vary as a consequence;
3. Make sure that the payment model is flexible enough to allow for upwards or downwards changes to the contract price to happen;
4. Make sure the specification is written in clear and precise language so that it sets out the contract requirement unambiguously;
5. In the specification set out what types of additional requirements may be needed over the contract term; and
6. Make sure the change control process sets out a clear process for instructing any additional requirements together with how these additional requirements will be paid for.

If in doubt please speak to your contact in procurement or GLD