



Coronavirus (COVID-19): preparations for contracting authorities to restart the procurement and management of construction contracts - CPN 3/2020

Purpose

1. This Construction Policy Note (CPN) sets out matters for contracting authorities to consider when making preparations in readiness to implement procurement procedures for new projects and reopen public construction sites which are currently closed due to restrictions for mitigating COVID-19. **Note that this CPN is NOT an instruction to re-open closed sites or to begin work on new sites where the project is not for essential work¹.**
2. This CPN is part of a suite of procurement guidance related to COVID-19, which includes the following:
 - CPN [1/2020](#) and [2/2020](#)
 - SPPN [4/2020](#); [5/2020](#); and [6/2020](#)

Key message

3. Contracting authorities must now take the steps necessary to review and reconsider their procedures for project initiation, procurement and contract management in order to be able to commence the restart of the delivery of construction projects to the public estate **immediately** upon receipt of such guidance from Scottish Government.

Timing and coverage

4. This note is intended for all those contracting authority staff involved in the planning and delivery of public works projects. It is applicable guidance under the [Scottish Public Finance Manual](#).

Introduction

5. On 21 April 2020 the Cabinet Secretary for Economy, Fair Work and Culture set out Scottish Government's framework of principles by which sectors of business and industry can stage safe progress towards economic productivity². The construction sector is currently in **reset** mode, moving towards **restart**. This

¹ <https://www.gov.scot/publications/coronavirus-covid-19-construction-sector-guidance/>

² <https://www.gov.scot/publications/coronavirus-covid-19-update-economy-secretarys-statement-economic-impact-covid-19-tuesday-21-april-2020/>

construction policy note builds on advice in [CPN 1/2020](#) relating to the response and reset phases. It provides guidance to assist contracting authorities restart construction activity through quick and established routes to market in order to help stimulate a safe, orderly and effective transition towards economic **recovery**.

Restart and Recovery

6. Contracting authorities should progress towards procurement procedures where it is clear industry can respond, assisting contractors to plan, schedule and restart operations as soon as safely practicable. Particular consideration should be given to identifying the quickest possible routes for new projects to progress through procurement to start on site in order to help stimulate effective sectoral recovery.
7. Contracting authorities may find current circumstances conducive to forming new proposals and developing existing construction proposals, for example:
 - to **review** the feasibility, viability, suitability and sustainability of pre-pandemic project proposals.
 - to **reconsider**, reprioritise and where necessary, for recovery purposes, recast the delivery of prospective project pipelines by using quick routes to market with established supply chains.
8. [SPPN 6/2020](#) also provides general procurement guidance on some elements of this approach.

Review

9. Contracting authorities can carry out a number of exercises on projects which are in the pre-tender design phase in order to elicit optimal market response upon restart and contribute towards an effective recovery, including the following:
 - technical audit and where possible value engineering of existing pre-tender schemes.
 - reviewing both buildability and post-occupation maintenance practicalities.
 - considering in detail alternative modes of delivery for example, off-site manufacture.
 - reviewing the overall corporate tender pipeline to prioritise, accelerate and manage the project release schedule.
 - re-evaluating procurement strategies for example, using quick quote where possible or restricted instead of open procedures.
 - re-considering price/quality proportions and dispensing with price-only strategies.
 - evaluating a range of mechanisms for assuring against becoming liable for non-compliant work for example, trust-deposit retention.
 - incorporating proven prompt supply chain payment measures for example, project bank accounts³.

³ <https://www.gov.scot/publications/construction-projects-implementing-project-bank-accounts/>

- implementing measures for assuring performance of contractual obligations including built quality for example, clerks of works.

10. It is recommended that contracting authorities give particular attention to the last item in order to avoid creating a legacy of latent defects directly attributable to the resumption of work on public construction projects. Contractors are required to ensure that on-site staff are accredited under a competence scheme appropriate for the skills necessary to perform the contract⁴.

11. It may be necessary for contracting authorities to accommodate some flexion of pre-tender estimates and planned construction programmes within the context of sectoral recovery where considered relevant, proportionate and beneficial to project delivery. This can **only** occur without detriment to the specification if the quality of work on site is assured as it proceeds and certainly before being covered up. The Client Guide to Construction Projects⁵ contains further information.

Reconsider

12. Pandemic restrictions may present some contracting authorities with an opportunity to bring forward planned work or undertake proactive or preventative activities in facilities that would have needed to be closed to the public for a period of time in any case for example, leisure centres (including swimming pools), sports stadiums, libraries, schools etc.

13. Where viable technical proposals can be developed quickly and funding obtained, such projects can supplement an authority's short to medium term pipeline. Should a number of such opportunities become apparent upon review, there may be merit in considering a strategic approach to procurement such as a framework agreement where there is scale and repetition.

14. Contracting authorities will want to assure themselves of a contractor's capability, capacity and availability to undertake new work and, where applicable, in addition to resuming work on suspended sites. The following are among the matters which would help indicate such readiness and serve as the basis for further discussion:

- contract duration
- estimated period of mobilisation
- project values and estimated cash flow profile review of risk register associated with resuming and completing the projects
- availability of subcontractors, including labour, plant and materials

15. It will be important to ensure that the procurement procedures used to award new construction contracts help to promote sectoral recovery by minimising the

⁴<https://www.webarchive.org.uk/wayback/archive/20180212234848/http://www.gov.scot/Topics/Government/Procurement/policy/SPPNSSPANS/policy-notes/SPPN2014/SPPN52014>

⁵ <https://www.gov.scot/policies/public-sector-procurement/construction-procurement/>

duration between inviting tenders and starting on site, while recognising staff availability and attrition in both the demand and supply sides.

16. Contracting authorities should look in particular at the feasibility, in their specific circumstances, of directing appropriate elements of their infrastructure investment programme through procurement routes with established supply chains and a direct route to market. Where that is not possible, traditional processes should be accelerated to achieve quicker contract awards. The following actions are particularly relevant for contracting authorities to undertake as the sector moves towards restart and recovery:

- exploring scope to access current appropriate framework agreement(s) at local; national; and UK level⁶.
- investigating access to Scottish Futures Trust's Hubco(s)⁷.
- implementing accelerated procedures in public procurement regulations⁸.
- exploring potential for either combining or disaggregating projects as appropriate to optimise market response.
- examining scope for collaborative procurement/delivery strategies with other public bodies.

17. Contracting authorities should identify where the strategic balance is for their suite of restart projects within the following parameters:

- delivering an economic stimulus within their operational area(s).
- not exceeding particular contractors' capacity to safely deliver within contractual time and cost parameter across one or more projects.
- maintaining quality standards of site work.

Dissemination

18. Please bring this CPN to the attention of all those staff involved in the procurement of relevant construction projects.

Contact

19. If you have any questions about this CPN please contact:

Construction Procurement Policy Unit
Scottish Government
3B South, Victoria Quay
EDINBURGH
EH6 6QQ

Phone: 0131 244 8492

Email: constructionpolicy@gov.scot

⁶ <https://www.gov.scot/publications/speculative-framework-agreements-sppn-032017/>

⁷ <https://www.scottishfuturestrust.org.uk/page/hub>

⁸ http://www.legislation.gov.uk/ssi/2015/446/pdfs/ssi_20150446_en.pdf Reg 2

Webpages: [Construction Procurement](#)