

COVID-19

Further guidance on construction contracts

Procurement Policy Note 02/20

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Version 1.0

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About this document

Scape would like to bring to the urgent attention of clients the important information and guidance issued by the Cabinet Office on 6th April 2020 entitled “Guidance Notes for Construction Contracts - Procurement Policy Note 02/20” (“the Guidance”). Please [click here](#) to access a copy.

The Guidance aims to support contracting authorities in how they implement PPN 02/20 under existing works contracts, to provide contractual relief to suppliers (*and their supply chains*) whom the authority has identified as being at risk of default and/or ultimately insolvency as a result of the impact and effects of COVID-19.

The Guidance also contains a model deed of variation, including a set of provisions which authorities can use as a basis for varying existing NEC-based contracts, depending on the type of relief the authority considers appropriate.

Summary

The Guidance recommends that authorities seek legal advice to ensure that any such variation is consistent with the terms of the existing contract.

The types of relief which authorities might consider can be briefly summarised as follows:

1. **Accelerated payment of invoices**
2. **Certification of interim valuations where work has not been undertaken, based on previous valuations**
3. **Amending the payment mechanism to make more regular payments or re-order existing payment schedule, i.e. re-scheduling milestones**
4. **Provision of advance payments**
5. **Release of a percentage of any retentions.**

Relief options

The Guidance makes clear that not all relief options will be necessary or appropriate for each supplier under each contract.

The authority and the supplier will need to engage in discussions on a case-by-case basis.

The authority should consider the circumstances applicable to the supplier and the contract in question and agree to the relief (or combination of reliefs) that the authority considers will be the most effective.

The Guidance also stresses the need for open book transparency and the provision by the supplier of supporting information to allow the authority to check (and audit, if necessary) that the commercial principles are complied with. It also requires authorities to ensure that:

Relief options (continued.)

The Guidance also stresses the need for open book transparency and the provision by the supplier of supporting information to allow the authority to check (and audit, if necessary) that the commercial principles are complied with. It also requires authorities to ensure that:

- the supplier continues to pay its employees, as well as supply chain, promptly
- the supplier warrants that it is not in breach of any covenants by accepting relief and that it does not enforce any security against a third party after accepting relief
- the authority is able to recover any relief if it is not applied in the agreed manner
- the supplier is prevented from claiming twice in respect of the same hardship, i.e. claiming for employees under the Government's Coronavirus Job Retention Scheme when such employees are already covered by the relief

Notes

This summary does not in any way constitute legal advice, is not intended to be read in place of the Guidance itself and is not intended to be used, or relied upon, in substitution for the Guidance.

Authorities are, accordingly, urged to review and consider the Guidance itself in detail and take appropriate independent legal and professional advice.

If you have any questions, please get in touch

Email: general@scapegroup.co.uk

Phone: 0115 958 3200

Web: scapegroup.co.uk/contact