



NORTH LONDON PARTNERS
in health and care

North Central London's sustainability
and transformation partnership



Specific Procurement advice in light of exceptional circumstances

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In exceptional circumstances, CCGs may need to procure goods or services urgently. This is permissible under current public procurement regulations.

Under Public Contract Regulations 2015 (PCRs), the main options available are:

- Direct award due to extreme urgency;
- Direct award due to absence of competition or protection of exclusive rights;
- Call off from an existing framework agreement or dynamic purchasing system;
- Call for competition using a standard procedure with accelerated timescales;
- Extending or modifying a contract during its term.

Depending on the nature of requirement there may be further options under PCRs, such as the additional delivery of supplies from an existing supplier (regulation 32(5)), additional similar works or services from an existing supplier (regulation 32(9)), or using the services of a subsidiary of another contracting authority (regulation 12). These are not covered in this guidance and do have their own specific requirements.

Proper records of decisions and actions on individual contracts should be kept, as this could mitigate against the risk of a successful legal challenge. If a direct award is made, a contract award notice (regulation 50) should be published within 30 days of awarding the contract.

COVID-19 is serious and its consequences pose a risk to life. Regulation 32(2)(c) of the PCRs is designed to deal with this sort of situation

Therefore Direct Award due to reasons of extreme urgency.



2. Direct Award Due To Reasons Of Extreme Urgency

Regulation 32(2) sets out the following:

The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases: ...

(c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.

... the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.

Therefore, in responding to COVID-19, contracting authorities may enter into contracts without competing or advertising the requirement so long as they are able to demonstrate the following tests have all been met:

1) There are genuine reasons for extreme urgency, e.g.:

- o the need to respond to the COVID-19 consequences immediately because of public health risks, loss of existing provision at short notice, etc.;
- o reacting to a current situation that is a genuine emergency - not planning for one.

2) The events that have led to the need for extreme urgency were unforeseeable, e.g.:

- o the COVID-19 situation is so novel that the consequences are not something you should have predicted.

3) It is impossible to comply with the usual timescales in the PCRs, e.g.:

- o there is no time to run an accelerated procurement under the open or restricted procedures or competitive procedures with negotiation;
- o there is no time to place a call off contract under an existing commercial agreement such as a framework or dynamic purchasing system.

4) The situation is not attributable to the contracting authority, e.g.:

- o you have not done anything to cause or contribute to the need for extreme urgency.



3. Further Relevant Information

CCGs should keep a written justification that satisfies all tests and criteria. You should carry out a separate assessment of the tests before undertaking any subsequent or additional procurement to ensure that they are all still met, particularly to ensure that the events are still unforeseeable. For example, as time goes on, what might amount to unforeseeable now, may not do so in future.

You should limit your requirements to only what is absolutely necessary both in terms of what you are procuring and the length of contract.

Delaying or failing to do something in time does not make a situation qualify as extremely urgent, unforeseeable or not attributable to the contracting authority. This is because:

- the PCRs expect a contracting authority to plan its time efficiently so that it is able to use a competitive procedure;
- competitive alternatives (e.g. an accelerated open procedure) can be completed quickly;
- case law has held that knowing that something needs to be done means it is foreseeable;
- a contracting authority's delay or failure to do something is likely to mean that the situation is attributable to the contracting authority.

It is important that CCGs continue to achieve value for money and use good commercial judgement during any direct award. Whilst prices may be higher than would be expected in a regular market, any abnormally high pricing should be approved by the appropriate director.

COVID-19 – Staff Remuneration Guidance

Introduction

The NCL CCGs are playing a central role in coordinating and supporting the system-wide response to the Covid-19 outbreak. The level of activity has significantly increasing and it has been critical for the CCGs to identify necessary staff to deliver COVID-19 responsibilities.

As part of the NCL CCGs responsibilities as a Commissioner, there is a requirement to play a key role in supporting the NCL system 7 days a week.

Remuneration Guidance

This guidance sets out the remuneration arrangements for staff that are asked to work during weekends (Saturday/ Sunday) and Public Holidays to support COVID-19 work activities.

All staff working **must obtain approval and agreement** to work on COVID-19 work activities during a weekend/public holiday prior to undertaking work during these periods.

Rate of pay for work over a weekend/public holiday

Those staff on agenda for change bands 1-9 that are asked to work on a weekend (Saturday/Sunday) to support the COVID-19 work will be paid additional remuneration at the following rates:

- Saturday and Sunday – Time and a Half
- Public holidays – Double Time

How to claim for hours worked over a weekend/public holiday

All staff that work on COVID-19 work activities should complete a timesheet to claim additional hours form, clearly stating:

- Their personal details
- Details of the date and hours the additional hours have been undertaken

Completed forms should be sent to the respective Director for approval. Directors should then send the approved forms to Ian Porter, Executive Director of Corporate Services to sign off as the lead for the NCL Incident Co-ordination Centre (ICC).

All completed and approved forms must be sent to the HR team:

islccg.nclworkforce@nhs.net

Payment for additional hours

Payment for additional hours will be processed by the payroll team and will be paid as part of the monthly pay for staff. The details of the payment will be shown on the monthly payslip available to access via the workforce system.

HR Guidance: Managing Requests for Resource to Support COVID-19 Priorities From External Organisations

The following guidance has been prepared to provide the CCG with a framework to respond to requests from external organisations for CCG staff to be redeployed to roles within the external organisation whilst also considering the staffing resource required to ensure that the CCG continues to deliver its obligations and priorities to maintain business continuity during this critical period.

The purpose of putting in place a framework to consider such requests are to:

- ✚ Enable the HR function to centrally record all requests for staff resource from external organisations in accordance with local and national audit and reporting requirements
- ✚ Record all CCG decision-making with regard to requests for staff resource from external organisations in accordance with local and national audit and reporting requirements
- ✚ Enable Directors to identify if they have the staff with the requisite skillset to meet the resource requirements requested
- ✚ Support Directors to identify if there will be any capacity gaps as a result of redeploying CCG staff to external organisations
- ✚ Provide a co-ordinated and structured framework and approach to having discussions with staff when there is a request or requirement to temporarily change their duties and responsibilities in accordance with HR governance
- ✚ Ensure that the appropriate employment checks and risk assessments are carried out for staff to be redeployed to roles in line with national advice and guidelines
- ✚ Enable the HR function to record changes and movements of CCG staff that are being redeployed to temporary roles both within the CCG or to support providers/external organisations

Key Principles of staff being redeployed to external organisations:

- Secondment arrangements will be put in place for the duration of the redeployment
- Staff will remain employed by NCL CCG for the duration of the redeployment and continue to receive their salary in line with their substantive role with the CCG or the salary for the role they have been seconded to, whichever is higher.
- Staff will continue to receive all benefits and staff support from NCL CCG for the duration of the secondment
- NCL CCG will ensure that all employment checks required for staff to be redeployed to roles will be undertaken in accordance with national guidance
- Staff and the CCG line manager should continue to remain in touch for the duration of the secondment

To enable the HR function to centrally record all requests from external organisations, Directors will be required to complete the HR Form: COVID 19 External Resource Request Form

The following flow chart outlines the approach to managing requests for CCG staff from external organisations to support COVID-19 priorities and activities.

Managing Requests for Workforce Resource from External Organisations to Support COVID-19 Priorities and Activities

