

<b>Report to:</b>	Cabinet	<b>Date of Meeting</b>	25 June 2020
<b>Subject:</b>	<b>COVID 19 – PROCUREMENT ARRANGEMENTS</b>		
<b>Report of:</b>	Executive Director of Corporate Resources and Customer Service	<b>Wards Affected:</b>	All
<b>Cabinet Portfolio:</b>	Leader of the Council		
<b>Is this a Key Decision:</b>	Yes	<b>Included in Forward Plan:</b>	No
<b>Exempt Confidential Report:</b>	No		

### Summary:

As part of the central government response to the COVID 19 pandemic, a number of Policy Procurement Notes (PPN) were issued to all Council's that provided direction on how certain procurement activities should be administered and how existing contractual relationships between the council and 3<sup>rd</sup> parties should be maintained or could be varied.

The Council's own Contract Procedure Rules set out how the Council should administer its contractual arrangements therefore it is important that visibility is provided on how these maybe impacted. As a result, this report seeks to delegate authority to officers in order to amend current Council goods and/or services and works contracts to ensure continuity in the operation of Council services, or appoint an emergency contractor as per the Government's PPNs.

### Recommendation(s):

Cabinet are recommended to approve that:-

- (i) In relation to contracts where the supplier has requested an amendment due to COVID-19, or in the event that the Council needs to appoint an emergency supplier due to COVID-19, a delegation be made such that until 30 September 2020:
  1. Heads of Service in consultation with the relevant Cabinet Member be authorised to negotiate, draft (with appropriate procurement and legal support) and enter in to a contract variation where they can be accommodated and contained within that services existing budget provision; or
  2. In the event that expenditure cannot be contained within that services existing budget provision further engagement and approval be sought from the Council's Chief Executive and Section 151 Officer on the basis that the expenditure can be contained within the councils overall approved budget.

- (ii) All actions taken under such delegation will be formally recorded in writing and reported to the Cabinet meeting in September 2020 together with a recommendation on whether the delegation is required to be maintained due to the impact of the pandemic.
- (iii) It be noted that the proposal was a Key Decision but had not been included in the Council's Forward Plan of Key Decisions. Consequently, the Leader of the Council and the Chair of the Overview and Scrutiny Committee (Regulatory, Compliance and Corporate Services) had been consulted under Rule 27 of the Access to Information Procedure Rules of the Constitution, to the decision being made by Cabinet as a matter of urgency on the basis that it was impracticable to defer the decision until the commencement of the next Forward Plan because, in accordance with Government guidance, these variations need actioning as soon as possible to assist the Council with continuity of services, and contractors with liquidity.

**Reasons for the Recommendations:**

This report aims to expedite approval for each contract variation or new contract appointment arising due to COVID-19 ensuring that there is no delay in effecting an appointment or variation due to governance issues and to comply with government guidance.

**Alternative Options Considered and Rejected:** (including any Risk Implications)

In the event that this delegation is not in place, each responsible officer would have to request authority to amend a contract. This would cause delay in implementing the PPNs and could result in solvency issues for the provider(s) and/or service delivery delays / problems for the Council in its attempts to respond to the COVID-19 emergency.

**What will it cost and how will it be financed?**

**(A) Revenue Costs**

There are no revenue costs arising from this report if the recommendations are approved.

**(B) Capital Costs**

There are no capital costs arising from this report if the recommendations are approved.

**Implications of the Proposals:**

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

<p><b>Resource Implications (Financial, IT, Staffing and Assets):</b> As outlined in the report</p>
<p><b>Legal Implications:</b> As outlined in the report</p>
<p><b>Equality Implications:</b></p>

Any equality implications will be formally recorded by the contract manager
-----------------------------------------------------------------------------

**Contribution to the Council's Core Purpose:**

Protect the most vulnerable: Many of the Council's contracts are for social care. Ensuring that the providers of those services are not unfunded helps ensure contract continuity and ensure that where contracts have had to cease due to COVID-19 they can start up again as soon as practicable.
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Facilitate confident and resilient communities: Increase the Council's ability to effectively respond to the COVID-19 emergency.
----------------------------------------------------------------------------------------------------------------------------------

Commission, broker and provide core services: The Council commissions services which meet the defined needs of communities, are person-centred and localised where possible. In responding to the COVID 19 pandemic it is essential that the Council can effectively respond to meet local need.
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Place – leadership and influencer: The Council will ensure that through these proposals that it is acting in the best interests of Sefton and its residents.
--------------------------------------------------------------------------------------------------------------------------------------------------------------

Drivers of change and reform: N/A
-----------------------------------

Facilitate sustainable economic prosperity: The aim of the PPNs is to prevent solvency issues and ensuring economic prosperity of local authority contractors.
----------------------------------------------------------------------------------------------------------------------------------------------------------------

Greater income for social investment: N/A
-------------------------------------------

Cleaner Greener: N/A
----------------------

**What consultations have taken place on the proposals and when?**

**(A) Internal Consultations**

The Executive Director of Corporate Resources and Customer Services has been consulted any comments have been incorporated within the report. (FD 6042/20)

The Chief Legal and Democratic Officer has been consulted and any comments have been incorporated within the report. (LD 4225/20)

**(B) External Consultations**

N/A

**Implementation Date for the Decision**

Following the expiration of the call-in period.

<b>Contact Officer:</b>	<b>Alice Churm-Waring</b>
Telephone Number:	

Email Address:	<b>Alice.churm@sefton.gov.uk</b>
----------------	----------------------------------

## Appendices:

N/A

## Background Papers:

Cabinet Office Procurement Policy Note 01/20 “Responding to COVID-19” March 2020 (<https://www.gov.uk/government/publications/procurement-policy-note-0120-responding-to-covid-19>) (**PPN01/20**)

Cabinet Office Procurement Policy Note 02/20 “Supplier relief due to COVID-19 March 2020 (<https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19>) (**PPN02/20**)

### 1. Background

1.1 As part of the response to the current pandemic, central government have issued a number of directives to local government on its responsibilities and how it should manage its activities during this period. One of the areas for which guidance has been received has been in respect of procurement activity. This relates to both existing contractual relationships and potential new relationships that maybe required on an emergency basis.

1.2 As such two Procurement Policy Notes (PPN’s) have been received by the Council. The Cabinet Office issued Procurement Policy Note 01/20 “Responding to COVID-19” on 18 March 2020 (**PPN 01/20**) giving guidance that contracting authorities may have to procure goods, works and services with extreme urgency and advised on methods that could be used to do this and still comply with the Public Contract Regulations 2015. As a result there are two existing grounds that allow the Council to make direct awards and modify contracts during their term and PPN 01/20 confirms that these will apply to the COVID-19 emergency:

1. Reg. 32 (2)(c) allows Local Authorities to direct award contracts but these can only be used in the most extreme circumstances and the reasons of urgency must not be in any way attributable to the Council. PPN 01/20 recognises that these grounds for urgency apply in the case of COVID-19.

**Note:** Officers are therefore being required to keep written documentation of each decision taken under the delegations proposed by this report. This will require support form Procurement and Legal Services colleagues.

2. Reg.72 allows a Council to modify a contract during its term in certain circumstances. Written justifications should be maintained where relying on any Reg.72 modification and such modifications should be limited to only what is necessary.

**Note:** Officers are therefore required to document each decision taken. This will require support form Procurement and Legal Services colleagues.

Following receipt of this initial notice, the Cabinet Office issued a further Procurement Policy Note 02/20 “Supplier relief due to COVID-19” (**PPN 02/20**) on 20 March 2020. This sets out guidance and information for public bodies on

payment of suppliers to ensure service continuity and to protect jobs during and after the COVID-19 outbreak. This guidance endeavours to ensure that contractors are paid on appropriate terms to ensure ongoing provision, business continuity and ensure suppliers at risk are able to resume normal contract delivery once the outbreak is over. It is anticipated that this will form most of the changes made under this report.

## **2.0 Impact on Sefton MBC**

- 2.1 These notices that have been received by the Council are technical in nature, but they provide the basis for making decisions that support the Council's response to the COVID 19 pandemic. They also provide guidance for existing suppliers of goods and services to the Council on how to approach the Council for support during the pandemic when normal activity has been disrupted.
- 2.2 As stated, it is considered that it is the second PPN that will have the greatest impact on the Council. Under normal circumstances changes to contractual arrangements would take place under the Council's Contract Procedure Rules and Financial Procedure Rules (if prepayments are to be considered for example). As members will be aware the pace of the response to the pandemic and the volume of issues arising mean that it will not always be possible to wait, for example until forthcoming Cabinet meetings, in order to seek approval to variations or new arrangements that maybe required to support the Council's response.
- 2.3 As a result of this, a delegation is sought for any variations to be made by the relevant Head of Service in consultation with the appropriate Cabinet Member where the impact can be met from within that services existing budget provision for a defined period.
- 2.4 Where the financial impact cannot be contained within the service budget, the matter must be considered and approval must be provided by the Chief Executive and Section 151 officer to ensure that the expenditure can be contained within the Council's overall budget. Any decisions made under this delegation will be reported to Cabinet at the September 2020 meeting together with a further decision that will either recommend that the delegation be brought to and end on 30 September 2020 or extended for a further period
- 2.5 Such an approach will support the Council in both responding to the current pandemic and ensuring that the Council is complying with Government policy.
- 2.6 COVID-19 has had an unprecedented impact on all aspects of the Council's operations and the ability of suppliers of goods, services and works to fulfil requirements. The Council had several tenders planned to take place over the next few months, however COVID-19 means that these tenders might not be able to take place. It is therefore proposed that where appropriate current contracts are modified, or direct awards of contract take place to ensure provision of these, often key, services.
- 2.7 As members are aware state aid is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union (EU). With regard to state aid, it is anticipated that any amendments to the commercial arrangements

between the Council and its existing contractors fall within the realms of the existing contract, therefore state aid is unlikely to be applicable.