

COVID-19 Contracts & Commissioning Board (CCB)

Summary Report & Recommendations

1. Details

Project title:	PPE Procurement for COVID-19
Name and role of report author:	Matthew Devan –Strategic Procurement Manager
Directorate and Service Area:	Commissioning and Procurement - Commissioning and Procurement (Corporate)
Executive Director: Director/Head of Service:	Jaqueline Harris-Baker/ Sarah Warman/ Bianca Byrne
Statutory Service (Yes or No):	No
Procurement Stage (RP2 or RP3):	Regulation 19 Notification Report
Key Decision (Yes or No - if Yes, include ref and if using General Exemption):	No

2. Summary

Summary of Project

Since the outbreak of COVID-19 the Council has been required to procure large amounts of PPE to protect front line Council workers, and latterly on behalf of social care providers such as residential and nursing care homes who have struggled to maintain their own supply chains. The required PPE includes gloves, aprons, gowns, face masks, eye protection, hand sanitiser and hand wash. The Council has been required to act at pace to procure this PPE in what has become a very volatile market.

The sourcing of PPE has been undertaken centrally via the Commissioning and Procurement Division to enable the Council to benefit from bulk purchasing and ensure a coordinated approach is taken. The emerging PPE requirement required immediate action to procure PPE from a variety of sources and suppliers, compounded by the challenge in obtaining PPE due to the huge surge in global demand for PPE as COVID-19 has spread around the globe. The Council has been competing with both other public bodies and private sector organisations for a limited supply.

Due to the emergency nature of this requirement and limited amount of PPE available, there was no opportunity to go out via a formal procurement route and instead informal arrangements were made from a variety of suppliers that were able to source PPE at short notice. The lack of supply led to a number of difficulties in procuring PPE including existing suppliers having no stock, inflated prices, long lead times, requirements for up-front payment, risks of new suppliers and substandard products.

Nonetheless, to ensure the Council obtained the correct PPE in a timely manner at the best possible prices the following principles were adhered to:

- Use of existing suppliers where possible;
- Benchmarking of market prices to ensure we are paying the appropriate amount;
- Buy in bulk where this offers economies of scale;
- Where forced to buy from new suppliers/ pay up front check company history and product certification before ordering;

As the market has changed some prices have increased further (notably disposable gloves). Where this has happened sign off has been sought from the Director of Commissioning and Procurement, prior to making the purchase.

Up until 5th May 2020 £382,332 of cost has been committed. Not all this cost has been incurred yet as stock deliveries are arranged up until June. In addition the Council is expected to incur a further £15,000 of cost in stock, in order to have enough PPE to supply to our staff until the end of October. The supply to date has been provided by 17 different suppliers as follows:

Supplier	Amount
Drive Devilbiss	£228,000
Wealdon Rehab	£39,600
Fortuna Group	£39,300
Stockdale Martin Ltd	£17,572
MDS Healthcare Limited	£12,558
Arco	£11,500
Greenham Ltd	£9,977
GMC Corshill	£8,173
John Preston & Co	£3,360
Ethical Stationery	£2,760
MI Supplies	£2,609
Janitorial Express	£1,516
Right Ideas	£1,494
Rowland Bros t/a Fibrous	£1,125
The Glove Club	£983
Felgains	£900
Robinson Healthcare	£511
Delivernet	£395
Total	£382,332

Social Care Providers

In addition to supplying PPE for Council staff, the Council has also provided assistance for social care providers. This assistance has come in the form of providing emergency PPE for social care providers where requested. The PPE for these providers has been obtained from emergency provisions supplied by the government and through emergency help from St George's hospital.

West London Alliance Pan London Procurement

The West London Alliance (WLA) is now leading on a pan London procurement route as a central source of PPE for London Councils. WLA, through the London borough of Ealing, have been to their Cabinet setting out that they are relying on Regulation 32 of the Public Contract Regulations allowing procurement for reasons of extreme urgency.

The Council has entered into a Memorandum of Agreement (MOA) under which it is seeking to place a large order with the WLA for stock for the next 6 week period. This order would be for both the Council and social care providers. This extends the offer for social care providers from an emergency supply to offering to supply all required PPE on a chargeable basis. The Council order includes 300,000 additional masks for council staff, to distribute to staff commuting into work over the next 6 months. The social care providers' PPE would be initially paid for by the Council and then recharged to the social care providers. The cost of this order is estimated at approximately £694,516 of which £324,950 is for the Council and £369,566 is for the social care providers.

Cost Breakdown

Description of Cost

Council cost incurred to date	£382,332
Estimated Council cost for WLA order	£324,950
Estimated extra Council orders up until 31 October	£15,000
Council sub Total	£722,282
Estimated Social Care Provider cost of WLA order*	£369,566

Total estimated cost until 31 October	£1,091,848
--	-------------------

*Rechargeable to Social Care Providers

Length of PPE Requirement

It is unclear at present how long the requirement for PPE will continue. As set out above this has been costed until the end of October 2020. Depending on any continuing risk of COVID-19 the Council may not be required to purchase PPE all the way through until October 2020. The purchasing up until October is anticipated to be primarily through the WLA.

Reason for Urgency

PPE has and continues to be urgently required to reduce the risk of damage to persons for front line Council staff (and social care providers' staff). These staff are exposed to risk of catching COVID-19 which could result in illness and even death. A practical way of mitigating this risk is by supplying disposable PPE to reduce the risk of infection. The sudden onset and unprecedented scale of the COVID 19 pandemic means the Council could not have reasonably been expected to foresee this requirement and has been unable to procure in the normal way.

As such the urgent requirement for PPE meets the requirements of Regulation 19.3 Tenders and Contracts Regulations (TCR):

19.3 For Disasters and Emergencies where there is a clear need to provide a service or product immediately in the instance of a sudden unforeseen crisis or the immediate risk is to health, life, property or environment, compliance when these regulations may not be feasible. Any Director may place an order for supplies, services or works as the circumstances require after seeking approval from the chair of CCB, clearly stating the immediate procurements required. If that is not feasible for example due to outside of normal working hours then immediately after when reasonably feasible. A report of contracts awarded and any future procurements required will require approval by the Chair of CCB and if applicable Cabinet at the next available meeting after the event.

In terms of the Public Procurement Regulations 2015 (PCR), The Covid-19 outbreak is deemed to be an emergency as confirmed by the Cabinet Office Procurement Policy Note - Responding to COVID-19 March 2020 Information Note PPN 01/20 which sets out information and associated guidance on the public procurement regulations and responding to the current coronavirus, COVID-19, outbreak. The procurement of supplies without undertaking a competitive process is considered justified pursuant to Regulation 32 (2)(c) of the PCR which permits contracting authorities to procure goods, services and works under extreme urgency.

Options Considered

The following options are set out below; with option 1 the recommended option:

Option	Pros	Cons
Direct award of PPE contracts based on an ad-hoc approach where stock is available.	Achieves quickest route for PPE to be obtained ensuring Council staff access PPE in time. Ensures the Council can react quickly to a changing landscape to secure PPE stock as when it becomes available. Permitted to direct award due to extreme urgency (regulation 32(2)(c); as set out in PPN 01/20.	Could be deemed not to comply with national and Council regulations leading to possible procurement challenge. May not obtain best value for money compared to competitive tender.
Procure PPE through OJEU compliant tender process	Ensure compliance with OJEU and Council procurement policy.	Even using an accelerated procedure the time taken to procure would have led to a delay in supplying PPE leading to increased risk on front line staff. Lack of flexibility to obtain stock in a rapidly changing marketplace.

Due to the extreme emergency the only viable option is to direct award PPE contracts based on an ad-hoc approach where stock is available. This is because the overriding driver is to ensure that PPE is provided to front line staff in a timely way and this is the only option which achieves this aim.

3. Recommended Procurement Strategy during COVID-19

Recommendation:

1. The Chair of CCB and the nominated Cabinet Member for Finance & Resources in consultation with the Leader are requested to note:
 - 1.1 the contractual commitments for the urgent supply of PPE made pursuant to Regulation 19.3 Tenders and Contracts Regulations by the Council as described in this report;
 - 1.2 that further emergency orders, including those placed pursuant to the MOA described in this report, up to an aggregated value (in terms of supplies for the Council's own needs) of £722,282 will be notified in October.
2. The contracts and commissioning board is requested to endorse the above recommendations.

4. Financial Implications

Details	Internal Capital	Revenue	Period funding of	External		Period of funding
				Capital	Revenue	
Council cost up until 31 October 2020 – funded from Covid-19 grant		£722,282	2020-2021			
Social Care Providers cost through WLA		Net £0 - £369,566 cost to be reclaimed by the Council	2020-2021			

5. Actions

Action	Action owner			Date
Confirm order and pricing through pan London procurement	Matthew Warman	Devan/ Sarah		w/c/ 4 th May.
Recharge of costs to Social Care Providers from pan London procurement	Matthew Warman	Devan/ Sarah		w/c25th May (estimated depending on delivery dates)

6. Outcome and approval

Outcome	Date agreed	
Cllr Hall approved 11/05/2020	CCB (07/05/2020)	CCB1580/20-21
	Leader/Lead Member	

Appendix 1:

A. Summary of regulations (PCR 2015)

- Various options already exist:
 - direct award due to extreme urgency (Reg. 32(2)(c))
 - direct award due to absence of competition or protection of exclusive rights (Reg.32(2))
 - call off from an existing framework agreement or DPS
 - call for competition using a standard procedure with accelerated timescales – *further info below*
 - extending or modifying a contract during its term (72(1)(c)) – *further info below*
- Depending on specific nature of requirement there may also be the following options:
 - additional delivery of supplies from an existing supplier (Reg. 32(5))
 - additional similar works or services from an existing supplier (Reg. 32(9))
 - using the services of a subsidiary of another contracting authority (Reg. 12)
- **Using a standard procedure with accelerated timescales due to urgency**
 - can reduce minimum timescales if a state of urgency renders the standard timescales impracticable
 - for open procedure, timescales can be reduced to 15 days for receipt of tender plus min. 10 days for standstill
 - no express requirement for situation to be unforeseeable or not attributable, but should set out in OJEU notice a clear justification; e.g.:
“The COVID-19 outbreak has given rise to an urgent need for the supply of [description of what is being procured] because [explanation of urgency]. This does not give [name of contracting authority] sufficient time to comply with the standard [open procedure / restricted procedure / competitive procedure with negotiation] timescales for this procurement. [Contracting authority] considers this to be a state of urgency which it has duly substantiated. Accordingly, [contracting authority] is using the accelerated time limits permitted under the Public Contract Regulations 2015 (regulation [27(5) for the open procedure / 28(10) for the restricted procedure / 29(10) for the competitive procedure with negotiation]) in respect of this procurement”.
- **Extending or modifying a contract during its term (Reg. 72(1)(c)):**
 - contracts can be modified without a new procurement procedure in any of the following cases, and where the conditions are met:
 - (c)(i) *the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen*
 - (c)(ii) *the modification does not alter the overall nature of the contract*
 - (c)(iii) *any increase in price does not exceed 50% of the value of the original contract or framework agreement*
 - Need to demonstrate specific reason relating to COVID-19 outbreak that decision was taken, e.g. staff are diverted by procuring urgent requirements to deal with COVID-19 consequences, or staff are off sick so cannot complete a new procurement exercise.
 - should publish the modification by way of an OJEU notice to say you have relied on regulation 72(1)(c)
 - multiple modifications are permissible but each one should not exceed 50% of the original contract value
- Other grounds under Reg 72 may also exist

B. Justification for Urgency (Part 5A article 1.7 of the Constitution)

- Where the Executive Director or other Director preparing a report ... is of the opinion that a relevant decision should be made urgently in order to prevent or reduce the risk of damage to persons or property or to the interests of the Authority, and that the urgency of the matter is such that it is not practicable to complete the decision making process set out above
- Applying the above to the COVID-19 situation, the urgency route should only be used for:
 - Services, supplies etc. relating to COVID-19 (e.g. PPE)
 - Contracts impacted by COVID-19 (e.g. supplier relief)
 - In the context of the current situation where there is unexpected and immense pressure on capacity and resources while the Council responds to the COVID-19 situation, to enable interim measures to be implemented e.g. roll on of required services which would otherwise have been re-procured.