



Private Finance Initiative and PF2 Projects

Supporting vital service provision in PFI /PF2 (and related) contracts during the COVID-19 emergency

This Guidance Note should be read alongside, and is consistent with, the Cabinet Office *Procurement Policy Note - Supplier relief due to COVID-19* and *Guidance notes on Model Interim Payment Terms - Procurement Policy Note 02/20*. Both documents can be found at:

<https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19>.

- **PFI contractors should consider themselves to be part of the public sector response to the current COVID-19 emergency.**
- **PFI contracting counterparties should co-operate to ensure the continued delivery of public services (the COVID-19 emergency is not, and is not to be, regarded as an event of force majeure).**
- **PFI contractors should ensure contingency plans are up to date and have been reviewed and discussed with contracting authorities to enable continuity of full services as far as possible to respond to the emergency and maintain vital public services, particularly across the NHS.**
- **Contracting authorities should work closely with PFI contractors to use all available options to maintain public services during the emergency period. This will include maintaining unitary charge payments (enabling PFI contractors to pay their workforce and suppliers), revising contract requirements/ standards (including scope changes where necessary) and moderating payment and performance mechanism regimes where appropriate.**

Background

1. PFI contracts deliver vital public services that must continue to be delivered during the current COVID-19 emergency. PFI contractors should now see themselves as part of the public sector response to COVID-19 and, as such, work cooperatively with their contracting authorities to ensure, as far as possible, vital services continue. Contracting authorities must reciprocate and ensure that where services or performance are impacted due to COVID-19 despite the best efforts of the PFI contractors, there should be a temporary moratorium on related payment and performance mechanism deductions/points so that PFI contractors can continue to operate as far as possible and pay their workforce and suppliers.



Detail

2. PFI contracts provide vital services and support to our public services across the UK. The provision of those services and support is needed as part of our national response to the COVID-19 emergency.

3. As a matter of contract, Government does not regard COVID-19 as an event of force majeure and therefore expects that best efforts are made by all parties for the continuation of service provision under PFI contracts at this critical time for the country.

4. PFI contractors will be implementing their contingency arrangements to enable continuity of service. It is critical however that contracting authorities recognise that PFI contractors may not be able to achieve full performance under the PFI contract due to the on-going COVID-19 emergency, including where due to illness in the workforce and to the need to introduce revised ways of working to protect health and safety. Where this is the case, it should be agreed locally to moderate contract requirements and standards and payment and performance mechanism arrangements to a point where they support the stable delivery of vital services for the duration of the emergency. In those circumstances normal unitary charge payments to PFI contractors should be maintained (we would recommend having regard to the net level of unitary charge payments over the last three months as a performance baseline) and there should be a temporary moratorium on related payment and performance mechanism deductions/points so that PFI contractors can continue to operate and pay their workforce and suppliers. We would expect that bespoke contractual documents will be used to implement these temporary arrangements in PFI contracts rather than by the template set out in the *Guidance notes on Model Interim Payment Terms - Procurement Policy Note 02/20*.

5. Under no circumstances should contract requirements or performance standards be relaxed to the point where health and safety is put at risk.

6. In some cases it is possible that contract requirements and performance standards may need to be increased, for example reconfiguration of areas or enhanced/additional cleaning, and unitary charge payments may need to be adjusted to reflect any required increase in requirements/ standards (and it is recognised that there may be other circumstances in which there may be increased costs of operation). As set out in PPN 02/20, we expect any increased costs to be presented on an open book basis.

7. Where an asset is to be temporarily closed (for example if a school is to be closed during the emergency) the asset must be kept in such a condition that it can immediately be brought back into use once the current emergency is over. This may require a change in the services that the PFI contractor is required to deliver.

8. PFI contractors must use their best efforts to deliver any new requirements /standards as part of the response to COVID-19.



Summary

9. The COVID-19 emergency requires all of us to work together to protect the public and workers, our vital public services and our economy. This includes the delivery of vital public services to the NHS through PFI contracts.

10. Government requires PFI contractors to continue to deliver agreed requirements and performance standards but, where this is not possible due to COVID-19, local arrangements as set out above should be agreed that will allow facilities and services to be provided by PFI contractors and for those PFI contractors to be able to pay their workforce and suppliers.

Further Advice

11. Further advice is available from the Project and Structured Finance Group at the Infrastructure and Projects Authority.

Email: ipa_finance_team@ipa.gov.uk

12. This is a rapidly developing situation and this Guidance Note may therefore be revised and reissued as necessary.

13. This Guidance Note will be supplemented by a set of Frequently Asked Questions and Answers as the situation develops.

Timing

14. With immediate effect until 30 June 2020.

Infrastructure and Projects Authority

2 April 2020