HM Treasury

HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

For enquiries about distribution of this and other DAO letters please contact Kate Adedipe on 020 7270 5314 or email kate.adedipe@hmtreasury.gsi.gov.uk

www.gov.uk/hm-treasury

DAO(GEN)02/14
All live DAOs are at
https://www.gov.uk/government/organisations/hm-treasury/series/dao-letters

Date: 24 October 2014

Dear Accounting Officer

Early Termination of Contracts

This letter is to remind Accounting Officers of the need to consider carefully, when agreeing to the use of longer term contracts, the use of clauses which require payments to be made to the supplier if the contract is terminated by the public body, through no fault of the supplier.

Contacts

2. Please contact the following to deal with enquiries about this DAO:

- *Specific procurement cases:* Cabinet Office CCS Service desk (Info@CCS.gsi.gov.uk);
- *Regularity or propriety issues:* Jim Duncan, TOA, on 0207 270 4833 or at jim.duncan@hmtreasury.gsi.gov.uk

Action

3. Each Accounting Officer should ensure that his or her staff are aware of the guidance in this letter and act accordingly. The guidance applies to arms' length bodies as well as to their sponsor departments.

Context

4. The Public Accounts Committee recently raised concerns over the inclusion of "termination for convenience" clauses in contracts providing for compensation to be paid to suppliers based on projected supplier profits to contract end where a contract is terminated by the public body, through no fault of the supplier. In particular the Chair of the Committee has asked the National Audit Office to challenge any "politically contentious" contracts that are signed before the general election.

5. In line with Accounting Officers' personal responsibilities, it is up to Accounting Officer to ensure that the decision to include such a clause provides value for money and that the decision can be explained. Departments should therefore undertake an Accounting Officer assessment, including consideration of:

a. whether the market be willing to bid without such clauses, particularly when outsourcing for the first time, or establishing a new market;
b. whether it is likely that, if the public body terminates the contract for policy reasons, the supplier would have a legal case to claim even without the clause being in the contract;
c. whether the clause allows the minimum commitment to pay for the benefit of being able to terminate the contract;
d. normal practice in this area of business;
e. whether the contract apportion risk as intended;
f. whether the amount of profit to be repaid is capped, and how it is scaled according to the timing of the termination; and
g. the timing of signing the contract affects the decision ie signing at a particular time risks an increased cost (as HMG will appear to be forced buyer/seller).

Guidance on forms of contract are to be found in the Treasury's SOPC (PFI) contract terms https://www.gov.uk/government/publications/private-finance-2-pf2) or the Cabinet Office's Model Services Contract https://ccs.cabinetoffice.gov.uk/about-government-procurement-service/contracting-value-standard-terms-conditions, with particular note given to Schedule 7.2 as the basis for agreeing such a provision.

RDBrown

Richard Brown

Treasury Officer of Accounts