



National Audit Office

Report

by the Comptroller
and Auditor General

Cabinet Office

Investigation into government procurement during the COVID-19 pandemic

What this investigation is about

1 Procurement by public bodies in the UK, such as government departments and their agencies, NHS organisations and local authorities, is subject to the regime set out in The Public Contracts Regulations 2015 and related statutory instruments. These regulations seek to ensure that in procuring goods, services and works, public bodies adhere to fair and reasonable timetables and procedures, and encourage open competition. The regulations also require public bodies to document their procurement decisions and actions fully, and to ensure that risks such as conflicts of interest are managed.

2 In responding to the COVID-19 pandemic, public bodies have needed to procure enormous volumes of goods, services and works with extreme urgency. On 18 March 2020, the Cabinet Office issued information and guidance on public procurement regulations and responding to the pandemic. This guidance noted that public bodies are permitted to procure goods, services and works with extreme urgency using regulation 32(2)(c) under The Public Contracts Regulations 2015. This sets out the various options available to public bodies if they have an urgent requirement for goods, services or works due to an emergency such as COVID-19, including the use of direct awards to suppliers without any competition.

3 This regulation allows public bodies to negotiate with any supplier to provide their requirements without undergoing a formal competition. In responding to COVID-19, public bodies may enter into contracts without competing or advertising the requirement so long as they are able to demonstrate that: there are genuine reasons for extreme urgency; the events that have led to the need for extreme urgency were unforeseeable; it is impossible to comply with the usual timescales; and the situation is not attributable to the public body that requires the goods, services or works.

4 Concerns have been raised about the risks to public money that could arise from greater use of this regulation. For example, we have received over 20 pieces of correspondence from members of the public and members of Parliament raising concerns about the transparency of contracts being awarded during the pandemic, potential bias or conflicts of interest in the procurement process, and that some contracts may have been given to unsuitable suppliers.

5 This investigation sets out the facts relating to government procurement during the COVID-19 pandemic covering the period up to 31 July 2020. It covers:

- the need to procure goods, services and works quickly, the regulations that apply to this, and roles and responsibilities (Part One);
- procurement activity during the pandemic (Part Two); and
- management of procurement risks (Part Three).

6 This investigation covers procurement by government departments and their arm's-length bodies but does not cover procurements carried out by NHS trusts, NHS foundation trusts and local authorities on their own behalf. This work does not evaluate the value for money of the contracts awarded over this period. It is part of a wider programme of work related to government's response to the COVID-19 pandemic.¹

7 This report does not include an examination of the wider context of the supply of personal protective equipment (PPE) in which contracts for PPE supply were awarded, or the value for money of those supply arrangements. The circumstances of the pandemic required government to procure unprecedented volumes of PPE, to protect front-line workers, in a global market where demand far exceeded supply. A separate National Audit Office report will examine the supply of PPE, including the performance of national bodies in obtaining and distributing PPE to providers, and the scale and impact of PPE shortages. This report will be published later in November 2020.

8 Appendix One sets out our investigative approach, including a list of organisations that submitted information on their procurement activity during the pandemic, and the 20 contracts that we reviewed. We selected contracts where potential risks were apparent, in many cases having been highlighted in the media or correspondence. It is not possible to extrapolate from the sample to quantify issues in government procurement as a whole.

9 This report contains references to companies where Government is subject to procurement challenge or judicial review. The Government fully reserves its position as regards the judicial review proceedings in relation to the contracts referred to in this report.

¹ Further information is available at www.nao.org.uk/covid-19/

Summary

Key findings

Procurement activity related to the COVID-19 pandemic

10 By 31 July 2020, over 8,600 contracts related to government's response to the pandemic had been awarded, with a value of £18.0 billion. New contracts (including new call-offs from existing framework agreements) accounted for 94% of the contracts awarded by number, with extensions and amendments to existing contracts accounting for the remainder. Contracts ranged in value from less than £100 to £410 million. By 31 July, more than £14.6 billion had been spent on these contracts (paragraph 2.2 and Figure 1).

11 Most of these contracts (86%) were awarded by the Department of Health & Social Care and its national bodies, representing 90% of the total value of contracts awarded. By 31 July 2020, the Department of Health & Social Care and its national bodies had awarded 7,477 contracts with a value of £16.2 billion. Contracts worth £1.8 billion were awarded by other departmental groups. By value, the Department for Education's group was the second largest (£556 million), followed by the Cabinet Office (£279 million). The Department of Health & Social Care in particular had to manage a significantly higher level of procurements than it had done previously as a result of the pandemic. For example, in 2019-20 it awarded 174 contracts worth £1.1 billion, less than 7% of the value of contracts it and its national bodies awarded between January and July 2020 in response to the pandemic (paragraph 2.3 and Figure 1).

12 The Department of Health & Social Care, supported by the Government Commercial Function, mobilised staff from across government to support its procurement of personal protective equipment (PPE). There was an urgent need to procure PPE quickly during the first few months of the pandemic, when demand for PPE was rising sharply. A cross-government team was set up to support this procurement, involving around 450 staff from the Department of Health & Social Care, NHS England & Improvement, the Cabinet Office, the Ministry of Defence, and the Department for Education. The procurement activity included assessing and processing offers of PPE support from over 15,000 suppliers, leading to the award of over 400 contracts (paragraphs 3.11 and 3.12).

13 PPE accounted for 80% of the number of contracts awarded, and 68% of the total value of contracts awarded. Across government, over 6,900 contracts were awarded for PPE, with a total value of £12.3 billion.² This includes £4.3 billion of PPE bought through existing contracts with Supply Chain Coordination Limited (SCCL), which manages the NHS supply chain. Contracts relating to the COVID-19 testing and tracing programmes (138 contracts) had a value of £3 billion (paragraph 2.6 and Figures 4 and 5).

14 Government used a range of procurement routes to obtain goods and services during the pandemic. New contracts worth £17.3 billion were awarded to suppliers, of which: £10.5 billion were awarded directly without any competition; £6.7 billion directly through framework agreements; and contracts worth almost £0.2 billion were awarded using a competitive tender process or using a competitive bidding process from a framework agreement. The framework agreements would have involved a competitive bidding process when they were set up. Government also procured goods and services worth £0.7 billion through amendments or extensions to existing contracts. For PPE procurement, the government was often having to procure goods quickly in a highly competitive international market, which meant that it did not consider it practical to undertake competitive tender exercises. However, it benchmarked the prices being offered with other contracts and offers (paragraphs 2.5 and Figure 3).

Managing risks

15 The widespread use of direct awards to procure goods, services and works may increase the chances that some procurement risks materialise if not correctly mitigated. These risks need to be put in the context of the broader risk of not being able to secure PPE or other necessary goods or services, for example to support critical front-line medical services being delivered. The use of competition in procurement is an important mechanism to ensure that processes are fair, suppliers are treated equally and there is transparency in contract award decisions. Without competition in the procurement process, it becomes even more important that public bodies document their procurement decisions and actions fully, publish their contract awards in a timely manner and manage conflicts of interest effectively. These actions help to maintain public trust in these processes and to prevent procurement decisions being the subject of challenge. The Cabinet Office told us it is currently considering reforming procurement regulations to remove barriers that prevent awarding bodies from running competitive procedures for extremely urgent procurements (paragraphs 1.4 and 3.2).

² The figures of £12.3 billion for total PPE contract value and £4.3 billion for SCCL PPE contract value are based on contract data supplied by the Department of Health & Social Care and other departments for January to July 2020. Our forthcoming report on *The supply of personal protective equipment (PPE) during the Covid-19 pandemic*, to be published later in November, will contain more detail on PPE spend.

16 In March 2020, the Cabinet Office issued technical guidance to support procurement by public bodies during the pandemic. The guidance (Procurement Policy Note 01/20) notes that public bodies are permitted to procure goods and services with extreme urgency under the regulatory framework and identifies the options available to public bodies to do this. It did not specifically set out the risks that should be considered as part of any purchasing decision, such as the additional controls that may be required to manage the risks associated with direct awards. These include perceived or actual bias in awarding contracts or conflicts of interest, that may become more prominent when no competition is involved in the procurement process. The guidance referred to the need to keep proper records of decisions and actions on individual contracts, transparency and publication requirements and the need to achieve value for money and use good commercial judgement during any direct award. The Cabinet Office briefed commercial directors across government on Procurement Policy Note 01/20 on several occasions. The Department of Health & Social Care also wrote to all staff undertaking PPE procurement setting out their procurement obligations, including on transparency and reporting requirements (paragraphs 1.3 to 1.5 and 3.4 to 3.5).

17 Some Cabinet Office spending controls were not applied to PPE procurements, because separate assurance processes were put in place. In addition to departmental spending controls, the Cabinet Office has an additional commercial spending control for all government contracts worth £10 million or more. For all such high-value procurements, including COVID-19 related ones, it examines how and why the goods, services or works were procured from a commercial perspective before giving its approval for the spending. However, the Cabinet Office decided not to apply this control to the award of PPE contracts because of the speed at which it needed to purchase PPE in a highly competitive international market and the seniority of the staff working on PPE. Instead, the Department of Health & Social Care and the Cabinet Office put in place a clearance board to approve PPE contracts more than £5 million. PPE procurements were subject to normal departmental spending controls, including HM Treasury approval (paragraphs 3.6 to 3.9 and 3.13, and Figure 7).

18 The procurement processes established by the cross-government PPE team enabled PPE to be purchased quickly, but some procurements were carried out before all key controls were put in place. The cross-government PPE team established an eight-stage process to assess and process offers of support to supply PPE, but not all processes were in place during early procurements. For example, it set up processes to rapidly check suppliers' equipment against government's PPE specifications and to undertake financial and company due diligence on the suppliers. However, it had awarded contracts to 71 suppliers, with a total value of £1.5 billion, before the financial and company due diligence process was standardised. The Department for Health & Social Care told us that of the contracts with the 71 suppliers, to date 62 had been delivered, three had been cancelled and the remaining contracts were ongoing. It also told us that across all equipment bought by the cross-government PPE team and received, it had calculated the failure rate as 0.5% by volume. In addition to the eight-stage process, given the short time frames involved, the PPE team compared prices to those obtained within the previous two weeks to benchmark the competitiveness of offers, with separate approval required for any offers that were not within 25% of an average considered for possible approval (paragraphs 3.13 and 3.19, and Figure 7).

19 The cross-government PPE team established a high-priority lane to assess and process potential PPE leads from government officials, ministers' offices, MPs and members of the House of Lords, senior NHS staff and other health professionals. The cross-government PPE team considered that leads from these sources were more credible or needed to be treated with more urgency. The high-priority lane sat alongside a normal lane established to assess and process other offers of PPE support. Procurement regulations aim to ensure that there is a level playing field for suppliers to compete for contracts, while allowing for direct contract awards in circumstances such as extreme urgency. Both lanes used the same eight-stage process to assess and process offers. About one in ten suppliers processed through the high-priority lane (47 out of 493) obtained contracts compared to less than one in a hundred suppliers that came through the ordinary lane (104 of 14,892). The sources of the referrals to the high-priority lane were not always recorded on the team's case management system and we found a case where a supplier was added to the high-priority lane in error (paragraphs 3.10 and 3.12 to 3.14, and Figures 6, 7 and 8).

20 We found inadequate documentation in a number of cases on how the risks of procuring suppliers without competition had been mitigated. For procurements where there is no competition, it is important that awarding bodies document very clearly why they have chosen a particular supplier and how any associated risks from a lack of competition have been identified and mitigated. This is to ensure public trust in the fairness of the procurement process. We found examples where departments failed to document fully the consideration and management of risks, such as the justification for using emergency procurement, why particular suppliers were chosen, or how any potential conflicts of interest had been identified and managed. Notwithstanding the documentation issues, in the examples we examined where there were potential conflicts of interest involving ministers, we found that the ministers had properly declared their interests, and we found no evidence of their involvement in procurement decisions or contract management. The ministerial code and other codes of conduct set out how interests should be managed within an individual department, but not where there are cross-government responsibilities or where procurement is carried out across multiple departments. (paragraphs 3.17 to 3.23, and Figures 9, 10 and 11).

21 Some contracts were awarded retrospectively after some work had already been carried out. For example, the Cabinet Office awarded a £3.2 million contract to support the cross-government PPE team's procurement of PPE on 21 July 2020, with the contract effective from 14 March 2020. The Cabinet Office awarded an £840,000 contract for focus groups and other communications work on 5 June 2020, with the contract effective from 3 March 2020. By procuring work without a formal contract setting out full details of work and how it is managed, government increases risks including underperformance (paragraph 3.21).

22 There was not always a clear audit trail to support key procurement decisions. In August 2020, Cabinet Office asked the Government Internal Audit Agency to undertake a review of six PPE contracts that have attracted media attention. The review found that while there was evidence for most controls being applied, there were some gaps in the documentation to support key procurement decisions, such as why some suppliers which had low due diligence ratings were awarded contracts. We also found gaps or limited documentation to support some key decisions made in the risk-based sample of 20 contracts we looked at, including PPE contracts (paragraphs 3.20 to 3.23).

23 Many of the contracts awarded over this period have not been published in a timely manner. Transparency is a key control to ensure accountability for procurement decisions taken and particularly important to mitigate risks associated with increased use of emergency direct awards. General guidance issued by the Crown Commercial Service recommends that awarding bodies publish basic information about the award of all contracts within 90 days of the award being made. Of the 1,664 contracts awarded across government up to the end of July 2020 with a contract value above £25,000, 55% had not had their details published by 10 November and 25% were published on Contracts Finder within the 90-day target. For contracts where basic details have already been published, it took on average 92 days from the date of the award for this information to be published. For contracts requiring contract award notices to be published to the Official Journal of the European Union, the Department for Health & Social Care reported for the same period that these had been published for 89% of 871 contracts. The Cabinet Office and the Department of Health & Social Care acknowledged the backlog of publications and noted that resources were earlier prioritised on making goods and services available for the pandemic response (paragraphs 3.24 to 3.27).

Concluding remarks

24 In the months following the emergence of the COVID-19 pandemic in March 2020 in the UK, government awarded around £18 billion of contracts using emergency procurement regulations to buy goods, services and works to support its response to the pandemic. Government was having to work at pace, with no experience of using emergency procurement on such a scale before and was developing its approach at the same time as procuring large quantities of goods and services quickly, frequently from suppliers it had not previously worked with, in a highly competitive international market. This procurement activity secured unprecedented volumes of essential supplies necessary to protect front-line workers. Our separate report on the supply of PPE looks in detail at the extent to which demand for that equipment was met and the value-for-money achieved.

25 While government had the necessary legal framework in place to award contracts directly, it had to balance the need to procure large volumes of goods and services quickly, with the increased commercial and propriety risks associated with emergency procurement. We looked in detail at a sample of contracts selected on a risk basis. Although we found sufficient documentation for a number of procurements in our sample, we also found specific examples where there is insufficient documentation on key decisions, or how risks such as perceived or actual conflicts of interest have been identified or managed. In addition, a number of contracts were awarded retrospectively, or have not been published in a timely manner. This has diminished public transparency, and the lack of adequate documentation means we cannot give assurance that government has adequately mitigated the increased risks arising from emergency procurement or applied appropriate commercial practices in all cases. While we recognise that these were exceptional circumstances, there are standards that the public sector will always need to apply if it is to maintain public trust.

Recommendations

26 Our recommendations aim to ensure that, should the widespread need to procure goods with extreme urgency happen again, the associated risks to public money and propriety are managed effectively.

- a Awarding bodies should publish basic information on contracts in a reasonable time, in line with guidance to publish within 90 days of award.**

Transparency is one of the key controls to mitigate the risks associated with emergency direct awards. Therefore, during these types of situation, it is critical that basic information on contract awards is published as soon as possible.
- b The Cabinet Office should issue further guidance on specific procurement risks arising from greater use of regulation 32(2)(c).** The guidance should build on the lessons government has learned from the use of this regulation during the pandemic to date and in particular cover the levels of transparency and documentation required for key decisions, such as choice of procurement route. The Cabinet Office should continue to monitor the use of regulation 32(2)(c), as part of the decisions that it considers through the Cabinet Office controls process, to ensure any continued use is fully justified, and review the operation of procurement rules to encourage greater use of competitive procedures in extremely urgent procurements.
- c Awarding bodies should provide clear documentation for establishing and using procedures that may result in unequal treatment of suppliers.**

While segmenting suppliers based on strength of evidence to deliver can be beneficial in speeding up the procurement process, awarding bodies need to ensure that the criteria for segmenting suppliers is documented, applied consistently and records of each evaluation of supplier's suitability are kept to support procurement decisions and avoid perceptions of unfair treatment.
- d When procuring directly from suppliers, awarding bodies need to provide clear documentation on how they have considered and managed potential conflicts of interest or bias in the procurement process.** Before awarding contracts, awarding bodies should document due diligence checks carried out on suppliers and associated parties. Steps to manage actual and perceived conflicts of interest, for example those set out in the *Ministerial Code* and *Civil Service Management Code*, or other actions taken by awarding bodies should be properly documented.

- e **The Cabinet Office should review whether requirements for disclosure and management of relevant interests are sufficient in cases where public office-holders hold cross-government responsibilities for awarding contracts or procurement.** For such cases, the Cabinet Office should take steps to enable departments and other government bodies to identify any potential conflicts of interest by strengthening existing measures in place.