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Iechyd Cyhoeddus
Cymru
Public Health
Wales

Name of Meeting
Board

Date of Meeting

30 April 2020

Agenda item:

4.7.300420

Financial Authority Arrangements (COVID-19)

Executive lead: Huw George, Deputy Chief Executive and Executive Director of Finance and Operations

Authors: Helen Bushell, Board Secretary and Head of Board Business Unit

Angela Fisher, Deputy Director of Finance and Operations

Approval/Scrutiny route: Huw George, Deputy Chief Executive and Executive Director of Finance and Operations

Purpose

To propose a number of variations to the Standing Financial Instructions in light of COVID-19.

Recommendation:

APPROVE

CONSIDER

RECOMMEND

ADOPT

ASSURANCE

In light of COVID-19, the Board is asked to **approve**:

1. Option (2) in relation delegated financial limits:-

- o delegate to the Chief Executive the ability to commit financial resources up to £1m

2. Option (1) in relation to Procurement Thresholds & processes:-

- a. suspend the SFI Procurement thresholds as outlined but retain the relevant procurement processes (e.g. requisitioning, ordering etc).
- b. the requirement to seek approval from the Audit and Corporate Governance Committee for contracts, goods or services requiring a STA/SQA be temporarily suspended.

We propose the above take effect immediately and remain in place for 12 weeks pending further review.

Introduction and Context

The Standing Financial Instructions (SFIs) set out, together with a range of other framework documents, the arrangements for the Board and the wider organisation to make financial decisions and authorise expenditure.

The COVID-19 Emergency requires the organisation to rapidly procure and place orders for goods & services following decisions by Gold, Silver or Bronze Commands, sometimes prior to identification of a funding source. Welsh Government (letter dated 30 March) have confirmed that:

- Their expectation is that in most cases operational costs of the response to COVID-19 would be met from within existing health bodies funding as a consequence of switching resources away from planned (healthcare) activity;
- There are some costs which will be met centrally as part of the national coordinated response;
- Where an organisation has a need to incur specific additional costs associated with the local response, or where an organisation has a national leadership role, then Welsh Government will consider making additional revenue funding available on the basis of a short business case explaining the additional cost, the likely timeframe it will be incurred, and why it can't be met within existing allocations;
- Welsh Government will be looking to establish a rapid and pragmatic approval and allocation process. However, not to slow or stop procurements and developments while waiting for funding confirmation.

The finance team within our organisation have set up a cost centre to record all COVID-19 related expenditure. Monthly reports are provided to Gold group along with relevant reports to Audit & Corporate Governance Committee and the Board.

There is also a requirement to submit monthly monitoring returns to Welsh Government on COVID19 expenditure, which will include what mitigating action we are taking to cover elements of these costs within our organisation.

Risk - The Board is asked to note that whilst we always undertake to either seek funding approval from Welsh Government or identify from our own budgets, the Board should not that the total quantum of funding for addressing COVID-19 across Wales remains fluid and uncertain. There is a risk that the organisation's operational cost of addressing the pandemic cannot be contained within available funding resulting in a potential breach of the planned outturn for 2020-21.

Temporary variation to Delegated Financial Limits to authorise expenditure commitments

To ensure that we can facilitate agile decision making and reduce unnecessary bureaucracy, without compromising strong governance, we ask the Board to approve the temporary variation to parts of the Standing Financial Instructions (March 2014 edition), specifically the delegated financial limits. The full set of standing orders can be accessed here – <https://phw.nhs.wales/about-us/policies-and-procedures/policies-and-procedures-documents/corporate-governance-communications-and-finance-policies/>

Delegated Financial Limits to authorise expenditure commitments

To facilitate the swift but appropriate authorisation of expenditure, three options have been set out as follows:

OPTION	PROS	CONS
1. Use existing Chairs action as set out in SO's to enable urgent decisions to be made requiring commitment of financial resources up to £1m	Enables the organisation to procure outside of Board meetings enabling more timely ordering of goods or services in order to facilitate the delivery of care to patients during the COVID-19 emergency	Still requires Chair and the Chief Executive to authorise, supported by the Board Secretary - after first consulting with at least two other Non-Executive Directors
2. Agree to delegate to the Chief Executive the ability to commit financial resources up to £1m <i>(the organisation is required to notify WG of its intent to enter into a Contract >£500k and seek agreement to contracts over £1m)</i>	Enables the organisation to rapidly commit expenditure on goods and services to facilitate the delivery of care to patients during the COVID-19 emergency	Increased risk to breach of financial governance and loss of financial control
3. Continue to use the existing financial limits as set out in the SFIs	Complies with existing SFIs	Will not enable rapid procurement of essential goods & services during the COVID-19 emergency

Option 2 is the recommended option to the Board to ensure rapid but appropriate action. The following points of clarity are proposed:

- Notifying Welsh Government of intentions over £500k and £1m would remain in place;
- Notifying Welsh Government of all costs relating to COVID19 via a monitoring template which includes COVID19 forecast costs and forecast savings from reduction in our normal business spending plans.
- The increase to the authorisation level is for COVID-19 related activity only and is for a temporary period whilst the pandemic is prevalent;
- Financial transactions made within the increased authorisation limit (£500k to £1m) will be made available in a report to Audit & Corporate Governance Committee.

Recommendation – The Board is asked to approve option 2 to delegate to the Chief Executive the ability to commit financial resources up to £1m.

Note - The Board is asked to refer to the paper regarding the approved Chairs Action. If ratified by the Board, the Chairs Actions enables:

- the Deputy Chief Executive & Executive Director of Finance and Operations to be increased to the standard CEO Delegated financial limit of £500k (in the CEOs absence) and
- for the Deputy Director of Finance & Operations (Angela Fisher), to receive increased authority to authorise payments on behalf of the Deputy Chief Executive (in his absence or when the Deputy CEO is acting as the CEO).

Procurement Thresholds and Processes

During this unprecedented time, it may be that our current procurement policies and practices cannot be fully complied with. The Cabinet Office issued a Procurement Policy Notice (PPN) in relation to COVID-19. The PPN and associated guidance highlights a number of potential options open to a contracting authority in order to procure goods, services and works with extreme urgency, and which are permitted by the Public Contracts Regulations 2015 (“PCRs”).

The PPN is applicable to all contracting authorities, including central government departments, executive agencies, non-departmental public bodies, local authorities, NHS bodies and the wider public sector.

There will be a range of commercial actions that may need to be considered by contracting authorities in responding to the impact of COVID-19. In such exceptional circumstances, authorities may need to procure goods, services and works with extreme urgency. This is permissible under current public procurement regulations using regulation 32(2)(c). The options include:

1. direct award due to extreme urgency (regulation 32(2)(c);
2. direct award due to absence of competition or protection of exclusive rights;
3. call off from an existing framework agreement or dynamic purchasing system;
4. call for competition using a standard procedure with accelerated timescales;
5. extending or modifying a contract during its term.

The guidance sets out a series of considerations for executive staff to consider when undertaking procurement(s).

NWSSP Procurement has confirmed that given the unprecedented circumstances, they will work with colleagues to ensure arrangements are in place, in terms of expediting and being flexible, in respect of the procurement of goods and services. For capital and revenue spend, there has been advice from NWSSP procurement that where a cost is defined as relating to COVID-19, regulation 32 allows for an accelerated approach for both capital and revenue purchases. It does however remain vital that a decision log is completed and retained of the financial consequences of any spend and that the finance team are notified prior to the commitment being made.

The following table set out in the SFIs summaries the minimum thresholds for quotes and competitive tendering arrangements. The total value of the contract over its entire period is the qualifying sum that should be applied (except in specific circumstances relating to aggregation and contracts of an indeterminate duration) as set out in EU Directives and UK Regulations.

Contract value (excl. VAT)	Minimum competition¹
<£5,000	At discretion of DoF
£5,000 - £25,000	3 written quotations
£25,000 – OJEU threshold	4 tenders
Above OJEU threshold	5 tenders

¹ subject to the existence of suitable suppliers

Due to the need for a rapid procurement to support NHS Wales and in the case of Public Health Wales' to take actions to tackle COVID-19, there are three options to consider:-

OPTION	PROS	CONS
<p>1. Suspend the requirement to follow the SFI Procurement thresholds</p> <p>and</p> <p>suspend the requirement to seek Audit Committee approval for contracts for goods or services requiring a STA/SQA</p>	<p>Enables the organisation to procure rapidly All Wales NHS or PHW required goods or services in order to facilitate the delivery of care to patients during the COVID-19 emergency</p>	<p>Does not follow the EU Directives and UK regulations (the Public Contracts Regulations 2006 (2006/05) which could lead to future legal challenge</p>
<p>2. Continue to use the existing thresholds and processes as set out in SFIs for procurement of goods and services</p> <p>and</p> <p>continue to require any STA/SQA procurement to be approved by Audit Committee</p>	<p>Complies with EU Directives and UK regulations</p>	<p>For goods & services not already on NHS Wales or NHS Procurement Framework Agreements it will not enable rapid procurement required for delivering of service user during the COVID-19 emergency.</p> <p>It may also result in missed opportunities where available products would be re-directed to other interested NHS establishments</p>

Current supply chains are unpredictable due to global demand. Every effort will be made to source products from established contracts/frameworks and known suppliers however, the uncertainty of product availability in certain sectors of the market, may result in having to secure a supply of products from previously unknown or unlikely suppliers, where they haven't been placed on any contract or framework.

Value for Money

In these exceptional and unprecedented circumstances it is recognised that decisions taken at pace may not always provide the best value for money. When systems return to normal, we must be able to demonstrate we took the most realistic approach when considering the options available at the time. Decisions taken in these circumstances are likely to carry greater risk.

To assist in capturing the context of decisions taken, a record will be maintained of decisions where the financial cost is in excess of £60k. This will apply to both single costs and aggregated costs of decisions relating to the same piece of work. The log will be reported to Gold and to the Audit and Corporate Governance Committee.

In making decisions and committing expenditure, staff will be guided to consider the following:

Decisions are Rational and Justifiable

As stated in the finance guidance issued by Welsh Government alongside the Accountability Letter (30 March 2020), finance will not be a barrier to delivering the operational needs of the service in response to the COVID-19 pandemic but needs to be managed and monitored in a structured manner.

Integrity

All decisions made must be in-line with the Nolan Principles (Accountability, Selflessness, Integrity, Openness, Objectivity, Honesty and Leadership) and avoid conflict of interest.

Fraud

There is likely to be an increased risk of fraudulent activity during this emergency situation. Whilst ensuring the ability of operational areas to secure the goods and services required swiftly, we will continue to focus on good governance processes albeit with potentially more flexibility in the system.

Recommendation – The Board is asked to approve:

1. Option (1) in relation to Procurement Thresholds & processes:-
 - suspend the SFI Procurement thresholds as outlined but retain the relevant procurement processes (e.g. requisitioning, ordering etc).
 - the requirement to retrospectively report to Audit and Corporate Governance Committee for contracts, goods or services requiring a STA/SQA be temporarily suspended.

Recommendations summary

The Board is asked to **approve:**

1. Option (2) in relation delegated financial limits:-
 - delegate to the Chief Executive the ability to commit financial resources up to £1m
2. Option (1) in relation to Procurement Thresholds & processes:-
 - c. suspend the SFI Procurement thresholds as outlined but retain the relevant procurement processes (e.g. requisitioning, ordering etc).
 - d. the requirement to seek approval from the Audit and Corporate Governance Committee for contracts, goods or services requiring a STA/SQA be temporarily suspended.

We propose the above take effect immediately and remain in place for 12 weeks pending further review.