

Financial Guideline 2019/2020 - 40

Community & Comprehensive and Voluntary Secondary Schools

Review of Contracts for Service during the COVID-19 period

1. Introduction:

Boards of Management may have contracts for services in place with external businesses such as contract cleaners, computer maintenance services, photocopier maintenance, waste disposal services or canteen service providers.

During the COVID-19 period, the contractors may not be able to deliver the services contracted for or the service may not be required by the school.

The board should review all its contracts for service considering the guidance issued below in order to reduce costs.

It is important that schools seek appropriate legal advice for complex cases and that any decisions taken which have a funding impact should also be communicated and/or agreed with other funding partners, as appropriate.

2. The guidance below has been issued by the Department of Education & Skills:

Contracts for service¹

The key issue here is whether or not the contractor is providing the contracted service and whether or not the contracting authority can avail of the service in line with the contract. The following applicable points should be considered.

- Continued compliance with public financial procedures and, in particular, DPER *Circular 13/2014 Management of and Accountability for Grants from Exchequer Funds*.
- If a contractor for service can make the service (e.g. training) available and if the recipients (e.g. trainees) can continue to use that service, albeit remotely or in a

¹ The issues and applicable points outlined for contract for service should also be considered in terms of funding grant aided non-government organisations. It is also worth noting that Public Private Partnership (PPP) contracts are not fully deemed contracts for service and such contracts should be considered separately.

format that is different than was intended but is still working, the contracting authority should continue to pay the contractor.

- If it is not possible for the contractor to provide the service as was intended and the contracting authority continues to require that service (or part thereof) it should engage with the contractor to determine, the extent if any, the contractor can provide some of the service. If this is possible the contracting authority should work to agree with the contractor an appropriate payment for that reduced service.
- If it is not possible for the contractor to provide the service or not possible for the contracting authority to avail of the service (e.g. cleaning in schools which are closed or catering company in training centres), the contracting authority needs to consider what business continuity arrangements need to be put in place (if any), which would allow the service to be available when restrictions are lifted (e.g. school transport contractors). This will require the contracting authority to engage with the contractor and with approval of the DES, it may be possible to contribute to costs so that the service can become available, if required, including at short notice.
- The status of grant aided non-government organisations and the type of services they provide to DES is an additional factor to be considered in assessing the business continuity arrangements required, which may need to differ from commercial contract arrangements.
- If no payment is necessary to support business continuity the general principle is that the contracting authority should not pay for a service from a contractor which it is not getting, unless there is overall exchequer cost implications and/or the contract is such that it is not possible to discontinue payment without encountering significant legal difficulties. It is, therefore, important that contracting authorities should take legal advice on these matters and should weigh up the legal consequences of breaking (even temporarily) contracts with contractors and the financial implications of continuing to pay for a service which they are not receiving, while taking into account any force majeure clause and/or doctrine of frustration legal principles.

Therefore, subject to the above caveats, the contracting authority should look to end:

- Non-performing contracts that have a force majeure clause;
- Non-performing contracts that were concluded at the end of the recent term (Easter);
- Contracts by mutual consent where the contractor is in agreement, as it may suit them to have the contract terminated.

There should be no double state funding of services so that it is not possible for a contractor, or an employee of the contractor, to obtain COVID-19 financial supports in cases where the contractor is still being paid the full pay allocation under their publicly funded grant from the contracting authority. This is to ensure that no employer or employee is paid more than 100% of the employee wages from the various state funding arrangements (COVID-19 financial supports + public grant payment should be \leq 100%).

In the case of a contractor availing of the COVID-19 Wage Subsidy Scheme (WSS), who had a publicly funded contract with a school, the school would need to be informed if the contractor availed of the WSS for the employees who provided the service to the school. If so, the school should reduce its public grant funding accordingly to the contractor.

It is envisaged that schools could obtain confirmation in the form of a self-declaration by the contractor that could be subject to audit at a later date. **See Appendix 1 for a template form.**

Should you require further assistance, please contact the FSSU.

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Appendix 1

Temporary COVID-19 Wage Subsidy Scheme Contractor Self Declaration Form (To be filled out by the Contractor)

Name of Contactor: _____

Name of School: _____

As per Department of Public Expenditure and Reform guidelines:

As a general principle, there should be no double state funding of services so that it is not possible for a contractor, or an employee of the contractor, to obtain COVID-19 financial supports in cases where the contractor is still being paid the full pay allocation under their publicly funded grant from the contracting authority.

In the case of a contractor availing of the COVID-19 Wage Subsidy Scheme (WSS), who had a publicly funded contract with a contracting authority, the contracting authority would need to be informed if the contractor availed of the WSS for the employees who provided the service to the contracting authority.

I, _____, on behalf of _____ (Contractor) declare that:

1. The Company did **not** avail of the COVID-19 Wage Subsidy Scheme for works carried out at the above-named school (please indicate with an X).

OR

2. The Company did avail of the COVID-19 Wage Subsidy Scheme for works carried out at the above-named school in the amount of € _____.
Therefore, the school has been instructed to reduce its funding accordingly by this amount (please indicate with an X).

Note 1: This Self Declaration Form may be subject to audit at a later date.

Note 2: A copy should be retained by the board and the contractor.