

CONTINGENCY PLANNING – COVID-19

Updated 14th April 2020

SPA, in association with LHC, is closely monitoring the developing situation of the coronavirus (COVID-19) outbreak and is following the regulatory and advisory guidance issued by HM Government, Scottish Government, NHS and the Construction Leadership Council (CLC). Sources of this information can be found on the SPA website <https://www.scottishprocurement.scot/covid-19/>.

We will also issue further statements as the situation unfolds.

SPA Offices

We are doing all we can to ensure the wellbeing of our staff and the continuity of our business during this difficult time.

Health and wellbeing of our staff

- Since 18th March 2020, our offices have been closed, and all of our staff have been working from home. Although they are not attending meetings, they are available as normal through their usual contact details (<https://www.scottishprocurement.scot/get-in-touch/>)

Business continuity

- Our staff will contact you to rearrange meetings or, where possible, to conduct them virtually or over the phone.
- On existing live projects, we will be contacting all our contractors and discussing with them their current situation and also contacting Partners to see what their plans are over the next 3 – 6 months. This will enable us to build up a picture of what is happening across the country. For many of our contractors and their supply chains they will be keen to maintain productivity as far as is possible (and safe) in order to preserve business and cash flow.
- On new procurements we will remain in close contact with tenderers to ensure we understand their needs and have the best possible submissions.
- We may have to delay some of our events, but we are looking to make best use of our online marketing channels to continue to communicate effectively with all of our stakeholders.

We will continue to keep you updated and would like to reassure you of our commitment to maintaining our high level of service throughout the coming weeks and months.

SPA Appointed Companies

When tendering for our frameworks, candidates are instructed that, if appointed, they must comply with:

- ISO 22301 Business Continuity Management
- BS ISO 22301 Societal security – Business continuity management systems – Requirements
- PD ISO/TS 22318:2015 “Societal security. Business continuity management systems. Guidelines for supply chain continuity

Tenderers are required to demonstrate and are evaluated upon the ability to recover data and systems, processes for frequent backup of systems and data, regular tests and drills of disaster procedures, data and system backups stored offsite, appropriate and relevant insurance, documented emergency procedures and that both manual and automated procedures in place.

They are also required to have in place and operate arrangements that, in the event of an unforeseen circumstance that prevents them from completing a task, all uncompleted tasks can be transferred to another Consultant / Project Manager and be completed in accordance with the relevant requirements and standards, to the satisfaction of the SPA Partner.

The latest Business Continuity status on each SPA appointed company can be found on the SPA website <https://www.scottishprocurement.scot/covid-19/>.

Call-Off Projects

Whereas SPA framework terms and conditions dictate requirements for Business Continuity and Disaster Recovery, SPA Partners are encouraged to address the provisions that each Appointed Company and its supply chain can support or provide assurances of on a project by project basis. Such provisions and assurances will vary with the complexity, severity and locality of projects and will be affected by the contractual arrangements for projects.

SPA Partners and Appointed Companies may wish to revisit the operational provisions in individual contracts, including but not limited to:

- **Programme obligations.** Is the Appointed Company obliged to submit a revised programme due to disruption or otherwise notify the Partner that the programme may not be met?
- **Early warnings.** Does the contract obligate the Appointed Company to give early warnings of delays and cost overruns, promptly?
- **Progress reports.** Does the contract require regular progress reports? If so, the Appointed Company should clearly set out all impacts that the disease has had on the project.
- **Claims clauses.** Does the contract include or omit clauses covering the following?
 - Suspension
 - force majeure and prevention (see below)
 - change in law
 - delay in delivery of materials
 - special circumstances
- **Breaching implied terms.** Has the Partner hindered the Appointed Company from carrying out and completing the works.
- **Force Majeure.** Does the outbreak constitute a force majeure event under the contract? Has it prevented, hindered and/or delayed performance and can the Appointed Company invoke provisions in their contracts and suspend performance?

The latest guidance from the Construction Leadership Council can be accessed via the SPA website <https://www.scottishprocurement.scot/covid-19/>.

Conclusion

SPA staff will continue to engage with Partners and Appointed Companies throughout the current COVID-19 situation and will always be available to facilitate dialogue.

Appointed Companies have demonstrated their Business Continuity and Disaster Recovery capabilities and have measures in place to mitigate impacts.

There may be a number of remedies available to SPA Partners and Appointed Companies under individual contracts that can be used to grant or seek relief from performance if the COVID-19 has an adverse impact on any SPA call-off project. However, the current situation is unprecedented and an open and transparent approach to mitigating the impacts of the spread of the virus is encouraged.