



Department
for Work &
Pensions



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9 April 2020

Fedcap Employment Limited
Suite 006 BIZ HUB
Cleveland Business Centre
Oak Street
Middlesbrough
TS1 2RQ

Dear [REDACTED]

Various contracts (as amended) between the (1) Secretary of State for Work and Pensions (the “Authority”) and (2) Fedcap Employment Limited (the “Contractor”) in Table 1 at Schedule 1 (the “Contracts”)

Contractor relief due to COVID-19 in accordance with Procurement Policy Note 02/20

We refer to the contracts between the Secretary of State for Work and Pensions (the “Authority”) and Fedcap Employment Limited (the “Contractor”) set out in Table 1 at Schedule 1 to this letter (“the Contracts”). The Authority wishes to amend the terms of the Contracts as set out in this letter. Terms used but not otherwise defined in this letter have the same meaning as set out in the Contracts.

Background

1. The purpose of this letter (“CV03”) is for the Authority to give immediate relief to the Contractor on the terms of this CV03 and in anticipation of, and in accordance with a full package of changes to the Contracts which will be agreed and implemented in CV04.
2. This letter, CV03, and subsequently CV04, shall be interpreted and construed so that they vary each Contract set out in Table 1 at Schedule 1 individually and in accordance with the terms of CV03 and CV04 and the specific Contract details as set out in Table 1 at Schedule 1.
3. The immediate relief provided under CV03 and the full package of changes which will be proposed in CV04 are intended to provide relief to the Contractor for the Covid Relief Period for each of the Contracts set out in Table 1 at Schedule 1. Any payments made under CV03 are conditional upon the Contractor entering into and abiding by the terms of CV04. Should the Contractor not enter into, or abide by, the terms of CV04 variation for a specific Contract(s) then the CV03 relating to that Contract is automatically rescinded and any and all payments made by the Authority to the Contractor under the CV03 for that Contract(s) shall immediately, and in full, become repayable by the Contractor to the Authority.

4. The Authority and the Contractor acknowledge that the relief is given in accordance with the policy set out in PPN 02/20 and that both parties shall act in good faith and work together towards the principles set out in PPN 02/20. The Contractor acknowledges that any relief given to it is at the sole discretion of the Authority.
5. The Authority reasonably anticipates that the Procurement Regulations will apply to this CV03 and the Parties shall ensure that there is lawful basis for agreeing the CV03 under the Public Contracts Regulations 2015 and/or any applicable procurement rules. Due to the current COVID-19 pandemic, this may include in particular justifications under Regulation 72 and Regulation 32 of the Public Contracts Regulations 2015 or such other applicable or equivalent provision.
6. The Contracts, including any previous variations, will remain effective and unaltered except as amended by this CV03.

Variation

7. The following terms shall have the meaning as set out below and shall be incorporated into the Contract:

“Covid Related Hardship” means that as a result of the COVID-19 pandemic the Contractor’s ability to meet its contractual obligations under the Contract have been adversely affected.

“Covid Relief Period” means the period from the Variation Date – CV03 until the Relief Expiry Date.

“CV03” means this letter and the terms set out in it.

“CV03 Interim Payment(s)” means the payments set out in Table 2 at Schedule 1 to CV03.

CV04 means a further variation to the Contracts which the Authority and the Contractor intend to enter into, and which includes a full package of changes to the Contracts to provide relief to the Contractor who is subject to Covid Related Hardship. For the avoidance of doubt CV04 will be for individual Contracts as listed in Table 1 at Schedule 1.

“CV04 Interim Payment(s)” means any payments made to the Contractor under CV04.

“Interim Payment(s)” means any CV03 Interim Payment(s) or CV04 Interim Payment(s) made by the Authority to the Contractor under CV03 or CV04.

“Open Book Interim Data” means the complete and accurate financial and non-financial information which is required by the Authority to enable the Authority: (a) to understand all COVID-19 related relief, grants, interventions or other measures received by the Contractor from the Crown; and (b) to verify any payments paid under CV03 or CV04; and (c) to assess any fees/charges, invoices and/or claims, which may have become payable under the Contract during the Covid Relief Period. Full details of allowable costs, evidence requirements, assurance and audit procedures will be set out and contained in CV04. Pending the issue and agreement of CV04 the Contractor shall provide the following information on a monthly basis, within 5 working days of the calendar Month end or other such time as required by the Authority:

- (a) Supply Chain analysis including Sub-contractor name, Sub-contractor main contact including phone number and email address, description of services provided, geographic coverage, amounts paid and forecast in each of the months April 2020, May 2020 and June 2020 and an assessment of the Sub-contractor’s financial stability (a description of the financial stability rating, and summary of the process undertaken, to be provided with the initial information return);
- (b) Confirmation that no Staff supported by Interim Payments are, or will be made, redundant, furloughed and will receive full pay whilst funded by CV03 as a result of the COVID-19 Pandemic;

- (c) Confirmation that the Contractor will seek to secure or otherwise maximise alternative COVID-19 support from other available sources. The Authority may reduce Interim Payments by the amount of any such alternative COVID-19 support received by the Contractor;
- (d) Staff costs broken down into the number and grade/role of all Staff together with a list of agreed rates against each manpower grade; and
- (e) Full details of the payment of Staff wages.

“Procurement Regulations” means the Public Contracts Regulations 2015.

“PPN 02/20” means Procurement Policy Note 02/20, as updated or amended from time to time, setting out information and guidance for public bodies on how they may amend payment provisions in contracts or consider other contractual relief in order to assist suppliers to combat the impact of COVID-19.

“Relief Expiry Date” means 30 June 2020, or such other date as may be notified by the Authority to the Contractor at its absolute discretion.

“Variation Date – CV03” means the date the second Party signs this CV03.

- 8. Notwithstanding any other term of the Contract, the Parties agree to vary the Contract by incorporating the following terms into the Contract:
- 9. CV03 Interim Payment(s)
 - 9.1. The Contractor has informed the Authority that it is subject to Covid Related Hardship.
 - 9.2. The Authority hereby agrees to make the CV03 Interim Payment(s) detailed in Table 2 at Schedule 1 to the Contractor in accordance with the timetable detailed in Table 2 at Schedule 1.
 - 9.3. The Contractor acknowledges that the aim of the Authority in making the CV03 Interim Payments is to provide immediate interim relief and support to the Contractor, pursuant to the aims and principles set out in PPN 02/20, and the Contractor undertakes to use the CV03 Interim Payments strictly in accordance with such aims and principles.
 - 9.4. The Authority, acting in good faith, is making CV03 Interim Payments to the Contractor on the express basis that such payments are on account of Fees and/or Interim Payments paid or to be paid by the Authority to the Contractor for Services delivered or to be delivered by the Contractor under the Contract (as amended by CV03 and CV04).
- 10. The Parties shall use reasonable endeavours to identify and utilise existing contractual mechanisms and provisions under the Contract to reduce the adverse impact of Covid Related Hardship on the Contractor, which may include:
 - 10.1. relief against performance indicators;
 - 10.2. relief and/or changes to delivery dates;
 - 10.3. relief and/or delays to service credits; or
 - 10.4. waiver or delay by the Authority of its remedies and rights under the Contract in whole or in part.
- 11. CV03 Interim Payment(s) will be paid monthly in accordance with Table 2 at Schedule 1.
- 12. CV04
 - 12.1 Where the Parties enter into CV04, the Contractor undertakes to treat any and all CV03 Interim Payment(s) made under this CV03 as payments on account of Fees and/or Interim Payments paid or to be paid by the Authority to the Contractor for Services delivered or to be delivered by the Contractor under the Contract (as amended by CV03

and CV04). The Contractor undertakes to develop, agree, enter into and abide by CV03 and CV04 in good faith and pursuant to the aims and principles set out in PPN 02/20.

- 12.2 If the Contractor does not enter into CV04 then all CV03 Interim Payment(s) shall immediately and in full become repayable by the Contractor to the Authority.
- 12.3 If, in the reasonable opinion of the Authority, the Contractor does not ensure that CV03 Interim Payments are promptly and solely applied to the purposes for which they are paid and pursuant to the aims and principles set out in PPN 02/20 (which may include making payments to Contractor's Staff and the Contractor's Sub-contractors who are working on deliverables to be provided under or in connection with the Contract(s), or maintaining and retaining capability and capacity for future delivery, so as to reduce the adverse effects of Covid Related Hardship), then all CV03 Interim Payment(s) shall immediately and in full become repayable by the Contractor to the Authority.

13 Use of Interim Payments

13.1 The Contractor shall not be entitled to:

- 13.1.1 make any profit from the CV03 Interim Payment(s);
- 13.1.2 any Interim Payments to the extent that the Contractor has been underperforming under the Contract and is subject to a current improvement plan or other remedial performance measure under the Contract. For the purposes of this clause underperformance on behalf of the Contractor must have led to the Authority reducing, deferring, or withholding Fees which the Authority pays to the Contractor; or
- 13.1.3 to combine the Interim Payment(s) with any other government, public sector, and/or other COVID-19 related relief, grant, intervention, insurance payment, or other measure which results in the Contractor receiving more than one benefit/relief for the same underlying cash-flow issue.

13.2 The Contractor must:

- 13.2.1 provide Sub-contractors with equal or better terms than the Authority is providing the Contractor under this CV03; and
- 13.2.2 maintain the employment and engagement of Staff, ensuring that Staff are not made redundant or furloughed and will receive full sickness pay while the Contractor is receiving Interim Payments.

14 If, in the reasonable opinion of the Authority, the Contractor:

- 14.1 fails to meet any obligation set out in this CV03;
- 14.2 receives any payment and fails to apply it to meet the purposes for which the payment was made and pursuant to the aims and principles set out in PPN 02/20;
- 14.3 takes undue advantage of any relief; or
- 14.4 fails to act transparently and with integrity,

the Authority may take all action necessary to recover any payments made to the Contractor during the Covid Relief Period.

- 15 Where any sum is or becomes payable by the Contractor to the Authority under the Contract or pursuant to this CV03, the Authority may unilaterally deduct that sum from any amount then due, or which at any later time may become due, to the Contractor under the Contract, this CV03, or any other agreement or contract that the Contractor has with the Authority or the Crown.

Miscellaneous

- 16 The terms of this CV03 shall be effective from the Variation Date – CV03 until amended or replaced by variation CV04, or rescinded if the Parties fail to agree CV04.
- 17 Except to the extent set out in this CV03, this CV03 shall not constitute a waiver of any right or remedy of the Authority or the Contractor arising before, during or after this CV03.
- 18 The Authority and the Contractor agree that any event arising from COVID-19 shall not give rise to any force majeure or frustration rights set out in the Contract to the extent that such rights are mitigated by any Interim Payments.
- 19 If there is an inconsistency between any of the provisions of this CV03 and the provisions of the Contract, the provisions of this CV03 shall prevail.

Please confirm your acceptance of this CV03 by countersigning this letter and uploading a scanned copy to the Jaggaer (DWP e-portal) fileshare folder named [REDACTED]

If you have any queries, please contact the team on
EMPLOYMENTCATEGORY.COVID19@DWP.GSI.GOV.UK

Yours faithfully,

[REDACTED]

For and on behalf of the Authority

We hereby acknowledge receipt and accept the terms of this CV03.

Signed: _____
For and on behalf of the Contractor

Name: [REDACTED]

Position: [Director]/[Authorised Signatory]

Date: 17/4/2020

Schedule 1

Table 1

The following contracts are modified in accordance with this CV03:

Contract Reference	Contract Name / Description	Contract Start Date
ECM_7301	ESF 2014-2020 Enterprise M3	07/10/2019
ECM_3419	ESF Leicestershire	19/10/2016

Table 2

The CV03 Interim Payment(s) shall consist of the following:

Contract Reference	Contract Name / Description	Contract Start Date	CV03 Interim Payment, per month excluding recoverable VAT (see Note 4 for how these CV03 Interim Payments will be adjusted)
ECM_7301	ESF 2014-2020 Enterprise M3	07/10/2019	[REDACTED]
ECM_3419	ESF Leicestershire	19/10/2016	[REDACTED]

Notes:

- 1 CV03 Interim Payments are based on the average monthly value of Outcome Payments made between December 2019 – February 2020 inclusive.
- 2 A sum of 25% of the average monthly value of Outcome payments made between December 2019 – February 2020 inclusive, and 25% of the Service / Delivery Fee payable for the month in which the CV03 Interim Payment is made, is added to the CV03 Interim Payment.

Payment process:

- 3 CV03 Interim Payment(s) are payable on a Contract by Contract basis, payable in month for the month to which they relate.

- 4 CV03 Interim Payments will be reduced by Outcome Payments made in that month. Due to timing differences this means that CV03 Interim Payments will be adjusted as follows:
 - a. May 2020 Payment: CV03 Interim Payment **less** outcome payments paid in April 2020
 - b. June 2020 Payment: CV03 Interim Payment **less** outcome payments paid in May 2020
 - c. July 2020 Payment: Service / Delivery fee paid in July 2020 **less** outcome payments paid in June 2020
- 5 To the extent that:
 - a. an Outcome for which the Authority makes an Outcome Payment to the Contractor is subject to validation and/or extrapolation in accordance with the terms of the Contract to which it relates,
 - b. the result of that validation and/or extrapolation is that the Authority recovers the Outcome Payment made by the Authority to the Contractor in respect of that Outcome, and
 - c. the CV03 Interim Payment the Authority made, makes or will make to the Contractor was calculated on the basis of that Outcome Payment,then the Authority may adjust the CV03 Interim Payment by excluding that Outcome Payment from the calculation of the CV03 Interim Payment.
- 6 Where the application of Note 5 means that the CV03 Interim Payment the Authority has made to the Contractor is more than the CV03 Interim Payment the Contractor was owed, the Authority may recover in full any difference between the CV03 Interim Payment the Authority made to the Contractor and the CV03 Interim Payment the Contractor was owed.
- 7 Where the application of Note 5 means that the CV03 Interim Payment the Authority has made to the Contractor is less than the CV03 Interim Payment the Contractor was owed, the Authority shall pay the Contractor the difference between the CV03 Interim Payment the Contractor was owed and the CV03 Interim Payment that the Authority made to the Contractor.