



National Audit Office

Report

by the Comptroller
and Auditor General

Cabinet Office

Investigation into government procurement during the COVID-19 pandemic

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Investigation into government procurement during the COVID-19 pandemic

Report by the Comptroller and Auditor General

Ordered by the House of Commons
to be printed on 16 November 2020

This report has been prepared under Section 6 of the
National Audit Act 1983 for presentation to the House of
Commons in accordance with Section 9 of the Act

Gareth Davies
Comptroller and Auditor General
National Audit Office

13 November 2020

This investigation sets out the facts relating government procurement during the COVID-19 pandemic covering the period up to 31 July 2020, in response to concerns raised about the risks to public money that could arise from greater use of direct awards to suppliers during the pandemic.

Investigations

We conduct investigations to establish the underlying facts in circumstances where concerns have been raised with us, or in response to intelligence that we have gathered through our wider work.

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009199 11/20 NAO

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The National Audit Office study team consisted of:

Leon Bardot, Iain Forrester and Pauline Ngan, with assistance from Matthew Caine, Sophie Jones, Stephanie Muir, Eleanor Robinson and Karen Yohannes, under the direction of Charles Nancarrow.

This report can be found on the National Audit Office website at www.nao.org.uk

For further information about the National Audit Office please contact:

National Audit Office
Press Office
157–197 Buckingham Palace Road
Victoria
London
SW1W 9SP

Tel: 020 7798 7400

Enquiries: www.nao.org.uk/contact-us

Website: www.nao.org.uk

Twitter: @NAOorguk

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.

Part One

Background

1.1 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. This occurs within the wider requirement to ensure value for money in the use of public resources as set out in HM Treasury's guidance on handling public funds, *Managing Public Money*.³ The Public Contracts 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 processes fully and ensure that risks such as conflicts of interest are managed. Further guidance is provided through Procurement Policy Notes, which are issued by the Cabinet Office to offer guidance on best practice for public sector procurement.

The need to procure with extreme urgency

1.2 The procurement of essential supplies has been one of the highest-profile issues for the government during the COVID-19 pandemic. In responding to the pandemic, public sector bodies have needed to procure goods, services and works with extreme urgency.

1.3 On 18 March 2020 the Cabinet Office issued information and guidance on public procurement regulations and responding to the COVID-19 pandemic.⁴ This guidance noted that public bodies are permitted to procure goods, services and works in extremely urgent situations using regulation 32(2) (c) under The Public Contracts Regulations.⁵ The guidance also sets out the various options available to public bodies if they have an urgent requirement for goods, services or works due to COVID-19.

³ HM Treasury, *Managing Public Money*, May 2012.

⁴ Cabinet Office, Procurement Policy Note - Responding to COVID-19, Information Note 01/20, 18 March 2020.

⁵ Available at: www.legislation.gov.uk/uksi/2015/102/contents/made

- **Direct award due to extreme urgency: regulation 32(2)(c).** This allows a public body to negotiate with any supplier to provide the requirement without opening it up to formal competition. In responding to COVID-19, contracting authorities 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, for example there is no time to run an accelerated procurement under the open or restricted procedures or competitive procedures with negotiation, and the situation is not attributable to the contracting authority.
- **Direct award due to absence of competition for technical reasons or protection of exclusive rights, including intellectual property rights.** However, this is only when there is no reasonable alternative or substitute available, and the contracting authority is not doing something which artificially narrows down the scope of the procurement, such as by over specifying the requirement.
- **Call off from an existing framework agreement or dynamic purchasing system.** Central purchasing bodies, such as the Crown Commercial Service, offer public bodies access to commercial agreements including framework agreements and dynamic purchasing systems that may be suitable. A framework agreement will provide for direct awards, mini-competitions or both. An award under a dynamic purchasing system must be by mini-competition and the minimum time for receipt of tenders is 10 days.
- **Call for competition using a standard procedure with accelerated timescales.** This can apply if a state of urgency renders standard timescales impracticable. However, even an accelerated timescale may still not be practicable.
- **Extending or modifying a contract during its term.** Contracts may be modified without a new procurement procedure where: the need for modification has been brought about by circumstances which a public body who needs to contract for goods and services could not have foreseen; the modification does not alter the overall nature of the contract; and any increase in value whether from price or volume does not exceed 50% of the value of the original contract or framework agreement.

1.4 Other parts of the regulatory framework set by The Public Contracts Regulations 2015 still apply to urgent procurements made under regulation 32(2)(c). These include regulations regarding transparency and documentation of the procurement process, which offer important protections in the absence of assurance provided by an open and competitive procurement process. In particular, the publication of basic information on the contracts awarded and documenting how the procurement process was run can help maintain public trust that procurements are being conducted appropriately.

1.5 The Cabinet Office also issued three more procurement policy notes covering information and guidance for public bodies on payment of their suppliers to ensure service continuity during and after the current pandemic and the use of procurement cards during the pandemic. Procurement decisions relating to this guidance are not covered in this report.

1.6 The Cabinet Office told us that it is taking action to learn lessons from the urgent procurement of contracts at a time of national emergency. In addition to internal audit, an independent expert review is in progress in relation to the Cabinet Office communications services contracts. Once completed, the implementation of recommendations will be overseen by the Cabinet Office Audit and Risk Committee.

Procurement roles and responsibilities

1.7 All public bodies that contract for goods, services and works are required to comply with The Public Contracts Regulations 2015, for all procurements where the value of goods or services bought exceeds certain thresholds. Thresholds vary by type of body and what is purchased. Outside of public works contracts, the thresholds currently vary from £70,778 to £663,540. The regulations set out the procedures to be followed before awarding a contract to suppliers. Departments and other public bodies, such as the contracting bodies, are responsible for managing the procurement processes they decide to use, with their commercial directors being responsible for applying commercial practice, including identifying conflicts of interest and other commercial risks.

1.8 The Crown Commercial Service, an executive agency of the Cabinet Office, establishes and operates commercial agreements for a range of common goods and services for use by the UK public sector. These agreements enable public sector buyers to procure these goods and services from suppliers who have won places on Crown Commercial Service commercial agreements quickly and compliantly. Many of these agreements were used to procure goods and services during the pandemic. The Cabinet Office hosts the Government Chief Commercial Officer, who is responsible for developing the commercial capability of the civil service. He coordinates the Government Commercial Function, a network of around 4,000 commercial staff across government. The Government Commercial Function's responsibilities and activities include:

- relationship management with, and insight into the 35 strategic suppliers that government has identified to be centrally managed by government's Crown Representatives and partner managers;
- providing commercial expertise to support departments with complex commercial arrangements and disputes;
- continuous improvement through setting commercial standards and guidance and running masterclasses; and
- central employment of commercial staff in senior grades through the new Government Commercial Organisation, which deploys these staff across departments as needed.

1.9 The Government Commercial Function and Crown Commercial Service have both redeployed commercial staff to support urgent work on COVID-19 related procurement. In particular, at the height of the pandemic, the Government Commercial Function supported the Department of Health & Social Care in setting up a supply chain team to help assess and process the very large number of offers from suppliers to provide personal protective equipment (PPE). It also led the ventilator challenge programme, which encouraged UK manufacturers to scale-up production of mechanical ventilators.

Part Two

Procurement activity during the pandemic

2.1 This part sets out government procurement activity related to responding to the COVID-19 pandemic. It covers the period up to 31 July 2020 and is based on returns that we received from government departments and their supporting bodies. Appendix One provides details of which organisations submitted returns.

2.2 By 31 July 2020, over 8,600 contracts related to government's response to the COVID-19 pandemic had been awarded, with a value of £18.0 billion (**Figure 1**). New contracts 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 2020, more than £14.6 billion had been spent on these contracts.

2.3 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 (see Figure 1). This represents 86% of the total number of COVID-19 related contracts awarded over this period, and 90% of the total value of contracts awarded. 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 significantly more procurements as a result of the pandemic. For example, in 2019-20 it awarded 174 contracts worth £1.1 billion, less than 7% of what it and its national bodies awarded between January and July 2020 in response to the pandemic.

2.4 Procurement activity related to the pandemic built up steadily in March and April, peaking in May when 2,518 contracts were awarded, representing 29% of all the contracts awarded up to 31 July 2020 (**Figure 2** on page 20). Activity then reduced slightly in June and by a larger extent in July, when 505 contracts (6% of all contracts) were awarded.

Figure 1

Government contracts in response to the COVID-19 pandemic from 1 January to 31 July 2020, by department

By 31 July 2020, more than 8,600 contracts related to government's response to the COVID-19 pandemic had been awarded, with a value of £18.0 billion

Departmental group	Total value of contracts (£m)	Spend on contracts (£m)	Number of contracts
Department of Health & Social Care	16,205	13,730	7,447
Department for Education	556	445	66
Cabinet Office	279	110	74
Department for Work & Pensions	263		48
Department for Environment, Food & Rural Affairs	209	191	17
Department for Business, Energy & Industrial Strategy	133	12	221
Ministry of Defence	106	13	71
Home Office	52	31	19
Ministry of Justice	47	10	39
Foreign & Commonwealth Office	38	35	33
Department for Digital, Culture, Media & Sport	36	34	339
Department for Transport	31		171
HM Treasury	25	2	30
Department for International Development	21	21	12
HM Revenue & Customs	8	3	12
Ministry of Housing, Communities & Local Government	6	3	19
Department for International Trade	3	2	4
Total	18,019	14,643	8,652

Notes

- 1 Contract number, value and spend figures are for COVID-19 related contracts up to 31 July 2020. Not all departments provided spend data. Contract value refers to the maximum possible value of spending set out for a contract, and actual spending on the contract may be below that level. For example, the Ministry of Defence let 10 contracts to support the direct and indirect impact of COVID-19 with a total value of £95 million but spent only £2.2 million on these contracts.
- 2 In September 2020, the Foreign & Commonwealth Office and the Department for International Development were replaced by the Foreign, Commonwealth & Development Office.
- 3 Some contracts which were awarded by one department involve costs borne by other departments or bodies; for example, the Department for Work & Pensions let a £55.6 million contract for the shielding call centre, but the costs involved were borne by the Department of Health & Social Care.
- 4 Totals may not sum due to rounding.

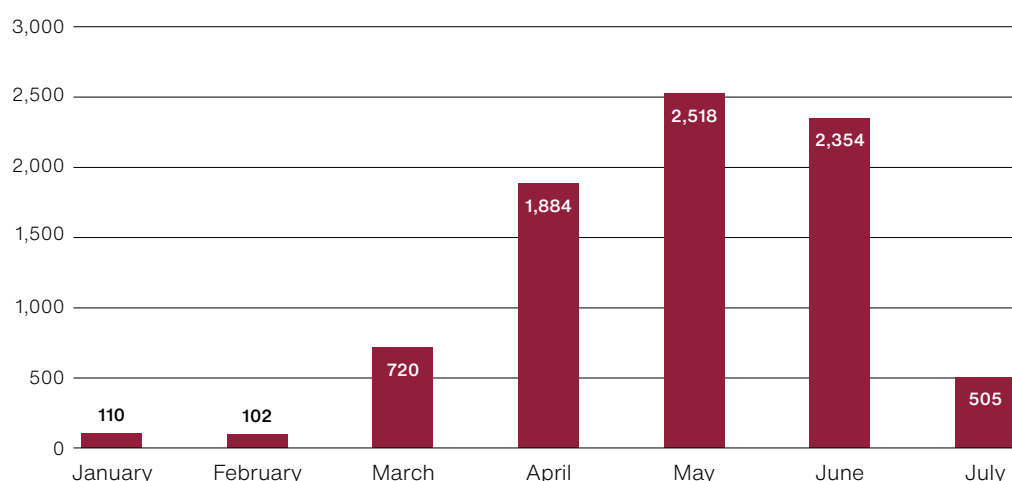
Source: National Audit Office analysis of data provided by government departments and other departmental bodies

Figure 2

Government procurement in response to the COVID-19 pandemic from 1 January to 31 July 2020, by month

Most contracts were awarded from April to June 2020

Number of contracts

**Note**

1 A clear award date was provided for 8,193 contracts, with no or incomplete data on award date provided for 459 contracts.

Source: National Audit Office analysis of data provided by government departments and other departmental bodies

2.5 Government departments and bodies have used five main procurement routes in awarding contracts to suppliers during the pandemic (**Figure 3**):

- **Direct award to supplier without competition** – 1,301 contracts worth £10.49 billion.
- **Direct award to supplier from a framework agreement that would have involved a competitive bidding process to set up** – 6,651 contracts worth £6.66 billion.
- **Competitive bidding process from a framework agreement** – 65 contracts worth £0.14 billion.
- **Competitive bidding process** – 123 contracts worth £0.05 billion.
- **Extension or amendment to an existing contract with a supplier** – 458 contracts worth £0.66 billion.

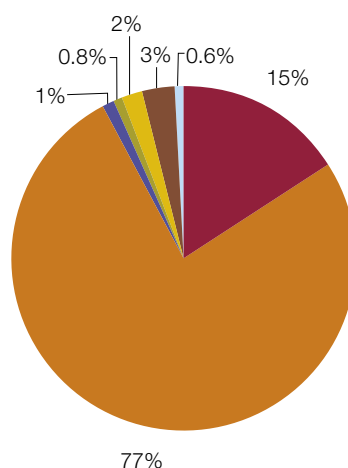
For PPE procurement, the government was often having to procure goods quickly in a highly competitive international market, which meant that it did not consider it practical to undertake competitive tender exercises, given the timescales involved. However, it did benchmark the prices being offered.

Figure 3

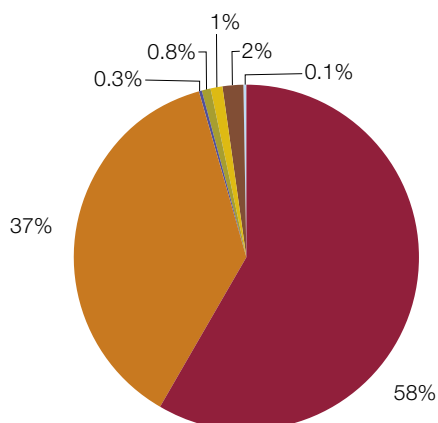
Procurement routes used during the COVID-19 pandemic from 1 January to 31 July 2020, by number of contracts and by value of contracts

Direct awards of new contracts to suppliers accounted for 15% of the total number of contracts awarded and 58% of total contract value

By number of contracts



By value of contracts



- Direct award to a supplier
- Direct award to a supplier from a framework agreement
- Award involved competition
- Award involved competition from a framework agreement
- Extension to an existing contract
- Amendment to an existing contract
- No data

Notes

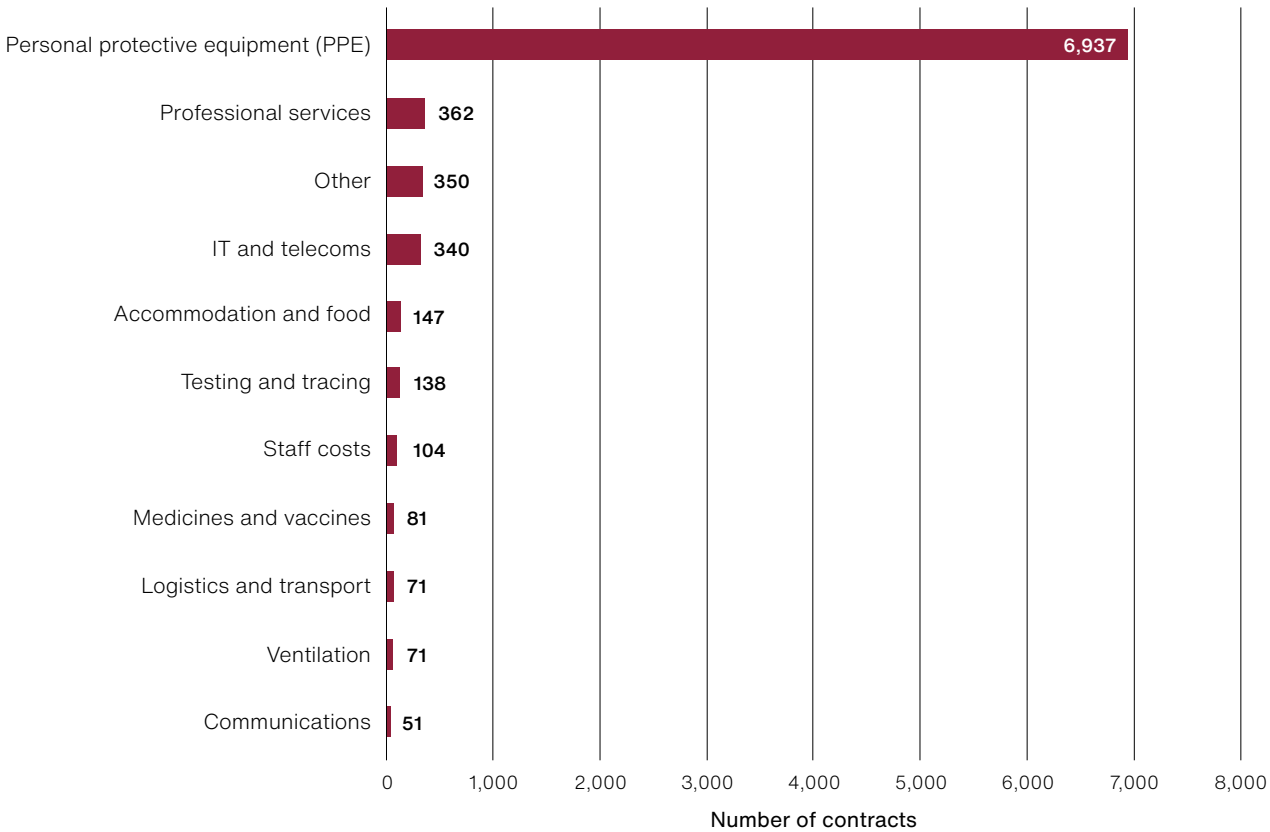
- 1 Data on procurement route were provided for 8,598 contracts, with no or incomplete data on procurement route provided for 54 contracts.
- 2 Percentages may not sum to 100 due to rounding.

Source: National Audit Office analysis of data provided by government departments and other departmental bodies

2.6 A wide range of goods, services and works have been procured during the pandemic, which we have grouped into 11 categories (**Figure 4**).⁶ Of contracts awarded, 80% were for personal protective equipment (PPE). This includes £4.3 billion of PPE bought through existing contracts with Supply Chain Coordination Limited (SCCL), which manages the NHS supply chain.⁷ PPE contracts accounted for 68% of the total value of contracts awarded, with testing and tracing accounting for a further 17% (**Figure 5**).

Figure 4
Types of goods, services and works bought during the COVID-19 pandemic, from 1 January to 31 July 2020, by number of contracts

Four-fifths of contracts awarded were for personal protective equipment (PPE)



Note
1 Based on all 8,652 contracts.

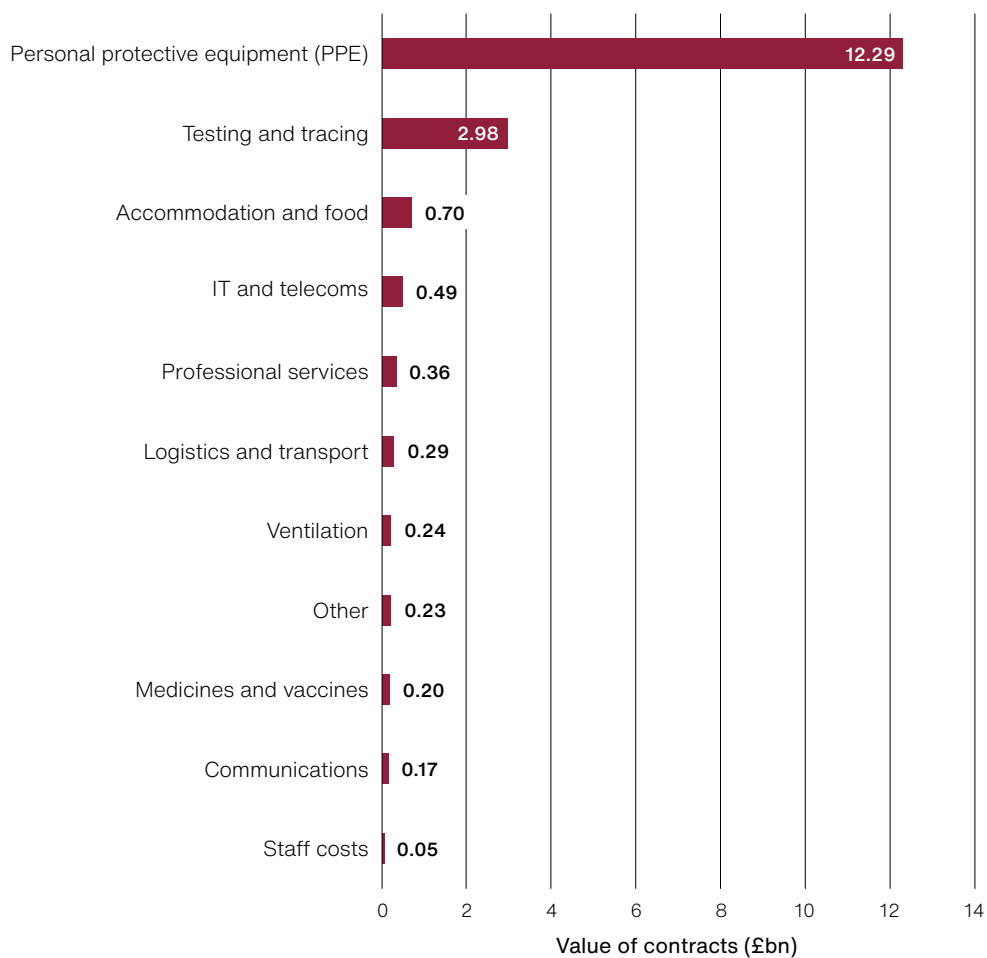
Source: National Audit Office analysis of data provided by government departments and other departmental bodies

6 Further detail on the goods, services and works covered by each category can be found in Appendix One.
7 The £4.3 billion figure for SCCL PPE contract value is based on contract data supplied by the Department of Health & Social Care 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.

Figure 5

Types of goods, services and works bought during the COVID-19 pandemic, from 1 January to 31 July 2020, by value of contracts

Personal protective equipment (PPE) contracts accounted for 68% of the total value of all contracts

**Note**

1 Based on all 8,652 contracts.

Source: National Audit Office analysis of data provided by government departments and other departmental bodies

Part Three

Management of procurement risks

3.1 This part focuses on the risks from conducting procurements with extreme urgency and the controls in place to manage those risks. The analysis in this part is based on reviews of a sample of contracts identified as presenting particular risks, and examination of specific procurement processes such as those put in place for buying personal protective equipment (PPE) (see Appendix One for more detail of our methodology, including the contracts we considered in detail).

3.2 The main procurement risks identified from our analysis of COVID-19 related contracts include:

- potential unequal treatment of suppliers in procurement processes;
- poor procurement practices due to procuring at speed, such as retrospective contract awards or due retrospective diligence checks and a lack of documentation around key procurement decisions such as why particular suppliers were chosen, and lack of documentation on how conflicts of interest were identified or managed; and
- lack of transparency over what and how contracts were awarded.

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, in a timely manner. 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.

Guidance on the use of regulation 32(2)(c)

3.3 Departments and other public bodies, as the contracting authorities, are responsible for managing the procurement processes they decide to use. The Cabinet Office's responsibilities for government-wide procurement policy include issuing procurement guidance and overseeing some spending controls.

3.4 The Cabinet Office issued guidance on procurements made under extreme urgency as allowed under regulation 32(2)(c), in the form of Procurement Policy Note 01/20 (see paragraph 1.3). This guidance set out the circumstances under which COVID-19 related procurements could take place more quickly (for example, by making greater use of direct awards). 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 guidance did not include specific guidance on managing the risks that should be considered as part of any purchasing decision and which could arise in particular from quicker procurements.

3.5 The Cabinet Office told us that it briefed commercial directors across government on Procurement Policy Note 01/20 on several occasions. It told us it received very few questions from departments and other bodies on using regulation 32(2)(c) for quicker COVID-19 related procurements. Most of the questions it received related instead to the new supplier relief payments that were permitted to support suppliers through the pandemic. The Department of Health & Social Care told us that it also wrote to all staff undertaking PPE procurement setting out their procurement obligations, including on transparency and reporting requirements.

Application of procurement spending controls

3.6 COVID-19-related procurements are subject to the wider framework of public spending controls overseen by HM Treasury. As set out in *Managing Public Money*, all departments are required to manage their spending to maximise effectiveness, efficiency and economy, and to keep spending within the limits set during the Spending Review process. New spending proposals above certain thresholds are required to go through the Treasury Approvals Point (TAP) process, under which HM Treasury scrutinises and approves the proposed new spending. Many new COVID-19-related spending commitments have been large and have consequently required HM Treasury approval of this kind.

3.7 In 2014, the Cabinet Office introduced a commercial spend control for all government contracts with designated strategic suppliers worth £10 million or over. In 2016, this was extended to all government contracts worth £10 million or over. This was in addition to existing HM Treasury controls on departmental spending outlined above. For all procurements of £10 million or more, including COVID-19 related ones, the Cabinet Office examines how and why the goods or services will be procured from a commercial perspective before it gives its approval for the spending. The final step of that approval process, for the larger or most contentious items, is by a committee chaired by the Minister of State for Efficiency and Transformation made up of the Cabinet Office permanent secretary, the Government Chief Commercial Officer and officials from the Cabinet Office controls team. The Cabinet Office told us that by the end of October 2020, it had undertaken 63 of these ‘deep dives’ and reviewed the commercial methodology for award and value for money on a total spend of £14 billion. It told us that as a result of this review a total of 187 conditions were attached to approvals and followed up.

3.8 The Cabinet Office decided not to apply this commercial spending control to the award of PPE contracts because of the pace of the market decisions required and the seniority of the staff working on PPE, and to rely on separate assurance processes put in place. The PPE procurements were subject to normal departmental spending controls, including HM Treasury approval of new spending proposals, and to a clearance board established by the Department of Health & Social Care and the Cabinet Office to approve PPE contracts more than £5 million.

3.9 The Cabinet Office also requires departments to submit regular returns on COVID-19 related procurements and payments over £1 million, to monitor changes to departments’ procurement practices in response to the pandemic.

Competing for contracts on an equal basis

3.10 Public bodies should always follow public procurement rules and policy guidance. The principles of procurement set out in regulation 18 of The Public Contracts Regulations 2015 state that: “Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.” Notwithstanding this, the regulations allow for direct contract awards in circumstances, such as extreme urgency, which will entail treating suppliers differently.

3.11 As a result of enormous demand for PPE, coupled with worldwide supply constraints, the procurement of PPE became particularly important and demanding. To help support the Department of Health & Social Care's procurement of PPE, it established a cross-government team of around 450 staff from the Department of Health & Social Care, NHS England and NHS Improvement, the Cabinet Office, the Ministry of Defence, and the Department for Education, with the help of the Government Commercial Function. Prior to this, there were 21 full-time equivalent staff working to secure PPE. Our forthcoming report on the supply of PPE during the COVID-19 pandemic will further explain the background to the government's procurement of PPE during this time.

3.12 The urgent clinical need and high global level of demand for PPE created a volatile and highly competitive and fast-paced market. In response, the government designed its processes to put emphasis on speed, deliverability and technical compliance. The Department of Health & Social Care was approached by around 15,000 suppliers offering PPE. The cross-government PPE team established a normal lane to assess and process these leads and on 2 April 2020 set up a high-priority lane to follow up on leads from government officials, ministers' offices, MPs and members of the House of Lords, senior NHS staff and other health professionals, that it considered to be more credible (**Figure 6** overleaf). The sources of the referrals to the high-priority lane were not always recorded on the team's case management system. 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).

3.13 The cross-government PPE team established an eight-stage process to assess and process offers of support (**Figure 7** on page 29). This process developed over time. For example, financial and company due diligence checks were not always completed on suppliers before the award of contracts in the early weeks of PPE procurement (see paragraph 3.19). In addition to the eight-stage process, because of the nature of the market which meant that it was not considered feasible to run normal tendering competitions, price comparison mechanisms were put in place with the aim of ensuring the team was continually benchmarking the competitiveness of offers. Prices for valid offers were compared to prices obtained in the prior two weeks, with separate approval required for any offers that were not within 25% of an average.

3.14 There were no criteria for referrals to the high-priority lane and the source of the referral was not always recorded. We also found one example (out of a risk-based sample of PPE contracts with five suppliers) where an offer was processed through the high-priority lane in error (**Figure 8** on page 30).

Figure 6
High-priority lane for the procurement of personal protective equipment (PPE)

The cross-government PPE team established a high-priority lane to assess and process PPE leads given to them by government officials, ministers’ offices, MPs and members of the House of Lords, senior NHS staff and other health professionals

Background	Established by the cross-government PPE team as a dedicated lane used to assess and process high-priority leads for PPE, that it considered more credible or where it considered more urgency was needed. This lane sat alongside a normal lane to process over 15,000 offers of support to supply PPE.
Suppliers	A total of 493 suppliers came through this lane, of which 47 were awarded contracts.
Source of leads	Leads came into to a dedicated mailbox. There were no written rules that determined what went into this mailbox. The existence and nature of the mailbox was publicised across the PPE procurement programme and to relevant private offices across government and parliament. The cross-government PPE team told us that these leads had been pre-sifted for credibility by being referred by a senior credible source.
Data on sources	Fewer than 250 sources for these leads were recorded: 144 leads came from the private offices of ministers, including referrals from MPs who had gone to ministers with a possible manufacturer in their constituency and where private individuals had written to the minister or the private office with offers of help; 64 leads were direct from MPs or members of the House of Lords not in government; 21 leads were from officials, such as a Department of International Trade network that was looking for sources worldwide, and the private office of the Permanent Secretary of the Department of Health & Social Care; and three leads were from other identified sources that did not fall into the categories above.

Source: National Audit Office analysis of documents provided by, and interviews with, the Department of Health & Social Care and the Cabinet Office

Figure 7

Stages for assessing and processing offers of support to provide personal protective equipment (PPE)

The cross-government PPE team established an eight-stage process



Source: National Audit Office analysis of documents provided by, and interviews with, the Department of Health & Social Care

Figure 8

Case study 1: Department of Health & Social Care contract for a range of personal protective equipment (PPE)

Awarding body	Department of Health & Social Care (the Department)
Supplier	PestFix
Contracts for	Personal protective equipment (aprons, face masks, gloves, gowns)
Contract value	£350 million (in total)
Background	<p>PestFix was processed through the high-priority lane. The Department told us that PestFix was added to this route by an initial mistake within the cross-government PPE team, which was not as a result of any incorrect information provided by PestFix. PestFix is a retailer of pest control products including PPE.</p> <p>Government contracted with PestFix to purchase 25 million FFP2 masks for £59 million based on a design which complied with the BS EN149 standard but was not in line with the government's published PPE specifications at the time of the order. The masks ordered and delivered were of the specification agreed with the supplier. After 600,000 of the masks had been delivered, the Department became aware of the issue and communicated it to Pestfix. Those 600,000 masks will not be used for their original purpose but may be able to be used for other purposes or resold. In place of the remainder of the order, the Department requested that PestFix instead supply Type IIR masks and varied the contract accordingly. PestFix has delivered 69% of this order to date and is continuing to work with the department.</p>
Documentation	<p>On 18 May, contract documentation was initially published for a contract for £109 million. This included items of PPE which the Department had decided not to buy.</p> <p>It published a corrected document on 10 July for the actual value of £32 million, by which time it had awarded further contracts to PestFix.</p> <p>There was no documented financial and company due diligence at the time of the original award, with this due diligence retrospectively carried out in June. This rated PestFix as amber.</p>

Source: National Audit Office analysis of documents provided by, and interviews with, the Department of Health & Social Care

Procurement practices while procuring at speed

3.15 Although government bodies were having to procure goods and services at speed, standards governing procurement practices still applied. For example:

- Regulation 84 of The Public Contracts Regulations 2015 states that awarding bodies should document the progress of all procurement procedures, ensuring that they keep sufficient documentation to justify decisions taken in all stages of the procurement procedure. This applies to direct awards as well as to competitive procurements, and for emergency procurements under regulation 32 includes recording the circumstances which justify its use.
- Regulation 24 of The Public Contracts Regulations 2015 requires that awarding bodies take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators. It specifies that conflicts of interest include any situations where the financial, economic or other personal interests of those involved in the procurement procedure, or those able to influence the outcome of that procedure, might be perceived to compromise their impartiality and independence.

3.16 It is even more important to have a clear approach to managing conflicts of interest when contracts are awarded directly to suppliers without any competition. Competition would usually provide one way of managing any conflicts. Where potential conflicts do arise, we would expect these to be clearly documented with a record of the action taken to manage the potential conflict. For example, individuals with an actual or perceived conflict of interest might be required to declare the interest, or step aside from the procurement process for specific contracts.

3.17 We selected a risk-based sample of 20 procurements to review compliance with these regulations. We also drew on evidence from our previous work on the procurement of ventilators and from work undertaken by the Government Internal Audit Agency. The following paragraphs in this section set out our findings.

3.18 We previously reported that the Cabinet Office spent around £277 million, and the Department of Health & Social Care spent around £292 million, on new ventilators. Both departments started their ventilator programmes on the basis that securing as many mechanical ventilators as possible, as quickly as possible, was necessary to safeguard public health, and reflected this urgency in their procurement approach. We found that both departments maintained sufficient record of their programmes' rationale, the key spending decisions they took and the information they had to base those on.

3.19 The Department of Health & Social Care's newly created PPE procurement channel supported by a cross-government team took a similar approach with an emphasis on speed, deliverability and technical compliance. The PPE team quickly put in place processes to check the certification and technical suitability of all equipment offered by suppliers. It also put in place a process for rapid supplier due diligence reports. It told us that it was able to research and report on financial details of companies and the background details of company directors within four hours at the peak, and produced reports rating suppliers as red, amber or green. However, this process was only standardised towards the end of April, after some contracts had already been signed. For example, contracts were awarded to PestFix and Clandeboyne on 16 April 2020 and 28 April 2020 respectively, but retrospective financial and company due diligence for the companies was only carried out at the end of June 2020. The companies were rated as amber and red respectively. The PestFix contracts included £26 million of prepayments, which was common practice over this period in order to secure supplies in a competitive global market. By 28 April 2020, PPE contracts had been awarded to 71 suppliers, with a total value of £1.5 billion. The Department for Health & Social Care told us that of the contracts with the 71 suppliers, to date 59 had been delivered, three had been cancelled and the remaining contracts were ongoing. It also told us that both PestFix and Clandeboyne contracts were delivered as agreed and that across all equipment bought by the cross-government PPE team and received, it had calculated the failure rate as 0.5% by volume.

3.20 In August 2020, the Cabinet Office asked the Government Internal Audit Agency to undertake a review of six PPE contracts where concerns had been highlighted in the media. 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 how they mitigated for some issues raised in due diligence reports for suppliers which were given low ratings but awarded contracts. We also found gaps or limited documentation to support some key decisions made in the contracts we looked at, including PPE contracts. These are highlighted in the following paragraphs and figures.

3.21 We found that three contracts out of our risk-based sample of 20 contracts were awarded retrospectively after some work had already been carried out. By procuring work without a formal contract setting out full details of work and how it is managed, government increases risks including underperformance.

- The Cabinet Office awarded a £3.2 million contract through a framework agreement to Deloitte to support the cross-government PPE team's procurement of PPE on 21 July 2020, with the contract effective from 14 March 2020. We found no evidence that the Cabinet Office documented its reasons for its choice of supplier. The procurement strategy stated that other suppliers on the framework may be able to provide the service and it accepted the risk of a legal challenge.
- In March 2020, the Cabinet Office procured focus group and communication services from Public First, a supplier that was already working for the Cabinet Office on another project. The Cabinet Office asked the supplier to provide focus group research on an informal basis, agreeing to pay the supplier for each set of groups without a formal contract. This arrangement continued for a number of weeks (**Figure 9** overleaf). On 5 June 2020, the Cabinet Office awarded a retrospective contract for a maximum £840,000 to Public First to cover work already carried out from 3 March 2020 onwards and to cover the value of potential future work. Public First invoiced for £550,000 in total for work covered by the contract. We found a lack of documentation recording the process for choosing the supplier, the justification for using emergency procurement, or any considerations around potential conflicts of interest.
- The Cabinet Office awarded a contract to Topham Guerin with an initial maximum value of £1.5 million for publicity campaign coordination services on 7 May 2020, with the contract effective from 17 March 2020. This contract was a direct award and we did not find evidence of documented requirements prior to the work beginning.

3.22 For a contract awarded by the Department of Health & Social Care for PPE (face masks) we found no documentation that a potential or perceived conflict of interest had been considered by the awarding body in relation to a senior adviser to the supplier or of how it was managed. (**Figure 10** on page 35).

Figure 9

Case study 2: Cabinet Office procurement for focus groups and communications

Awarding body	Cabinet Office
Supplier	Public First
Contract for	Focus groups and communications
Contract value	£840,000
Background	<p>In March 2020, the Cabinet Office requested Public First, an existing supplier, to conduct focus groups and communication work relating to COVID-19 at short notice. Without putting a contract in place, the Cabinet Office asked the supplier to continue to provide focus group research for a number of weeks, agreeing to pay the supplier for each set of groups conducted – usually booked a week or two ahead. In addition, the Cabinet Office asked the supplier to second a member of staff into the Cabinet Office without setting up a formal contract.</p> <p>On 5 June 2020, the Cabinet Office awarded a retrospective contract to cover work already carried out from 3 March 2020 onwards and expected potential future work. The contract was a direct award on the same terms as those of the government’s research marketplace dynamic purchasing system, which Public First is a supplier on. Contracts awarded through the dynamic purchasing system require a mini-competition. The Cabinet Office paid £550,000 to Public First in total for the work covered by this contract.</p>
Documentation	<p>The owners of Public First have previously advised or worked with the Minister for the Cabinet Office. We found no evidence that the Minister for the Cabinet Office had been involved in either the award or management of this contract. We found no documentation on the consideration of conflicts of interest, no recorded process for choosing the supplier, and no specific justification for using emergency procurement.</p> <p>The award letter states that “Cabinet Office reasonably anticipates that The Public Contracts Regulations 2015 will apply to this Contract and the Parties shall ensure that there is a lawful basis for awarding the Contract”.</p>

Source: National Audit Office analysis of documents provided by, and interviews with, departments

Figure 10

Case study 3: Department of Health & Social Care contract for personal protective equipment (PPE) – face masks

Awarding body	Department of Health & Social Care
Supplier	Ayanda Capital
Contract for	PPE (face masks)
Contract value	£253 million
Background	<p>The offer of support was processed through the Department of Health & Social Care's PPE high-priority lane, following a referral by an NHS official.</p> <p>The offer of support was from a business person who was an adviser to the Board of Trade at the time. Interest was originally registered with the Department of Health & Social Care with this person's own company, Prospermill, before the Department for Health & Social Care agreed to their request to contract with Ayanda Capital, where this person is a senior adviser, because Ayanda had access to international banking infrastructure.</p> <p>This person acted as Ayanda's representative and signed the contract with the Department of Health & Social Care on Ayanda's behalf on 29 April 2020.</p> <p>The government contracted with Ayanda to purchase 50 million FFP2 masks for £155 million based on a design which complied with the BS EN149 standard but was not in line with the government's published PPE specifications at the time the contract was signed. The masks ordered and delivered were of the design that government had agreed with the supplier. The masks received will not be used for their original purpose but may be able to be used for other purposes or resold. Ayanda is assisting in these discussions.</p>
Documentation	<p>The only documented consideration of conflicts of interest by the awarding body was a standard new supplier form declaring no conflicts of interest with the Department of Health & Social Care, and due diligence checking for political connections for Ayanda directors. The due diligence checks, carried out on 2 May 2020 as part of a second round of due diligence on Ayanda, did not include Ayanda's senior adviser and did not identify any conflicts of interest.</p> <p>After the contract was awarded, entered into and an initial deposit made by the Department of Health & Social Care, it sought additional assurance over how further payments would be made and processed. An internal paper from 6 May 2020 for the Department of Health & Social Care's approval of the approach taken to those payments mentions that this adviser made contact regarding a planned press release by the Department for International Trade on the contract and the Department of Health & Social Care's paper goes on to say "therefore we need to agree final sign off urgently". The relevant agreement was approved the following day. The adviser told us that his contact with the Department for Health & Social Care covered a number of issues and followed recent discussions around the planned communications. The adviser told us that he was contacted by the Department of International Trade's Press Office regarding a proposed press release and that they were very keen to build up media plans. The Department for International Trade told us that it did not agree to the press release and no press release was issued.</p>

Source: National Audit Office analysis of document provided by, and interviews with, departments

3.23 We also identified an example where a minister who had cross-government responsibilities for supporting procurement and other government functional activity relating to COVID-19 had a connection to a supplier who was awarded three contracts. The contracts were awarded by three different departments under delegated authority and would not therefore require a Cabinet Office or HM Treasury review on the basis of their value. The minister concerned had declared his interests in line with the respective codes, and we found no evidence that he was involved in the awarding or managing the procurements (**Figure 11**).⁸

Figure 11

Case study 4: Departmental contracts for a range of data services

Awarding body	Ministry of Housing, Communities & Local Government	Department for Business, Energy & Industrial Strategy	NHSX
Supplier	Faculy	Faculy	Faculy
Contract for	Data Scientists	Analytics	NHS information
Contract value	£400,000	£264,000	£2,331,000
Background	All three contracts were direct awards from the Crown Commercial Service's G-Cloud framework in March and April 2020. This framework allows direct awards as standard but requires the process for choosing the supplier to be documented. The Minister of State at the Cabinet Office and HM Treasury owns £90,000 of shares in Faculy with a nominal value of around £90,000.		
Documentation	<p>The minister declared his interest in Faculy on the Register of Lords' Interests as required. The Register of Lords' Interests notes that on 23 August 2020 the minister's interest relating to Faculy ceased.</p> <p>All three contracts fall below departmental delegated authority limits and would not be subject to a required Cabinet Office or HM Treasury review on the basis of their value. As such the Minister of State at the Cabinet Office and HM Treasury would not be involved in the award of these contracts, and we found no evidence that the minister had been involved.</p> <p>Only one of the three contracts (with NHSX) has any documented consideration of conflicts of interest, and no potential conflicts of interest were identified. The contract with NHSX does not have documentation for the basis of choice of supplier and has not been published on the Contracts Finder website. The other two have documented the process of supplier selection based on their requirements.</p>		

Source: National Audit Office analysis of documents provided by, and interviews with, departments

⁸ Ministers and civil servants (including special advisers as temporary civil servants) are subject to their respective codes of conduct, the *Ministerial Code* and the *Civil Service Code*. Additional guidance for civil servants is provided by the *Civil Service Management Code*. Ministers, peers and MPs are required to declare financial and other interests in their respective registers of interest.

Transparency

3.24 Transparency through the publication of contract details is fundamental to good government procurement practice, given the need to ensure that public money is being spent appropriately. It is a vital check to help ensure accountability for procurement decisions taken and is particularly important in the case of direct awards where the assurance provided by a competitive process is absent. In particular, lack of transparency through the failure to publish contract details, or delays in doing so, may result in unfairness to other suppliers if it prevents or hinders their ability to challenge contract awards.

3.25 In December 2017, the Government Commercial Function issued guidance to encourage greater transparency in government procurement. It built on The Public Contracts Regulations requirements to publish details of contracts within a reasonable time period and recommended that government bodies publish basic information about contracts they award, within 90 days of awarding them, on the Contracts Finder website. The Cabinet Office's Procurement Policy Note regarding government's response to COVID-19 reminded public bodies that the legal requirement to publish contract award notices within 30 days applies for direct awards. For central government bodies the threshold for publishing contracts on Contracts Finder is a contract value of £10,000 and for non-central government bodies it is £25,000.

3.26 Our report on *Departments' use of consultants to support preparations for EU Exit* found that it had taken on average 119 days for basic details of EU Exit consultancy contracts to be published, compared with 82 days for all consultancy contracts.⁹ In response to the Committee of Public Accounts' report on Brexit consultancy contracts,¹⁰ published in September 2019, the Cabinet Office committed to improving transparency and prompt reporting on professional services spending more widely, including through government publishing contracts and related details within its 90-day target.¹¹

⁹ Comptroller & Auditor General, *Departments' use of consultants to support preparations for EU Exit*, Session 2017-2019, HC 2105, National Audit Office, June 2019.

¹⁰ HC Committee of Public Accounts, *Brexit consultancy contracts*, One Hundred and Twentieth Report of Session 2017-2019, HC 2342, September 2019.

¹¹ Treasury Minutes, *Government response to the Committee of Public Accounts on the One Hundred and Twelfth to One Hundred and Nineteenth reports from Session 2017-19 and the First and Second reports from Session 2019*, CP 210, January 2020.

3.27 Of the 1,644 contracts awarded across government up to the end of July 2020 with a contract value above £25,000 (excluding contracts for PPE awarded through existing frameworks), 55% have not had their details published by 10 November 2020 and 25% were published within the 90-day target. Of these contracts that were new direct awards (1,301), 4% were published within 30 days of awarding the contract and 19% within 90 days. 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. 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. We have not included contracts for PPE awarded through existing frameworks in our analysis as we received data too late in our audit process. The Cabinet Office and Department of Health & Social Care acknowledged the backlog of contract details awaiting publication and noted that resources were now being devoted to this, having earlier been prioritised on ensuring procurements were processed so that goods and services could be made available for the pandemic response.

Appendix One

Our investigative approach

Scope

1 We conducted an investigation into government procurement during the COVID-19 pandemic in response to concerns raised by members of the public and members of Parliament. These concerns included a lack of transparency on the award of contracts, impropriety and that contracts had been awarded to unsuitable suppliers. The report covers:

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

2 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 has been carried out as part of the Comptroller and Auditor General's examinations of economy, efficiency and effectiveness, but does not evaluate the value for money of the contracts awarded over this period.

3 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.

Methods

4 Our fieldwork took place between July 2020 and October 2020. In conducting this investigation, we drew on a variety of evidence sources.

5 We interviewed key individuals from the Government Commercial Function, the Department of Health & Social Care, the Crown Commercial Service and the Government Internal Audit Agency. The work was designed to understand:

- the role of the Government Commercial Function in procurement during the pandemic, including any controls in place other than departmental or HM Treasury spending controls;
- the role of the Crown Commercial Service in procurement during the pandemic;
- the procurement process for PPE; and
- the work undertaken by the Government Internal Audit Agency on the procurement of PPE.

6 We carried out a census of government procurement activity related to its responses to the COVID-19 pandemic. We asked for details of all COVID-19 related procurement activity carried out by departments and their arm's-length bodies between 1 January 2020 and 31 July 2020. It does not cover procurements by NHS trusts, NHS foundation trusts and local authorities. We assessed the reasonableness of census submissions and confirmed contract values to published values where available, but did not request any further evidence for the contracts included. We received responses from the following departmental groups:

- the Cabinet Office;
- the Department for Business, Energy & Industrial Strategy, including the Advisory Conciliation and Arbitration Service, the Coal Authority, the Civil Nuclear Constabulary, the Competition and Markets Authority, Companies House, HM Land Registry, the Insolvency Service, the Intellectual Property Office, the Meteorological Office, the Nuclear Decommissioning Authority, Ofgem, UK Atomic Energy Authority and UK Research & Innovation;

- the Department for Digital, Culture, Media & Sport, including Arts Council England, the British Film Institute, the British Library, the British Museum, the British Tourist Authority, the Charity Commission, the Commonwealth Games Organising Committee, the Churches Conservation Trust, the Gambling Commission, Historic England, Historic Royal Palaces, the Horniman Museum, the Horserace Betting Levy Board, the Information Commissioner's Office, the Imperial War Museums, the Museum of the Home, the National Archives, the National Citizen Service Trust, the National Gallery, the National Lottery Community Fund, the National Lottery Heritage Fund, the National Maritime Museum, the National Museums Liverpool, the National Portrait Gallery, the Natural History Museum, Ofcom, the Phone-paid Services Authority, the Royal Armouries, the Royal Parks, S4C, the Science Museum Group, Sir John Soane's Museum, Sport England, the Tate Galleries, UK Anti-Doping, UK Sport, the Victoria and Albert Museum and the Wallace Collection;
- the Department for Education, including the Children's Commissioner, the Construction Industry Training Board, the Engineering Construction Industry Training Board, the Institute for Apprenticeships and Technical Education, the Institute for Arts in Therapy and Education, LocatED, the Office for Students, Ofsted, Social Work England and the Student Loans Company;
- the Department for Environment, Food & Rural Affairs, including the Agriculture and Horticulture Development Board, the Environment Agency, the Joint Nature Conservation Committee and the Royal Botanic Gardens, Kew;
- the Department for International Development;
- the Department for International Trade;
- the Department for Transport, including the British Transport Police, the Driver and Vehicle Standards Agency and Network Rail;
- the Department for Work & Pensions;
- the Department of Health & Social Care, including the Care Quality Commission, Health Education England, the Health Research Agency, the Medicines and Healthcare Products Regulatory Agency, the National Institute for Health and Care Excellence, NHS Blood and Transplant, NHS Business Services Authority, NHS England and NHS Improvement, NHS Digital, NHSX and Public Health England;
- the Foreign and Commonwealth Office (for contracts awarded overseas valued £25,000 and over and for contracts awarded in the UK valued £100,000 and over);

- the Home Office;
- HM Revenue & Customs;
- HM Treasury, including the UK Debt Management Office and UK Government Investments;
- the Ministry of Defence;
- the Ministry of Justice; and
- the Ministry of Housing, Communities & Local Government, including Homes England.

7 The data used in this report only includes new contracts, contract extensions and amendments that resulted in an additional cost. They do not include changes to contracts resulting from the payment of their suppliers to ensure service continuity during and after the current COVID-19 pandemic, covered by Procurement Policy Note 02/20: Supplier relief due to COVID-19 and Procurement Policy Note 04/20: Recovery and transition from COVID-19. It also does not include contracts within the NHS family, for example contracts awarded by NHS England to commissioning support units or secondments of staff from trusts to NHS England.

8 The procurement route categories used in our analysis are:

- new contracts awarded following a competitive process;
- new contracts awarded directly without a competitive process, including single tender actions, negotiations without prior publication, purchase orders and Government Procurement Card purchases;
- direct awards for call-off contracts under framework agreements (which would have been subject to a competitive process to select suppliers when the framework was established; some framework agreements effectively provide for direct call-off contracts only, such as frameworks for G-Cloud and for employing agency staff);
- mini-competitions for call-off contracts under framework agreements;
- extensions to existing contracts which increased the value of the contract; and
- other amendments to existing contracts which increased the value of the contract.

9 A wide range of goods, services and works have been procured during the pandemic. Based on the descriptions provided in returns to our census, we categorised these awards into 11 types:

- PPE – this includes aprons, hand sanitiser, gowns and disposable gloves, face shields and respirator masks.
- Medicines and vaccines – all contracts related to medicines and vaccines, including other categories such as logistics and professional services.
- Testing and tracing – all contracts related to the testing and tracing programmes, including other categories such as logistics and professional services.
- Ventilation – all contracts related to ventilation, including other categories such as logistics and professional services.
- Logistics and transport – all contracts related to logistical support, transport and travel, not covered in medicines and vaccines, testing and tracing and ventilation.
- IT and telecommunications – this includes IT equipment, software and applications, telecommunications/telephony and digital.
- Accommodation and food – this includes property and estates contracts, facilities management, furniture, security and catering and other contracts related to making properties amenable to social distancing.
- Professional services – including legal services, management consultancy, programme management office support and other professional services such as market research.
- Staff costs – this includes all contracts related to additional staffing needs not covered in the categories above.
- Communications – including communications and public relations support and media buying.
- Other – this includes all other goods, services and works not covered in the above categories.

10 We collected data on the transparency of contract awards. For contracts awarded between 1 March 2020 and 30 June 2020 with a value over £25,000, we reviewed whether basic details for each contract were published on Contracts Finder, available at www.gov.uk/contracts-finder.

11 We reviewed the documentation for a sample of 20 contracts, including new awards, contract amendments and contract extensions. We selected these on a risk basis, considering factors such as concerns raised (for example, by correspondents or the media), as well as the size of contracts and the complexity of their subject matter. For each contract we requested a standard set of procurement documentation including the commercial strategy award documents, procurement log, details of due diligence, and details of spending. Where there were related contracts with the same supplier for the same purpose, we also looked at these. We reviewed this documentation against a framework of questions drawing on the requirements in regulations for recording of information and asked further questions to understand the facts about the process by which each contract was awarded and information published, including interviews with those responsible where required. This report should not be considered as offering positive assurance over aspects of any of these contracts which are not detailed in the report, or as offering any legal opinion on the use of public procurement regulations. It is also not possible to extrapolate from the sample to quantify issues in procurement as a whole. We have not drawn any conclusions regarding the value for money of the procurement, and the value for money of arrangements for the supply of PPE will be covered in a separate report. The sample consisted of the following contracts:

- two Cabinet Office communications contracts;
- a Cabinet Office contract for support in PPE procurement;
- a Department for Business, Energy & Industrial Strategy data contract;
- a Department for Health & Social Care data contract;
- two Department for Health & Social Care contracts for testing;
- five Department for Health & Social Care contracts for PPE;
- a Department for Work & Pensions contract for call centre services;
- two Royal Free London NHS Foundation Trust contracts for PPE;
- two Supply Chain Coordination Limited logistics contracts;
- a Ministry of Defence consultancy contract;
- a Ministry of Housing, Communities & Local Government data contract; and
- an NHSX data contract.

12 We reviewed other relevant documents. These included procurement policy notices, procurement regulations, and relevant reports from the Government Internal Audit Agency.

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National Audit Office

Design and Production by NAO External Relations
DP Ref: 009199-001

£10.00

ISBN 978-1-78604-342-9



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