

LEGAL ADVICE

Acceptance of the funding (£1,496,710.53) requires the Council to enter a Memorandum of Understanding by way of Second Variation (MOUV2) to the Original MOU under s.31 of the Local Government Act 2003 with the Department. The MOUV2 further varies original Memorandum of Understanding dated 27/10/2022 (“The Original MoU”) as already varied by the First Variation (dated 10/03/2023) (MOUV1).

Under the effects of MOUV2 the Council must continue to commit to eligible expenditure set out on the original MOU dated 27/10/2022 as now varied. MOUV2 must be delivered within the period for delivering of the Local Net Zero Programme which must comply in all respects with the objectives set out in paragraph 12 (Scope) of the original MOU. The original MOU set out details of requirements by the Authority to deliver against the Scope and commitments in relation to the administration of the original grant. Any funding commitments under the new grant must also meet the funding criteria. All existing requirements of the Original MOU, as varied by MOUV1 must continue to be adhered to save for as varied by MOUV2. The “Funding Period” under MOUV2 is now extended to 31 March 2024 in paragraph 13. However, paragraph 17 of the MOU is varied to state *“at the Secretary of State’s sole discretion, the Secretary of State reserves the right to determine an extension to the Funding Period **beyond 30th September 2024**, should the Authority provide a request in writing to do so.”* In light of the discrepancy in dates, the client is advised to get clarification from the Department as to the intended Funding Period, as being extended until March or September 2024, before MOUV2 is signed.

Where the Authority provides any funding to third parties for activities undertaken during the Funding Period, it must ensure that the relevant provisions within the MOU as now varied are cascaded down and included in any such arrangement with third parties, under a grant agreement, and meet the grant funding purposes. Further legal support can be accessed to assist with this process if necessary.

As previously advised in relation to the Original MOU and MOUV1, the Council must complete its own Subsidy Control Principles assessment for any third party provided with funding under the grant and retain all declarations and information as may be required to enable both the Authority and the Secretary of State to comply with any applicable subsidy control regime requirement, and to provide copies of such declarations and information to the Secretary of State if required to do so. Government guidance published on 11.11.2022 (as updated from time to time) regarding subsidy control compliance must be referred to and utilised by the Council.

Again, as advised previously, when using the funding to procuring goods or services, to ensure the Council meets the MOU objectives, the authority must comply with all relevant requirements of the Public Contract Regulations 2015 as well as obligations under the Equality Act 2010 and its associated Public Sector Equality Duty and its own Contract Procedure Rules. When managing its supply chain the Council should expect its suppliers and subcontractors to meet the standards set out in the Government Supplier Code of Conduct published by the HM Government on best practice expectations referenced below:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf.

Previous legal advice to the authority by my colleague on the original and first Variation, made clear that the Authority cannot use the grant, or any asset financed wholly or partly by it to generate revenue or make a capital gain, except to the extent agreed as part of the grant. This is still the case, and the grant will be subject to clawback, where funding was used outside of the scope of MOU (as varied) and contravenes any requirement of the law.

Under MOUV2 the Council will be responsible for ensuring supported projects are in line with grant funding requirements and the wider Net Zero goals and signing off on resource/funding decisions. The new grant funding can only be used for Local Capacity support as specified in Appendix 1 to MOUV2 in the amounts and projects including:

Grant Amount	Proposed Task
£100,000	SCATTER Tool development, maintenance and inventory update
£100,000	Communications and conferences (including APSE)
£150,000	Project development fund

Therefore, with regards to the balance of £1,196,710.53, the Council must ensure it seeks the Departments consent/agreement in writing, before making expenditure commitment of this sum, that the Department is satisfied the sums are being expended on “Local Capacity” support to avoid any subsequent risk of clawback by the department.

It is imperative that that all requirements under the Original MOU as now varied are complied with by the Council as any funds that are not utilised in line with the funding scope and would be subject to clawback, which have significant financial implications for the Council.

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