



Trading during difficult times for SMEs

November, 2009

Introduction

In an effort to support small and medium sized enterprises (SMEs), which constitute the main fabric of the upstream oil and gas supply chain, the Supply Chain Forum of Oil & Gas UK has identified a number of measures that would enable organisations to mitigate financial and commercial risks during these difficult times. The proposed measures offer tips, advice and best practice to adopt.

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Business Self Help

Resources	Web Links	Content and Tools
Business Link	http://www.businesslink.gov.uk/bdotg/action/home?domain=www.businesslink.gov.uk&target=http://www.businesslink.gov.uk/	<p>Click on "what's new", then two options "real help with finance now" or "help for business".</p> <p>Business Link covers all available financing support offered by the government and tools to help your business in difficult times.</p> <p>This web site is rich with free advice on all aspects of funding and cash flow enhancement tools for any business.</p>
Scottish Enterprise	http://www.nowsthetimetask.com/index/profiler	<p>This tool enables evaluation of your business performance, by asking questions on different aspects. It generates an instant profile that highlights business development priorities across six key areas: strategic planning, investment, business improvement, innovation, business relationships and new markets.</p>
DECC	http://www.decc.gov.uk/	<p>Go to "action for business" and you will find a recap of all government initiatives to support businesses during this challenging time.</p>
Company House	http://www.companieshouse.gov.uk/	<p>Click on "winding up a company".</p> <p>Excellent source of guidance for understanding insolvency, administration and liquidation processes.</p>

Funding in Times of Recession and Credit Crunch

Government Initiatives

Funding Type	Profile	References
Enterprise Finance Guarantee	The £1bn scheme will support up to £1.3bn of new lending by banks to viable SMEs with working capital or investment needs.	http://www.decc.gov.uk/
Capital for Enterprise Fund	The new £75m equity fund, bringing together £50m of government money with £25m from major banks. It provides longer term capital to companies who have exhausted their traditional borrowing capacity.	http://www.decc.gov.uk/ Go to "action for business", towards the bottom of the page click on "real help with finance now" for a one stop shop, easy to use web portal.
Working capital scheme	Government will provide banks with guarantees covering 50% of the risk on existing and new working capital portfolios worth up to £20bn.	
Scottish Enterprise (SE)/ Business Gateway (BG) Grants	These vary with your company's profile or banding with SE/BG. There are various options to obtain grants for development/research, trade missions and marketing. This can reduce or replace funding from banks for this type of activity.	http://www.scottish-enterprise.com/
Tax Relief Schemes	HMRC offers schemes especially targeted at SMEs that allows them to claim tax relief on activity defined by HMRC as of Research & Development type. It is worthy to note that such definition is quite wide according to HMRC and it extends to innovations in all forms. The claims put through by SMEs will be treated as a priority by HMRC (ahead of larger companies).	http://www.hmrc.gov.uk/index.htm Specialist companies: http://www.almacg.com/ http://www.deloitte.com/view/en_GX/global/index.htm http://www.pwc.com/

Financial Facilities

Funding Type	Purchaser	Supplier
Tools enhancing working capital	Overdraft: A bank may honour an overdraft, depending on the importance of the customer and on prior arrangements (if any) to cover overdrafts.	
	Reverse factoring: Supplier finance is when a business provides low-cost finance to its suppliers, as part of a flexible settlement system. It is particularly used in manufacturing production, and improves cash flow for both buyer and supplier. Early payment is provided - either by a bank or by a factoring company or or specialised financial - to a supplier, based on invoices that have been qualified by the buyer.	Factoring: Debt factoring involves selling your invoices to a third party. In return they will process the invoices and allow you to draw loans against the money owed to your business. Essentially, these companies provide a debt collection and ledger management service.
		Invoice discounting: Invoice discounting is an alternative way of drawing money against your invoices. However, your business retains control over the administration of your sales ledger. As well as providing finance, which is probably the main attraction, it offers valuable support services and credit insurance.

Trading in Times of Recession and Credit Crunch

Preventive Measures	As a Purchaser	As a Seller / Contractor
Commercial	<p><u>Supplier Management</u></p> <p>Review your supplier's financial standing; engage in close regular communication to monitor how the situation evolves.</p>	<p><u>Customer Management</u></p> <p>Account management => Review your major clients' accounts. Evaluate turn over v/s profit margins; quality of the business relationship; financial standing; value of having the account in your portfolio; and potential to grow the account.</p> <p>If you consider the account as "key", then think about strengthening relationships through account management and regular visits to keep in tune with their needs and grow your business.</p> <p>Managing the work from delivery to payment => Work only if contract/PO in place; ensure variation is issued when scope is changed; raise an invoice as soon as work is finished; chase payment and do not leave it beyond credit term; identify problems with invoice as soon as possible and resolve dispute quickly; consider ADR or debt recovery agency (they charge a fee or percentage of money recovered).</p> <p>Bottom line => understand where your profit comes from; review your over heads and adjust according to your activity; review your processes and aim to improve efficiencies and effectiveness.</p>
Management	<p><u>Staff</u></p> <p>Consider reviewing the benefits package with the aim of balance between motivation and tax efficiency.</p> <p>Keep a close eye on your key employees and ensure they remain motivated to stay with the company by examining what matters to them.</p> <p>If redundancies are envisaged, plan carefully in consultation with expert lawyer to prevent subsequent claims for compensation (capped presently at £63k).</p>	

Financial	<p>Credit Check</p> <p>Escrow account (A)</p> <p>Parent Company Guarantee</p> <p>Letter of credit</p>	
	<p>Performance bond</p> <p>Retention (B) retention bond or bond in lieu (C)</p> <p>Advance payment and bond (D)</p>	<p>Payment guarantee</p>
		<p>Pay when paid</p>
		<p>Invoicing: Properly detailed and documented invoices, in accordance with client and contract requirements, do help faster payment cycles.</p> <p>Trade Credit Insurance: The scheme is expected to primarily help the retail, construction and manufacturing sectors with cover provided for up to £8.3bn of trade. The scheme comes into effect on May 1 2009 and will take applications until December 31 2009. The maximum cover offered by each insurer will be £1m between a single buyer and supplier. It will only be available for companies which have seen their cover cut after April 1 2009 but will not apply to those whose cover has been withdrawn entirely as they are seen as too much of a risk. This cover is offered as a top up credit insurance where it has been reduced, not covering total losses.</p>
Contractual	<p>Include option to assign contract of subcontractors to Purchaser and ensure that Seller/Contractor cannot assign the contract without Purchaser approval.</p>	<p>Clear payment provisions and payment term as per law within 30 days.</p>
	<p>Do not pay in advance for services, equipment or material without some form of guarantee such as a performance bond or guarantee</p>	<p>Retain title to equipment/material sold until payment received.</p>

	bond or letter of credit (when trading internationally).	
	In case of free issue material- protect against potential liens by Seller.	<p>Include provisions enabling payment set off for companies pertaining to the same Group.</p> <p>Request ability to approve assignment and run a credit check before assignment of contract to another purchaser.</p> <p>Suspension: Include right to suspend the work by Contractor to protect against violations of Purchaser without committing breach of contract (E).</p> <p>Termination: Include right to terminate the contract by Contractor to protect against violations of Purchaser without committing breach of contract.</p>
		Request right to approve assignment by Purchaser to another legal prior to assignment and run credit check on said legal entity to ensure it able to fulfill the obligations of Purchaser under the contract.
	<p>Do not mobilise or start work without a contract or PO with agreed T&Cs in place.</p> <p>If bankruptcy occurs without a PO or Call Off there is no ground on which to claim anything.</p> <p>Ensure that clear provisions are included as to which law governs the contract and which jurisdiction is competent.</p> <p>Keep record of all exchanges with the other party and ensure supporting documents for the job are complete with acceptance signed off at the work site.</p> <p>Talk to the other party on regular basis and visit premises.</p>	
Insurance	<p>Insure ventures in foreign countries through relevant government agencies.</p> <p>Insure credit.</p>	
Legal	<p>Select a law firm that fits with your company needs and negotiate preferential rates or a flat rate before you need their services.</p> <p>Consult closely with your lawyer or follow the advice of your legal counsel before you act.</p>	

Crisis Management

	As a Purchaser	As a Seller / Contractor	Your company
Operational	<p>Immediately contact the party in financial difficulty and identify who are the administrators and what is going on.</p> <p>Keep daily communication with the other party from that point onward.</p> <p>Assess the situation immediately: outstanding monies; stage of services or fabrication/work.</p> <p>Communicate to the administrators your findings and ensure that your respective accounts reconcile correctly.</p> <p>Once a good understanding of the situation is gained contact the other parties involved in the project (if any) to control communication and protect reputation and monies due.</p>		<p>Many of the recommendations listed opposite apply to ensure reputation damage control and maintain relationships.</p> <p>Talk to your clients to try to draw cash that is due from them or request advances to prevent insolvency.</p> <p>Speak to your banks early enough to be able to manage the situation and prevent insolvency.</p> <p>Check out the following web sites for guidance: http://www.companieshouse.gov.uk/ http://www.companyrescue.co.uk/</p>
	In case of free issue material, demand access to withdraw your materials from the premises of the Seller/Contractor.	In case of delivery of material or equipment unpaid for, demand access to withdraw it from the premises of the Purchaser.	
		Stop work and do not proceed if required and pressured to do so until an understanding or a new contract or arrangement is drawn with the Administrators.	
Legal		Call your lawyer immediately.	

(A) Escrow account provisions extracted from a presentation by McGrigors law firm:

1 The Parties hereby jointly direct and instruct the Escrow Agent to open an interest-bearing deposit account at [] Bank Plc, to be opened and held in its name by request letter substantially in the form set out in Schedule [], in accordance with the terms of this Agreement.

2 Funds to be credited to the Escrow Account shall be deposited by the Escrow Agent [immediately] in the Escrow Account unless the Escrow Agent is otherwise notified by the Parties in writing in accordance with this Agreement.

3 The Parties acknowledge that any funds deposited by the Escrow Agent in the Escrow Account shall be deposited at their own risk and the Escrow Agent and the Parties shall have no liability to repay or reimburse any such monies to either of the Parties in the event that the bank or deposit taking institution with whom the Escrow Account is held fails to make repayment of the same.

4 No releases or withdrawals from the Escrow Account shall be made otherwise than in accordance with the provisions of this Agreement save with the previous written consent of the Parties.

(B) Joint Contract Tribunal Standard Provision for Treatment of Retention:

30.5 .1 The Employer's interest in the Retention is fiduciary as trustee for the Contractor...

30.5 .3 The Employer shall,... at the date of payment under each Interim Certificate place the Retention in a separate banking account (so designated as to identify the amount as the Retention held by the Employer on trust as provided in clause 30.5.1) and certify to the Architect with a copy to the Contractor that such amount has been so placed. The Employer shall be entitled to the full beneficial interest in any interest accruing in the separate banking account and shall be under no duty to account for any such interest to the Contractor or any sub-contractor.

(C) Joint Contract Tribunal and BBA standard Retention Bond:

1- By a contract ("the Contract") between the Employer and []... ("the Contractor") the Employer has agreed that he will not exercise his right under the Contract to deduct Retention from amounts included in Interim Certificates provided the Contractor has taken out this Bond in favour of the Employer.

2 - The Surety is hereby bound to the Employer in the maximum aggregate sum of (figures and words) until the Surety is notified by the Employer in writing of the date of issue of the next Interim Certificate after practical completion when the maximum aggregate sum shall be reduced by 50 per cent.

3 - The Employer shall, on demand which complies with the requirements in clause 4 below, be entitled to

receive from the Surety the sum therein demanded.

(D) Joint Contract Tribunal recommended clause for Bond in lieu of retention:

30.4A.1 The provisions in clauses 30.2.1 and 30.4 which provide that the Employer may deduct and retain a percentage of the total amount included under clause 30.2.1 in any Interim Certificate (“the Retention”)... shall not apply; save that the Architect shall at the date of each Interim Certificate prepare, or instruct the Quantity Surveyor to prepare, a statement specifying what deduction in respect of the Contractor’s Retention... would have been made, using the percentage stated in the Appendix pursuant to clause 30.4.1.1... had the provisions in clauses 30.2.1 and 30.4 applied.

30.4A.2 On or before the Date of Possession the Contractor shall provide and thereafter maintain a bond in favour of the Employer in the terms set out at Annex 3 to the Conditions; and incorporating in clause 2 (maximum aggregate sum) and in clause 6(iii) (expiry date) of the bond, the sum and date stated in the Appendix. The bond executed by the surety named in the bond (“the Surety”) shall be supplied to the Employer.

(E) Joint Contract Tribunal standard clause for advance payment and bond:

30.1.1.6 Where it is stated in the Appendix that clause 30.1.1.6 applies, the advance payment identified in the Appendix shall be paid to the Contractor on the date stated in the Appendix and such advance payment shall be reimbursed to the Employer by the Contractor on the terms stated in the Appendix. Provided that where the Appendix states that an advance payment bond is required such payment shall only be made if the Contractor has provided to the Employer such bond from a surety approved by the Employer on the terms agreed between the British Bankers’ Association and the JCT and annexed to the Appendix unless pursuant to the Seventh Recital a bond on other terms is required by the Employer.

(F) Joint Contract Tribunal and BBA standard clause for advance payment and bond:

The Client has agreed to pay the Trade Contractor the sum of [] as an advance payment of sums due to the Trade Contractor under the Contract (“the Advance Payment”) for reimbursement by the Surety on the following terms:

- (a) When the Surety receives a demand from the Client in accordance with clause 3(b) the Surety shall repay the Client the sum demanded up to the amount of the Advance Payment.

- (b) The Client shall in making any demand provide to the Surety a completed notice of demand in the form of the Schedule attached hereto which shall be accepted as conclusive evidence for all purposes under this Bond. The signatures on any such demand must be authenticated by the Client's bankers.
- (c) The Surety shall within 5 Business Dates after receiving the demand pay to the Client the sum so demanded.

Payments due under this Bond shall be made notwithstanding any dispute between the Client and the Trade Contractor and whether or not the Client and the Trade Contractor are or might be under any liability one to the other. Payment by the Surety under this Bond shall be deemed a valid payment for all purposes of this Bond and shall discharge the Surety from liability to the extent of such payment.

(G) Joint Contract Tribunal standard clause for suspension by Contractor:

- 30.1 .4 Without prejudice to any other rights and remedies which the Contractor may possess, if the Employer shall, subject to any notice issued pursuant to clause 30.1.1.4, fail to pay the Contractor in full (including any VAT due pursuant to the VAT Agreement) by the final date for payment as required by the Conditions and such failure shall continue for 7 days after the Contractor has given to the Employer, with a copy of the Architect, written notice of his intention to suspend the performance of his obligations under this Contract to the Employer and the ground or grounds on which it is intended to suspend performance then the Contractor may suspend such performance of his obligations under this Contract to the Employer until payment in full occurs. Such suspension shall not be treated as suspension to which clause 27.2.1.1 refers or a failure to proceed regularly and diligently with the Works to which clause 27.2.1.2 refers.