

# Practical procurement advice and tips in the time of COVID- 19

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# Introduction

- PPN 01/2020, how flexible is your procurement?
- Ongoing procurements: how to adopt and adapt to remote working and keeping procurements on track
- PPN 02/2020, how to help and protect your supply chain, pre- and prompt-payment
- Challenges and the court process

# PPN 01/20

- Issued 18 March 2020
- Recognition of the need to respond to COVID-19 crisis
- NOT a relaxation of the procurement rules
- BUT reminder of the flexibility which already exists in the rules

# Flexibility in the rules

- Direct award due to extreme urgency, reg 32(2)(c)
- Direct award due to absence of competition/protection of exclusive rights, reg 32(2)(b)(ii), (iii)
- Call off from existing framework/DPS
- Use of accelerated timescales
- Modifying or extending an existing contract, reg 72

# Extreme urgency

- Four cumulative requirements
  - Genuine reasons for extreme urgency, such as immediate consequences of Covid-19 requiring response on public health or essential services grounds;
  - Unforeseeability of the trigger events;
  - Impossibility of complying with usual timescales, including accelerated procurement, competitive procedures with negotiation or a call-off; and
  - Lack of attributability/fault.

# Extreme Urgency (2)

- Exception
- Narrowly interpreted
- Likely therefore to be restricted to the procurement of medical equipment necessitated by COVID-19

# Accelerated timescales

- Open
  - Reg 27(5), (6)
  - 10 days (electronic) 15 days (non-electronic)
- Restricted
  - Reg 28 (10)
- Competitive with negotiation
  - Reg 29(10)
- 15 days from contract notice, 10 days from ITT

# Call offs

- Prior identification as a permitted customer
- Compliance with the original scope of the contract, framework agreement or DPS
- Procurement was PCR 2015 compliant originally; and
- Adequacy of existing terms, without the need for significant modification.
- In practice, it is vital to follow the contractual mechanism.
- There may also be additional minimum tendering requirements and timescales, such as for a call-off from a DPS.



# Modifying/Extending Existing Agreements

- whether modifications are specifically provided for, not substantial or due to a change of contractor not being possible for economic or technical reasons (regulations 72(1)(a), (e) and (b)).
- If not, regulation 72(1)(c) provides a further ground for modification, provided three requirements are met:
  - Unforeseeability;
  - Not altering the overall nature of the contract; and
  - A 50% price increase cap from the contract or framework agreement value.

# Mitigation of risk

- Record justification for steps taken
  - Reg 84 (report)
- Issue a VEAT notice
  - Reg 99
- Contract award notice
  - Reg 50

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