



# COVID-19– Geldards Public Sector Update

Business Emergency Advisory Team

15th April 2020



# Public Procurement

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15<sup>th</sup> April 2020

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# Public Contracts Regulations 2015

- Apply to procurement of contracts for public services, public supplies, public works
- Subject to thresholds
- Exemptions available in some circumstances
- Light touch regime

# Procurement in extreme urgency

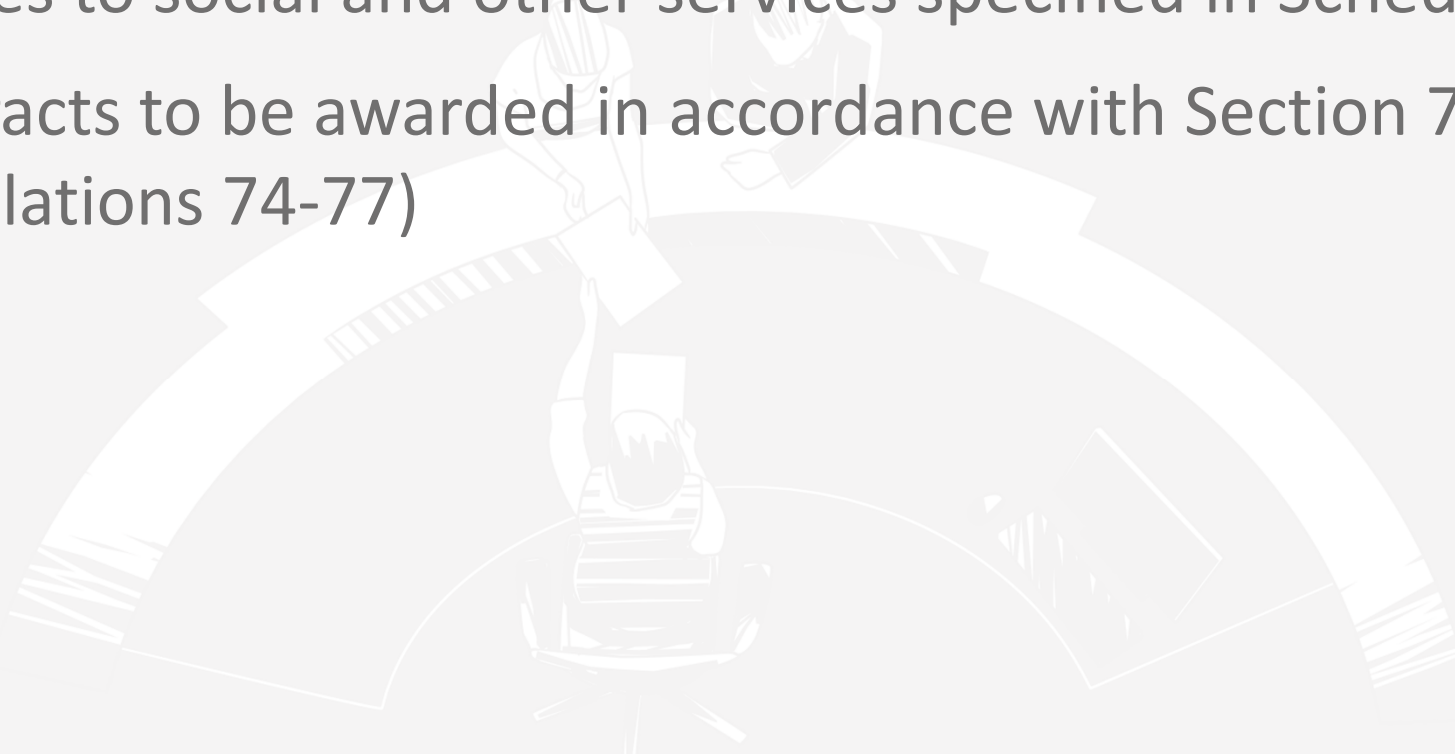
- Direct award – use of the negotiated procedure without prior publication
- Regulation 32(2)(c):
  - Insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with

# Other urgent procurements

- Open, restricted and competitive procedure with negotiation  
- accelerated timescales possible if state of urgency renders normal time limits impracticable
- Call off from an existing framework agreement or dynamic purchasing system
- Modification of existing contract – Regulation 72

# Light touch regime

- Applies to social and other services specified in Schedule 3
- Contracts to be awarded in accordance with Section 7 (Regulations 74-77)



# Procurement Policy Note 01/20

- PPN 01/20 – Responding to COVID-19
- Identifies options for procurement
- Regulation 32(2)(c):
  - “COVID-19 is serious and its consequences pose a risk to life. Regulation 32(2)(c) of the PCRs is designed to deal with this sort of situation”
- Contracting authority should keep a written justification of satisfying the tests of Regulation 32(2)(c)
- Separate assessment of the tests necessary before any subsequent or additional procurement

# Supplier Relief

- Procurement Policy Note 02/20 – Supplier relief due to COVID-19
- Applies until 30 June 2020
- Aimed at ensuring service continuity
- Contracting authorities should
  - Review their contract portfolio and identify suppliers at risk
  - Inform suppliers who they believe are at risk that they will continue to be paid as normal (even if service delivery is disrupted or temporarily suspended) until at least the end of June
  - Put in place the most appropriate payment measures to support supplier cash flow



# Supplier Relief – Obligations of suppliers

- Suppliers should agree to act on an open book basis and make cost data available to the contracting authority during this period.
- Invoices should identify amounts attributable to impact of COVID-19
- Suppliers should continue to pay employees and flow down funding to their subcontractors.
- Suppliers should not make profits on undelivered elements of contracts

# Contractual Reliefs

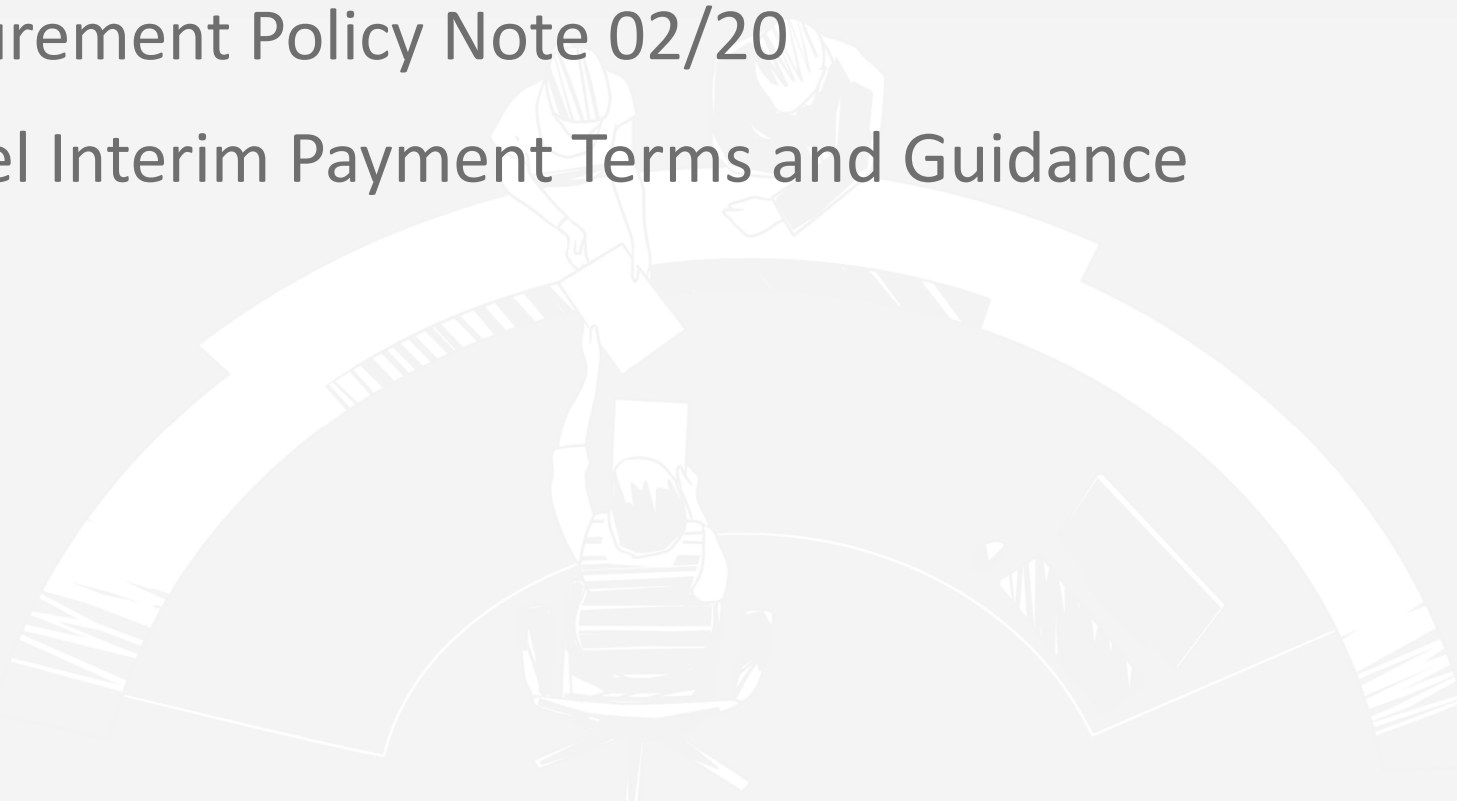
- Contracting authority should work with supplier to apply reliefs or vary contracts instead of allowing supplier to suspend performance
- Changes should be limited to specific circumstances of the situation
- Contract should return to original terms as soon as impact of COVID-19 on the contract is over

# Supplier Relief – Issues to consider

- Risks associated with advance payments should be carefully considered and documented
- Consider carefully extent of payments to underperforming suppliers
- Make suppliers aware contracting authority will take action to recover payments made to suppliers who fail to act transparently and with integrity

# Interim Payment Terms

- Procurement Policy Note 02/20
- Model Interim Payment Terms and Guidance



# Conclusions

- Consider options for urgent procurement if necessary
- Identify suppliers at risk
- Consider use of reliefs for suppliers
- Take account of all relevant issues

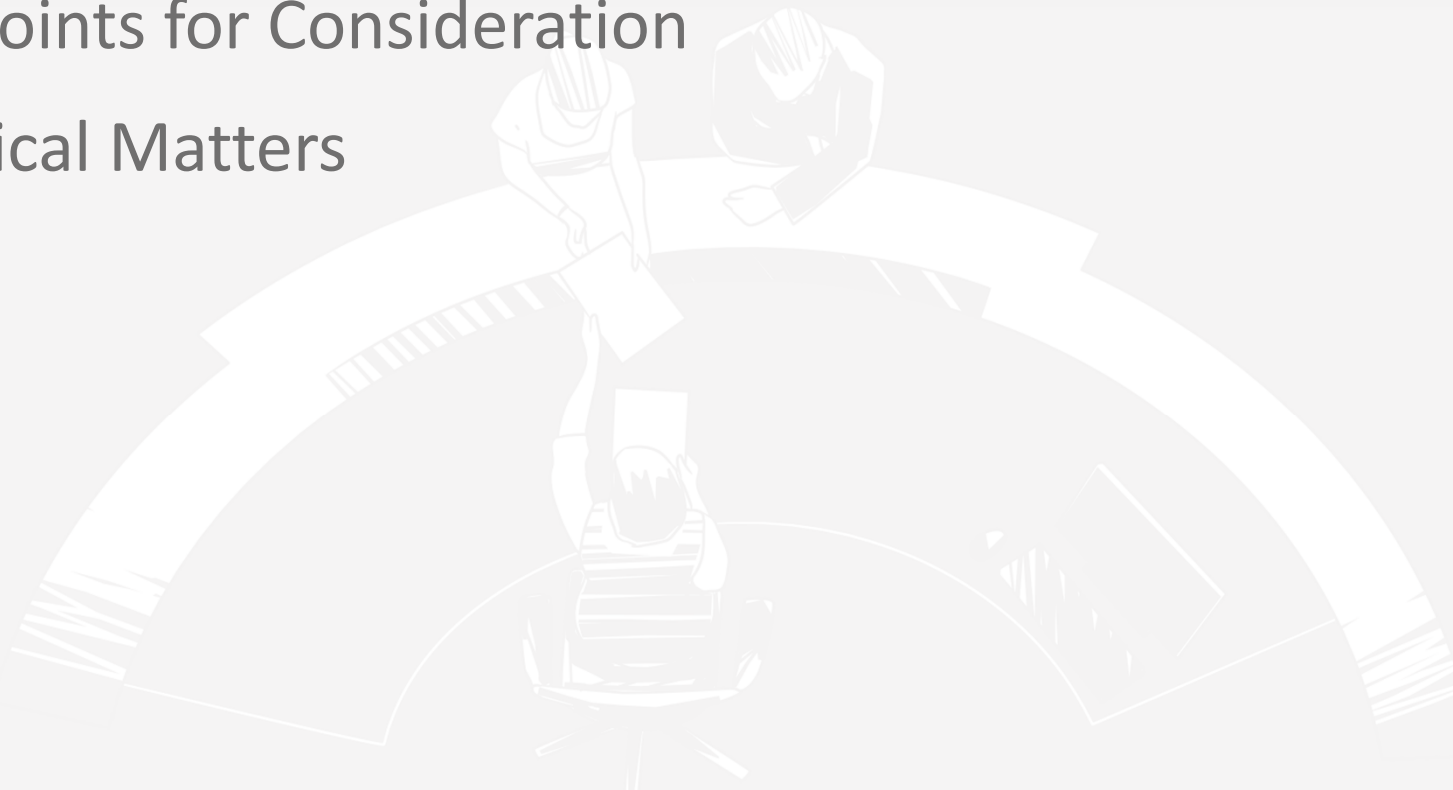


# COVID – 19 Contracting Complexities – Part 1

Michelle S Craven-Faulkner, Partner, Commercial Services

# Introduction

- Key Points for Consideration
- Practical Matters



# Key Points

- Do you want to exit an agreement?
- Is the other party seeking to terminate/cancel?
- What rights of cancellation are there?
- When is the agreement due to end?
- What payments/liabilities could fall due?
- Is there a right of suspension?
- Reasonable endeavours Vs best endeavours



# Practical Matters

- Payment terms
- Advance payment/periodic payments
- Supply chain
- Insurance
- Liquidated damages/Service Credits?
- What is the desired result – short term & long term



# Social Distancing - Employer Workplace Obligations

Rachel Mills, Senior Associate, Employment

# Current Advice

Everyone to stay home except in specific situations:

- Only going to work where this cannot be done at home
- Staying at a 2m distance away from other individuals
- Avoiding busy commuting times
- Washing of hands regularly

# Working from home (if possible)

- Make sure employees have the right equipment to do this
- Paid in the usual way/ subject to any agreed reduced pay/ hours
- Have regular check ins/ supervision sessions
- Check on mental health of all staff

# But what if they can't work from home?

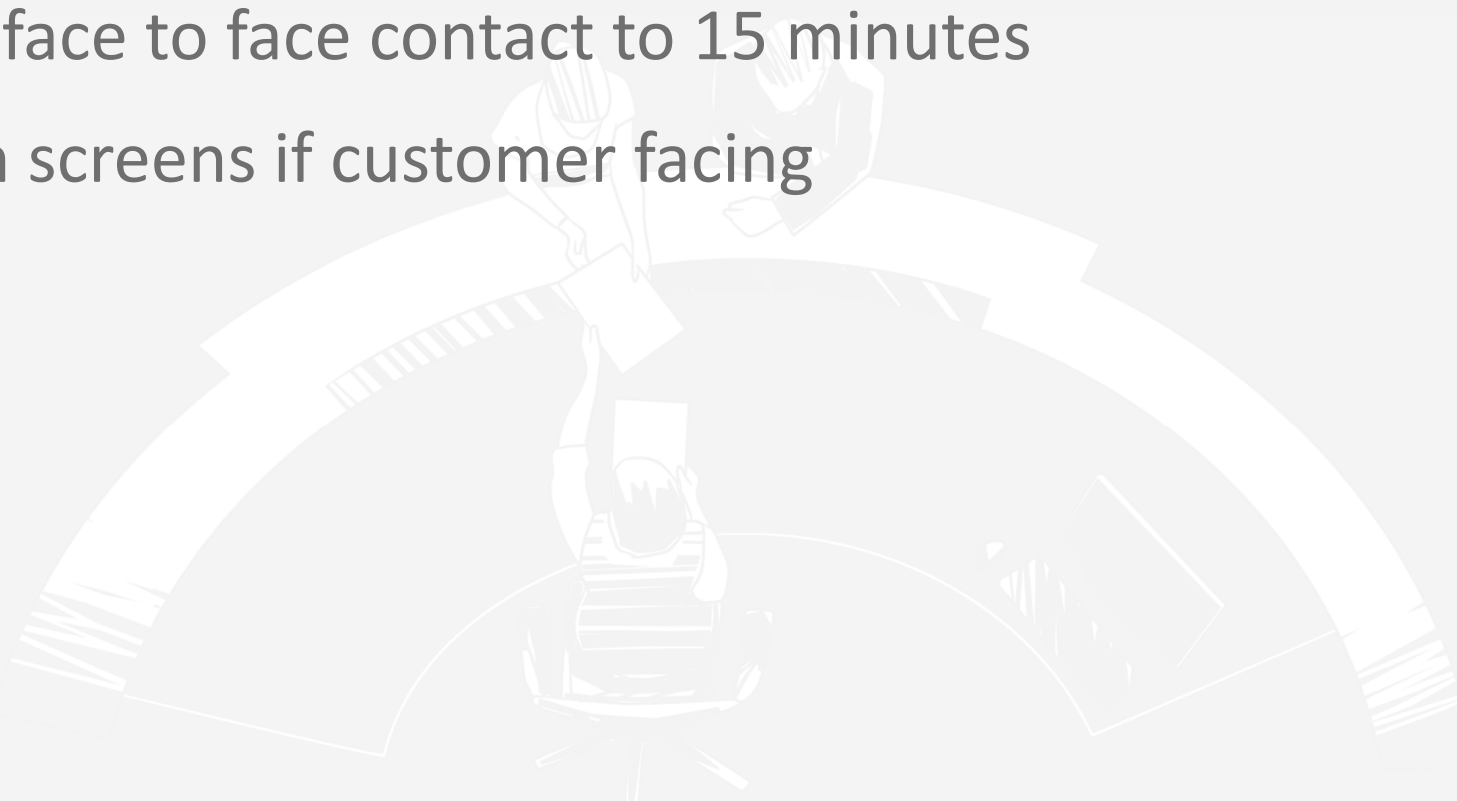
- Look at each different scenario
- Make an assessment
- Handwashing signs clear for employees and customers
- Mark the floor with tape to show 2 metres/ desks moved apart
- Alter staff shifts/ rotate working practices to reduce number of employees in at any given time
- Alter the breaks to minimise contact
- Barriers put up to protect staff/ alternative routes designed around the office

# But what if they can't work from home?

- Provide hand sanitizer
- Alter current practices e.g. rounds of tea
- Increase cleaning practices so regularly touched surfaces are cleaned/ wiped down e.g. door handles/ kettle
- Make sure managers can spot symptoms of Corona
- Make sure all mobile numbers/ emergency details are up to date

# But what if they can't work from home?

- Limit face to face contact to 15 minutes
- Put in screens if customer facing



# Employer – Key Considerations

- Employees who refuse to attend work
- Potential claims
  - Personal injury
  - Health & Safety
  - Constructive Unfair Dismissal



# Any questions



# Contact details



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