

Annex D1

Justification for the choice of the negotiated procedure without prior publication of a call for competition in accordance with Article 32

- Extreme urgency brought about by events unforeseeable for the contracting authority and in accordance with the strict conditions stated in the directive
- No tenders or no suitable tenders/requests to participate in response to open procedure
- No tenders or no suitable tenders/requests to participate in response to restricted procedure
- Additional deliveries by the original supplier ordered under the strict conditions stated in the directive
- Purchase of supplies or services on particularly advantageous terms from a supplier which is definitely winding up its business activities
- Purchase of supplies or services on particularly advantageous terms from the liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws and regulations

Please explain in a clear and comprehensive manner why the award of the contract without prior publication in the Official Journal of the European Union is lawful, by stating the relevant facts and, as appropriate, the conclusions of law in accordance with the directive (500 words)

1. The Coronavirus disease (COVID-19) is a serious infectious respiratory disease and its consequences pose a risk to life. The COVID-19 outbreak is a Public Health Emergency of International Concerns as declared by the World Health Organisation on 30 January 2020. The WHO Director General characterised COVID-19 as a pandemic on 11 March 2020, by this stage Europe was the centre of the pandemic.
2. The use of Personal Protective Equipment (PPE) is critical in safeguarding the health and lives of the care professionals treating patients with COVID-19. *Delays in procuring the PPE, in this case, face masks, poses a risk to life of those on the front line and the likelihood of significantly increased death toll.*
3. In March the NHS experienced severe shortages of PPE, modelling based the trajectory of other European countries forecast the need for significant and extremely rapid increase in the UK PPE capacity. Similar shortfalls in PPE stocks were identified globally. There was immense demand for PPE, requiring the UK government to actively seek and create new supply chains rapidly to meet that demand. In these circumstances, a procurement following the usual timescales under the PCR 2015, including accelerated options, was impossible. PPE manufacturers and supply chains were under immediate and unprecedented global pressure to provide products. A delay in engaging with the market by running a usual procurement process ran

the risk of failing to acquire the necessary stock of PPE equipment and presenting a significant risk to life.

4. The Department for Health and Social Care (“DHSC”) is satisfied the tests permitting use of the Negotiated procedure without prior publication (Regulation 32(2)(c)) were met:
 - A. **As far as is strictly necessary:**
PPE was identified as strictly necessary to meet anticipated demand on the NHS during the first wave of cases in the UK.
 - B. **There are genuine reasons for extreme urgency:**
DHSC are responding to COVID-19 immediately because of public health risks presenting a genuine emergency.
 - C. **The events that have led to the need for extreme urgency were unforeseeable:**
As the Commission itself confirmed: “The current coronavirus crisis presents an extreme and unforeseeable urgency – precisely for such a situation our European rules enable public buyers to buy within a matter of days, even hours, if necessary.” (Commissioner Breton, Internal Market, 01.04.2020).
 - D. **It was impossible to comply with the usual timescales in the PCR:**
Due to the urgency of the situation there was no time to run an accelerated procurement under the open, restricted or competitive procedures with negotiation that would allow DHSC to secure delivery of products, particularly in light of the corresponding delays to timelines associated with securing supply of the PPE equipment.
 - E. **The situation is not attributable to the contracting authority:**
DHSC has not caused or contributed to the coronavirus crisis, which justifies the need for extreme urgency.