



Procurement Act 2023

2023 CHAPTER 54

PART 3

AWARD OF PUBLIC CONTRACTS AND PROCEDURES

CHAPTER 2

COMPETITIVE AWARD

PROSPECTIVE

Terms of a procurement

19 Award of public contracts following a competitive tendering procedure

- (1) A contracting authority may award a public contract to the supplier that submits the most advantageous tender in a competitive tendering procedure.
- (2) The “most advantageous tender” is the tender that the contracting authority considers—
 - (a) satisfies the contracting authority’s requirements, and
 - (b) best satisfies the award criteria when assessed by reference to—
 - (i) the assessment methodology under section 23(3)(a), and
 - (ii) if there is more than one criterion, the relative importance of the criteria under section 23(3)(b).
- (3) In assessing tenders for the purposes of this section a contracting authority—
 - (a) must disregard any tender from a supplier that does not satisfy the conditions of participation;
 - (b) may disregard any tender from a supplier that—
 - (i) is not a United Kingdom supplier or treaty state supplier, or

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- (ii) intends to sub-contract the performance of all or part of the contract to a supplier that is not a United Kingdom supplier or treaty state supplier;
 - (c) may disregard any tender that offers a price that the contracting authority considers to be abnormally low for performance of the contract;
 - (d) may disregard any tender which breaches a procedural requirement set out in the tender notice or associated tender documents.
- (4) Before disregarding a tender under subsection (3)(c) (abnormally low price), a contracting authority must—
- (a) notify the supplier that the authority considers the price to be abnormally low, and
 - (b) give the supplier reasonable opportunity to demonstrate that it will be able to perform the contract for the price offered.
- (5) If the supplier demonstrates to the contracting authority’s satisfaction that it will be able to perform the contract for the price offered, the authority may not disregard the tender under subsection (3)(c) (abnormally low price).
- (6) The reference to a tender breaching a procedural requirement includes a reference to a supplier breaching a procedural requirement in relation to the tender.
- (7) In this Act, a reference to a contracting authority’s requirements is a reference to requirements described in the tender notice or associated tender documents (see section 21(5) and (6)).
- (8) See sections 26 and 28 for provision about disregarding tenders from suppliers that are excluded or excludable suppliers or that are sub-contracting to excluded or excludable suppliers.
- (9) See sections 32 and 33 for provision about reserving public contracts to supported employment providers and qualifying public service mutuals.
- (10) See section 34 for provision about disregarding tenders from suppliers that are not members of a dynamic market.
- (11) In this section “procedural requirement” includes a requirement that a supplier provide information.

Commencement Information

II S. 19 not in force at Royal Assent, see [s. 127\(2\)](#)

20 Competitive tendering procedures

- (1) Before awarding a public contract under section 19, a contracting authority must carry out a competitive tendering procedure in accordance with a tender notice and any associated tender documents.
- (2) A “competitive tendering procedure” is—
 - (a) a single-stage tendering procedure without a restriction on who can submit tenders (an “open procedure”), or

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- (b) such other competitive tendering procedure as the contracting authority considers appropriate for the purpose of awarding the public contract (a “competitive flexible procedure”).
- (3) A contracting authority must ensure that the procedure is a proportionate means of awarding the public contract, having regard to the nature, complexity and cost of the contract.
- (4) A competitive flexible procedure—
 - (a) may limit the number of participating suppliers, generally or in respect of particular tendering rounds or other selection processes;
 - (b) may provide for the refinement of award criteria in accordance with section 24;
 - (c) may not permit the participation of suppliers that did not submit a tender in the first round of tendering or that were excluded following an earlier round.
- (5) A competitive flexible procedure may provide for the exclusion of suppliers—
 - (a) by reference to conditions of participation (see section 22);
 - (b) by reference to an intermediate assessment of tenders;
 - (c) that are not United Kingdom suppliers or treaty state suppliers;
 - (d) that intend to sub-contract the performance of all or part of the contract to a supplier that is not a United Kingdom supplier or treaty state supplier.
- (6) The reference in subsection (5)(b) to an intermediate assessment of tenders is a reference to an assessment of which tenders—
 - (a) satisfy the contracting authority’s requirements, and
 - (b) best satisfy the award criteria at the point of exclusion, when assessed by reference to—
 - (i) the assessment methodology under section 23(3)(a), and
 - (ii) if there is more than one criterion, the relative importance of the criteria under section 23(3)(b),in each case, at the point of assessment.
- (7) A competitive tendering procedure may, if a contract is being awarded by reference to lots, limit the number of lots in respect of which any one supplier can submit a tender.
- (8) See sections 27, 28 and 30 for provision about excluding suppliers that are excluded or excludable suppliers, that are sub-contracting to excluded or excludable suppliers or for improper behaviour.
- (9) See sections 32 and 33 for provision about reserving public contracts to sheltered employment providers and qualifying mutual societies.
- (10) See section 34 for provision about excluding suppliers that are not members of a dynamic market.

Commencement Information

I2 S. 20 not in force at Royal Assent, see [s. 127\(2\)](#)

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21 Tender notices and associated tender documents

- (1) A contracting authority must publish a tender notice for the purpose of—
 - (a) inviting suppliers to submit a tender as part of an open procedure, or
 - (b) in the case of a competitive flexible procedure—
 - (i) inviting suppliers to submit a request to participate in the procedure, or
 - (ii) where no such invitation is made, inviting suppliers to submit their first, or only, tender as part of the procedure.
- (2) A “tender notice” means a notice setting out—
 - (a) that a contracting authority intends to award a public contract under section 19, and
 - (b) any other information specified in regulations under section 95.
- (3) A contracting authority must provide any associated tender documents in accordance with the tender notice.
- (4) “Associated tender document” means, in relation to a tender notice, a document setting out information specified in regulations under section 95 that supplements that set out in the tender notice.
- (5) A contracting authority may not invite suppliers to submit a tender as part of a competitive tendering procedure unless it is satisfied that the tender notice or associated tender documents contain—
 - (a) information sufficient to allow suppliers to prepare such a tender, and
 - (b) in particular, details of the goods, services or works required by the contracting authority.
- (6) In detailing its requirements, a contracting authority must be satisfied that they—
 - (a) are sufficiently clear and specific, and
 - (b) do not break the rules on technical specifications in section 56.
- (7) See section 40 for an exception to the duty in subsection (1) for contracts awarded by reference to suppliers’ membership of certain utilities dynamic markets.

Commencement Information

I3 S. 21 not in force at Royal Assent, see [s. 127\(2\)](#)

22 Conditions of participation

- (1) A contracting authority may set conditions of participation in relation to the award of a public contract under section 19 only if it is satisfied that the conditions are a proportionate means of ensuring that suppliers have—
 - (a) the legal and financial capacity to perform the contract, or
 - (b) the technical ability to perform the contract.
- (2) A “condition of participation” is a condition that a supplier must satisfy if the supplier is to be awarded the public contract.
- (3) A condition set under subsection (1)(a) may not—

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- (a) require the submission of audited annual accounts, except from suppliers who are, or were, required to have the accounts audited in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent;
 - (b) require insurance relating to the performance of the contract to be in place before the award of the contract.
- (4) A condition set under subsection (1)(b) may relate to suppliers' qualifications, experience or technical ability, but may not—
- (a) require suppliers to have been awarded a contract by a particular contracting authority,
 - (b) break the rules on technical specifications in section 56, or
 - (c) require particular qualifications without allowing for their equivalents.
- (5) When considering whether a condition is proportionate for the purposes of subsection (1), a contracting authority must have regard to the nature, complexity and cost of the public contract.
- (6) A condition of participation may require the provision of evidence that is verifiable by a person other than the supplier.
- (7) If a supplier does not satisfy a condition of participation, the contracting authority may exclude the supplier from participating in, or progressing as part of, the competitive tendering procedure.
- (8) A supplier is to be treated as satisfying a condition of participation to the extent that a supplier associated with the supplier satisfies the condition.
- (9) For the purposes of this section, a supplier is associated with another supplier if—
- (a) the suppliers are submitting a tender together, or
 - (b) the contracting authority is satisfied that the suppliers will enter into legally binding arrangements to the effect that—
 - (i) the supplier will sub-contract the performance of all or part of the contract to the other, or
 - (ii) the other supplier will guarantee the performance of all or part of the contract by the supplier.

Commencement Information

I4 S. 22 not in force at Royal Assent, see [s. 127\(2\)](#)

23 Award criteria

- (1) In this Act, “award criteria” means criteria set in accordance with this section against which tenders may be assessed for the purpose of awarding a public contract under section 19 (award following competitive tendering procedure).
- (2) In setting award criteria, a contracting authority must be satisfied that they—
- (a) relate to the subject-matter of the contract,
 - (b) are sufficiently clear, measurable and specific,
 - (c) do not break the rules on technical specifications in section 56, and
 - (d) are a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract.

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- (3) In setting award criteria, a contracting authority must—
- (a) describe how tenders are to be assessed by reference to them and, in particular, specify whether failure to meet one or more criteria would disqualify a tender (the “assessment methodology”), and
 - (b) if there is more than one criterion, indicate their relative importance by—
 - (i) weighting each as representing a percentage of total importance,
 - (ii) ranking them in order of importance, or
 - (iii) describing it in another way.
- (4) In setting award criteria for the assessment of tenders by reference to lots, a contracting authority—
- (a) may limit the number of lots that may be awarded to any one supplier, and
 - (b) in doing so, must provide an objective mechanism for supplier selection in circumstances where a supplier would otherwise exceed the limit.
- (5) In subsection (2), the reference to the subject-matter of a contract includes a reference to—
- (a) the goods, services or works to be supplied under the contract, including in respect of any aspect of their production, trading or other stage in their life-cycle;
 - (b) how or when those goods, services or works are to be supplied;
 - (c) the qualifications, experience, ability, management or organisation of staff where those factors are likely to make a material difference to the quality of goods, services or works being supplied;
 - (d) price, other costs or value for money in all the circumstances.
- (6) In the case of a light touch contract, the reference to the subject-matter of the contract also includes a reference to—
- (a) the views of an individual for whose benefit the services are to be supplied (a “service recipient”), or of a person providing care to a service recipient, in relation to—
 - (i) who should supply the services, and
 - (ii) how and when they should be supplied;
 - (b) the different needs of different service recipients;
 - (c) the importance of proximity between the supplier and service recipients for the effective and efficient supply of the services.

Commencement Information

I5 S. 23 not in force at Royal Assent, see [s. 127\(2\)](#)

24 Refining award criteria

- (1) A contracting authority may refine an award criterion as part of a competitive flexible procedure if—
- (a) the tender notice or associated tender documents provide for the refinement of the criterion, and
 - (b) the authority is yet to invite suppliers to submit tenders to be assessed under section 19 (award following competitive tendering procedure).

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- (2) A contracting authority may, in consequence of refining an award criterion under subsection (1), refine the indication of the relative importance of the award criteria under section 23(3)(b).
- (3) A contracting authority may not make a refinement under this section if it would result in award criteria that would, had the refinement been made earlier, have allowed one or more suppliers that did not progress beyond an earlier round or selection process to have done so.
- (4) A contracting authority must modify and republish or provide again the tender notice and any associated tender documents affected by refinements under this section.

Commencement Information

I6 S. 24 not in force at Royal Assent, see [s. 127\(2\)](#)

25 Sub-contracting specifications

- (1) Subsection (2) applies if a contracting authority considers that the authority could award a contract for the supply of certain goods, services or works to a particular supplier under section 41 (direct award in special cases).
- (2) In awarding a contract that is wholly or partly for the supply of those goods, services or works under section 19 (award following competitive tendering procedure), the contracting authority may require that a supplier sub-contracts the supply of those goods, services or works to the particular supplier.

Commencement Information

I7 S. 25 not in force at Royal Assent, see [s. 127\(2\)](#)

PROSPECTIVE

Exclusions and modifications

26 Excluding suppliers from a competitive award

- (1) In assessing tenders under section 19, a contracting authority must disregard any tender from a supplier that is an excluded supplier.
- (2) Before assessing which tender best satisfies the award criteria for the purposes of section 19, a contracting authority—
 - (a) must consider whether a supplier is an excludable supplier, and
 - (b) may disregard any tender from an excludable supplier.
- (3) If the supplier is an excluded or excludable supplier only by virtue of an associated person being an excluded or excludable supplier, the contracting authority must, before disregarding a tender—
 - (a) notify the supplier of its intention to disregard, and

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(b) give the supplier reasonable opportunity to replace the associated person.

(4) In this Act, “associated person” means a person that the supplier is relying on in order to satisfy the conditions of participation (see section 22(8)), but not a person who is to act as guarantor as described in section 22(9).

Commencement Information

18 S. 26 not in force at Royal Assent, see [s. 127\(2\)](#)

27 Excluding suppliers from a competitive flexible procedure

- (1) Before permitting a supplier to participate in a competitive flexible procedure, a contracting authority must determine whether the supplier is—
 - (a) an excluded supplier, or
 - (b) an excludable supplier.
- (2) The contracting authority must exclude an excluded supplier from participating in, or progressing as part of, the competitive flexible procedure.
- (3) The contracting authority may exclude an excludable supplier from participating in, or progressing as part of, the competitive flexible procedure.
- (4) Before excluding a supplier that is an excluded supplier or excludable supplier only by virtue of an associated person, a contracting authority must—
 - (a) notify the supplier of its intention, and
 - (b) provide the supplier with reasonable opportunity to replace the associated person.
- (5) In this section, a reference to a supplier participating in a competitive flexible procedure is a reference to a supplier participating beyond the initial submission of tenders or requests to participate.

Commencement Information

19 S. 27 not in force at Royal Assent, see [s. 127\(2\)](#)

28 Excluding suppliers by reference to sub-contractors

- (1) A contracting authority must as part of a competitive tendering procedure—
 - (a) request information about whether a supplier intends to sub-contract the performance of all or part of the public contract, and
 - (b) seek to determine whether any intended sub-contractor is on the debarment list.
- (2) A contracting authority may, as part of a competitive tendering procedure, request information for the purpose of determining whether any intended sub-contractor is an excluded or excludable supplier.
- (3) If, after requesting information under subsection (1) or (2), a contracting authority considers that a supplier intends to sub-contract to a supplier that is an excluded supplier, the contracting authority must—

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- (a) treat the supplier as an excluded supplier for the purpose of assessing tenders under section 19, and
 - (b) exclude the supplier from participating in, or progressing as part of, the competitive tendering procedure.
- (4) If, after requesting information under subsection (1) or (2), a contracting authority considers that a supplier intends to sub-contract to a supplier that is an excludable supplier, the contracting authority—
- (a) must treat the supplier as an excludable supplier for the purpose of assessing tenders under section 19, and
 - (b) may exclude the supplier from participating in, or progressing as part of, the competitive tendering procedure.
- (5) Before disregarding a tender or excluding a supplier under subsection (3) or (4), a contracting authority must—
- (a) notify the supplier of its intention, and
 - (b) give the supplier reasonable opportunity to find an alternative supplier with which to sub-contract.
- (6) In this section, a reference to a supplier participating in a competitive tendering procedure is a reference to a supplier participating beyond the initial submission of tenders or requests to participate.
- (7) Subsections (3) and (4) do not apply if the intended sub-contractor is an associated person.

Commencement Information

110 S. 28 not in force at Royal Assent, see [s. 127\(2\)](#)

29 Excluding a supplier that is a threat to national security

- (1) This section applies if a relevant contracting authority intends to disregard a tender under section 26 or 28 or exclude a supplier under section 27 or 28 on the basis of the discretionary exclusion ground in paragraph 14 of Schedule 7 (threat to national security).
- (2) The contracting authority may not disregard the tender, exclude the supplier or notify the supplier of its intention unless—
- (a) the authority has notified a Minister of the Crown of its intention, and
 - (b) the Minister of the Crown considers that—
 - (i) the supplier or an intended sub-contractor is an excludable supplier by reference to paragraph 14 of Schedule 7, and
 - (ii) the tender should be disregarded or supplier excluded.
- (3) The reference in subsection (2) to a contracting authority notifying a supplier of its intention is a reference to notification in accordance with section 26(3), 27(4) or 28(5).
- (4) In this section, a “relevant contracting authority” means a contracting authority other than—
- (a) a Minister of the Crown or a government department,
 - (b) the Corporate Officer of the House of Commons, or

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- (c) the Corporate Officer of the House of Lords.

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111 S. 29 not in force at Royal Assent, see [s. 127\(2\)](#)

30 Excluding suppliers for improper behaviour

- (1) Subsection (2) applies if a contracting authority determines that—
- (a) a supplier has acted improperly in relation to the award of a public contract,
 - (b) in consequence, the supplier is put at an unfair advantage in relation to the award, and
 - (c) the unfair advantage cannot be avoided other than by excluding the supplier.
- (2) The contracting authority must in relation to the award—
- (a) treat the supplier as an excluded supplier for the purpose of assessing tenders under section 19, and
 - (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.
- (3) Before making a determination of the kind described in subsection (1), a contracting authority must give the supplier reasonable opportunity to—
- (a) make representations, and
 - (b) provide relevant evidence.
- (4) In subsection (1), the reference to a supplier acting improperly is reference to a supplier—
- (a) failing to provide information requested by the contracting authority,
 - (b) providing information that is incomplete, inaccurate or misleading,
 - (c) accessing confidential information, or
 - (d) unduly influencing the contracting authority’s decision-making.
- (5) Subsection (6) applies if—
- (a) a contracting authority has, in relation to the award of a public contract, requested—
 - (i) information about a supplier’s connected persons or associated persons for the purpose of determining whether the supplier is an excluded or excludable supplier, or
 - (ii) other information under section 28(2) (excluding suppliers by reference to sub-contractors), and
 - (b) the supplier has—
 - (i) failed to provide the information requested, or
 - (ii) provided information that is incomplete, inaccurate or misleading.
- (6) The contracting authority must in relation to the award—
- (a) treat the supplier as an excluded supplier for the purpose of assessing tenders under section 19, and
 - (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.

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Commencement Information

I12 S. 30 not in force at Royal Assent, see [s. 127\(2\)](#)

31 Modifying a section 19 procurement

- (1) A contracting authority may modify the terms of a covered procurement before the following deadlines have passed—
 - (a) in the case of an open procedure, the deadline for submitting tenders;
 - (b) in the case of a competitive flexible procedure—
 - (i) the deadline for submitting a request to participate in the procedure, or
 - (ii) where there has been no invitation to submit such requests, the deadline for submitting a first or only tender.
- (2) In the case of a competitive flexible procedure, a contracting authority may also modify the terms of a covered procurement before the deadline for submitting a tender for assessment under section 19 (award following competitive tendering procedure) has passed if—
 - (a) the modification is not substantial, or
 - (b) the procurement relates to the award of a light touch contract.
- (3) A modification is “substantial” if—
 - (a) it would permit suppliers that are not participating suppliers to submit a tender, or
 - (b) the contracting authority considers that, had the modification been reflected in the tender notice or associated tender documents before a deadline referred to in subsection (1)(b) passed—
 - (i) one or more participating suppliers would not be a participating supplier, or
 - (ii) one or more suppliers that are not participating suppliers would be a participating supplier.
- (4) Whenever a contracting authority modifies the terms of a covered procurement, the authority must consider revising applicable tender deadlines and other time limits in accordance with section 54 (time limits).
- (5) If a contracting authority modifies the terms of a covered procurement under subsection (1), the authority must revise and republish or provide again the tender notice and any associated tender documents affected by the modifications or time limit revisions.
- (6) If a contracting authority modifies the terms of a covered procurement under subsection (2), the authority must notify each participating supplier.
- (7) In this section—

“terms of a covered procurement” means anything set out in a tender notice or associated tender documents, including any requirements of a competitive tendering procedure, conditions of participation or award criteria;

“participating supplier” means a supplier that—

 - (a) has submitted a request to participate in, or a tender as part of, the competitive tendering procedure, and

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(b) has not been excluded in accordance with the procedure or under this Act.

(8) See section 43 for provision about switching to direct award.

Commencement Information

I13 S. 31 not in force at Royal Assent, see [s. 127\(2\)](#)

Reserving contracts to certain suppliers

PROSPECTIVE

32 Reserving contracts to supported employment providers

- (1) A competitive flexible procedure may provide for suppliers that are not supported employment providers to be excluded from participating in, or progressing as part of, the procedure.
- (2) Subsection (3) applies in relation to the award of a public contract under section 19 if the competitive flexible procedure provides for suppliers to be excluded as set out in subsection (1).
- (3) In assessing tenders under section 19, a contracting authority must disregard any tender from a supplier that is not a supported employment provider.
- (4) A “supported employment provider” means an organisation that operates wholly or partly for the purpose of providing employment, or employment-related support, to disabled or disadvantaged individuals where—
 - (a) disabled or disadvantaged individuals represent at least 30 per cent of the workforce of the organisation,
 - (b) if a particular part of the organisation is to perform the contract, disabled or disadvantaged individuals represent at least 30 per cent of the workforce of that part of the organisation, or
 - (c) if more than one organisation is to perform the contract, disabled or disadvantaged individuals represent at least 30 per cent of the combined workforce of—
 - (i) those organisations,
 - (ii) where a particular part of each organisation is to perform the contract, those parts, or
 - (iii) where a combination of organisations and parts is to perform the contract, those organisations and parts.

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I14 S. 32 not in force at Royal Assent, see [s. 127\(2\)](#)

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33 Reserving contracts to public service mutuals

- (1) This section applies in relation to the award of a public contract under section 19 if the contract—
 - (a) is for reservable light touch services, and
 - (b) has a maximum term of five years or less.
- (2) A competitive flexible procedure may provide for suppliers that are not qualifying public service mutuals to be excluded from participating in, or progressing as part of, the procedure.
- (3) Subsection (4) applies in relation to the award of a public contract under section 19 if the competitive flexible procedure provides for suppliers to be excluded as set out in subsection (2).
- (4) In assessing tenders under section 19, a contracting authority must disregard any tender from a supplier that is not a qualifying public service mutual.
- (5) A “qualifying public service mutual” means a public service mutual that has not entered into a comparable contract during the period of three years ending with the day on which the contract referred to in subsection (1) is awarded.
- (6) A “public service mutual” means a body that—
 - (a) operates for the purpose of delivering public services and mainly for the purpose of delivering one or more reservable light touch services,
 - (b) is run on a not-for-profit basis or provides for the distribution of profits only to members, and
 - (c) is under the management and control of its employees.
- (7) In this section—

“comparable contract” means a contract that was—

 - (a) a contract for the same kind of services,
 - (b) awarded by the same contracting authority, and
 - (c) awarded in reliance on this section;

“reservable light touch services” means services of a kind specified in regulations under subsection (8).
- (8) An appropriate authority may by regulations specify services of a kind specified in regulations of the authority under section 9 (light touch contracts).

Commencement Information

I15 S. 33 not in force at Royal Assent, see [s. 127\(2\)](#)

I16 S. 33(7)(8) in force at 12.3.2024 by S.I. 2024/361, [reg. 2\(f\)](#)

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PROSPECTIVE

Awarding contracts by reference to dynamic markets

34 Competitive award by reference to dynamic markets

- (1) A competitive flexible procedure may provide for the following suppliers to be excluded from participating in, or progressing as part of, the procedure—
 - (a) suppliers that are not members of an appropriate dynamic market, or
 - (b) suppliers that are not members of an appropriate part of an appropriate dynamic market.
- (2) Subsection (3) applies in relation to the award of a public contract under section 19 if the competitive flexible procedure provides for suppliers to be excluded as set out in subsection (1).
- (3) In assessing tenders under section 19, a contracting authority must disregard any tender from a supplier that is not a member of—
 - (a) the appropriate dynamic market, or
 - (b) the appropriate part of the appropriate dynamic market.
- (4) A contracting authority must, before excluding suppliers or disregarding tenders under this section, consider any applications for membership of the market or part of the market from suppliers that have submitted a request to participate in the competitive flexible procedure, or submitted a tender as part of the competitive flexible procedure.
- (5) Subsection (4) does not apply in relation to an application for membership if, due to exceptional circumstances arising from the complexity of the particular procurement, a contracting authority is unable to consider the application before—
 - (a) the deadline for submitting a request to participate in the procedure, or
 - (b) where there has been no invitation to submit such requests, the deadline for submitting a first or only tender.
- (6) A dynamic market or part of a dynamic market is “appropriate” for the purposes of this section if its terms permit the award of the contract by the contracting authority.
- (7) This section does not apply in relation to the award of a concession contract, unless the concession contract is also a utilities contract.
- (8) In this Act—

“dynamic market” means arrangements established under section 35(1);

references to a contract being awarded by reference to suppliers’ membership of a dynamic market are references to a contract being awarded in reliance on this section;

references to suppliers’ membership of a dynamic market are references to suppliers’ participation in arrangements established under section 35(1).

Commencement Information

I17 S. 34 not in force at Royal Assent, see [s. 127\(2\)](#)

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35 Dynamic markets: establishment

- (1) A contracting authority may establish arrangements for the purpose of a contracting authority awarding public contracts by reference to suppliers' participation in the arrangements.
- (2) In this Act a “utilities dynamic market” means a dynamic market established only for the purpose of the award of utilities contracts by utilities.
- (3) If arrangements established by any person comply with the requirements of this Act that apply in relation to a utilities dynamic market established by a private utility—
 - (a) the arrangements are to be treated for the purposes of this Act as a utilities dynamic market established by a private utility, and
 - (b) a utility may award public contracts that are utilities contracts by reference to suppliers' membership of the market.
- (4) In this Act, “utility” means—
 - (a) a public authority, or public undertaking, that carries out a utility activity;
 - (b) a private utility.
- (5) Documents establishing or modifying a dynamic market are not a contract for the purposes of this Act.

Commencement Information

I18 S. 35 not in force at Royal Assent, see [s. 127\(2\)](#)

36 Dynamic markets: membership

- (1) A contracting authority may set conditions for membership of a dynamic market or part of a dynamic market only if it is satisfied that the conditions are a proportionate means of ensuring that members—
 - (a) have the legal and financial capacity to perform contracts awarded by reference to membership of the market or the part of the market;
 - (b) have the technical ability to perform such contracts.
- (2) A condition set under subsection (1)(a) may not—
 - (a) require the submission of audited annual accounts, except from suppliers who are, or were, required to have the accounts audited in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent;
 - (b) require insurance relating to the performance of the contract to be in place before the award of the contract.
- (3) A condition set under subsection (1)(b) may relate to suppliers' qualifications, experience or technical ability, but may not—
 - (a) require suppliers to have been awarded a contract by a particular contracting authority,
 - (b) break the rules on technical specifications in section 56, or
 - (c) require particular qualifications without allowing for their equivalents.
- (4) When considering whether a condition is proportionate for the purposes of subsection (1) a contracting authority must have regard to the nature, complexity and cost of contracts to be awarded by reference to suppliers' membership of the market.

Status: This version of this chapter contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Procurement Act 2023, CHAPTER 2. (See end of Document for details)

- (5) A condition for membership may require the provision of evidence that is verifiable by a person other than the supplier.
- (6) A contracting authority must—
- (a) accept applications for membership of a dynamic market or part of a dynamic market at any time during the term of the market;
 - (b) consider such applications within a reasonable period;
 - (c) admit to the market or the part of the market, as soon as reasonably practicable, any supplier that—
 - (i) is not an excluded or excludable supplier, and
 - (ii) satisfies the conditions for membership;
 - (d) consider whether to admit to the market or the part of the market any supplier that—
 - (i) is an excludable supplier, and
 - (ii) satisfies the conditions for membership;
 - (e) inform a supplier of the outcome of their application, together with reasons for the decision, as soon as reasonably practicable.
- (7) A contracting authority may not—
- (a) limit the number of suppliers that can be admitted to a dynamic market or part of a market, or
 - (b) modify the conditions for membership of a dynamic market or part of a market during the term of the market.

Commencement Information

I19 S. 36 not in force at Royal Assent, see [s. 127\(2\)](#)

37 Dynamic markets: removing members from the market

- (1) A contracting authority must remove a supplier from a dynamic market if the authority considers that the supplier is an excluded supplier under section 57(1)(b) (debarment by reference to mandatory exclusion ground).
- (2) A contracting authority may remove a supplier from a dynamic market if—
- (a) the authority considers that the supplier—
 - (i) is an excluded supplier under section 57(1)(a),
 - (ii) does not satisfy the conditions for membership, or
 - (iii) has, since becoming a member, become an excludable supplier, or
 - (b) the authority discovers that, on becoming a member, the supplier was an excludable supplier.
- (3) The reference to a supplier becoming an excludable supplier includes a reference to a supplier becoming an excludable supplier by virtue of a discretionary exclusion ground that—
- (a) did not apply before the supplier became a member, or
 - (b) applied before the supplier became a member by reference to different circumstances.

Status: This version of this chapter contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Procurement Act 2023, CHAPTER 2. (See end of Document for details)

- (4) Before removing a supplier from a dynamic market, a contracting authority must inform the supplier of its decision to do so, together with reasons for the decision.

Commencement Information

I20 S. 37 not in force at Royal Assent, see [s. 127\(2\)](#)

38 Dynamic markets: fees

- (1) Documents establishing a dynamic market other than a utilities dynamic market may provide for the charging of fees to suppliers that are awarded a contract by reference to their membership of the market.
- (2) Fees charged by virtue of subsection (1) must be set as a fixed percentage to be applied to the estimated value of the awarded contract.
- (3) Documents establishing a utilities dynamic market may provide for the charging of fees to suppliers in connection with obtaining and maintaining membership of the market.

Commencement Information

I21 S. 38 not in force at Royal Assent, see [s. 127\(2\)](#)

39 Dynamic market notices

- (1) A notice under this section is called a “dynamic market notice”.
- (2) Before establishing a dynamic market, a contracting authority must publish a notice setting out—
- (a) that the authority intends to establish a dynamic market, and
 - (b) any other information specified in regulations under section 95.
- (3) As soon as reasonably practicable after establishing a dynamic market, the contracting authority must publish a notice setting out—
- (a) that the dynamic market has been established, and
 - (b) any other information specified in regulations under section 95.
- (4) As soon as reasonably practicable after modifying a dynamic market, the contracting authority must publish a notice setting out—
- (a) the modifications made to the market, and
 - (b) any other information specified in regulations under section 95.
- (5) As soon as reasonably practicable after a dynamic market ceases to operate, the contracting authority that established the market must publish a notice setting out—
- (a) that the dynamic market has ceased to operate, and
 - (b) any other information specified in regulations under section 95.
- (6) Subsection (5) does not apply to private utilities.

*Status: This version of this chapter contains provisions that are prospective.
 Changes to legislation: There are currently no known outstanding effects for
 the Procurement Act 2023, CHAPTER 2. (See end of Document for details)*

Commencement Information

I22 S. 39 not in force at Royal Assent, see [s. 127\(2\)](#)

40 Qualifying utilities dynamic market notices: no duty to publish a tender notice

- (1) The duty to publish a tender notice in section 21(1) does not apply in relation to the award of a contract by reference to suppliers' membership of—
 - (a) a utilities dynamic market established by reference to a qualifying utilities dynamic market notice, or
 - (b) a part of such a market.
- (2) A contracting authority must instead provide a tender notice to members of the market, or part of the market, for the purposes set out in section 21(1).
- (3) A contracting authority may also provide a tender notice to suppliers that have applied for membership of the market, or part of the market, but have yet to be accepted or rejected.
- (4) The reference in section 21(5) to a tender notice or associated tender documents includes a reference to a qualifying utilities dynamic market notice.
- (5) Section 34(4) (duty to consider applications for membership) does not apply in relation to the award of a contract by reference to suppliers' membership of—
 - (a) a utilities dynamic market established by reference to a qualifying utilities dynamic market notice, or
 - (b) a part of such a market.
- (6) In this section, “a qualifying utilities dynamic market notice” means a dynamic market notice under section 39(2) (dynamic market notices) that—
 - (a) relates to the establishment of a utilities dynamic market, and
 - (b) sets out—
 - (i) that only members of the market will be notified of a future intention to award a contract by reference to suppliers' membership of the market, and
 - (ii) any other information specified in regulations under section 95.
- (7) In this Act, a reference to publication of a tender notice includes a reference to provision of a tender notice under subsection (2) or (3).

Commencement Information

I23 S. 40 not in force at Royal Assent, see [s. 127\(2\)](#)

Status:

This version of this chapter contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Procurement Act 2023, CHAPTER 2.