



# Procurement Act 2023

## 2023 CHAPTER 54

### PART 3

#### AWARD OF PUBLIC CONTRACTS AND PROCEDURES

### CHAPTER 6

#### GENERAL PROVISION ABOUT AWARD AND PROCEDURES

#### *Excluding suppliers*

#### **57 Meaning of excluded and excludable supplier**

- (1) A supplier is an “excluded supplier” if—
  - (a) the contracting authority considers that—
    - (i) a mandatory exclusion ground applies to the supplier or an associated person, and
    - (ii) the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again, or
  - (b) the supplier or an associated person is on the debarment list by virtue of a mandatory exclusion ground.
- (2) A supplier is an “excludable supplier” if—
  - (a) the contracting authority considers that—
    - (i) a discretionary exclusion ground applies to the supplier or an associated person, and
    - (ii) the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again, or
  - (b) the supplier or an associated person is on the debarment list by virtue of a discretionary exclusion ground.

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*Status: This is the original version (as it was originally enacted).*

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- (3) If a supplier is an excluded supplier on the basis of the supplier or an associated person being on the debarment list only by virtue of paragraph 35 of Schedule 6 (threat to national security), the supplier is to be treated as an excluded supplier only in relation to public contracts of a kind described in the relevant entry.
- (4) For the purposes of a covered procurement carried out by a private utility—
  - (a) an excluded supplier is to be regarded as an excludable supplier, and
  - (b) a reference in this Act to an excludable supplier includes a reference to such an excluded supplier.
- (5) In this Act “debarment list” means the list kept under section 62.
- (6) The mandatory exclusion grounds are set out in Schedule 6.
- (7) The discretionary exclusion grounds are set out in Schedule 7.

## **58 Considering whether a supplier is excluded or excludable**

- (1) In considering, for the purposes of section 57(1)(a) or (2)(a), whether the circumstances giving rise to the application of an exclusion ground are continuing or likely to occur again, a contracting authority may have regard to the following matters—
  - (a) evidence that the supplier, associated person or connected person has taken the circumstances seriously, for example by paying compensation;
  - (b) steps that the supplier, associated person or connected person has taken to prevent the circumstances continuing or occurring again, for example by changing staff or management, or putting procedures and training in place;
  - (c) commitments that such steps will be taken, or to provide information or access to allow verification or monitoring of such steps;
  - (d) the time that has elapsed since the circumstances last occurred;
  - (e) any other evidence, explanation or factor that the authority considers appropriate.
- (2) Before determining whether a supplier is an excluded supplier under section 57(1)(a) or an excludable supplier under section 57(2)(a), a contracting authority must give the supplier reasonable opportunity to—
  - (a) make representations, and
  - (b) provide evidence as to whether exclusion grounds apply and whether the circumstances giving rise to any application are likely to occur again (including information of a kind referred to in subsection (1)).
- (3) But a contracting authority may not require particular evidence or information unless the authority is satisfied that the requirements are proportionate in the circumstances, having regard to—
  - (a) the nature and complexity of the matters being assessed, and
  - (b) where relevant, the preliminary nature of a consideration under section 27(3).