



Procurement Act 2023

2023 CHAPTER 54

PART 3

AWARD OF PUBLIC CONTRACTS AND PROCEDURES

CHAPTER 1

PRELIMINARY STEPS

15 Planned procurement notices

- (1) Before publishing a tender notice, a contracting authority may publish a planned procurement notice.
- (2) A “planned procurement notice” means a notice setting out—
 - (a) that the contracting authority intends to publish a tender notice, and
 - (b) any other information specified in regulations under section 95.
- (3) A “qualifying planned procurement notice” means a planned procurement notice published at least 40 days but not more than 12 months before the day on which the tender notice is published.
- (4) See section 54(4) for provision for reduced tendering periods in cases where a qualifying planned procurement notice has been published.

16 Preliminary market engagement

- (1) Before publishing a tender notice in respect of a public contract, a contracting authority may engage with suppliers and other persons for the purpose of—
 - (a) developing the authority’s requirements and approach to the procurement;
 - (b) designing a procedure, conditions of participation or award criteria;
 - (c) preparing the tender notice and associated tender documents;

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- (d) identifying suppliers that may be able to supply the goods, services or works required;
 - (e) identifying likely contractual terms;
 - (f) building capacity among suppliers in relation to the contract being awarded.
- (2) Engagement under subsection (1) is called “preliminary market engagement”.
- (3) In carrying out preliminary market engagement, a contracting authority must take steps to ensure that—
- (a) suppliers participating in the preliminary market engagement are not put at an unfair advantage, and
 - (b) competition in relation to the award of the public contract is not otherwise distorted.
- (4) Subsection (5) applies if a contracting authority considers that—
- (a) a supplier’s participation in preliminary market engagement has put the supplier at an unfair advantage in relation to the award of a public contract, and
 - (b) the advantage cannot be avoided.
- (5) The contracting authority must in relation to the award—
- (a) treat the supplier as an excluded supplier for the purpose of—
 - (i) assessing tenders under section 19 (competitive award), or
 - (ii) awarding a contract under section 41 or 43 (direct award), and
 - (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.

17 Preliminary market engagement notices

- (1) If a contracting authority carries out preliminary market engagement, the authority must—
- (a) publish a preliminary market engagement notice before publishing a tender notice, or
 - (b) provide reasons for not doing so in the tender notice.
- (2) A “preliminary market engagement notice” means a notice setting out—
- (a) that the contracting authority intends to conduct, or has conducted, preliminary market engagement, and
 - (b) any other information specified in regulations under section 95.

18 Duty to consider lots

- (1) Before publishing a tender notice in respect of a public contract, a contracting authority must consider—
- (a) whether the goods, services or works to be supplied under the contract could reasonably be supplied under more than one contract, and
 - (b) whether such contracts could appropriately be awarded by reference to lots.
- (2) If the contracting authority considers that the goods, services or works could reasonably be supplied under more than one contract and such contracts could appropriately be awarded by reference to lots, the authority must—
- (a) arrange for the award of the contract or contracts by reference to lots, or

- (b) provide reasons for not doing so.

CHAPTER 2

COMPETITIVE AWARD

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
 - (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)).

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- (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.

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
 - (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

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- (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.

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.

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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—
 - (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.

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).

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- (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.
- (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.

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

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- (b) the authority is yet to invite suppliers to submit tenders to be assessed under section 19 (award following competitive tendering procedure).
- (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.

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.

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
 - (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).

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

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- (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.

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—
 - (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.

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- (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.

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

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—

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- (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.

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.

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- (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
 - (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.

Reserving contracts to certain suppliers

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,

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- (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.

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).

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

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- (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).

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.

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- (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.

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.
- (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.

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

- (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.

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.
- (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.

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.

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.

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

- (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.

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).

CHAPTER 3

DIRECT AWARD

41 Direct award in special cases

- (1) If a direct award justification applies, a contracting authority may award a public contract directly—
 - (a) to a supplier that is not an excluded supplier, or
 - (b) in accordance with subsection (2).
- (2) A contracting authority may award a contract to a supplier that is an excluded supplier if the contracting authority considers that there is an overriding public interest in awarding the contract to that supplier.
- (3) A contracting authority may carry out a selection process or take such other preliminary steps as it considers appropriate for the purpose of awarding a contract under this section.
- (4) Before awarding a contract to a supplier under this section, a contracting authority must consider whether the supplier is an excludable supplier.
- (5) There is an overriding public interest in awarding a public contract to an excluded supplier if—
 - (a) it is necessary in order to construct, maintain or operate critical national infrastructure,
 - (b) it is necessary in order to ensure the proper functioning of a sector on which the defence, security or economic stability of the United Kingdom relies,
 - (c) failure to do so would prejudice the conduct of military or security operations, or the effective operation of the armed forces or intelligence services, or
 - (d) the contract is being awarded by reference to paragraph 13 of Schedule 5 (extreme and unavoidable urgency) and cannot be awarded to, or performed by, a supplier that is not an excluded supplier within the necessary time frame.
- (6) The direct award justifications are set out in Schedule 5.
- (7) In this section, “intelligence services” means the Security Service, the Secret Intelligence Service and the Government Communications Headquarters.

42 Direct award to protect life, etc

- (1) If a Minister of the Crown considers it necessary, the Minister may by regulations provide that specified public contracts may be awarded under section 41 as if a direct award justification applies.
- (2) In subsection (1), “necessary” means necessary to—
 - (a) protect human, animal or plant life or health, or
 - (b) protect public order or safety.
- (3) Provision under subsection (1) may—
 - (a) specify contracts or classes of contract, or otherwise describe contracts by reference to purpose, subject-matter or contracting authority;
 - (b) include other conditions or limitations;

(c) confer a discretion.

(4) A Minister of the Crown must—

- (a) keep regulations made under subsection (1) under review, and
- (b) if the Minister considers that direct award under section 41 is no longer necessary, revoke the regulations.

43 Switching to direct award

(1) A contracting authority may award a public contract directly to a supplier that is not an excluded supplier if—

- (a) the authority has invited suppliers to submit tenders as part of, or requests to participate in, a competitive tendering procedure in respect of the contract,
- (b) it has not received any suitable tenders or requests in response, and
- (c) it considers that award under section 19 is not possible in the circumstances.

(2) A tender or request is not suitable if the contracting authority considers that—

- (a) it would be disregarded in an assessment of tenders under section 19(3)(a), (b) or (c);
- (b) it does not satisfy the contracting authority's requirements or the award criteria when assessed by reference to the assessment methodology and the relative importance of the criteria indicated under section 23(3);
- (c) there is evidence of corruption or collusion between suppliers or between suppliers and contracting authorities;
- (d) it materially breaches a procedural requirement in the tender notice or associated tender documents.

(3) A reference to a tender breaching a procedural requirement includes a reference to a supplier breaching a procedural requirement in relation to the tender.

(4) A breach is material if the contracting authority considers that ignoring it would put the tender at an unfair advantage.

(5) A contracting authority may carry out a selection process or take such other preliminary steps as it considers appropriate for the purpose of awarding a contract under subsection (1).

(6) Before awarding a contract to a supplier under this section, a contracting authority must consider whether the supplier—

- (a) is an excludable supplier, or
- (b) submitted an unsuitable tender or request in response to the invitation referred to in subsection (1)(a).

44 Transparency notices

(1) Before awarding a contract under section 41 or 43 a contracting authority must publish a transparency notice.

(2) A “transparency notice” means a notice setting out—

- (a) that a contracting authority intends to award a contract directly, and
- (b) any other information specified in regulations under section 95.

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- (3) This section does not apply in relation to the award of a contract under section 41 by virtue of paragraph 15 of Schedule 5 (direct award: user choice contracts).

CHAPTER 4

AWARD UNDER FRAMEWORKS

45 Frameworks

- (1) A contracting authority may award a public contract in accordance with a framework.
- (2) A “framework” is a contract between a contracting authority and one or more suppliers that provides for the future award of contracts by a contracting authority to the supplier or suppliers.
- (3) Unless subsection (4) applies, a framework may only provide for the future award of a public contract following a competitive selection process.
- (4) A framework may provide for the future award of a public contract without competition between suppliers—
- (a) in circumstances where only one supplier is party to the framework, or
 - (b) if the framework sets out—
 - (i) the core terms of the public contract, and
 - (ii) an objective mechanism for supplier selection.
- (5) A framework must include the following information—
- (a) a description of goods, services or works to be provided under contracts awarded in accordance with the framework;
 - (b) the price payable, or mechanism for determining the price payable, under such contracts;
 - (c) the estimated value of the framework;
 - (d) any selection process to be applied on the award of contracts;
 - (e) the term of the framework (see section 47);
 - (f) the contracting authorities entitled to award public contracts in accordance with the framework;
 - (g) whether the framework is awarded under an open framework (see section 49).
- (6) A framework may not—
- (a) permit the award of a public contract to an excluded supplier, or
 - (b) prevent a contracting authority from requesting additional information from suppliers before awarding a contract.
- (7) A framework may provide for the charging of fees at a fixed percentage of the estimated value of any contract awarded to the supplier in accordance with the framework.
- (8) This section does not apply in relation to the award of—
- (a) a concession contract, or
 - (b) a framework.

- (9) Subsections (3) to (5) do not apply to a framework that is a light touch contract (see section 9(5)).

46 Frameworks: competitive selection process

- (1) A competitive selection process may provide for conditions of participation only if the contracting authority is satisfied that the conditions are a proportionate means of ensuring that suppliers party to the framework have—
- (a) the legal and financial capacity to perform the contract, or
 - (b) the technical ability to perform the contract.
- (2) In this section, a “condition of participation” means a condition that a supplier must satisfy in order to be awarded a public contract in accordance with the framework.
- (3) 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.
- (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 under the framework or 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 selection process.
- (8) A competitive selection process may provide for the assessment of proposals, but only by reference to one or more of the award criteria against which tenders were assessed in awarding the framework.
- (9) The award criteria may be refined for the purposes of subsection (8).
- (10) In this section, a “competitive selection process” means a competitive selection process for the award of a public contract in accordance with a framework.
- (11) This section does not apply to a framework that is a light touch contract.

47 Frameworks: maximum term

- (1) The term of a framework may not exceed—

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- (a) in the case of a defence and security framework or a utilities framework, eight years, and
 - (b) otherwise, four years.
- (2) Subsection (1) does not apply if the contracting authority considers the nature of the goods, services or works to be supplied under contracts awarded in accordance with the framework means that a longer term is required.
- (3) If a contracting authority relies on subsection (2) in awarding a framework with a term exceeding four or eight years, the contracting authority must set out its reasons in the tender or transparency notice for the framework.
- (4) In this section—
- (a) “a defence and security framework” is a framework which does not provide for the future award of public contracts other than defence and security contracts;
 - (b) “a utilities framework” is a framework which does not provide for the future award of public contracts other than utilities contracts.
- (5) This section does not apply in relation to—
- (a) a framework awarded under an open framework (see section 49),
 - (b) a framework awarded by a private utility, or
 - (c) a framework that is a light touch contract (see section 9(5)).

48 Frameworks: implied terms

- (1) It is an implied term of every framework that a contracting authority may exclude a supplier that is an excluded supplier or has, since the award of the framework, become an excludable supplier from participating in any selection process run in relation to the award of a contract under the framework.
- (2) For the purposes of the term in subsection (1), the reference to a supplier becoming an excludable supplier includes a reference to—
- (a) a supplier becoming an excludable supplier on the basis of a discretionary exclusion ground that—
 - (i) did not apply before award of the contract, or
 - (ii) applied before award of the contract by reference to different circumstances, and
 - (b) a contracting authority discovering that, before award of the contract, the supplier was an excludable supplier.
- (3) Before excluding a supplier that is an excluded or excludable supplier only by virtue of an associated person, the contracting authority must give the supplier reasonable opportunity to replace the associated person.
- (4) Any term purporting to restrict or override the term implied by subsection (1) is without effect.

49 Open frameworks

- (1) An “open framework” is a scheme of frameworks that provides for the award of successive frameworks on substantially the same terms.

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- (2) An open framework must provide—
 - (a) for the award of a framework at least once during—
 - (i) the period of three years beginning with the day of the award of the first framework in the scheme, and
 - (ii) each period of five years beginning with the day of the award of the second framework in the scheme;
 - (b) for the expiry of one framework on the award of the next (but see subsection (3));
 - (c) for the final framework to expire at the end of the period of eight years beginning with the day on which the first framework under the scheme is awarded.
- (3) An open framework may provide that, if a framework expires in accordance with subsection (2)(b) while a process for the award of a contract in accordance with the framework is ongoing, the contracting authority may continue the process and award the contract as though the framework had not expired.
- (4) If there is no limit on the number of suppliers that can be party to a framework under an open framework, a contracting authority may award the framework to an existing supplier by reference to—
 - (a) the fact that the supplier has already been awarded a framework under the scheme,
 - (b) a tender relating to an earlier award under the scheme, or
 - (c) a tender relating to the current award.
- (5) Otherwise, a contracting authority may award a framework under an open framework to an existing supplier by reference to—
 - (a) a tender relating to an earlier award of a framework under the scheme, or
 - (b) a tender relating to the current award.
- (6) If a framework under an open framework is awarded to only one supplier, the framework, and the open framework, must expire before the end of the period of four years beginning with the day on which the framework is awarded.
- (7) Subsection (6) applies despite subsection (2)(c) and any term of the framework or open framework.
- (8) In this section, an “existing supplier” means a supplier that is party to a framework under the open framework.
- (9) A reference to an award on substantially the same terms is a reference to an award that could be made by reference to the same tender or transparency notice without substantial modification (see section 31).
- (10) A framework under an open framework may not be awarded under section 41 (direct award in special cases) or 43 (switching to direct award).

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CHAPTER 5

AFTER AWARD, STANDSTILL PERIODS AND NOTICES

50 Contract award notices and assessment summaries

- (1) Before entering into a public contract, a contracting authority must publish a contract award notice.
- (2) A “contract award notice” means a notice setting out—
 - (a) that the contracting authority intends to enter into a contract, and
 - (b) any other information specified in regulations under section 95.
- (3) Before publishing a contract award notice in respect of a contract awarded under section 19 (award following competitive tendering procedure), a contracting authority must provide an assessment summary to each supplier that submitted an assessed tender.
- (4) An “assessment summary” means, in relation to an assessed tender, information about the contracting authority’s assessment of—
 - (a) the tender, and
 - (b) if different, the most advantageous tender submitted in respect of the contract.
- (5) In this section, an “assessed tender” is a tender which—
 - (a) was submitted in respect of the contract and assessed for the purposes of determining the most advantageous tender under section 19(1), and
 - (b) was not disregarded in the assessment of tenders.
- (6) Subsection (1) does not apply in relation to—
 - (a) a defence and security contract awarded under a defence and security framework;
 - (b) a contract awarded under section 41 by reference to paragraph 15 of Schedule 5 (direct award: user choice contracts).

51 Standstill periods on the award of contracts

- (1) A contracting authority may not enter into a public contract before—
 - (a) the end of the mandatory standstill period, or
 - (b) if later, the end of another standstill period provided for in the contract award notice.
- (2) The “mandatory standstill period” is the period of eight working days beginning with the day on which a contract award notice is published in respect of the contract.
- (3) Subsection (1) does not apply in relation to a contract that is—
 - (a) awarded under section 41 by reference to paragraph 13 of Schedule 5 (direct award: extreme and unavoidable urgency);
 - (b) awarded under section 41 by reference to regulations under section 42 (direct award to protect life, etc);
 - (c) awarded under section 41 or 43 (direct award and switching to direct award) by a private utility;
 - (d) awarded in accordance with a framework;

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- (e) awarded by reference to a dynamic market;
 - (f) a light touch contract.
- (4) If a contract is of a kind described in subsection (3), a contracting authority may not enter into the contract before the end of any standstill period (a “voluntary standstill period”) provided for in the contract award notice.
- (5) A voluntary standstill period may not be less than a period of eight working days beginning with the day on which the contract award notice is published.

52 Key performance indicators

- (1) Before entering into a public contract with an estimated value of more than £5 million, a contracting authority must set at least three key performance indicators in respect of the contract.
- (2) Subsection (1) does not apply if the contracting authority considers that the supplier’s performance under the contract could not appropriately be assessed by reference to key performance indicators.
- (3) A contracting authority must publish any key performance indicators set under subsection (1).
- (4) A “key performance indicator” is a factor or measure against which a supplier’s performance of a contract can be assessed during the life-cycle of the contract.
- (5) An appropriate authority may by regulations amend this section for the purpose of changing the financial threshold.
- (6) This section does not apply in relation to a public contract that is—
- (a) a framework,
 - (b) a utilities contract awarded by a private utility,
 - (c) a concession contract, or
 - (d) a light touch contract.
- (7) See section 71 for provision about assessing performance against, and publishing information about, key performance indicators.

53 Contract details notices and publication of contracts

- (1) A contracting authority that enters into a public contract must publish a contract details notice—
- (a) if the contract is a light touch contract, before the end of the period of 120 days beginning with the day on which the contract is entered into;
 - (b) otherwise, before the end of the period of 30 days beginning with the day on which the contract is entered into.
- (2) A “contract details notice” means a notice setting out—
- (a) that the contracting authority has entered into a contract, and
 - (b) any other information specified in regulations under section 95.
- (3) A contracting authority that enters into a public contract with an estimated value of more than £5 million must publish a copy of the contract—

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- (a) if the contract is a light touch contract, before the end of the period of 180 days beginning with the day on which the contract is entered into;
 - (b) otherwise, before the end of the period of 90 days beginning with the day on which the contract is entered into.
- (4) Subsection (3) does not apply in relation to a contract—
- (a) awarded by a devolved Welsh authority or a transferred Northern Ireland authority, unless it is awarded under a reserved procurement arrangement, or
 - (b) awarded under a devolved Welsh procurement arrangement or a transferred Northern Ireland procurement arrangement.
- (5) A Minister of the Crown may by regulations amend this section for the purpose of changing the financial threshold.
- (6) This section does not apply—
- (a) to private utilities, or
 - (b) in relation to a contract awarded under section 41 by reference to paragraph 15 of Schedule 5 (direct award: user choice contracts).

CHAPTER 6

GENERAL PROVISION ABOUT AWARD AND PROCEDURES

Time limits and termination

54 Time limits

- (1) In setting time limits for the purposes of this Part, a contracting authority must, where relevant, have regard to—
- (a) the nature and complexity of the contract being awarded;
 - (b) the need for site visits, physical inspections and other practical steps;
 - (c) the need for sub-contracting;
 - (d) the nature and complexity of any modification of the tender notice or any associated tender documents;
 - (e) the importance of avoiding unnecessary delay.
- (2) Time limits set for the purposes of this Part must be the same for each supplier.
- (3) A participation period set under this Part must equal or exceed the shortest minimum period specified in an entry in the second column of the following table that corresponds with an entry in the first column which applies to the circumstances of the case—

<i>Circumstance</i>	<i>Minimum period</i>
The contract being awarded is a light touch contract	No minimum period
The contracting authority considers there to be a state of urgency that means that a 25 day participation period is impractical	10 days
Neither of the above circumstances apply	25 days

- (4) A tendering period set under this Part must equal or exceed the shortest minimum period specified in an entry in the second column of the following table that corresponds with an entry in the first column that applies to the circumstances of the case—

<i>Circumstance</i>	<i>Minimum period</i>
The contract being awarded is a light touch contract	No minimum period
The contract— (a) being awarded is a utilities contract, or (b) is being awarded by a contracting authority that is not a central government authority, and is subject to a negotiated tendering period	No minimum period
The contract— (a) being awarded is a utilities contract, or (b) is being awarded by a contracting authority that is not a central government authority, and tenders may be submitted only by preselected suppliers	10 days
A qualifying planned procurement notice has been issued	10 days
The contracting authority considers there to be a state of urgency that means any other applicable minimum tender period is impractical	10 days
The contract being awarded is being awarded by reference to suppliers' membership of a dynamic market	10 days
Tenders may be submitted electronically, and the tender notice and associated tender documents are all provided at the same time	25 days
Tenders may be submitted electronically, but the tender notice and associated tender documents are not all provided at the same time	30 days
Tenders may not be submitted electronically, but the tender notice and associated tender documents are all provided at the same time	30 days
Tenders may not be submitted electronically, and the tender notice and associated tender documents are not all provided at the same time	35 days

- (5) In this section—

“central government authority” has the meaning given in paragraph 5 of Schedule 1;

“negotiated tendering period” means a tendering period agreed between a contracting authority and pre-selected suppliers in circumstances where tenders may be submitted only by those pre-selected suppliers;

“qualifying planned procurement notice” has the meaning given in section 15;

“participation period” means the period beginning with the day following the day on which a contracting authority invites the submission of requests

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to participate in a competitive flexible procedure and ending with the day by which those requests must be submitted;

“pre-selected supplier” means a supplier that—

- (a) has been assessed as satisfying conditions of participation before being invited to submit a tender as part of a competitive tendering procedure, or
- (b) in the case of a contract that is being awarded by reference to suppliers’ membership of a dynamic market, is a member of that market;

“tendering period” means the period beginning with the day following the day on which a contracting authority invites the submission of tenders as part of a competitive tendering procedure and ending with the day by which tenders must be submitted.

55 Procurement termination notices

- (1) This section applies if, after publishing a tender or transparency notice in respect of a public contract, a contracting authority decides not to award the contract.
- (2) As soon as reasonably practicable after making the decision, the contracting authority must give notice to that effect.
- (3) This section does not apply to private utilities.

Technical specifications

56 Technical specifications

- (1) This section applies in relation to—
 - (a) a competitive tendering procedure;
 - (b) an award of a public contract in accordance with a framework;
 - (c) a process to become a member of a dynamic market.
- (2) The procurement documents may not refer to design, a particular licensing model or a description of characteristics in circumstances where they could appropriately refer to performance or functional requirements.
- (3) The procurement documents may not refer to a United Kingdom standard unless—
 - (a) the standard adopts an internationally-recognised equivalent, or
 - (b) there is no internationally-recognised equivalent.
- (4) If the procurement documents refer to a United Kingdom standard, they must provide that tenders, proposals or applications that the contracting authority considers satisfy an equivalent standard from another state, territory or organisation of states or territories will be treated as having satisfied the United Kingdom standard.
- (5) In considering whether a standard is equivalent to a United Kingdom standard for the purposes of subsection (4), a contracting authority may have regard to the authority’s purpose in referring to the standard.
- (6) A contracting authority may require certification, or other evidence, for the purpose of satisfying itself that a standard is satisfied or equivalent.
- (7) Unless the contracting authority considers it necessary in order to make its requirements understood, the procurement documents may not refer to a particular—

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- (a) trademark, trade name, patent, design or type,
 - (b) place of origin, or
 - (c) producer or supplier.
- (8) If the matters mentioned in subsection (7) are referred to, the procurement documents must also provide that tenders, proposals or applications demonstrating equivalent quality or performance will not be disadvantaged.
- (9) In this section—
- “procurement documents” means—
 - (a) the tender notice or associated tender documents, including any requirements of a competitive tendering procedure, conditions of participation or award criteria;
 - (b) documents inviting suppliers to participate in a competitive selection process under a framework, including details of the process, any conditions of participation or criteria for the award of the contract;
 - (c) documents inviting suppliers to apply for membership of a dynamic market, including any conditions for membership;
 - “United Kingdom standard” means a standard that is—
 - (a) set by the British Standards Institution, or
 - (b) primarily developed for use in the United Kingdom, or part of the United Kingdom.

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.
- (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—

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- (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).

Debarment

59 Notification of exclusion of supplier

- (1) This section applies where—
- (a) a contracting authority—
 - (i) has disregarded a tender from an excluded or excludable supplier under section 26 or 28,

- (ii) has excluded an excluded or excludable supplier from participating in, or progressing as part of, a competitive tendering procedure under section 27 or 28,
 - (iii) is aware of an associated person or sub-contractor having been replaced under section 26(3), 27(4) or 28(5) (replacing an excluded or excludable associated person or sub-contractor),
 - (iv) has rejected an application from a supplier for membership of a dynamic market on the basis that the supplier is an excluded or excludable supplier (see section 36), or
 - (v) has removed an excluded or excludable supplier from a dynamic market under section 37, and
- (b) the supplier was an excluded or excludable supplier—
- (i) under section 57(1)(a) or (2)(a) by virtue of a relevant exclusion ground, or
 - (ii) on the basis of being on the debarment list by virtue of paragraph 35 of Schedule 6 (threat to national security).
- (2) The contracting authority must, before the end of the period of 30 days beginning with the day on which the tender was disregarded or the supplier excluded, replaced or removed, give notice of that fact to the relevant appropriate authority.
- (3) A notice under subsection (2) must set out—
- (a) any relevant exclusion ground that the authority considers applies to the supplier, and
 - (b) any other information specified in regulations under section 95.
- (4) If any proceedings under Part 9 are brought in respect of the disregard, exclusion, replacement or removal, the contracting authority must give notice to the relevant appropriate authority of—
- (a) the commencement of those proceedings or any appeal proceedings;
 - (b) the outcome of any proceedings within paragraph (a).
- (5) Notice under subsection (4)(a) or (b) must be given before the end of the period of 30 days beginning with the day the proceedings concerned are commenced or determined.
- (6) In this section—
- “exclusion ground” means a mandatory exclusion ground or a discretionary exclusion ground;
 - “relevant exclusion ground” means any exclusion ground except the one listed in paragraph 43 of Schedule 6 (failure to cooperate with investigation);
 - “relevant appropriate authority” means—
- (a) if the contracting authority is a devolved Welsh authority, the Welsh Ministers;
 - (b) if the contracting authority is a transferred Northern Ireland authority, the Northern Ireland department that the contracting authority considers it most appropriate to notify;
 - (c) in any other case, a Minister of the Crown.

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

60 Investigations of supplier: exclusion grounds

- (1) An appropriate authority may, for the purpose of considering whether an entry could be added to the debarment list in respect of a supplier, investigate whether a supplier is, by virtue of the application to the supplier of a relevant exclusion ground—
 - (a) an excluded supplier under section 57(1)(a), or
 - (b) an excludable supplier under section 57(2)(a).
- (2) A Minister of the Crown must—
 - (a) have regard to the fact that contracting authorities may be unknowingly awarding public contracts to suppliers that—
 - (i) could be excludable suppliers by virtue of paragraph 14 of Schedule 7 (threat to national security), or
 - (ii) are sub-contracting to suppliers that could be excludable suppliers by virtue of that paragraph, and
 - (b) in light of that fact, keep under review whether particular suppliers or sub-contractors should be investigated under this section.
- (3) If an appropriate authority decides to investigate under this section, the authority must give the supplier concerned a notice setting out—
 - (a) the relevant exclusion grounds in respect of which the investigation is being conducted,
 - (b) how and when the supplier may make representations to the appropriate authority, and
 - (c) any other information specified in regulations under section 95.
- (4) The appropriate authority may by notice require a contracting authority—
 - (a) to provide such relevant documents as the appropriate authority may reasonably require for the purposes of the investigation, in the form or manner specified in the notice;
 - (b) to give such other assistance in connection with the investigation as is reasonable in the circumstances and is specified in the notice.
- (5) A contracting authority must comply with a notice under subsection (4) before the end of the period specified in the notice.
- (6) The appropriate authority may by notice request that the supplier concerned, or a connected person in relation to the supplier—
 - (a) provide such relevant documents as the appropriate authority may reasonably require for the purposes of the investigation, in the form or manner, and before the end of the period, specified in the notice;
 - (b) give such other assistance in connection with the investigation as is reasonable in the circumstances and is specified in the notice, before the end of the period so specified.
- (7) A notice under subsection (6) must set out the potential consequences for the supplier of non-compliance with the request (see paragraph 43 of Schedule 6).
- (8) In this section—
 - “relevant documents” means documents or other information that—
 - (a) are specified or described in a notice under subsection (4) or (6), and
 - (b) are in the possession or control of the recipient of the notice;
 - “relevant exclusion ground” has the meaning given in section 59.

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

61 Investigations under section 60: reports

- (1) This section applies where an appropriate authority has conducted an investigation under section 60.
- (2) The Welsh Ministers or a Northern Ireland department—
 - (a) may refer the case to a Minister of the Crown for the Minister’s consideration for the purposes of section 62(1), and
 - (b) if they do so, must provide the Minister with all information relevant to their findings.
- (3) A Minister of the Crown who has conducted, or considered the findings of, an investigation must—
 - (a) prepare a report in relation to the findings of the investigation,
 - (b) give a copy to the supplier concerned as soon as reasonably practicable after the report is prepared, and
 - (c) publish it.

Paragraphs (b) and (c) are subject to subsection (5).

- (4) The report must, in particular, set out whether the Minister is satisfied that the supplier is, by virtue of a relevant exclusion ground, an excluded or excludable supplier, and if the Minister is so satisfied—
 - (a) in respect of each applicable relevant exclusion ground—
 - (i) whether it is a mandatory or discretionary ground,
 - (ii) the date on which the Minister expects the ground to cease to apply (see paragraph 44 of Schedule 6 and paragraph 15 of Schedule 7), and
 - (iii) whether the Minister intends to make an entry to the debarment list,
 - (b) in respect of the exclusion ground in paragraph 35 of Schedule 6 (if applicable), the description of contracts in relation to which the Minister—
 - (i) is satisfied the ground applies, and
 - (ii) intends to refer to in a relevant entry in the debarment list, and
 - (c) in each case, the Minister’s reasons.
- (5) If the Minister considers it necessary to do so for a purpose mentioned in subsection (6), the Minister may—
 - (a) remove information from a report before publishing it or giving it to the supplier concerned;
 - (b) decide not to publish the report;
 - (c) decide not to give the report to the supplier;
 - (d) disclose the report only to such persons as the Minister considers appropriate.
- (6) The purposes are—
 - (a) safeguarding national security;
 - (b) preventing the publication of information that is sensitive commercial information where there is an overriding public interest in it being withheld from publication or other disclosure.
- (7) In this section—

“relevant exclusion ground” has the meaning given by section 59;

“sensitive commercial information” has the meaning given by section 94.

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62 Debarment list

- (1) Subsection (3) applies where a Minister of the Crown—
 - (a) has conducted an investigation under section 60 or considered the findings of such an investigation conducted by the Welsh Ministers or a Northern Ireland department, and
 - (b) is satisfied that the supplier is, by virtue of the application of a relevant exclusion ground, an excluded or excludable supplier.
- (2) Subsection (3) also applies where a Minister of the Crown has made a determination as mentioned in paragraph 43 of Schedule 6 in relation to a supplier (mandatory exclusion ground for failing to cooperate with investigation).
- (3) The Minister may enter the supplier’s name on a list kept by a Minister of the Crown for the purposes of this section and, as part of that entry, must include the relevant debarment information.
- (4) In this section, the “relevant debarment information” means—
 - (a) the exclusion ground to which the entry relates;
 - (b) whether the exclusion ground is mandatory or discretionary;
 - (c) in the case of an entry made on the basis of paragraph 35 of Schedule 6 (threat to national security), a description of the contracts in relation to which the supplier is to be an excluded supplier;
 - (d) the date on which the Minister expects the exclusion ground to cease to apply (see paragraph 44 of Schedule 6 and paragraph 15 of Schedule 7).
- (5) Before entering a supplier’s name on the debarment list, the Minister must give notice to the supplier setting out—
 - (a) the decision to do so,
 - (b) an explanation of the supplier’s rights under sections 63 to 65, and
 - (c) any other information specified in regulations under section 95.
- (6) The Minister may not enter a supplier’s name on the debarment list before the end of the period of eight working days beginning with the day on which the Minister gives notice to the supplier in accordance with subsection (5) (the “debarment standstill period”).
- (7) The Minister may not enter a supplier’s name on the debarment list if—
 - (a) during the debarment standstill period—
 - (i) proceedings under section 63(1) (interim relief) are commenced, and
 - (ii) the Minister is notified of that fact, and
 - (b) the proceedings have not been determined, discontinued or otherwise disposed of.
- (8) A Minister of the Crown—
 - (a) must keep the debarment list under review,
 - (b) may remove an entry from the debarment list,
 - (c) in the case of an entry added on the basis of paragraph 35 of Schedule 6 (threat to national security), may revise an entry to remove a description of contracts, and
 - (d) may revise a date indicated under subsection (4)(d).

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- (9) If a Minister of the Crown voluntarily removes or revises an entry in connection with proceedings under section 65 (debarment decisions: appeals), a Minister of the Crown may reinstate the entry only after the proceedings have been determined, discontinued or otherwise disposed of.
- (10) A Minister of the Crown must—
- (a) remove an entry if the Minister is satisfied that the supplier is not an excluded or excludable supplier by virtue of the ground stated in the entry;
 - (b) in the case of an entry added on the basis of paragraph 35 of Schedule 6 (threat to national security), revise the entry to remove a description of contracts if the Minister is satisfied the exclusion ground in that paragraph does not apply in relation to contracts of that description.
- (11) A Minister of the Crown must publish the debarment list (including any amended list).
- (12) A Minister of the Crown must consult the Welsh Ministers and the Northern Ireland department that the Minister considers most appropriate before—
- (a) entering a supplier’s name on the debarment list, or
 - (b) removing or revising an entry pursuant to an application under section 64.
- (13) In this section, “relevant exclusion ground” has the meaning given by section 59.

63 Debarment decisions: interim relief

- (1) A supplier may apply to the court for suspension of the Minister’s decision to enter the supplier’s name on the debarment list.
- (2) Proceedings under subsection (1) must be brought during the debarment standstill period.
- (3) The court may make an order to—
- (a) suspend the Minister’s decision to enter the supplier’s name on the debarment list until—
 - (i) the period referred to in subsection (2)(c) of section 65 (appeals) ends without proceedings having been brought, or
 - (ii) proceedings under that section are determined, discontinued or otherwise disposed of, and
 - (b) if relevant, require that an entry in respect of the supplier be temporarily removed from the debarment list.
- (4) In considering whether to make an order under subsection (3), the court must have regard to—
- (a) the public interest in, among other things, ensuring that public contracts are not awarded to suppliers that pose a risk,
 - (b) the interest of the supplier, including in relation to the likely financial impact of not suspending the decision, and
 - (c) any other matters that the court considers appropriate.
- (5) In this section—
- “the court” means—
 - (a) in England and Wales, the High Court,
 - (b) in Northern Ireland, the High Court, and

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(c) in Scotland, the Court of Session;

“debarment standstill period” has the meaning given in subsection (6) of section 62 (debarment list).

64 Debarment list: application for removal

- (1) A supplier may at any time apply to a Minister of the Crown for the removal or revision of an entry made on the debarment list in respect of the supplier.
- (2) The Minister is only required to consider such an application if—
 - (a) in the opinion of the Minister, there has been a material change of circumstances—
 - (i) since the entry was made or, where relevant, revised, or
 - (ii) in a case where the supplier has made a previous application under subsection (1) in relation to the entry or, where relevant, revision, since the most recent application that was considered by the Minister was made, or
 - (b) the application is otherwise accompanied by significant information that has not previously been considered by a Minister of the Crown.
- (3) After considering an application under subsection (1), the Minister must—
 - (a) notify the supplier of the Minister’s decision, and
 - (b) give reasons for the decision.

65 Debarment decisions: appeals

- (1) A supplier may appeal to the court against a decision of a Minister of the Crown—
 - (a) to enter the supplier’s name on the debarment list,
 - (b) to indicate contracts of a particular description as part of an entry made in respect of the supplier on the basis of paragraph 35 of Schedule 6 (threat to national security),
 - (c) to indicate a particular date as part of an entry in respect of the supplier under section 62(4)(d), or
 - (d) not to remove or revise an entry made in respect of the supplier following an application under section 64 (application for removal).
- (2) Proceedings under subsection (1)—
 - (a) may only be brought by a United Kingdom supplier or a treaty state supplier,
 - (b) may only be brought on the grounds that, in making the decision, the Minister made a material mistake of law, and
 - (c) must be commenced before the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the Minister’s decision.
- (3) Subsection (4) applies if, in proceedings under subsection (1)(a) or (b), the court is satisfied that—
 - (a) the Minister made a material mistake of law, and
 - (b) in consequence of the mistake, a contracting authority excluded the supplier from participating in a competitive tendering procedure, or other selection process, in reliance on section 57(1)(b) or (2)(b).

- (4) The court may make one or more of the following orders—
- (a) an order setting aside the Minister’s decision;
 - (b) an order to compensate the supplier for any costs incurred by the supplier in relation to participating in the procedure or process referred to in subsection (3)(b).
- (5) Otherwise, if the court is satisfied that the Minister made a material mistake of law, the court may make an order setting aside the Minister’s decision.
- (6) In this section—
- “the court” has the meaning given in section 63 (interim relief);
 - the reference to a supplier being excluded includes a reference to—
 - (a) the supplier’s tender being disregarded under section 26;
 - (b) the supplier becoming an excluded supplier for the purposes of section 41(1)(a), 43(1) or 45(6)(a).

66 Debarment proceedings and closed material procedure

Part 2 of the Justice and Security Act 2013 (disclosure of sensitive material) applies in relation to proceedings under sections 63(1) (interim relief) and 65 (appeals) as if, in each of the following provisions, each reference to the Secretary of State included a reference to the Minister for the Cabinet Office—

- (a) section 6(2)(a), (7) and (9)(a) and (c);
- (b) section 7(4)(a);
- (c) section 8(1)(a);
- (d) section 11(3);
- (e) section 12(2)(a) and (b).