



Procurement Act 2023

2023 CHAPTER 54

PROSPECTIVE

PART 5

CONFLICTS OF INTEREST

81 Conflicts of interest: duty to identify

- (1) A contracting authority must take all reasonable steps to identify, and keep under review, in relation to a covered procurement any—
 - (a) conflicts of interest, or
 - (b) potential conflicts of interest.
- (2) There is a conflict of interest in relation to a covered procurement if—
 - (a) a person acting for or on behalf of the contracting authority in relation to the procurement has a conflict of interest, or
 - (b) a Minister acting in relation to the procurement has a conflict of interest.
- (3) A person who influences a decision made by or on behalf of a contracting authority in relation to a covered procurement is to be treated as acting in relation to the procurement.
- (4) In this section—
 - “interest” includes a personal, professional or financial interest and may be direct or indirect;
 - “Minister” means—
 - (a) a Minister of the Crown;
 - (b) a member of the Welsh Government;
 - (c) the First Minister, deputy First Minister or a Northern Ireland Minister;
 - “member of the Welsh Government” means a person referred to in section 45 of the Government of Wales Act 2006.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Procurement Act 2023, PART 5. (See end of Document for details)

Commencement Information

II S. 81 not in force at Royal Assent, see [s. 127\(2\)](#)

82 Conflicts of interest: duty to mitigate

- (1) A contracting authority must take all reasonable steps to ensure that a conflict of interest does not put a supplier at an unfair advantage or disadvantage in relation to a covered procurement.
- (2) Reasonable steps may include requiring a supplier to take reasonable steps.
- (3) Subsection (4) applies if a contracting authority considers that—
 - (a) a conflict of interest puts a supplier at an unfair advantage in relation to the award of a public contract, and
 - (b) either—
 - (i) the advantage cannot be avoided, or
 - (ii) the supplier will not take steps that the contracting authority considers are necessary in order to ensure it is not put at an unfair advantage.
- (4) 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.
- (5) In this section, “conflict of interest” has the meaning given in section 81.

Commencement Information

I2 S. 82 not in force at Royal Assent, see [s. 127\(2\)](#)

83 Conflicts assessments

- (1) Before publishing a tender or transparency notice in relation to a covered procurement, a contracting authority must prepare a conflicts assessment in relation to the procurement.
- (2) Before publishing a dynamic market notice in relation to the establishment of a dynamic market, a contracting authority must prepare a conflicts assessment in relation to the establishment.
- (3) A conflicts assessment must include details of—
 - (a) conflicts or potential conflicts of interest identified in accordance with section 81 (duty to identify), and
 - (b) any steps the contracting authority has taken or will take for the purposes of section 82 (duty to mitigate).
- (4) If a contracting authority is aware of circumstances that it considers are likely to cause a reasonable person to wrongly believe there to be a conflict or potential conflict of

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interest, a conflicts assessment must also include details of any steps the contracting authority has taken or will take to demonstrate that no such conflict or potential conflict exists.

- (5) A contracting authority must—
- (a) keep any conflicts assessment under review,
 - (b) revise the assessment as necessary, and
 - (c) when publishing any relevant notice, confirm that a conflicts assessment has been prepared and revised in accordance with this section.
- (6) Subsection (5) does not apply after—
- (a) a contracting authority has given notice of its decision not to award the contract (under section 55),
 - (b) a contract termination notice is published in relation to the procurement, or
 - (c) a dynamic market notice is published in relation to the market ceasing to operate.
- (7) In the case of a contracting authority that is a private utility—
- (a) the reference in this section to notice of a decision not to award a contract is a reference to the decision;
 - (b) the reference in this section to a contract termination notice being published in relation to a procurement is a reference to the contract being terminated;
 - (c) the reference in this section to a dynamic market notice being published in relation to a market ceasing to operate is a reference to the market ceasing to operate.
- (8) In this section—
- “conflict of interest” has the meaning given in section 81;
- “relevant notice” means—
- (a) a tender notice,
 - (b) a transparency notice,
 - (c) a dynamic market notice in relation to the establishment of a dynamic market,
 - (d) a contract details notice relating to a public contract, or
 - (e) a contract change notice;
- “terminated” is to be understood by reference to section 80(3).

Commencement Information

I3 S. 83 not in force at Royal Assent, see [s. 127\(2\)](#)

Status:

This version of this part contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Procurement Act 2023, PART 5.