



# Procurement Act 2023

## 2023 CHAPTER 54

### PART 8

#### INFORMATION AND NOTICES: GENERAL PROVISION

#### 93 Pipeline notices

- (1) This section applies in relation to any contracting authority that considers that, in the coming financial year, it will pay more than £100 million under relevant contracts.
- (2) A contracting authority must publish a pipeline notice before the end of the period of 56 days beginning with the first day of the financial year referred to in subsection (1).
- (3) A “pipeline notice” means a notice setting out specified information about any public contract with an estimated value of more than £2 million in respect of which the contracting authority intends to publish a tender notice or transparency notice during the reporting period.
- (4) In this section—
  - “financial year” means—
    - (a) the period of twelve months beginning with the 1 April following the day on which this section comes into force, and
    - (b) each successive period of 12 months;
  - “relevant contracts” means any contracts for the supply of goods, services or works to the contracting authority other than exempted contracts;
  - “reporting period” means the period of 18 months beginning with the first day of the financial year referred to in subsection (1);
  - “specified information” means information specified in regulations under section 95.
- (5) A Minister of the Crown or the Welsh Ministers may by regulations amend this section for the purpose of changing the financial thresholds.
- (6) This section does not apply to—
  - (a) private utilities, or

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- (b) a transferred Northern Ireland authority.

#### **94 General exemptions from duties to publish or disclose information**

- (1) A contracting authority is not required to publish or otherwise disclose information under this Act if the authority is satisfied that—
  - (a) withholding the information from publication or other disclosure is necessary for the purpose of safeguarding national security, or
  - (b) the information is sensitive commercial information and there is an overriding public interest in its being withheld from publication or other disclosure.
- (2) “Sensitive commercial information” is information which—
  - (a) constitutes a trade secret, or
  - (b) would be likely to prejudice the commercial interests of any person if it were published or otherwise disclosed.
- (3) If a contracting authority withholds information under this section, the authority must publish or notify anyone to whom the information would otherwise be provided of—
  - (a) the fact that information is being withheld, and
  - (b) whether it is being withheld under subsection (1)(a) or (1)(b).
- (4) A contracting authority is not required to publish or notify someone under subsection (3) if the authority is satisfied that it would be contrary to the interests of national security to do so.

#### **95 Notices, documents and information: regulations and online system**

- (1) An appropriate authority may by regulations make provision about—
  - (a) the form and content of notices, documents or other information to be published or provided under this Act;
  - (b) how such notices or documents are, or information is, to be published, provided or revised.
- (2) Regulations under subsection (1) may for example—
  - (a) require a notice or document to contain specified information;
  - (b) require publication on a specified online system.
- (3) Regulations under subsection (1) may—
  - (a) make different provision for different kinds of notice, document or information;
  - (b) make different provision for the same kind of notice, document or information for different purposes.

See also section 122(3).

- (4) A Minister of the Crown must make arrangements to establish and operate an online system for the purpose of publishing notices, documents and other information under this Act.
- (5) An online system established or operated under subsection (4) must—
  - (a) make notices, documents and other information published under this Act available free of charge, and
  - (b) be accessible to people with disabilities.

## **96 Electronic communications**

- (1) In carrying out a covered procurement, a contracting authority must so far as practicable—
  - (a) communicate with suppliers electronically, and
  - (b) take steps to ensure that suppliers participating in the procurement communicate electronically.
- (2) In carrying out a covered procurement, a contracting authority may only use, or require the use of, electronic communication systems that are—
  - (a) free of charge and readily accessible to suppliers,
  - (b) generally available, or interoperable with other generally available systems, and
  - (c) accessible to people with disabilities.
- (3) Subsection (2)(a) does not apply in relation to an electronic communications system used, or required to be used—
  - (a) after the award of the public contract, or
  - (b) in relation to a utilities dynamic market.
- (4) This section does not apply if the contracting authority is satisfied that electronic communication, or the use of an electronic communication system meeting the requirements of subsection (2), poses a particular security risk in the circumstances.
- (5) In this section, “electronic communication system” includes any electronic system used for the purpose of communication with suppliers.

## **97 Information relating to a procurement**

- (1) An appropriate authority may by regulations make provision requiring certain information to be shared in a particular way, including through a specified online system.
- (2) Regulations under subsection (1) may require a contracting authority to—
  - (a) share information in a particular way, or
  - (b) take steps to ensure that suppliers participating in a procurement share information in a particular way.
- (3) In this section, “information” means information shared under, or for a purpose relating to, this Act.

## **98 Record-keeping**

- (1) A contracting authority must keep such records as the authority considers sufficient to explain a material decision made for the purpose of awarding or entering into a public contract.
- (2) For the purposes of subsection (1), a decision is “material” if, under this Act, a contracting authority is required—
  - (a) to publish or provide a notice, document or other information in relation to the decision, or
  - (b) to make the decision.

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- (3) A contracting authority must keep records of any communication between the authority and a supplier that is made—
  - (a) in relation to the award or entry into of a public contract, and
  - (b) before the contract is entered into.
- (4) A record under this section must be kept until—
  - (a) the day on which the contracting authority gives notice of a decision not to award the contract (see section 55), or
  - (b) the end of the period of three years beginning with the day on which the contract is entered into or, if the contract is awarded but not entered into, awarded.
- (5) This section does not apply in relation to defence and security contracts.
- (6) This section does not affect any other obligation under any enactment or rule of law by virtue of which a contracting authority must retain documents or keep records, including for a longer period.

## **99 Data protection**

- (1) This Act does not authorise or require a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the powers conferred and the duties imposed by and under this Act).
- (2) In this section “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).