



Procurement Act 2023

2023 CHAPTER 54

PART 3

AWARD OF PUBLIC CONTRACTS AND PROCEDURES

CHAPTER 1

PRELIMINARY STEPS

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;
 - (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

Status: This is the original version (as it was originally enacted).

- (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.