



Procurement Act 2023

2023 CHAPTER 54

PART 3

AWARD OF PUBLIC CONTRACTS AND PROCEDURES

CHAPTER 2

COMPETITIVE AWARD

Terms of a procurement

PROSPECTIVE

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—

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Procurement Act 2023, Section 20. (See end of Document for details)

- (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
 - (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.

Commencement Information

- II** S. 20 not in force at Royal Assent, see [s. 127\(2\)](#)

Status:

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