



Procurement Act 2023

2023 CHAPTER 54

PART 4

MANAGEMENT OF PUBLIC CONTRACTS

Terminating public contracts

PROSPECTIVE

78 Implied right to terminate public contracts

- (1) It is an implied term of every public contract that the contract can, if a termination ground applies, be terminated by the contracting authority in accordance with this section.
- (2) Each of the following circumstances is a termination ground—
 - (a) the contracting authority considers that the contract was awarded or modified in material breach of this Act or regulations made under it;
 - (b) a supplier has, since the award of the contract, become an excluded supplier or excludable supplier (including by reference to an associated person);
 - (c) a supplier (other than an associated person) to which the supplier is sub-contracting the performance of all or part of the public contract is an excluded or excludable supplier.
- (3) The termination ground in subsection (2)(c) is not available unless—
 - (a) the contracting authority requested information under section 28(1)(a) (information about sub-contractors) in relation to the award of the public contract, and
 - (b) subsection (4), (5) or (6) applies.
- (4) This subsection applies if, before awarding the public contract, the contracting authority did not know the supplier intended to sub-contract the performance of all or part of the contract.

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Procurement Act 2023, Section 78. (See end of Document for details)

- (5) This subsection applies if—
- (a) the sub-contractor is an excluded or excludable supplier under section 57(1)(b) or (2)(b) (the debarment list), and
 - (b) before awarding the contract the contracting authority—
 - (i) sought to determine whether that was the case in accordance with section 28(1)(b), but
 - (ii) did not know that it was.
- (6) This subsection applies if—
- (a) the sub-contractor is an excluded or excludable supplier under section 57(1)(a) or (2)(a),
 - (b) the contracting authority requested information about the sub-contractor under section 28(2), and
 - (c) before awarding the contract, the contracting authority did not know that the sub-contractor was an excluded or excludable supplier.
- (7) Before terminating a contract by reference to the term implied by subsection (1), a contracting authority must—
- (a) notify the supplier of its intention to terminate,
 - (b) specify which termination ground applies and why the authority has decided to terminate the contract,
 - (c) give the supplier reasonable opportunity to make representations about—
 - (i) whether a termination ground applies, and
 - (ii) the authority's decision to terminate.
- (8) Before terminating a contract by reference to the fact that a supplier to which the supplier is sub-contracting is an excluded or excludable supplier (whether under subsection (2)(b) or (c)), a contracting authority must give the supplier reasonable opportunity to—
- (a) cease sub-contracting to the excluded or excludable supplier, and
 - (b) if necessary, find an alternative supplier to which to sub-contract.
- (9) A public contract may contain provision about restitution and other matters ancillary to the termination of the contract by reference to the term implied by subsection (1).
- (10) But any term purporting to restrict or override the implied term is without effect.
- (11) In subsection (2)(b), 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.
- (12) In this section, “material breach” means a breach that the contracting authority considers could reasonably result in a successful legal challenge under Part 9 or otherwise.

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Procurement Act 2023, Section 78. (See end of Document for details)

Commencement Information

II S. 78 not in force at Royal Assent, see [s. 127\(2\)](#)

Status:

This version of this provision is prospective.

Changes to legislation:

There are currently no known outstanding effects for the Procurement Act 2023, Section 78.