



Transforming Public Procurement Learning Manual

Summary Documents and Learning Aids

The learning manual and all of the material within it has been produced for the purpose of learning and development only, and does not constitute and should not be relied upon as legal or other professional advice. We have aimed to ensure that the information is correct as at 26th July 2024. The content has not been updated following any relevant changes. In particular, the material used in the e-Learning and learning manual has been based on a draft version of the Procurement Regulations 2024 and so users should review the Procurement Regulations 2024 laid before Parliament and the guidance issued by Cabinet Office in due course.

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Module 1: Scope, definitions and general principles

Contents

1. Introduction
2. Scope
3. Procurement Principles and Objectives
4. Definitions
5. Transitioning to the Procurement Act 2023

1. Introduction

This document intends to provide a summary of the requirements relating to the scope of the Procurement Act 2023, procurement objectives, pipeline notices, conflicts of interest and transitional requirements. It will identify the key changes against the previous regime and sets out what contracting authorities must do to be compliant with the new rules.

2. Scope

What is the Procurement Act 2023 and why do we need it?

Prior to leaving the European Union (EU), the UK's public procurement legislation mainly derived from EU directives, consisting of four separate sets of regulations and separate regulations application in Scotland: the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016, the Concession Contracts Regulations 2016 and the Defence and Security Public Contracts Regulations 2011. The UK's exit from the EU provided an opportunity to create a simpler and more transparent system to better meet our needs.

Scotland has decided to retain its existing regulations.

Previous Regulations	Procurement Act 2023 and relevant regulations to be made under the Act
- Public Contracts Regulations 2015 - Utilities Contracts Regulations 2016 - Concession Contracts Regulations 2016 - Defence and Security Public Contracts Regulations 2011	A single, uniformed framework for public procurement

What are the main changes and benefits of the Procurement Act 2023?

Change: Four sets of regulations have been transformed into a simpler set of rules

Benefit: Improved clarity and consistency for contracting authorities no matter which sector they operate in.

Change: Procurement Act 2023 and relevant regulations to be made under the Act offer greater freedoms and flexibilities to design procurement processes.

Benefit: Allows contracting authorities to undertake procurement activities that are fit for purpose to meet organisational needs, as well as local and national objectives.

Change: Procurement Act 2023 and relevant regulations to be made under the Act will improve transparency

Benefit: Easier access to existing routes to market and market analysis data to help contracting authorities inform procurement strategies and decisions. Greater visibility of opportunities for businesses, and better scrutiny over where and how public money is being spent.

Change: The Procurement Act 2023 contains a number of benefits for SMEs and VCSEs and reflects the government's commitment to removing barriers to new entrants accessing public contracts, either directly or indirectly as part of a supply chain.

Benefit: Increasing access to public contracts for SMEs and VCSEs and broadening the marketplace for contracting authorities.

Change: The Procurement Act 2023 and relevant regulations to be made under the Act strengthens the ability to exclude suppliers from procurements who are unfit to deliver public contracts, for example because of past misconduct, corruption or poor performance.

Benefit: better protects contracting authorities from suppliers who pose a risk to contract delivery including the protection of the public, the environment, public funds, national security and the rights of workers.

Change: The Procurement Act 2023 sets out a power to publish a national procurement policy statement (NPPS) and a Wales procurement policy statement (WPPS). Contracting authorities are required to have regard to the appropriate NPPS/WPPS (where one exists) when carrying out their procurement activities, which includes the setting of award criteria.

Benefit: The NPPS/WPPS will explain the government's strategic priorities for public procurement and provide focus for contracting authorities and suppliers to deliver outcomes in these areas.

■ Which contracts are covered by the Procurement Act 2023?

Generally the provisions in the Procurement Act 2023 must be applied to a “covered procurement”. A covered procurement is the award, entry into and management of a public contract. A public contract is a contract of a particular type that is above the relevant threshold (for goods, services and works) and which is not an exempted contract.

However, some rules in the Procurement Act 2023 must be applied to procurements not caught by the definition of “covered procurement” and that is why there is a wider definition of “procurement” (the award, entry into and management of a contract), which means any procurement. This allows some limited rules for contracts not caught under the definition of “covered procurement”, such as below-threshold procurements; this is to ensure we comply with certain treaty obligations.

■ Exempted contracts

An exempted contract is a contract of a kind listed in Schedule 2 to which the Act generally does not apply. Exempted contracts are not covered by the Act when it refers to “covered procurement”. Exempted contracts are covered by the Act when it refers to “procurement”, for example in relation to the National

Procurement Policy Statement (NPPS) at section 13 (which may or may not apply, depending on the requirements of the NPPS itself). In this learning manual, when we talk about contracts being exempt from the Act, this is a reference to the general position - i.e. in relation to covered procurement.

Part 1 describes the contracts that are exempt from the Act due to the nature of the relationship between the contracting parties. These are referred to as “counterparty exempted contracts” for example a contract (vertical arrangement) between a local authority and a company that it controls provided the requirements of paragraph 2 of Part 1 are met. Part 2 describes the contracts that are exempt from the Act due to their subject matter e.g. contracts for the purchase of arbitration, mediation or conciliation services and other similar services.

It should also be noted that the Procurement Act 2023 will not apply to procurements that are subject to the Health Care Services (Provider Selection Regime) Regulations 2023 - see regulation 49 of the Procurement Regulations 2024.

■ Other exemptions

There are exemptions where certain rules do not apply to particular contracts, for example, in some instances for special regime contracts.

A special regime contract means:

- a concession contract;
- a defence and security contract;
- a light touch contract; or
- a utilities contract.

An example of this is that section 51(1) does not apply to light touch contracts.

■ Concession Contracts

Concession contracts are no longer subject to a separate regime and the main rules of the Act apply to them. Whilst the threshold remains significantly higher for concession contracts, contracting authorities must follow the requirements of the Act, including those relating to procedures and transparency, except from some differences and exemptions which can be found here.

■ Defence and Security Contracts

Defence and Security contracts have also been incorporated into the main rules of the Act with some exemptions. Further detail on this can be found in the Defence and security summary document.

■ Utilities Contracts

Utilities contracts are also no longer procured under a separate regime and have also been incorporated into the rules of the Act, with some exemptions. Further detail on this can be found in the Utilities summary document.

Utilities contracts are contracts for the supply of goods, services or works wholly or mainly for the purpose of utility activities.

■ Light Touch and Healthcare Contracts

Light Touch is no longer a separate regime and has also been incorporated into the main rules of the Act with some exemptions. Further detail on this can be found in the Light touch summary document.

■ Who should follow the rules set out in the Procurement Act 2023?

All entities that fall under the definition of “contracting authority” will be subject to the rules set out in the Procurement Act 2023, although some exemptions apply, which will be identified and explained in the relevant sections. The Act defines a contracting authority as either a public authority or, in the case of a utilities contract, a public authority, public undertaking or private utility, other than (in each case) an excluded authority. There is no intended change to the scope of the entities that are covered by the Procurement Act 2023 from the previous regimes, but entities should make sure to consider their status, particularly those with a fluctuating status.

■ Does this apply to the whole of the UK?

The Procurement Act 2023 applies to contracting authorities in England, Wales, Northern Ireland and to contracting authorities with reserved functions carrying out procurement in Scotland. Just as some exemptions that apply to certain contracts there are also some exemptions that apply to certain authorities. Some devolved Welsh and transferred Northern Ireland procurements are exempt from a small number of requirements of the Procurement Act 2023. These exemptions can be found in the following documents:

Wales exemptions fact sheet

Northern Ireland exemptions fact sheet

Scotland will maintain its own procurement legislation which will apply to devolved Scottish authorities. The Procurement Act 2023 ensures we can continue to jointly procure goods, works and services where UK authorities are governed by different regimes and the regulations will allow Scottish contracting authorities to make use of frameworks and dynamic markets established under the Act. The Procurement Act 2023 gives Scottish Ministers the power to disapply devolved Scottish regulations in respect of a devolved

Scottish authority procuring under the Act. If a contracting authority operates in Scotland and elsewhere in the UK, and is undertaking a procurement where its function relates to reserved matters, then the Procurement Act 2023 will apply.

Where joint or cross-border procurement is being undertaken there are key things contracting authorities need to be aware of to understand which regulations apply to that particular procurement. For example, which contracting authority is leading the procurement, and whether their functions are reserved, devolved/ transferred or a mixture of both.

Other excluded authorities include:

1. the Security Service, the Secret Intelligence Service and the Government Communications Headquarters;
2. the Advanced Research and Invention Agency;
3. any person that is subject to public authority oversight—
 - (i) only by reference to a devolved Scottish authority, or
 - (ii) by reference to an authority mentioned in bullets 1 and 2.

■ What about suppliers?

Contracting authorities must comply with the Procurement Act 2023, and both UK and treaty state suppliers (those entitled to the benefits of an international agreement to which the UK is a party) can bring civil proceedings under the remedies regime if they have suffered, or are at risk of suffering, loss or damage as a consequence of a contracting authority failing to comply with their obligations. Information about these remedies can be found in summary document 8 Remedies, procurement oversight and the debarment list

Section 19 (3) (b) does allow tenders to be disregarded from a supplier that:

- (i) is not a United Kingdom supplier or treaty state supplier, or
- (ii) intends 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

■ How to stay compliant

Contracting authorities must ensure they are familiar with the obligations set out in the Procurement Act 2023 as soon as they become aware they have to carry out a procurement. For example, this would include informative processes like pre-market engagement where they would need to have regard for the procurement objectives in choosing how and who to engage with. Also when drafting the contract scope, award criteria and KPIs, consideration needs to be given to things like the National Procurement Policy Statement (NPPS) or the Wales Procurement Policy Statement (WPPS).

The obligations set out in the Procurement Act 2023 do not cover very early stages when contracting authorities have not yet decided that they intend to award a contract, for example when they still have a number of potential avenues open to delivering their requirements and are still at the stage of forming initial views on issues such as ‘make vs buy’.

■ Thresholds

The Procurement Act 2023 has certain obligations that are triggered at set financial thresholds. The threshold (for goods, services and works) which determine whether a procurement is a covered procurement and therefore bound by the main provisions of the Procurement Act 2023 is set out in the table below (as of January 2024) and can be found in Schedule 1 to the Procurement Act (the amounts set out in Schedule 1 will be updated when the Act comes into force to reflect the thresholds that came into force on 1 January 2024). The thresholds include VAT and are revised every two years (they may also need revising in the interim if the UK has a VAT rate change).

There are a number of thresholds to consider, the main ones being the threshold that applies to the procurement of goods and services by central government authorities (currently £139,688), another for the procurement of goods and services by sub-central authorities such as local government and wider public sector bodies (currently £214,904). Also the ‘works’ threshold (currently £5,372,609) which is the same regardless of whether the body is a central government authority or sub-central authority (this is not a term which is defined in the Act, but is used to refer to bodies which are not central government authorities).

Central government authorities include the Crown and each of the entities (and their successors) listed in columns 1 or 2 of the Table in Schedule 2 to the Procurement Regulations 2024. This list will be updated from time to time.

To note: A contract is a “works contract” if its main purpose is— (a) the carrying out of works under the contract (whether or not resulting in a complete work), or (b) to facilitate the carrying out of works otherwise than under the contract, where those works are intended to result in a complete work that complies with specifications set out in, or determined under, the contract.

“Works” means the activities which fall within the CPV codes listed in Schedule 3 to the Procurement Regulations 2024.

Type of contract	Threshold amount (including VAT) as of January 2024
Defence and Security “works contract” (i.e. “construction services”)	£5,372,609
Defence and Security contract which is not a works contract, a concession contract or a light touch contract (i.e. “Goods”, “Services”)	£429,809
“Works contract” (i.e. “construction services”)	£5,372,609
Central government non-works contract (i.e. “Goods”, “Services”)	£139,688
Sub-central government non-works contract (i.e. “Goods”, “Services”)	£214,904
Light touch contract (not a Utility or Concession)	£663,540
Utility “works contract” (i.e. “construction services”)	£5,372,609
Utility non-works contract (i.e. “Goods”, “Services” and Utilities concession contract)	£429,809
Utility light touch contract	£884,720
Concession contract (Including light touch, Defence and security but not Utility)	£5,372,609

Below Threshold procurements

Contracts that are below the thresholds set out in Schedule 1 to the Procurement Act 2023 are known as “below-threshold contracts”. Below-threshold contracts fall under the wider definition of “procurement”. Below-threshold contracts except for those in the list below, are known as “regulated below-threshold contracts”, and are subject to a limited number of obligations under Part 6 of the Act, sections 84 to 88.

The following contracts and procurements are not “regulated below-threshold contracts” and therefore not subject to the below threshold obligations.

- an exempted contract.
- a concession contract.
- a utilities contract.
- “procurement” by a school.
- “procurement” by a transferred Northern Ireland authority, unless it is under a reserved procurement arrangement or a devolved Welsh procurement arrangement;
- “procurement” under a transferred Northern Ireland procurement arrangement.

What does this mean for “regulated below-threshold contract” procurements?

Contracting authorities must:

- Before inviting the submission of tenders, have regard to the fact that small and medium-sized enterprises may face particular barriers in competing for a contract, and consider whether such barriers can be removed or reduced.
- Not restrict the submission of tenders using an assessment of a supplier’s suitability to perform the contract¹ e.g. their legal and financial capability or their technical ability (with the exception of works contracts above £138,760 for central government or above £213,477 for others).
- Where the procurement is for a “notifiable below-threshold contract” (see definition below), publish a below-threshold tender notice before advertising the procurement opportunity on other platforms². Any time limits must be reasonable, and the same for all suppliers.

¹ Exemptions apply

² Not applicable if the opportunity is only advertised to particular or pre-selected suppliers

A “notifiable below-threshold contract” is a regulated below-threshold contract with an estimated value that equals or exceeds (including VAT) the following values

- (i) Central government contracting authority: £12,000; or
- (ii) Other contracting authorities: £30,000

The below threshold tender notice must set out³:

- the subject matter and description of the requirement.
 - estimated value.
 - an explanation of the criteria against which the award of the contract will be assessed.
 - how tenders may be submitted and the date by when they must be submitted
 - Any other relevant information
- Publish a contract details notices as soon as reasonably practicable after entering into a notifiable below-threshold contract

The contract details notice for below threshold contracts must set out⁴:

- the subject matter of the contract.
 - the successful supplier(s) details including Lots awarded where applicable.
 - a description of any options in the contract.
 - the estimated value of the contract.
 - Any other information you think is relevant
- Be aware of Section 88 Regulated below-threshold contracts: implied payment terms.

Key changes from PCR 2015 to below threshold obligations

1. New requirements to have regard to small and medium-sized businesses and whether barriers can be removed or reduced.
2. Publication of notifiable below-threshold contract opportunities should be made using a below threshold tender notice on the transparency platform instead of an opportunity notice on Contracts Finder.
3. Where a contracting authority wishes to advertise a below-threshold opportunity, they must publish it on the central platform before any other medium.
4. Publication of notifiable below-threshold contract awards should be made using the contract detail notice on the transparency platform instead of placing an awarded opportunity notice on Contracts Finder.

³ Not an extensive list

⁴ Not an extensive list

5. 30 days payment terms are now implied into every regulated below-threshold contract (see summary document 9 Contract Governance for further details).
6. The Procurement Act 2023 introduces new rules that enable contracting authorities to modify regulated below-threshold contracts where the modification would take the value of the contract above the relevant threshold. These are known as **“convertible contracts”**. A modification which would bring the value of a contract above the relevant threshold is only permitted under the same grounds that apply to all above-threshold contracts, as detailed in summary document 9 Contract Governance. Once the modification has taken place, the full scope of the regulations will apply to the amended contract. A below-threshold contract can be modified in any way if the effect of that modification will be that the value of the contract remains below the relevant threshold.
7. Local government and other authorities that are subject to the Local Government Act 1988 may now reserve competitions for below-threshold contracts to suppliers that are UK-based or located in a specific county or London borough. Under the previous regime, only central government departments (plus their executive agencies and non-departmental public bodies) were able to take advantage of this policy.

How to stay compliant

1. Publish a below threshold tender notice on the central digital platform before advertising by any other means (unless advertising from pre-selected suppliers list e.g. frameworks).
2. Do not restrict tenders based on a supplier's suitability to perform e.g. no conditions of participation stage (previously known as selection stage) unless the exception for works contracts applies.
3. Consider if there are any barriers for small and medium-sized enterprises and how any such barriers can be removed or reduced.
4. Set out reasonable time limits that are the same for all suppliers.
5. Publish a contract details notice as soon as reasonably practicable (this is the contracting authority's judgement and best practice is 30 days for central government, 90 days for others and 120 days for light touch contracts) after entering into a contract.
6. Comply with the 30 days payment terms.
7. Do not use convertible contract modifications as a way to avoid the regulations by procuring below-threshold contracts where it would be reasonable to expect the value may increase to above the relevant threshold.
8. Keep a record of all procurement decisions (including considerations of obligations for example consideration of barriers for SMEs).

Previous Regulations (PCR 2015 chapter 8 below threshold contracts)	New Requirements (below threshold contracts)
Publication requirements applied to In-Scope organisations above the following thresholds: • central government authorities, where the contract value is at least £12,000 (inc VAT); and • sub-central contracting authorities and NHS Trusts and Foundation Trusts, where the contract value is at least £30,000 (inc of VAT).	Publication requirements apply to all CA for notifiable below-threshold contracts which have a value of not less than: Central government authority: £12,000 (inc. VAT); or Other contracting authorities: £30,000 (inc. VAT)
Publication of an opportunity notice on Contracts Finder must be with 24 hours of any other advertisements of any other platforms <i>(and attached tender docs if central government authorities)</i>⁵	Publication of a below threshold tender notice on the central platform must happen before any other advertisements on any other platforms
Publish required details in awarded opportunity notice on Contracts Finder <i>(and attached contract docs if central government authorities)</i>⁶	Publish required details in contract detail notice on the transparency platform
N/A	Section 74: Modifying a public contract A below-threshold contract may be modified in any way if the result of that modification is that the value remains below the relevant threshold. If, as a result of the modification, the value of the contract will exceed the relevant threshold, the contract may only be modified in a way which is permitted by the Act and would then be subject to the general requirements of the Act.

⁵ Policy requirement see PPN 01/23.

⁶ Expected to be an ongoing policy requirement see PPN 01/23.

Previous Regulations (PCR 2015 chapter 8 below threshold contracts)	New Requirements (below threshold contracts)
N/A	Section 88. Regulated below-threshold contracts: Implied payment terms New provision that means a term requiring the payment of invoices within 30 days is implied into all regulated below-threshold contracts.

3. Procurement Principles and Objectives

The Procurement Act introduces new procurement objectives that apply to covered procurement.

Previous Regulations (PCR2015)	Procurement Act 2023
Principles of procurement • non-discrimination, • equal treatment, • proportionality, • mutual recognition • transparency	Section 12 Covered procurement: objectives Have regard to: • delivering value for money; • maximising public benefit; • sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions; • acting, and being seen to act, with integrity. • have regard to the fact that small and medium-sized enterprises may face particular barriers to participation, and • consider whether such barriers can be removed or reduced. Must: • treat suppliers the same unless a difference between the suppliers justifies different treatment, and • if different treatment is justified, not put a supplier at an unfair advantage or disadvantage.

When carrying out any procurement-related activity on a covered procurement contracting authorities **must** have regard to certain objectives and must treat suppliers equally. Contracting authorities can decide how the “have regard to” objectives are considered, if or how they are weighted and what actions they need to take. As with the previous principles there are no minimum requirements on the actions to be taken in applying those objectives, although they should not be outright ignored. They are there to be influencers rather than gatekeepers and support best practice within the procurement exercise. However it may be useful for contracting authorities to record how they have taken the objectives into consideration during procurement decisions throughout the procurement lifecycle and store these with the other procurement records. When complying with the obligation to treat all suppliers the same unless different treatment is justified, contracting authorities must take reasonable steps to ensure that different treatment does not put a supplier at an unfair advantage or disadvantage.

■ Delivering value for money

Although this is not a new concept, the value for money objective encourages contracting authorities to consider further what value means to their organisation and the community it serves, and how they can get the best mix of economy, efficiency and effectiveness that achieves the intended outcome over the whole lifetime of the contract.

■ Maximising public benefit

The public benefit objective encourages contracting authorities to think about the extent to which their contracts can deliver greater benefit, for example by collaborating with other contracting authorities for a common purpose to reduce resource implications and costs, or considering social value or environmental benefits that could be achieved by the contract.

■ Sharing information

Transparency is still a key consideration. The sharing information objective requires contracting authorities to share information for the purpose of allowing suppliers and others to understand their policies and decisions relating to procurements. This is in addition to the wider transparency obligations that have been embedded throughout the Procurement Act through clear publication requirements designed to ensure an approach of “transparency by default” and deliver greater transparency than any duty to have regard.

Example

A contracting authority is expected to keep suppliers reasonably informed of their progress in a competitive tendering procedure, including providing prompt notification and explanation of any decision to remove a supplier from the procedure.

■ Integrity

The acting, and being seen to act, with integrity objective will help in the fight to prevent fraud and corruption. Being able to demonstrate this objective through good management, prevention of misconduct, and having full control over processes is key to strengthening trust with suppliers and the general public.

Example

Public procurement must promote good governance, sound management of public money, and a professional relationship between contracting authority and supplier, by for example managing conflicts of interest, protecting intellectual property, copyrights and confidential information or other standards of professional behaviour.

■ Treat suppliers the same

Contracting authorities are required to treat suppliers the same unless a difference between the suppliers justifies different treatment.

Example

When a contracting authority sets a deadline for submission of tenders they should not accept a late tender from one supplier but not from others. This would be a breach of equal treatment and also applies to other procedural requirements such as other deadlines, word limits, minimum quality or quantity standards etc.

Alternatively, where an incumbent supplier is bidding again for its replacement contract, (and so will inevitably have an advantage over other tenderers due to their experience in the current contract) the contracting authority must consider how this incumbent advantage can be managed to ensure all suppliers have an equal footing to win the replacement contract. In this case, different treatment intended to neutralise the advantage enjoyed by the incumbent may be justified, and can be achieved for example by providing additional information on the contract specification. However, a lower risk alternative would be to provide the additional information to all suppliers (ie including the incumbent).

■ Do not put a supplier at an unfair advantage or disadvantage

If different treatment of suppliers is justified, contracting authorities must take the appropriate steps to ensure they do not put a supplier at an unfair advantage or disadvantage.

Example

Where a potential conflict of interest does seem likely to benefit one or a few of the suppliers but not all, then the contracting authority must take steps to level the playing field. Transparency and informing the

suppliers of the same information, or disclosing the current supplier name may be acceptable means of countering the potential problem. Each procurement scenario should consider the best mitigation under the circumstances during and from early engagement through to award recommendation.

■ Have regard to small and medium-sized enterprises (SMEs)

This objective encourages contracting authorities to specifically consider their requirements from an SME perspective, for example by reducing processes which are disproportionately burdensome on SME suppliers or transfer unfair levels of risk to the suppliers.

Example

Consider whether the tender period is realistic when some businesses do not have dedicated tendering teams and small businesses are less likely to be able to respond to procurement processes with short timelines. This potential barrier to an SME could be removed or reduced by adding an extra 10 days onto the minimum time limit for return of tenders for all suppliers to ensure that small businesses are not disadvantaged. This would be consistent with the requirement to treat suppliers the same because although the tendering period is longer to enable higher levels of participation of more diverse suppliers, such as SMEs, there is no actual disparity of treatment.

■ National Procurement Policy Statement

The Procurement Act 2023 sets out a power for Ministers to publish a national procurement policy statement (NPPS) and for Welsh Ministers to publish a Wales procurement policy statement (WPPS), which along with the procurement objectives will set out the national strategic priorities for public procurement.

The NPPS will set out the current strategic priorities for public procurement and how contracting authorities in England (and those exercising non-devolved functions in Wales and Northern Ireland or procuring under a reserved procurement arrangement) can support their delivery. Contracting authorities are required to have regard to the relevant priorities in the NPPS, alongside other local priorities, when carrying out procurements.

The WPPS will set out the strategic direction for public procurement in Wales. It will set out principles, considerations and intended outcomes that devolved Welsh authorities will have to have regard to whilst undertaking public procurements.

The NPPS and the WPPS will give suppliers greater visibility of the national priorities that should be considered by contracting authorities when undertaking procurement. Where relevant to the specific contract, these priorities will be clearly set out in the tender documents. Policy matters likely to be addressed by the NPPS and WPPS include social value priorities. Inclusion in the NPPS allows for further development and guidance surrounding implementation of these priorities over time.

The NPPS and the WPPS may be amended or replaced at any point following appropriate consultation and parliamentary or Senedd scrutiny.

Northern Ireland will continue to implement public procurement policy through Procurement Policy Notes alone.

The NPPS does not apply:

- to private utilities;
- when awarding a contract:
 - a. in accordance with a framework; or
 - b. by reference to suppliers membership of a dynamic market;
- to devolved Welsh procurement arrangements; or
- to a devolved Welsh authority or transferred Northern Ireland authority, except in relation to a reserved procurement arrangement

The WPPS applies to:

- a devolved Welsh authority, except in relation to procurement under a reserved procurement arrangement or transferred Northern Ireland procurement arrangement; and
- a contracting authority other than a devolved Welsh authority in relation to procurement under a devolved Welsh procurement arrangement.

Under the authorities listed above the WPPS does not apply:

- to private utilities; or
- when awarding a contract:
 - a. in accordance with a framework; or
 - b. by reference to suppliers membership of a dynamic market.

Pipeline Notice

Change: The publication of the pipeline notice is mandatory for contracting authorities where their spend is estimated to be more than £100M in the year.

Benefit: Better visibility of procurement plans will increase collaboration opportunities with other authorities. It will allow suppliers to better plan their resources which should increase the number of appropriate suppliers tendering for contracts.

Contracting authorities with an estimated spend of £100 million or more on “relevant contracts” in the coming financial year are required to publish a pipeline notice. “Relevant contracts” are all contracts other than those which are exempted (including below threshold contracts). The purpose of the pipeline notice is to provide the market with advance notice of anticipated public contract opportunities with an estimated value of more than £2 million which a contracting authority expects to commence (by publishing a tender or transparency notice) during the 18 months following the 1st April each year. This gives suppliers the opportunity to track potential opportunities, enabling them to determine if they wish to tender. This will be of particular benefit to small and medium-sized enterprises (SMEs) and voluntary, community and social enterprises (VCSEs) by providing them with time to plan for future work, ensuring a competitive and vibrant market.

Timescales for publishing pipeline notices.

Contracting authorities have 56 days to publish their pipeline notice for the next 18 months following the 1st April each year. In the first year of the Act’s operation, the period which the notice must cover will be the twelve months beginning with the 1 April following the day on which the Procurement Act 2023 comes into force.

Private utilities and transferred Northern Ireland authorities are not required to publish a Pipeline Notice.

What information needs to be in the pipeline notice?

The pipeline notice must set out:

- nature of what is to be procured;
- when it is expected to be advertised; and
- any other information that is relevant.

Contracting authorities will not be held to any information they provide in the pipeline notice but any significant changes to the information published should be updated as and when appropriate.

Question: What if there is no budget available yet?

Answer: The pipeline notice should include knowns as well as aspirational procurements, as there is no commitment to procure anything published in the pipeline notice

Question: If no project value is available yet, how should we determine whether a pipeline notice is required?

Answer: Use an estimated figure based on previous similar procurements or research the market to get a typical benchmark. Values, particularly some way before early engagement, do not need to be absolute, just reasonable given the information available at the time. The pipeline notice can be updated when the procurement and budget becomes more certain.

Conflicts of Interest

Change: The Procurement Act 2023 gives clearer instructions on how and when to undertake conflicts of interest checks, steps to mitigate and makes specific provision for the preparation of a conflicts assessment.

Benefit: Ensures greater focus and consistency when dealing with, and recording, conflicts of interest which may allow them to be identified and managed earlier in the procurement process and throughout.

Conflicts of Interest obligation

The principal obligation on all contracting authorities is to avoid conflicts of interest of individuals acting in relation to a procurement, including those who influence a decision made by or on behalf of a contracting authority in relation to a covered procurement, by identifying and mitigating any conflicts or potential conflicts of interest. This obligation starts when the need for a procurement is first identified and continues until either the contracting authority decides not to award the contract (that is, the procurement itself is terminated) or termination of any contract(s) signed as a result of the covered procurement.

Actual conflicts

An actual conflict may exist if:

- a. an individual who is acting for or on behalf of the contracting authority has a personal, professional or financial interest (directly or indirectly) in the outcome of the procurement and has some influence over decisions made during the process. This includes an interest in a participating supplier such as owning shares in the company.

- b. a Minister of the Crown, a Member of the Welsh Government or the First Minister, Deputy First Minister or a Northern Ireland Minister has a personal, professional or financial interest (directly or indirectly) in the procurement.

Where an actual conflict has been identified, the contracting authority **must** take all reasonable steps to ensure that the conflict does not put a supplier at an unfair advantage or disadvantage during the procurement.

The range of steps that could be taken to avoid actual conflicts is extensive and contracting authorities have discretion on how best to mitigate them on each individual procurement. Mitigation could include:

- a. reassigning staff onto other projects;
- b. reassigning staff so they have no influence over procurement decisions;
- c. requiring a person to be removed from a suppliers bid team and advisory role (“ethical walls” are regularly used in large companies);
- d. excluding suppliers from the procurement.

Suppliers must be excluded from procurements if they:

- a. receive an unfair advantage which cannot be avoided; or
- b. the supplier does not take steps that the contracting authority considers are necessary in order to ensure it is not put at an unfair advantage. This could include refusing to provide certain information, providing information in response to such a request which is not accurate or not putting in place ethical walls.

■ Potential conflicts

A potential conflict may arise where a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future.

For example: A member of the commercial team’s spouse is the CEO/Director of a business that is in the process of acquiring ownership of another company. That company has recently submitted a tender.

Where a conflicts assessment (described below) identifies potential conflicts of interest, the contracting authority should implement a plan for monitoring and mitigating the risks to ensure they do not become actual conflicts of interest.

■ Perceived conflicts

It is critical for public trust that we are acting with integrity, spending public money responsibly and that suppliers will be treated fairly.

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 interest, then this should also be included in the conflicts assessment. It 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. The actions taken do not need to eradicate all doubt as to whether or not there is a conflict, but it does need to be sufficient to demonstrate to a reasonable person that there is no actual or potential conflict.

Examples for a perceived conflict could be that someone has been known to accept significant gifts or hospitality, this could create a perception of biased decision-making even if the gift has no bearing on the decision.

The contracting authority has wide discretion as to what approach it takes to a perceived conflict e.g. recording or publishing information which demonstrates no actual conflict.

■ Conflicts assessment

A conflicts assessment is the recording of any identified conflicts or potential conflicts of interest and the plans to mitigate them. It should also include any perceived conflicts identified and what steps the authority has taken, or will take, to ensure that no actual conflict or potential conflict exists. A conflicts assessment should be **proportionate** to each procurement and therefore could be applied in a light touch way in relation to procurements which are small and/or have very little in the way of conflicts concerns.

How could you identify conflicts and potential conflicts?

A conflicts identification process could be implemented in many ways, from having a standard agenda item on a meeting in relation to the procurement where awareness of any forms of conflicts of interest are sought and recorded; being part of a commercial risk register or having a templated document that has to be completed and updated at each stage of the procurement process by everyone that has been identified as influencing the procurement process, those persons would include:

- a. a person (including a minister) in a position that is likely to have direct influence over decisions made in the course of the procurement process;
- b. a person in a position which still has some possibility of influence, but is more remote than that set out in paragraph a. AND has tried to exert some influence over the process; and
- c. a supplier or other external body with an identified interest in the decisions in question.

If actual, potential or perceived conflicts are identified, the conflicts assessment must include details of:

- a. those conflicts that have been identified; and
- b. any steps taken or to be taken to mitigate to ensure it does not put a supplier at an unfair advantage or disadvantage.

A conflicts assessment may also note where no conflicts have been identified as respect relevant individuals, as a means of demonstrating that the duty to identify has been complied with.

Contracting Authorities must maintain and update the conflicts assessment as necessary throughout the course of the procurement and through the management of any resulting contracts. As the contracting authority obtains more information, makes more decisions about the procurement and is exposed to wider pressure and influence it should be adapting its assessment of and approach to conflicts. In practical terms this should not result in every new piece of information resulting in a review and update to the conflicts assessment, but at reasonable intervals, and upon the publication of specified notices (as set out below) it should be reviewed and revised as necessary.

At the point of publishing one of the following notices contracting authorities will be required to confirm that they have complied with the obligation to prepare a conflicts assessment, and have reviewed and revised the assessment as necessary (the conflicts assessment will not be published):

- 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; and
- e. a contract change notice.

Frameworks and Dynamic Markets Conflicts of Interest assessments

The conflict of interest provisions apply to all covered procurements. Where procurements are effectively split across multiple stages, for example frameworks and dynamic markets, the conflicts obligations set out above apply to all of those stages.

Example

When a contracting authority sets up a framework they need to comply with the conflicts obligations up to the point at which they award the framework and then maintain and update the conflicts assessments through the lifetime of the framework as required.

When call off contracts are procured under the framework the contracting authority (whether the contracting authority that set up the framework or a different contracting authority that is permitted to use the framework) will need to undertake a conflicts assessment specifically for that individual call off contract.

Recording and storing conflicts assessments

If the conflicts assessment has identified actual, potential or perceived conflicts it will also include mitigation steps. The conflicts assessment should be stored as a procurement record with the other procurement records.

4. Definitions

Term	Meaning	To note/simplified definition
below threshold contract	A contract with an estimated value (including VAT) of less than the threshold amount for the type of contract.	Not a covered procurement, but may be subject to obligations in Part 6 of the Procurement Act 2023
concession contract	a contract for the supply, for pecuniary interest, of works or services to a contracting authority where— (a) at least part of the consideration for that supply is a right for the supplier to exploit the works or services, and (b) under the contract the supplier is exposed to a real operating risk.	Concession contracts are regulated by the general rules of the Procurement Act 2023 with some differences and exceptions.
contracting authority	a public authority, or in the case of a utilities contract, a public authority, public undertaking or private utility, other than (in each case) an excluded authority.	All entities that are contracting authorities will be subject to the rules set out in the Procurement Act 2023. There is no change in intended scope of bodies covered in the previous regimes

Term	Meaning	To note/simplified definition
covered procurement	the award, entry into and management of a public contract	Covered procurement refers to public contracts which are subject to the general rules of the Procurement Act 2023
defence and security contract	a contract for the supply of— (a) military equipment; (b) sensitive equipment; (c) goods, services or works necessary for the development, production, maintenance or decommissioning of military equipment or sensitive equipment; (d) logistics services relating to military equipment or sensitive equipment; (e) goods, services or works for wholly military purposes; (f) sensitive services or sensitive works; (g) goods, services or works that are otherwise relevant to the operational capability, effectiveness, readiness for action, safety or security of the armed forces. includes a framework for the future award of contracts for the supply of goods, services or works of a kind described in (a) to (g).	Defence and security contracts are regulated by the Procurement Act 2023 with some exemptions.

Term	Meaning	To note/simplified definition
defence authority	a contracting authority specified in regulations made by a Minister of the Crown, if the Minister considers that the authority exercises its functions wholly or mainly for the purposes of defence or national security.	The Secretary of State for Defence, the Atomic Weapons Establishment PLC, the Oil and Pipelines Agency and the National Crime Agency satisfy the statutory requirements of the Act and are specified as defence authorities in regulations under the Act.
defence authority contract	a defence and security contract awarded by a defence authority.	
devolved Scottish authority	functions are exercisable only in or as regards Scotland, and— (a) none of its functions relate to reserved matters, or (b) some of its functions relate to reserved matters and some do not	The obligations in the Procurement Act 2023 do not apply to devolved Scottish authorities except where a devolved Scottish authority carries out procurement under a reserved procurement arrangement, a devolved Welsh procurement arrangement or a transferred Northern Ireland procurement arrangement, and as part of that procurement arrangement a contract is to be awarded following a procedure or other selection process carried out— (a) jointly by that authority and one or more contracting authority which is not a devolved Scottish authority, or (b) by a centralised procurement authority or equivalent body.

Term	Meaning	To note/simplified definition
devolved Welsh authorities	A contracting authority which is a devolved Welsh authority within the meaning given by section 157A of the Government of Wales Act 2006 is a devolved Welsh authority. A contracting authority that is a public undertaking or private utility is to be treated as a devolved Welsh authority for the purposes of this Procurement Act 2023 if— (a) it operates wholly or mainly in relation to Wales, and (b) its activities are wholly or mainly activities that do not relate to reserved matters. Otherwise, a contracting authority is to be treated as a devolved Welsh authority for the purposes of this Act if the authority's functions— (a) are exercisable wholly or mainly in relation to Wales, and (b) are wholly or mainly functions that do not relate to reserved matters.	

Term	Meaning	To note/simplified definition
devolved Welsh procurement arrangement	A procurement arrangement is a devolved Welsh procurement arrangement if, as part of it, the contract is awarded— (a) in accordance with a framework awarded by a devolved Welsh authority, (b) by reference to a dynamic market established by a devolved Welsh authority, (c) following a procedure carried out by a centralised procurement authority which is a devolved Welsh authority, or (d) following a procedure in which a devolved Welsh authority is designated the lead authority in the tender or transparency notice.	
estimated value	Contract value estimated in accordance with Schedule 3	Total estimated value, for the time being, of a contract including all available options (e.g.extensions) including VAT

Term	Meaning	To note/simplified definition
excluded authority	(a) a devolved Scottish authority, other than where it carries out procurement falling within section 115A of the Act; (b) the Security Service, the Secret Intelligence Service and the Government Communications Headquarters; (c) the Advanced Research and Invention Agency; (d) any person that is subject to public authority oversight— (i) only by reference to a devolved Scottish authority, or (ii) by reference to an authority mentioned in paragraph (b) or (c).	The obligations in the Procurement Act 2023 do not apply to excluded authorities as they do not fall within the definition of a contracting authority
exempted contract	An exempted contract is a type of contract listed in Schedule 2 to which the Procurement Act 2023 generally does not apply.	Generally exempt from the Procurement Act 2023. “Covered procurement” does not include exempted contracts; “procurement” does include exempted contracts
framework	A “framework” is a contract between a contracting authority and one or more suppliers that provides for the future award of contracts by a contracting authority to the supplier or suppliers.	A contract with suppliers that provides for the award of future contracts (known as call-off contracts). The framework must set out certain information relating to the call-off contracts, such as the price payable under call-off contracts or the mechanism for determining this

Term	Meaning	To note/simplified definition
light touch contract	a contract wholly or mainly for the supply of services of a kind specified in the Procurement Regulations 2024 schedule 1	The type of contracts that are classed as light touch contracts have broadly remained the same as those classed as light touch under the PCR 2015. Light touch contracts cover the following types of services: Health, social and related services Administrative social, educational, healthcare and cultural services Compulsory social security services Benefit services Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisations services Religious services Hotel and restaurant services Some legal services Other administrative services and government services Provision of services to the community Some prison related services, public security and rescue services Investigation and security services International services Postal services, and Miscellaneous services

Term	Meaning	To note/simplified definition
National Security Unit for Procurement (NSUP)	National Security Unit for Procurement	A unit in the Cabinet Office to support coordination of national security assessments for exclusion and debarment decisions
private utility	a person that— (a) is not a public authority or public undertaking, and (b) carries out a utility activity.	Entities that carry out utility activities under a “special or exclusive right” in the relevant energy, water and transport sectors.
procurement	the award, entry into and management of a contract	Procurement (as opposed to covered procurement) refers to contracts (as opposed to public contracts) which are not subject to the general rules of the Procurement Act 2023, but may have some obligations that must be met to comply with certain treaties.
Procurement Review Unit (PRU)		A new team established in the Cabinet Office to exercise procurement oversight.
public authority	A person that is— (a) wholly or mainly funded out of public funds, or (b) subject to public authority oversight and (in each case) does not operate on a commercial basis (public oversight means subject to the management or control of— (i) one or more public authorities, or (ii) a board more than half of the members of which are appointed by one or more public authorities)	Public authorities are funded wholly or mainly out of public funds or subject to public authority oversight, and in each case do not operate on a commercial basis.

Term	Meaning	To note/simplified definition
public contract	any contract for the supply, for pecuniary interest, of goods, services and works to a contracting authority, or any framework or concession contract, in each case which has an estimated value above an applicable threshold and is not an exempt contract.	An above threshold contract for goods, services or works that is not an exempted contract
public undertaking	a person that— (a) is subject to public authority oversight, and (b) operates on a commercial basis	Whilst public undertakings are subject to public authority oversight, unlike public authorities, they may operate commercially
regulated below-threshold contract	a below-threshold contract which is not— (a) an exempted contract, (b) a concession contract, or (c) a utilities contract.	Subject to obligations in Part 6 of the Procurement Act 2023
special regime contract	A “special regime contract” means— (a) a concession contract, (b) a defence and security contract, (c) a light touch contract, or (d) a utilities contract,	Mixed procurement rules determine which threshold applies and which rules a contracting authority must follow when procuring a contract or a framework that includes special regime elements.
threshold	The threshold amount for a contract of a type in accordance with schedule 1	Contracts with an estimated value of not less than the threshold amount for the type of contract is a public contract and subject to the main rules in the Procurement Act 2023

Term	Meaning	To note/simplified definition
transferred Northern Ireland authorities	an authority is a “transferred Northern Ireland authority” if its functions— (a) are exercisable only in or as regards Northern Ireland, and (b) are wholly or mainly functions that do not relate to reserved or excepted matters (within the meaning given by the Northern Ireland Act 1998). A contracting authority that is a public undertaking or private utility is to be treated as a transferred Northern Ireland authority for the purposes of this Act if— (a) it operates only in or as regards Northern Ireland, and (b) its activities are wholly or mainly activities that do not relate to reserved or excepted matters	

Term	Meaning	To note/simplified definition
transferred Northern Ireland procurement arrangement	A procurement arrangement is a transferred Northern Ireland procurement arrangement if, as part of it, a contract is awarded — (a) in accordance with a framework was awarded by a transferred Northern Ireland authority, (b) by reference to a dynamic market established by a transferred Northern Ireland authority, (c) following a procedure carried out by a centralised procurement authority which is a transferred Northern Ireland authority, or (d) following a procedure in which a transferred Northern Ireland authority is designated the lead authority in the tender or transparency notice.	
utilities contract	a contract for the supply of goods, services or works wholly or mainly for the purpose of a utility activity.	Utilities contracts are regulated by the procurement Act with some exemptions. Utility activities are set out in Part 1 of Schedule 4, subject to certain exceptions

Term	Meaning	To note/simplified definition
utility activity	an activity that — (a) is specified in Part 1 of Schedule 4 (b) is not specified in Part 2 of Schedule 4, (c) is not carried out wholly outside the United Kingdom, and (d) in the case of an activity carried out by a person that is not a public authority or public undertaking, is carried out pursuant to a special or exclusive right.	Consult schedule 4 for utility activities, which generally relate to activities for the purpose of: gas and heat networks and supply; electricity networks and supply; drinking water networks and supply; public transport services; ports and airports; extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels. Changes from UCRs 2016 Postal services are not covered by the Act as they are not covered by international agreements and it is considered that there is now sufficient competition in the postal services market.

5. Transitioning to the Procurement Act 2023

The intent is that the new procurement regime will cause as little disruption as possible for contracts already awarded under the old regulations or procurements that have started but not yet been awarded when the new regime comes into effect. Section 122 of the Procurement Act contains a power which allows transitional and saving provisions to be made. These provisions, found in the Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2024, provides for procurements that have already started at the time the new regime commences to continue under the old regime. In addition, contracts that were procured under the old regime will continue to be managed under those rules.

■ When do you have to start using the new rules?

The rules under the Procurement Act 2023 have to be followed from the commencement date of the new regime for all new procurements.

The Public Contracts Regulations 2015, Utilities Contracts Regulations 2016, Concession Contracts Regulations 2016 and Defence and Security Public Contracts Regulations 2011 will apply until the commencement date, at which point they will be revoked.

■ What about procurements started before the commencement date but not awarded yet?

Saving provisions will be included in secondary legislation, the Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2024, meaning you will continue to apply the Public Contracts Regulations 2015, Utilities Contracts Regulations 2016, Concession Contracts Regulations 2016 and Defence and Security Public Contracts Regulations 2011 to procurements that started under these rules, irrespective of those regulations being revoked.

The saving provisions detail when a procurement is considered to have started under each set of the old regulations. Generally this will be when:

- a notice for the purpose of inviting tenders, requests to be selected to tender or to negotiate, or requests to participate in relation to a contract or framework agreement has been published. This would usually be in the form of a Contract Notice⁷;
- a contract or framework agreement has been entered into;
- supplier(s) have been contacted to seek an offer or expression of interest in relation to a live contract or framework agreement;
- a voluntary transparency notice has been published;
- a below threshold contract opportunity has been published;
- a Utilities Notice on the existence of a Qualification System that acts as a call for competition has been published under the UCR 2016;
- a sub-contract Notice has been published under the DSPCR 2011.

What about call off contracts based on frameworks awarded under the old rules?

You will continue to apply the Public Contracts Regulations 2015, Utilities Contracts Regulations 2016, Concession Contracts Regulations 2016 and Defence and Security Public Contracts Regulations 2011 to frameworks awarded under these rules and to the call off processes under those frameworks until the termination of the last call off contract to finish as a result of an award made within the life of that framework.

What about dynamic purchasing systems awarded under the old rules?

You will continue to apply the Public Contracts Regulations 2015, Concession Contracts Regulations 2016 and Defence and Security Public Contracts Regulations 2011 to dynamic purchasing systems including the call off processes under those rules until the termination of the last contract awarded by reference to the DPS within its lifetime.

⁷ Contract Notice includes:

- F02: Contract Notice (reg. 49 PCRs)
- F05: Contract notice – utilities (reg. 69 UCRs)
- F17: Contract notice for contracts in the field of defence and security (reg. 17, 18, 19 DSPCRs)
- F24: Concession notice (reg. 31 CCRs)
- F12: Design contest notice (reg. 79 PCRs)

What about qualification systems awarded under the old rules?

You will continue to apply the Utilities Contracts Regulations 2016 to qualification systems including the call off processes under those rules until the end of the last contract awarded by reference to the QS within its lifetime or where it has an unlimited duration, the end of the last contract by reference to the QS before its termination.

FAQs

- If a contracting authority has commenced or completed pre-market engagement under the old regime, but had not advertised prior to the new regime coming into force, they will not need to rewind the process and start the engagement over again, with a pre-market engagement notice. Instead, it will be able to explain the position on pre-market engagement in its tender notice.
- If a contracting authority has published a Prior Information Notice without inviting expressions of interest or taking other steps outlined above which constitute the start of a procurement, then the contract must be procured under the new regime.
- Under the new regime, a Payment Compliance Notice should be published, in accordance with section 69, within 30 days of the end of each six month period. However, it is expected that the digital capability to publish Payment Compliance Notices will not be available until later in 2025. As such, contracting authorities do not have to publish these notices until section 69 is commenced, which will be some time after the new regime comes into effect. However, it should be noted that the requirement to publish payment information in accordance with regulation 113(7) of the Public Contracts Regulations 2015 will continue in respect of contracts procured under the old regime.
- It is also likely that the digital capability to publish information required under section 70 (information about payments under public contracts) and section 71 (assessment of contract performance) will not be available until later in 2025. These provisions will not be commenced until the capability is in place and therefore any relevant reporting will be delayed.

What about contract amendments to contracts awarded under the old rules?

Any contract amendments required after the commencement date are subject to the provisions in the old regime that regulate contract modifications and amendments.

What about new requirements in the Procurement Act 2023 that are not tied to the procurement process?

Where the changes are not tied to the process of an individual procurement, for example the publication of pipeline notices or the reporting of spend data, the obligations under the Procurement Act 2023 will start when the relevant section is commenced.

Can you delay starting a procurement because you want to wait for the new regime?

It depends on whether the delay of the procurement exercise requires an existing contract to be extended or not. If the tender is for a new requirement and the CA can cope with the delay then the delayed procurement could benefit from the additional flexibility provided by the new regime. However if a contract needed to be extended to cover the gap created by delaying the procurement then the existing contract can only be extended in accordance with the relevant modification provisions in the applicable set of old regime regulations.



Exemptions cheat sheet

Wales

This cheat sheet is a quick reference guide to all of the exemptions or differences for devolved Welsh authorities and procurements under a devolved Welsh procurement arrangement within the Procurement Act 2023.

A contracting authority which is a devolved Welsh authority within the meaning given by section 157A of the Government of Wales Act 2006 is a devolved Welsh authority.

A contracting authority that is a public undertaking or private utility is to be treated as a devolved Welsh authority for the purposes of this Procurement Act 2023 if:

- a. it operates wholly or mainly in relation to Wales, and
- b. its activities are wholly or mainly activities that do not relate to reserved matters

Otherwise, a contracting authority is to be treated as a devolved Welsh authority for the purposes of this act if the authority's functions:

- a. are exercisable wholly or mainly in relation to Wales, and
- b. are wholly or mainly functions that do not relate to reserved matters

A procurement arrangement is a devolved Welsh procurement arrangement if:

- a. the framework was awarded by a devolved Welsh authority
- b. the dynamic market was established by a devolved Welsh authority
- c. the centralised procurement authority that carried out the procedure is a devolved Welsh authority, or
- d. a devolved Welsh authority is designated the lead authority in the tender or transparency notice

Scope, definitions and general principles

Regulated below-threshold contracts: procedure (sections 85 to 88)	A devolved Welsh authority (unless the contract is to be awarded as part of a procurement under a reserved procurement arrangement) or a procurement under a devolved Welsh procurement arrangement will not be prohibited from restricting the submission of tenders by reference to an assessment of a supplier's suitability to perform the contract.
The national procurement policy statement (section 13)	The national procurement policy statement does not apply to: a devolved Welsh authority, except in relation to procurement under a reserved procurement arrangement. The Wales procurement policy statement (section 14) applies to procurement by a devolved Welsh authority or under a devolved Welsh procurement arrangement.

Transparency

Contract details notices and publication of contracts (section 53)	The requirement to publish a copy of the contract where the estimated value of the contract is more than £5 million does not apply to contracts awarded by a devolved Welsh authority, unless the contract was awarded as part of a procurement under a reserved procurement arrangement, or as part of a devolved Welsh procurement arrangement.

Publication of modifications (section 77)

Devolved Welsh authorities are exempt from publishing copies of contract modifications unless the contract was awarded as part of a procurement under a reserved procurement arrangement.

Procedures

N/A

N/A

Competitive flexible procedure

N/A

N/A

Frameworks and dynamic markets

Dynamic markets cannot be used to award below threshold contracts for goods and services contracts, and works contracts below the thresholds in s85(3), as they cannot be restricted by reference to a supplier's suitability (section 85(1)), and suppliers have already been assessed based on this to become a member of the dynamic market.

Dynamic markets can be used to award below threshold contracts by a devolved Welsh authority, unless it is awarded under a reserved procurement arrangement.

Supplier selection

N/A

N/A

Assessment and award

Contract details notices and publication of contracts (section 53)

The requirement to publish a copy of the contract where the estimated value of the contract is more than £5 million does not apply to contracts awarded by a devolved Welsh authority, unless the contract was awarded as part of a procurement under a reserved procurement arrangement.

Remedies, procurement oversight and the debarment list

Notification of exclusion of supplier (section 59)

If the contracting authority is a devolved Welsh authority the relevant appropriate authority is the Welsh ministers.

Contract governance

Publication of modifications (section 77)

Devolved Welsh authorities are exempt from publishing copies of contract modifications unless the contract was awarded as part of a procurement under a reserved procurement arrangement.



Exemptions cheat sheet

Northern Ireland

This cheat sheet is a quick reference guide to all of the exemptions or differences for transferred Northern Ireland authorities and procurements under a transferred Northern Ireland procurement arrangement within the Procurement Act 2023.

A contracting authority is a “transferred Northern Ireland authority” if its functions:

- a. are exercisable only in or as regards Northern Ireland, and
- b. are wholly or mainly functions that do not relate to reserved or excepted matters (within the meaning given by the Northern Ireland Act 1998)

A contracting authority that is a public undertaking or private utility is to be treated as a transferred Northern Ireland authority for the purposes of this act if:

- a. it operates only in or as regards Northern Ireland, and
- b. its activities are wholly or mainly activities that do not relate to reserved or excepted matters

A procurement arrangement is a transferred Northern Ireland procurement arrangement if, as part of it, a contract is awarded:

- a. in accordance with a framework was awarded by a transferred Northern Ireland authority
- b. by reference to a dynamic market established by a transferred Northern Ireland authority
- c. following a procedure carried out by a centralised procurement authority which is a transferred Northern Ireland authority, or
- d. following a procedure in which a transferred Northern Ireland authority is designated the lead authority in the tender or transparency notice

Scope, definitions and general principles

The national procurement policy statement (section 13)	The national procurement policy statement does not apply to a transferred Northern Ireland authority except in relation to procurement under a reserved procurement arrangement. It does not apply to any other contracting authority carrying out a procurement under a transferred Northern Ireland procurement arrangement.
Pipeline notices (section 93)	The requirement to publish pipeline notices does not apply to a transferred Northern Ireland authority.
Below-threshold contracts (part 6 - sections 84 to 88)	Procurements by a transferred Northern Ireland authority are exempt from the rules governing regulated below-threshold contracts, unless it is a procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement.

Transparency

Pipeline notices (section 93)	The requirement to publish pipeline notices does not apply to a transferred Northern Ireland authority.
Contract details notices and publication of contracts (section 53)	The requirement to publish a copy of the contract where the estimated value of the contract is more than £5 million does not apply to a contract awarded by a transferred Northern Ireland authority (unless it is awarded under a reserved procurement arrangement) or a transferred Northern Ireland procurement arrangement.

Contract change notices (section 75)	The requirement to publish contract change notices does not apply to a transferred Northern Ireland authority unless the contract was awarded as part of a procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement, or to a contract which was awarded as part of a transferred Northern Ireland procurement arrangement. As a result, the obligation to publish the modification in question (section 77) also does not apply.
Information about payments under public contracts (section 70)	The requirement to publish details about contract payments does not apply to a contract award by a transferred Northern Ireland authority (unless the contract was awarded as part of a procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement) or under a transferred Northern Ireland procurement arrangement.

Procedures

N/A	N/A

Competitive flexible procedure

N/A	N/A

Frameworks and dynamic markets

N/A

N/A

Supplier selection

N/A

N/A

Assessment and award

Contract details notices and publication of contracts (section 53)

The requirement to publish a copy of the contract where the estimated value of the contract is more than £5 million does not apply to a contract awarded by a transferred Northern Ireland authority (unless it is awarded under a reserved procurement arrangement) or a transferred Northern Ireland procurement arrangement.

Remedies, procurement oversight and the debarment list

Notification of exclusion of supplier (section 59)

If the contracting authority is a transferred Northern Ireland authority the relevant appropriate authority is the Northern Ireland department that the contracting authority considers it most appropriate to notify.

Contract governance

Contract change notices (section 75)	The requirement to publish contract change notices does not apply to a transferred Northern Ireland authority unless the contract was awarded as part of a procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement.
Publication of modifications (section 77)	Transferred Northern Ireland authorities are exempt from publishing copies of contract modifications unless the contract was awarded as part of a procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement.
Payments compliance notices (section 69)	The publication of payment compliance notices does not apply to a transferred Northern Ireland authority.
Information about payments under public contracts (section 70)	The requirement to publish details about contract payments does not apply to a contract award by a transferred Northern Ireland authority (unless the contract was awarded as part of a procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement) or under a transferred Northern Ireland procurement arrangement.



Exemptions cheat sheet

Light touch contracts

This cheat sheet is a quick reference guide to the exemptions and differences for light touch contracts within the Procurement Act 2023.

Section 9 (light touch contracts) of the Procurement Act defines light touch contracts as contracts wholly or mainly for the supply of services of a kind specified in regulations. These “light touch services” are set out in Schedule 1 to the Procurement Regulations 2024, using common procurement vocabulary (CPV) codes. The scope of services that can be procured using a light touch contract has broadly remained the same as those in the light touch regime under the PCR 2015. Table 1 of Schedule 1 to the Procurement Regulations 2024 specifies the general light touch services, which includes:

- health, social and related services
- administrative social, educational, healthcare and cultural services
- compulsory social security services
- benefit services
- other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisations services
- religious services
- hotel and restaurant services
- legal services (not otherwise exempt under the act)
- other administrative services and government services
- provision of services to the community
- prison related services, public security and rescue services (not otherwise exempt under the act)
- investigation and security services
- international services
- postal services, and
- miscellaneous services

Table 2 of Schedule 1 to the Procurement Regulations 2024 specifies additional light touch services, but only where those services are supplied under certain defence and security contracts.

Scope, definitions and general principles

Thresholds (schedule 1) - schedule 1 of the act will be amended to reflect the currently in force thresholds set out here	Light touch contract £663,540. Light touch contract that is a concession contract £5,372,609. Utilities contract that is a light touch contract £884,720.
Scope of the Procurement Act	The Procurement Act 2023 will not apply to procurements that are subject to the Health Care Services (Provider Selection Regime) Regulations 2023.

Transparency

Transparency notices (section 44)	A transparency notice is not required when awarding a contract via a direct award on the ground of user choice.
Contract award notices (section 50)	A contract award notice is not required when awarding a contract via a direct award on the ground of user choice.

Contract details notices (section 53)	Contract details notices are required for light touch contracts, but there is a longer time period for these notices to be published - 120 days instead of 30 days. Where the estimated value of the light touch contract is over £5 million, a copy of the contract must be published but there is a longer time period of 180 days instead of 90 days to publish. A contract details notice is not required when awarding a contract via a direct award on the ground of user choice.
Assessment of contract performance (section 71)	The requirement to publish contract performance notices for poor performance or breaches of contract does not apply to light touch contracts.
Contract change notices (section 75)	The requirement to publish a contract change notice (or a copy of the amended contract) does not apply to light touch contracts.
Contract termination notices (section 80)	A termination notice is not required when the terminating contract was awarded via a direct award on the ground of user choice.

Procedures

Duty to consider lots (section 18)	The duty to consider lots is now also mandated for light touch contracts.

Time limits (section 54)	There are no minimum timescales for notices before or duration of tender process in light touch contracts.
Mixed Procurement: Special regime contracts (section 10)	Where a contract is not solely for light touch services, the mixed procurement special regime rules also need to be applied.
Direct Award Grounds (section 41 and schedule 5)	A new ground for user choice has been introduced to allow direct awards for user choice services which are: • services that are light touch as identified by the CPV codes, • for the benefit of a particular individual (end user), and • services where the contracting authority would be legally required to consider the views of the end user, or their carers, in relation to the supply of services To use this ground, you must meet the following conditions: • the end user or their carer has expressed a preference as to which supplier should provide the services or there is only one supplier capable of providing the service, and • the contracting authority considers that a competitive tendering process would not be in the best interests of the end user
Transparency notices (section 44)	A transparency notice is not required when awarding a contract via a direct award on the ground of user choice.

Competitive flexible procedure

Time limits (section 54)	There are no minimum procurement timescales for light touch contracts.
Modifying a section 19 procurement (section 31)	For light touch contracts there is greater flexibility to make any necessary modifications to a procurement procedure which is underway. Section 31 (Modifying a section 19 procurement) allows modifications to be made, even if considered to be substantial, up until the final tender deadline. When making such modifications you: • should still have regard to the procurement objectives (see section 12) and consider revising any applicable timescales as a result of such modification (see section 54) • must also revise and republish the tender notice (and update any associated tender documents) if they are impacted by the modification or the revised timescales and • must also notify the participating suppliers of such changes at the same time, where a participation period applies (see section 54)

Reserving contracts to public service mutuals (section 33)	In respect of certain, specified light touch contracts, the ability to reserve contracts to qualifying public service mutuals has been retained as long as the contract term is for 5 years or less. To be a qualifying public service mutual, the organisation must not have entered into a reserved contract for the same kind of light touch services with the same contracting authority in the previous 3 years. Where a contract is being reserved to a public service mutual, only the competitive flexible procedure can be used. Table 1 in Schedule 1 to the Procurement Regulations 2024 specifies reservable light touch service by the letter “R” in column 3.

Frameworks and dynamic markets

Frameworks: Maximum term (section 47)	The maximum term does not apply to a light touch framework (the maximum terms under section 49 for open frameworks do apply).
Framework requirements (section 45)	If the framework is a light touch contract (i.e. the framework is wholly for the purposes of light touch services) it is permissible for contracting authorities to award a contract directly to a supplier without carrying out a competition.
Frameworks: competitive selection process (section 46)	These requirements under this section do not apply to a framework that is a light touch contract.

Supplier selection

Meaning of excluded and excludable supplier (section 57), and

Considering whether a supplier is excluded or excludable (section 58)

Exclusion grounds now apply in full to light touch contracts in the same way as other public contracts, meaning that contracting authorities awarding light touch contracts must now consider whether a supplier is an excluded or excludable supplier based on the exclusion grounds before assessing their tender.

Assessment and award

Award criteria (section 23)

Where the light touch contract is centred upon a particular individual or service recipient (end user), there are some additional flexibilities that can be considered to ensure the most appropriate outcome. Under section 23(6) of the Act there is the ability to consider certain views and needs of the end user/service recipient in the award of contracts which are for the benefit of an end user/service recipient.

In such contracts the award criteria may also make reference to:

- the views of the individual service recipient for whose benefit the service is being provided or of a person providing care to that individual service recipient in relation to:
 - a. who should supply the services, and
 - b. how and when they should be supplied;
- the different needs of different service recipients;
- the importance of proximity between the supplier and service recipients for the effective and efficient supply of the services

Contract award notices and assessment summaries (section 50)	Publishing a contract award notice does not apply in relation to a contract awarded based on the user choice ground.
Standstill periods on the award of contracts (section 51)	The standstill period does not apply to light touch contracts.
Contract details notices and publication of contracts (section 53)	For light touch contracts, the contract detail notice must be published within an extended timescale of 120 days rather than 30 days. For light touch contracts over £5m, you must publish a copy of the contract within an extended timescale of 180 days rather than 90 days. Contract details notices do not have to be published for a contract awarded based on the user choice ground.

Remedies, procurement oversight and the debarment list

Automatic suspension of the entry into or modification of contracts (section 101)	The automatic suspension of the entry into or modification of contracts only applies to light touch contracts when a voluntary standstill period is observed.

Post contractual remedies: set aside conditions (section 105)

Post contractual remedies: set aside

conditions have the following considerations in the context of light touch contracts

“A **required** contract award notice was not published” [section 105(1)(a)] - this set aside condition is not applicable to direct awards made under the ground of ‘user choice,’ as the publication of a contract award notice is not mandatory.

“Contract was entered into or modified before end of any applicable standstill period)” [section 105(1)(b)] - this will apply to light touch contracts where a voluntary standstill is notified in the contract award notice.

“In the case of a modification under section 74, the breach became apparent only on publication of a contract change notice” [section 105(1)(e)] - this is not applicable to light touch contracts as a contract change notice is not mandatory, although it would apply where a voluntary contract change notice is published.

Contract governance

Key performance indicators (section 52)

The requirement to set and publish key performance indicators does not apply to light touch contracts.

Assessment of contract performance (section 71)	Assessing and publishing performance information does not apply to light touch contracts (even if KPIs have been set). The requirement to publish information relating to a supplier breach or failure to perform the contract does not apply to light touch contracts.
Modifying a public contract (section 74)	This provides the ability for modifications to be made to light touch contracts during their term, without having to ensure one of the permitted grounds applies. This means substantial or above threshold modifications could be made (section 74(2)).
Contract change notices (section 75)	The requirement to publish a contract change notice before modifying a contract does not apply to a light touch contract.
Publication of modifications (section 77)	The requirement to publish a modified contract or modification does not apply to a light touch contract.



Exemptions cheat sheet

Defence and security

This cheat sheet is a quick reference guide to the exemptions and differences for defence and security contracts and contracting authorities within the Procurement Act 2023.

Section 7(1) “Defence and security contract”

means a contract for the supply of:

- a. military equipment
- b. sensitive equipment
- c. goods, services or works necessary for the development, production, maintenance or decommissioning of military equipment or sensitive equipment
- d. logistics services relating to military equipment or sensitive equipment
- e. goods, services or works for wholly military purposes
- f. sensitive services or sensitive works;
- g. goods, services or works that are otherwise relevant to the operational capability, effectiveness, readiness for action, safety or security of the armed forces

This definition also applies to frameworks for the future award of contracts for the supply of goods, services or works as described in points (a) to (g) above.

For more information on the scope of defence and security contracts, see the definitions of key terms (section 7(7)) in **Appendix 1**.

Section 7(4) “Defence authority contract”

means a defence and security contract awarded by a defence authority.

Section 7(5) “Defence authority” is a contracting authority specified in regulations made by a Minister of the Crown (its functions must be wholly or mainly for the purposes of defence or national security).

Scope, definitions and general principles

Thresholds (schedule 1) Note: • schedule 1 of the act will be amended to reflect the currently in force thresholds set out here • a contract that is a defence and security contract only by virtue of subsection 7(1) (g) is not to be treated as a defence and security contract for the purposes of schedule 1 (thresholds)	Defence and security works contracts or concession contracts - £5,372,609. Defence and security goods and service contracts - £429,809. Light touch contracts (including defence and security light touch contracts) - £663,540.
Exempted contracting authorities (schedule 2)	The following contracting authorities are fully exempt from the act: The Security Service, the Secret Intelligence Service and the Government Communications Headquarters.
Exempted contracts (schedule 2)	The following contracting authorities are fully exempt from the act: • Contracts that the contracting authority determines should not, in the interests of national security, be subject to the Procurement Act • Contracts for the purposes of carrying out, facilitating or supporting intelligence activities • Contracts awarded in an international agreement relating to the stationing of military personnel • Contracts for the implementation of a joint project between the signatories to that agreement (e.g. a joint project for works and services with a host country under a Status of Forces Agreement.)

- Defence and security contracts where:
 - a. the supplier is the government of another state or territory
 - b. the supplier is located outside the UK in an area where the armed forces are deployed, and operational needs require the contract to be awarded to that supplier
 - c. the supplier is located outside the UK in a state/territory where the armed forces maintain a military presence, and that state/territory requires the contract to be awarded to that supplier
 - d. it was awarded under a procedure adopted by an international organisation of which the UK is a member
 - e. It was awarded under an arrangement between the UK and one or more other states/territories, for the joint development and/or exploitation of a new product

Treaty state suppliers (schedule 9)

Because the defence and security contracts (other than those under section 7(1)(g)) are not included in the scope of any international agreements (as set out in schedule 9 of the act), contracts under this definition (section 7(1)) do not have to comply with the corresponding sections of the act that guarantees equal treatment for treaty state suppliers. Contracting authorities therefore have the discretion to exclude suppliers from outside the UK, Crown Dependencies and British Overseas Territories from a procurement process.

Transparency

Contract award notices and assessment summaries (section 50)	Publication of a contract award notice is not required for defence and security contracts awarded under a defence and security framework.
Contract change notices (section 75)	The requirement to publish a contract change notice (or a copy of the amended contract) does not apply to defence and security contracts.
Record-keeping (section 98)	The requirement to keep records of material decisions made during a procurement, including supplier correspondence, does not apply to defence and security contracts.

Procedures

Mixed procurement (section 10)	Where a mixed special regime procurement contains elements of defence and security then the mixed procurement may be treated as a defence and security contract where there are good reasons for not awarding separate contracts.
Direct award (schedule 5)	Additional grounds for direct award (set out in schedule 5 of the act) apply specifically to certain defence and security contracts: • for the supply of air or maritime transport to the armed forces / security services (either during or for the purpose of deployment), where the nature of the services means it is not possible to fix tenders for 10 days following submission

- where, if treated as a modification to an existing contract, the award would result in the existing contract becoming “a qualifying defence contract” under the Defence Reform Act 2014
- for most defence authority contracts where direct award is essential to enhance or maintain certain aspects of armed forces operations

Competitive flexible procedure

N/A

N/A

Frameworks and dynamic markets

Framework agreements: maximum term (section 47)

The maximum term for defence and security framework is eight years.

Supplier selection

Direct award and excluded suppliers (section 41)

Contracts may be awarded to an excluded supplier where there is “overriding public interest”

- where it is needed to ensure the proper functioning of a sector on which the defence, security or economic stability of the UK relies
- where failure to do so would put the functioning of military and security operations, the armed forces or intelligence services at risk

Assessment and award

Contract award notices and assessment summaries (section 50)	An assessment summary is not required for a defence and security contract awarded under a defence and security framework.
Contract award notices and assessment summaries (section 50)	A contract award notice is not required for the award of defence and security contracts under a defence and security framework.

Remedies, procurement oversight and the debarment list

N/A	N/A

Contract governance

Permitted contract modifications (schedule 8)	Additional grounds under which contract modifications may be made (set out in schedule 8 of the act) apply specifically to certain defence authority contracts: • to take advantage of developments in technology, or to mitigate against their adverse effects • modification is permitted to ensure the continuous supply of goods, works or services to maintain the operational capabilities, effectiveness, readiness for action, safety, security or logistical capabilities of the armed forces

Electronic invoicing (section 67)	A defence authority may require use of a particular system that requires the payment of fees by a supplier.
Contract change notices (section 75)	The publication of contract change notices, or copies of modified contracts, does not apply to defence and security contracts.

Appendix 1

Definitions of key terms in relation to defence and security contracts

The Procurement Act section 7(7)

“classified information” means information or other material which—

- a. in the interests of national security, requires protection from unauthorised access, distribution, or destruction, or from other compromise, and
- b. on the basis of those interests, has that protection under the law of any part of the United Kingdom;

“decommissioning”, in relation to equipment, includes—

- a. withdrawal of equipment from use;
- b. disposal or destruction of equipment;

“development”, in relation to equipment, includes—

- a. research allowing for the development of equipment, and
- b. development of industrial processes allowing for the production of equipment;

“equipment” includes any part, component or subassembly of equipment;

“maintenance”, in relation to equipment, includes—

- a. repair of equipment;
- b. modernisation of equipment;
- c. modifications to equipment;
- d. installing equipment, including after its transport to a new location;
- e. testing equipment;

“military equipment” means equipment specifically designed or adapted for military purposes, including—

- a. arms, munitions or war material, and
- b. any of the military goods, software and technology the export or transfer of which is controlled by virtue of Schedule 2 to the Export Control Order 2008 (S.I. 2008/3231), as amended from time to time;

“sensitive equipment” means equipment for use for security purposes where—

- a. the use or supply of the equipment may involve dealing with classified information,
- b. the supply of the equipment requires access to a physical site or to other equipment as a result of which classified information is likely to be accessible to the supplier, or
- c. the equipment contains classified information;

“sensitive services” means services performed for security purposes where performing the services—

- a. involves dealing with classified information, or
- b. requires access to a physical site or to equipment as a result of which sensitive equipment or classified information is likely to be accessible to the supplier, and includes the training of personnel to use sensitive equipment;

“sensitive works” means works undertaken for security purposes, where undertaking the works—

- a. involves dealing with classified information, or
- b. requires access to a physical site or to equipment as a result of which sensitive equipment or classified information is likely to be accessible to the supplier;

“supply”, in relation to equipment, other goods, services or works, includes the development of the equipment, other goods, services or works for the purposes of their supply to the contracting authority;

“wholly military purposes” include—

- a. the transportation of military personnel or military equipment;
- b. the training of military personnel;
- c. the training of other personnel to use military equipment;
- d. the construction of military facilities, including military airfields, military storage facilities or facilities for the maintenance of military equipment



Exemptions cheat sheet

Utilities contracts

A utilities contract is a contract for the supply of goods, services or works wholly or mainly for the purpose of a “utility activity”.

The Procurement Act Part 1 of Schedule 4 (utility activities) lists utility activities and Part 2 of Schedule 4 lists activities that are not, at a particular point in time, considered utility activities within the meaning of the Act. This largely mirrors the coverage of the UCR 2016 - except for the removal of postal services entirely.

Part 1 utility activities are activities connected with the:

- provision or operation of gas and heat, electricity and water networks and the supply to those networks;
- provision or operation of public transport networks and the provision of ports and airports; and
- extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels

Scope, definitions and general principles

Thresholds (schedule 1) - schedule 1 of the act will be amended to reflect the currently in force thresholds set out here	Utility “works contract” (i.e. “construction services”) = £5,372,609 Utility non-works contract (i.e. “Goods”, “Services”) = £429,809 Utility light touch contract = £884,720 Concession contract (including light touch, Defence and security) = £5,336,937
Below-threshold contracts (part 6 - sections 84 to 88)	A utilities contract is exempt from the rules governing regulated below-threshold contracts.
Exempted contracts (schedule 2)	Paragraph 5 exempts utilities contracts awarded by a joint venture between utilities to one of those joint venture members, and vice versa. Paragraph 6 exempts utilities contracts awarded by a utility to an affiliate and by a utility that is a joint venture to an affiliate of any member of that joint venture. Paragraph 21 exempts contracts for public passenger transport services that are awarded under separate legislation - that legislation is specified at section 136(11) of the Railways Act 1993. Paragraph 31 exempts utilities contracts awarded for the purpose of further sale or lease to third parties, provided the utility does not have a special or exclusive right to sell or lease the goods, services or works purchased and the market is open. Note, this does not apply where the utility is a centralised procurement authority. Paragraph 32 exempts utilities contracts for the purchase of water by utilities carrying out

a utility activity in paragraph 3(1) of schedule 4 (provision or operation of a fixed network or the supply of drinking water to such a fixed network).

Paragraph 33 exempts utilities contracts for purchases of energy, or fuel for the production of energy, by utilities carrying out a utility activity in paragraphs 1, 2 or 6 of schedule 4 (gas and heat, electricity and extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels).

Paragraph 34 operates to ensure that contracts for the purpose of the activities set out in part 2 of schedule 4 are exempt from the act.

Transparency

Tender notices and associated tender documents (section 21)

Where a utilities contract is to be awarded under a utilities dynamic market established by reference to a qualifying utilities dynamic market notice (see section 40) the tender notice is not published, but utilities must instead provide it directly to existing members of the market.

Electronic communications (section 96)

Electronic communications systems do not need to be free of charge and readily accessible to suppliers in relation to a utilities dynamic market. Note, see section 38(3) - fees may be charged in connection with obtaining and maintaining membership of a utilities dynamic market.

Procedures

Time limits (section 54)

No minimum timescales are mandated for tenders from “pre-selected suppliers” (i.e. suppliers that have been required to satisfy conditions of participation before submitting tenders or are members of a dynamic market) where the tendering period is agreed by all. In the absence of such agreement, the minimum timescale is 10 days.

Competitive flexible procedure

Time limits (section 54)

No minimum timescales are mandated for tenders from “pre-selected suppliers” (i.e. suppliers that have been required to satisfy conditions of participation before submitting tenders or are members of a dynamic market) where the tendering period is agreed by all. In the absence of such agreement, the minimum timescale is 10 days.

Frameworks and dynamic markets

Framework agreements: maximum term (section 47)

The maximum term for utilities framework is eight years. But may be longer if the contracting authority considers the nature of the goods, services or works to be supplied under the framework mean a longer term is required.

Dynamic markets: establishment (section 35)	Utilities can establish utilities dynamic markets - established only for the purpose of the award of utilities contracts by utilities.
Qualifying utilities dynamic market notices: no duty to publish a tender notice (section 40)	Utilities that establish dynamic markets using a qualifying utilities dynamic market notice do not publish a tender notice for the purpose of inviting suppliers to submit a request to participate or tender; instead a tender notice must be provided to members of the market or appropriate part of the market.
Qualifying utilities dynamic market notices: no duty to publish a tender notice (section 40)	Where a qualifying utilities dynamic market notice has been used, you do not have to consider any applications for membership to the market from suppliers that wish to participate in a particular procurement being carried out under the utilities dynamic market.
Dynamic markets: fees (section 38)	Utilities dynamic markets may provide for the charging of fees to suppliers in connection with obtaining and maintaining membership of the market. They can not provide for charging fees to suppliers that are awarded a contract by reference to their membership of the utilities dynamic market.
Dynamic markets (including utilities dynamic markets) cannot generally be used to award regulated below-threshold contracts, as they cannot be restricted by reference to a supplier's suitability (section 85(1)), and suppliers have already been assessed based on this to become a member of the dynamic market.	Dynamic markets cannot generally be used to award regulated below-threshold utilities contracts. Note, dynamic markets can be used to award works contracts above the values set out in section 85(3).

Supplier selection

N/A	N/A

Assessment and award

Contract award notices and assessment summaries (section 50)	An assessment summary is not required for a utilities (or other) contract awarded under a framework.

Remedies, procurement oversight and the debarment list

N/A	N/A

Contract governance

Contract modifications (Schedule 8 permitted contract modifications 4(2), 5(2) and 8(2))	The 50% financial cap on the value of permitted modifications does not apply if the contract being modified is a utilities contract.



Exemptions cheat sheet

Private utilities

This cheat sheet is a quick reference guide to the exemptions and differences for private utilities within the Procurement Act 2023.

Private utilities are other entities (i.e. not public authorities or public undertakings) that carry out a utility activity. Private utilities are only covered by the Procurement Act where they have been granted a special or exclusive right to carry out a utility activity.

It is not possible to have a definitive list of utilities as structures can be complex or change over time and whether an entity has been granted special or exclusive rights can change. Utilities will need to consider whether they are a public authority, public undertaking or private utility using the definitions in section 2(2) of the act.

The Procurement Act part 1 of schedule 4 (utility activities) lists utility activities and part 2 of schedule 4 lists activities that are not, at a particular point in time, considered utility activities within the meaning of the act. This largely mirrors the coverage of the UCR 2016

- except for the removal of postal services entirely.

Utility activities are activities connected with the provision or operation of networks that provide:

1. gas and heat
2. electricity
3. water
4. transport services (rail, tram, bus)
5. ports and airports
6. extraction of oil and gas and exploration for, or extraction of coal or other solid fuels

Scope, definitions and general principles

Thresholds (schedule 1) - schedule 1 of the act will be amended to reflect the currently in force thresholds set out here	Utility “works contract” (i.e. “construction services”) = £5,372,609 Utility non-works contract (i.e. “Goods”, “Services”) = £429,809 Utility light touch contract = £884,720 Concession contract (including light touch, Defence and security) = £5,336,937
Below-threshold contracts (part 6 - sections 84 to 88)	A utilities contract is exempt from the rules governing regulated below-threshold contracts.
The national procurement policy statement (section 13)	The duty to have regard to the national procurement policy statement does not apply to private utilities.
The Wales procurement policy statement (section 14)	The duty to have regard to the Wales procurement policy statement does not apply to private utilities.
Pipeline notices (section 93)	Private utilities are exempt from publishing pipeline notices.
Exempted contracts (schedule 2)	Paragraph 5 exempts utilities contracts awarded by a joint venture between utilities to one of those joint venture members, and vice versa. Paragraph 6 exempts utilities contracts awarded by a utility to an affiliate and by a utility that is a joint venture to an affiliate of any member of that joint venture. Paragraph 21 exempts contracts for public passenger transport services that are awarded under separate legislation - that legislation is

specified at section 136(11) of the Railways Act 1993.

Paragraph 31 exempts utilities contracts awarded for the purpose of further sale or lease to third parties, provided the utility does not have a special or exclusive right to sell or lease the goods, services or works purchased and the market is open. This does not apply where the utility is a centralised procurement authority.

Paragraph 32 exempts utilities contracts for the purchase of water by utilities carrying out a utility activity in paragraph 3(1) of schedule 4 (provision or operation of a fixed network or the supply of drinking water to such a fixed network).

Paragraph 33 exempts utilities contracts for purchases of energy, or fuel for the production of energy, by utilities carrying out a utility activity in paragraphs 1, 2 or 6 of schedule 4 (gas and heat, electricity and extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels).

Paragraph 34 operates to ensure that contracts for the purpose of the activities set out in part 2 of schedule 4 are exempt from the act.

Transparency

Pipeline notices (section 93)	Private utilities are exempt from publishing pipeline notices.
Preliminary market engagement notices (section 17) - the act will be amended to reflect changes made in the Procurement Regulations 2024	Private utilities are exempt from publishing preliminary market engagement notices.

Tender notices and associated tender documents (section 21)	Where a utilities contract is to be awarded under a utilities dynamic market established by reference to a qualifying utilities dynamic market notice (see section 40) the tender notice is not published, but utilities must instead provide it directly to existing members of the market.
Contract details notices and publication of contracts (section 53)	Private utilities are exempt from publishing contract details notices and copies of contracts.
Information about payments under public contracts (section 70)	Private utilities are exempt from publishing specified payment information where payments more than £30,000 are made under utilities contracts.
Key performance indicators (section 52)	Setting and publishing key performance indicators does not apply to a public contract awarded by a private utility.
Assessment of contract performance (section 71)	Assessing and publishing further information on key performance indicators does not apply to private utilities (even if KPIs have been set).
Contract change notice (section 77)	Publishing a copy of the contract as modified or the modification does not apply to a contract awarded by a private utility.
Contract termination notices (section 80)	Publishing a contract termination notice does not apply to private utilities.
Procurement termination notices (section 55)	Private utilities are exempt from publishing procurement termination notices.
Dynamic market notices (section 39)	The obligation to publish a dynamic market notice after a dynamic market ceases to operate does not apply to private utilities.

Electronic communications (section 96)

Electronic communications systems do not need to be free of charge and readily accessible to suppliers in relation to a utilities dynamic market.

See section 38(3) - fees may be charged in connection with obtaining and maintaining membership of a utilities dynamic market.

Procedures

Vertical and horizontal arrangements (schedule 2)

Vertical and horizontal exemptions do not apply to private utilities or public undertakings. The joint venture and affiliated persons exemptions for utilities contracts provide a similar exemption for all utilities.

Preliminary market engagement notices (section 17) - the act will be amended to reflect changes made in the Procurement Regulations 2024

Private utilities are exempt from publishing preliminary market engagement notices.

Time limits (section 54)

No minimum timescales are mandated for tenders from “pre-selected suppliers” (i.e. suppliers that have been required to satisfy conditions of participation before submitting tenders or are members of a dynamic market) where the tendering period is agreed by all. In the absence of such agreement, the minimum timescales is 10 days.

Competitive flexible procedure

Time limits (section 54)	No minimum timescales are mandated for tenders from “pre-selected suppliers” (i.e. suppliers that have been required to satisfy conditions of participation before submitting tenders or are members of a dynamic market) where the tendering period is agreed by all. In the absence of such agreement, the minimum timescales is 10 days.

Frameworks and dynamic markets

Framework agreements: maximum term (section 47)	The maximum term does not apply to a framework awarded by a private utility - the maximum terms under section 49 for open frameworks do apply to utilities.
Dynamic markets: establishment (section 35)	Utilities can establish utilities dynamic markets - established only for the purpose of the award of utilities contracts by utilities.
Qualifying utilities dynamic market notices: no duty to publish a tender notice (section 40)	Utilities that establish dynamic markets using a qualifying utilities dynamic market notice do not publish a tender notice for the purpose of inviting suppliers to submit a request to participate or tender; instead a tender notice must be provided to members of the market or appropriate part of the market.

Qualifying utilities dynamic market notices: no duty to publish a tender notice (section 40)	Where a qualifying utilities dynamic market notice has been used, you do not have to consider any applications for membership to the market from suppliers that wish to participate in a particular procurement being carried out under the utilities dynamic market.
Dynamic markets: fees (section 38)	Utilities dynamic markets may provide for the charging of fees to suppliers in connection with obtaining and maintaining membership of the market. They can not provide for charging fees to suppliers that are awarded a contract by reference to their membership of the utilities dynamic market.
Dynamic markets (including utilities dynamic markets) cannot generally be used to award regulated below-threshold contracts, as they cannot be restricted by reference to a supplier's suitability (section 85(1)), and suppliers have already been assessed based on this to become a member of the dynamic market.	Dynamic markets cannot generally be used to award regulated below-threshold utilities contracts - dynamic markets can be used to award works contracts above the values set out in section 85(3).
Dynamic market notices (section 39)	The obligation to publish a dynamic market notice after a dynamic market ceases to operate does not apply to private utilities.

Supplier selection

Meaning of excluded and excludable supplier (section 57)	Private utilities have a wider discretion on whether to exclude excluded suppliers and should consider any reference to "excluded" suppliers as "excludable" suppliers.

Assessment and award

Procurement termination notices (section 55)	Private utilities do not have to publish a procurement termination notice.
Contract details notices and publication of contracts (section 53)	The requirements to publish a contract details notice and a copy of the contract does not apply to private utilities.
Standstill periods on the award of contracts (section 51)	The standstill periods do not apply to private utilities when the award is made under direct award in special cases (section 41) or switching to a direct award (section 43). A standstill period is also not required for a contract that is awarded in accordance with a framework, including a utilities framework, or by reference to a dynamic market, which includes utilities dynamic markets (including utilities dynamic markets established pursuant to a qualifying utilities dynamic market notice).
Contract award notices and assessment summaries (section 50)	An assessment summary is not required for a utilities (or other) contract awarded under a framework.

Remedies, procurement oversight and the debarment list

Procurement investigations (section 108)	A private utility is not considered a “relevant contracting authority” for the purposes of this section and as a result is not subject to procurement investigations under this section (although they may be required to have regard to guidance published following an investigation (see section 109)).

Contract governance

Contract change notices (section 75)	The requirement to publish a contract change notice before modifying a contract does not apply if the contract was awarded by a private utility.
Publication of modifications (section 77)	The requirement to publish a modified contract or modification does not apply if the contract was awarded by a private utility.
Key performance indicators (section 52)	The requirement to set and publish key performance indicators does not apply to utilities contracts awarded by a private utility.
Assessment of contract performance (section 71)	Assessing and publishing performance information does not apply to private utilities (even if KPIs have been set).
Information about payments under public contracts (section 70)	Private utilities are exempt from publishing specified payment information where payments more than £30,000 are made under utilities contracts.
Implied payment terms in contracts (section 68)	The 30 day implied terms are not implied in a utilities contract awarded by a private utility.
Implied payment terms in sub-contracts (section 73)	Payment terms are not implied into public sub-contracts that are for the purpose of performing (or contributing to the performance of) all or any part of a utilities contract awarded by a private utility.
Payments compliance notices (section 69)	Publishing a payments compliance notice does not apply to private utilities.

Contract termination notices (section 80)	The requirement to publish a contract termination notice does not apply to private utilities.
Contract modifications (schedule 8 permitted contract modifications 4(2), 5(2) and 8(2))	The 50% financial cap on the value of permitted modifications does not apply if the contract being modified is a utilities contract.



Exemptions cheat sheet

Concession contracts

This cheat sheet is a quick reference guide to the exemptions and differences for concession contracts within the Procurement Act 2023.

A “concession contract” as a contract for the supply, for pecuniary interest, of works or services to a contracting authority where:

- a. at least part of the consideration for that supply is a right for the supplier to exploit the works or services, and
- b. under the contract the supplier is exposed to a real operating risk

Scope, definitions and general principles

Thresholds (schedule 1) - schedule 1 of the act will be amended to reflect the currently in force thresholds set out here	Concession contract (including light touch, defence and security but not utility) £5,372,609.
Below-threshold contracts (part 6 - sections 84 to 88)	Concession contracts are exempt from the rules governing regulated below-threshold contracts.

Valuation of contracts (section 4 and schedule 3)	The value of a concession contract must be estimated based on the maximum amount the supplier could expect to receive under or in connection with the contract.

Transparency

Information about payments under public contracts (section 70)	Contracting authorities are exempt from publishing specified payment information where payments more than £30,000 are made under concession contracts.
Assessment of contract performance (section 71)	Assessing and publishing further information on key performance indicators does not apply to concession contracts (even if KPIs have been set).
Payments compliance notices (section 69)	The requirement to publish a payments compliance notice does not apply to a concession contract.

Procedures

N/A	N/A

Competitive flexible procedure

N/A	N/A

Frameworks and dynamic markets

Competitive award by reference to dynamic markets (section 34)	A concession contract cannot be awarded under a dynamic market unless the concession contract is also a utilities contract.
Frameworks (section 45)	A framework can not be established for awarding a concession contract.

Supplier selection

N/A	N/A

Assessment and award

N/A	N/A

Remedies, procurement oversight and the debarment list

N/A	N/A

Contract governance

Key performance indicators (section 52)	The requirement to set and publish key performance indicators does not apply to concession contracts.

Assessment of contract performance (section 71)	Assessing and publishing performance information does not apply to concession contracts (even if KPIs have been set).
Information about payments under public contracts (section 70)	Contracting authorities are exempt from publishing specified payment information where payments more than £30,000 are made under concession contracts.
Implied payment terms in public contracts (section 68)	The 30 day implied terms are not implied in a concession contract.
Implied payment terms in sub-contracts (section 73)	Payment terms are not implied into public sub-contracts that are for the purpose of performing (or contributing to the performance of) all or any part of a concession contract.
Payments compliance notices (section 69)	Publishing a payments compliance notice does not apply to a concession contract.



Exemptions cheat sheet

Schools

This cheat sheet is a quick reference guide to the exemptions and differences for schools within the Procurement Act 2023.

In the Procurement Act “school” means:

- a. the governing body of a maintained school (see section 19(1) of the Education Act 2002)
- b. the proprietor, within the meaning given by section 579(1) of the Education Act 1996, of an Academy within the meaning given by that section
- c. the proprietor, within the meaning given by section 579(1) of the Education Act 1996, of a school that has been approved under section 342 of that act
- d. the governing body, within the meaning given by section 90 of the Further and Higher Education Act 1992, of an institution within the further education sector within the meaning given by section 91 of that act
- e. the Board of Governors of a grant-aided school within the meaning given by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

A reference to a contract awarded by a school includes a reference to a contract awarded wholly for the purposes of supplying goods, services or works to a pupil referral unit.

Scope, definitions and general principles

Below-threshold contracts (Part 6 - sections 84 to 88)	Are exempt from the rules governing regulated below-threshold contracts.

Transparency

Payments compliance notices (section 69)	Publishing a payments compliance notice does not apply to contracts awarded by a school.
Payments under public contracts (section 70)	The requirement to publish specified payment information where payments more than £30,000 are made does not apply under contracts awarded by a school.

Procedures

N/A	N/A

Competitive flexible procedure

N/A	N/A

Frameworks and dynamic markets

N/A	N/A

Supplier selection

N/A	N/A

Assessment and award

N/A	N/A

Remedies, procurement oversight and the debarment list

N/A	N/A

Contract governance

Implied payment terms in public contracts (section 68)	The 30 day implied terms are not implied in contracts awarded by a school.
Payments compliance notices (section 69)	Publishing a payments compliance notice does not apply to contracts awarded by a school.
Information about payments under public contracts (section 70)	The requirement to publish specified payment information where payments more than £30,000 are made does not apply under contracts awarded by a school.
Implied payment terms in sub-contracts (section 73)	Payment terms are not implied into public sub-contracts that are for the purpose of performing (or contributing to the performance of) all or any part of a contract awarded by a school.



Exempted contracts

Cheat sheet

An exempt contract is a type of contract listed in schedule 2 to which the Procurement Act 2023 generally does not apply.

Schedule 2 part 1 covers contracts that are always exempt due to the nature of the relationship between the contracting authority and the other party to the contract (“counterparty exempted contracts”).

Schedule 2 part 2 covers contracts that are exempt because of the nature of the subject matter of the contract (“subject matter exempted contracts”).

Summary, part 1: counterparty exempted contracts

■ Vertical arrangements (previously often referred to as “Teckal” contracts)

Vertical arrangement exemptions apply only to contracting authorities that are public authorities - it does not apply to public undertakings or private utilities. The exemption is available where a contracting authority (or two or more contracting authorities acting together) (referred to here as the “contracting authority owner”) contracts with a person (referred to here as the

“controlled person”) over which the contracting authority owner has the prescribed form of control and the controlled person carries out more than 80% of its activities for or on behalf of the contracting authority owner or other persons controlled by the contracting authority owner. One example of a controlled person is a local authority trading company that the contracting authority owner has set up, either on its own or with other contracting authorities, to provide services.

■ Horizontal arrangements (previously often referred to as “Hamburg” contracts)

Horizontal exemptions, apply only to contracts between contracting authorities (referred to here as the “co-operating contracting authorities”) and only where both of the co-operating contracting authorities are public authorities - it does not apply to public undertakings or private utilities.

The exemption applies only where the:

- the arrangement aims to achieve a common objective in connection with the exercise of the public functions of the co-operating contracting authorities;
- the arrangement it is solely in the public interest;
- no more than 20% of the activities envisaged by the arrangement are intended to be carried out for reasons other than for the purposes of the co-operating contracting authorities’ public functions

■ Defence and security contracts

A defence and security contract between a contracting authority and the government of another state or territory.

■ Utilities contracts

A contract between a utility and relevant joint venture to which the utility is a party.

A contract awarded by a utility to a person affiliated with the utility or by a relevant joint venture to a person affiliated with any member of the joint venture.

Summary, part 2: subject matter exempted contracts

Part 2-only contracts do not qualify as exempted if, on award of the contract, a contracting authority considers that the goods, services or works representing the main purpose of the contract could reasonably be supplied under a separate contract and the separate contract would not be of a kind to which part 2 of this

schedule applies. When considering whether goods, services or works could reasonably be supplied under a separate contract, a contracting authority may, for example, have regard to the practical and financial consequences of awarding more than one contract.

■ Land and buildings etc.

Contracts for the acquisition (by whatever means) of (or the acquisition of an interest in or right over) land, buildings or any other complete work or a contract concerning an interest or right over any such things.

■ Broadcasting

Contracts entered into by contracting authorities for broadcast content.

Contracts for the right to broadcast, by any means, to the general public, material supplied by the supplier - such as programmes or advertisements.

■ Electronic communications services

Contracts where the main purpose is facilitating the provision by a contracting authority to the general public of an electronic communications service (as the meaning given in section 32 of the Communications Act 2003).

Contracts where the main purpose is permitting a contracting authority to provide, maintain or use a public electronic communications network (within the meaning given in section 151 of the Communications Act 2003).

■ Alternative dispute resolution

Contracts for the purchase of arbitration, mediation or conciliation services and other similar services.

■ Legal services

Contracts for specified legal services where it

would be inappropriate to open those contracts to competition. These are contracts relating to judicial, other dispute resolution proceedings, notary and services that must be carried-out by a particular person under order of a court, tribunal or act.

■ Financial services

Contracts for the lending of money in any currency to a contracting authority.

Contracts for the provision or carrying out of an investment service or activity, or of an ancillary service, in relation to a financial instrument by an investment firm or a qualifying credit institution.

Contracts for the provision of services to the Bank of England.

■ Employment

Employment contracts (which are defined by reference to relevant employment legislation at paragraph 18(2)) and other contracts with individuals appointed to a public office (which may include the appointment of non-executive directors of a public authority or members of a public enquiry).

■ Emergency services

Contracts for the provision by an organisation or association not run for profit of one or more of the following services:

- a. services relating to the promotion of fire safety
- b. fire extinguishing services
- c. services for the protection of life and property in the event of fires

- d. search and rescue services
- e. civil defence services
- f. nuclear safety services
- g. ambulance services provided in respect of medical emergencies (note this does not include general patient transport, for example, between home and a treatment centre)

■ Public passenger transport services

A contract that is required to be awarded in accordance with the public service obligations regulations within the meaning given by section 136(11) of the Railways Act 1993.

■ Research and development services

Contracts for the provision of research and development (R&D) services where the services are intended to be for, or to result in, benefit to the public, and the contract does not also provide for the provision of goods or works. The R&D services to be provided must include at least one of the following activities:

- a. “fundamental” research to acquire new scientific or technical knowledge without any particular application or use in view
- b. “applied” research directed primarily at generating scientific or technical knowledge for a specific objective
- c. “experimental” development which draws on existing knowledge to initiate the manufacture of new materials or products, establish new

processes, systems or services; or to achieve a substantial improvement in existing materials, products, processes, systems and services

- d. the manufacture and testing of prototypes

But services are not “research and development services” if they include— (a) the production of tools for manufacture, or (b) the development of industrial processes to manufacture goods or works arising from R&D.

■ International agreements and organisations

A contract awarded under a procedure specified in an international agreement of which the United Kingdom is a signatory and which the contracting authority must follow. Exemption only applies to contracts relating to the stationing of military personnel, or the implementation of a joint project between the signatories to that agreement.

A contract awarded under a procedure adopted by an international organisation of which the UK is a member and that procedure is inconsistent in any material way with the procedure to be followed in the act.

■ National security

A contract that the contracting authority determines should not, in the interests of national security, be subject to all act or a part of the act.

■ Intelligence activities

A contract for the purposes of carrying out, facilitating or supporting intelligence activities.

■ Defence and security contracts

A defence and security contract where:

- a. the supplier is located in an area outside the United Kingdom in which the armed forces are deployed, and
- b. the operational needs of the armed forces require the contract to be awarded to that supplier

A defence and security contract where:

- a. the supplier is located in a state or territory outside the United Kingdom in which the armed forces maintain a military presence
- b. that state or territory requires, in connection with that presence, that the supplier supplies the goods, services or works to which the contract relates

A defence and security contract awarded under a procedure adopted by an international organisation of which the United Kingdom is a member.

A defence and security contract awarded under an arrangement between the United Kingdom and one or more other states or territories, where the purpose of that arrangement is, or is in connection with:

- a. the joint development of a new product by or on behalf of the parties to the arrangement, or
- b. the exploitation of that product once developed

■ Utilities contracts

A utilities contract for the supply of goods, services or works to a utility other than one acting as a centralised procurement authority, where:

- a. the purpose of the contract is to allow the

further sale or lease of those goods, services or works to a third party

- b. the utility does not have a special or exclusive right, within the meaning given by section 6(3), to sell or lease those goods, services or works, and
- c. other persons may sell or lease those goods, services or works under the same conditions as the utility

A utilities contract for the supply of water to a utility carrying out a utility activity referred to in paragraph 3(1)(a) or (b) of schedule 4.

A utilities contract for the supply of energy, or fuel for the production of energy, to a utility carrying out a utility activity referred to in paragraph 1, 2 or 6 of schedule 4.

A contract for the supply of goods, services or works wholly or mainly for the purpose of an activity that would be a utility activity if it were not specified in part 2 of schedule 4.

■ Concession contracts

A concession contract for the carrying out of a utility activity within paragraph 3(1) or (2) of schedule 4 (water services), ignoring for this purpose the effect of paragraph 3(4) of that schedule.

A concession contract that:

- a. confers an exclusive right to operate a relevant scheduled air service for a period of four years or a series of periods falling within a period of four years, and
- b. imposes minimum service requirements in respect of that service during those periods

A concession contract for the provision of public passenger transport services.

■ Commercial contracts of the City of London

A contract for the supply of goods, services or works to the Common Council of the City of London other than for the purposes of its functions as a local authority, police authority or port health authority.



How do I estimate the value of my contract?

The rules on valuation of contracts at section 4 of the Procurement Act 2023 are important, particularly in relation to determining whether contracts are above or below threshold and consequent applicable rules governing the procurement. When estimating the value of contracts, the methodology defined in the act at schedule 3, "Estimating the Value of a Contract" must be considered.

Estimating the values of a contract must not be approached with the intention of disaggregation by artificially subdividing contracts for the purposes of evading the above-threshold regime. As such, schedule 3 paragraph 4 confirms "anti avoidance" measures to be applied in estimating contracting authority values for contracts.

■ Estimating the value of a contract - methodology

Estimated contract values must be the maximum amount you might be expected to pay for any goods, services or works to be provided through the contract, taking account of any potential factors that might affect the total amount payable during the projected life of the whole contract and, where applicable, any amounts already paid. Schedule 3 sets out some examples of what might contribute to the total costs of a contract but this list is not exhaustive. Other project related cost factors may also be

considered if they are relevant to the valuation of total contract values.

Schedule 3, s.1 (2)(a) to (e) indicates the amount a contracting authority could expect to pay may include the following:

- a. the value of any goods, services or works provided by the contracting authority under the contract other than for payment
- b. amounts that would be payable if an option in the contract to supply additional goods, services or works were exercised

- c. amounts that would be payable if an option in the contract to extend or renew the term of the contract were exercised
- d. amounts representing premiums, fees, commissions or interest that could be payable under the contract
- e. amounts representing prizes or payments that could be payable to participants in the procurement provides the following examples of contributory costs that contracting authorities might expect to consider when calculating total contract values

Examples

Example 1

Your contract is for 2 years plus a possible 1 year extension at an estimated value of £70k per annum (including VAT), this is:

3 years (2 years + 1 year extension) x £70k = **£210k** is the estimated contract value.

Example 2

Your contract is for 4 years to deliver goods at an estimated value of £50k per annum (excluding VAT), your contract includes the option to deliver additional goods of up to £25k (excluding VAT) per annum if required, this is:

4 years x £75k (£50k + £25k optional) = 300k net cost.

Add a 20% for VAT i.e £300k + £60k = **£360k** is the estimated contract value.

Example 3

Your contract is for 3 years at a total estimated value of £100k (excluding VAT) for the whole term for 50 user licences. There are additional licence fees of £2k (excluding VAT) per service user after the first 50 users. You will require an additional 10 service user licences from day one of the service provision. The calculation of contract value would be:

£100k (3 year contract service provision) + £20k (£2k x 10 optional additional user licences from day 1) = £120k net cost.

Add a 20% allowance for VAT i.e. £120k + £24k = **£144k** is the estimated contract value.

■ Estimating the value of a framework - methodology

When calculating the total contract values for a framework, the total value must comprise the sum of the estimated values of all the contracts that may be awarded in accordance with that framework.

In the case of an open framework, the total value of the open framework is to be treated as including the value of all the series of frameworks awarded, or to be awarded, under the open framework.

Examples

Example 1

Your framework contract is for 3 years. The estimated value of all the call off contracts is £1.4m (including VAT), this is:

3 years = **£1.4m** is the estimated contract value.

Example 2

Your framework contract is for 3 years plus a possible 1 year extension with an estimated value of the calls offs of £140k (excluding VAT) per annum, this is:

4 years (3 years + 1 year extension) x £140k = £560k estimated contract value.

Add 20% VAT i.e £560k + £112k = **£672k is the estimated contract value.**

Example 3

Your open framework consists of 3 frameworks and the estimated values are:

Framework 1

Framework 1 is for 2 years with an estimated value of the calls offs of £140k (including VAT) per annum.

Framework 2

Framework 2 is for 2 years with an estimated value of the calls offs of £180k (including VAT) per annum.

Framework 3

Framework 3 is for 3 years with and estimated value of the calls offs of £220k (including VAT) per annum, this is:

2 years x £140k = £280k

2 years x £180k = £360k

3 years x £220k = £660k

Total open framework estimated value = £1.3m.

■ Estimating the value of a concession contract

Concession contracts are valued differently, based on what the contracting authority believes the the maximum amount the supplier could expect to receive (e.g. sales revenues) under or in connection with the contract, including, where applicable, amounts already received.

The amounts a supplier could expect to to receive by way of a concession contract are indicated, but not limited to, within schedule 3 as:

- a. amounts representing revenue (whether monetary or non-monetary) receivable pursuant to the exploitation of the works or services to which the contract relates (whether from the contracting authority or otherwise)
- b. the value of any goods, services or works provided by the contracting authority under the contract other than for payment
- c. amounts that would be receivable if an option in the contract to supply additional services or works were exercised
- d. amounts that would be receivable if an option in the contract to extend or renew the term of the contract were exercised
- e. amounts representing premiums, fees, commissions or interest that could be receivable under the contract
- f. amounts received on the sale of assets held by the supplier under the contract

Example

A sub-central government organisation offers a concession contract for catering services to be exploited for public visitors to their regional establishments. Because it has never operated such a catering service before, the contracting authority has used a catering consultant to provide a likely sales scenario for beverages and snacks based on the known footfall of each of 5 venues. It determines the most economically viable approach to be offered on a price per square metre of retail and preparation floorspace (£100 + VAT) per m2 per annum including rates but subject to metered utilities) and a minimum 2% + VAT of net sales revenue generated from concession sales. A concession revision and/or contract break option is available to both parties should pre-agreed sales commissions not be achieved per m2 in any one location. The contract is subject to an inflation related review in the 2nd year of a total four year term.

The contracting authority can define and list 5 venues with a combined floor area of 2000 m2 which could be valued in this manner:

Fixed rentals @ 2000(m2) x £100, per year = £200,000

Median (consultant) forecast of combined sales for all five sites is suggested at £925,000 inc VAT which should be represented as £770,833 (net) sales for commission calculation. 2% commission = £15,417 per annum.

Total indicative value for the purposes of advising the market would be in the region of:

£200,000 + £15,417

Y1 and Y2 contract value = £430,834

Y3 and Y4 contract values = £443,759 including inflation @ 3% £12,925

4 year indicative value of concession = £874,593

■ What if it is not possible to estimate the value of my contract?

If you are genuinely unable to estimate the value of your contract in accordance with schedule 3, (for example when the duration of the contract is unknown) then the contract is to be treated as having estimated the value above the threshold amount for its type of contract.

Example

An agile contract for the provision of information management penetration testing for a sub-central government organisation is required. The programme must be completed within 12-months of award, however, there is a genuine belief that by its nature, the testing may uncover a need for more advanced or other directly related investigation testing of the system. The classified nature of the data and environment has created a situation where once the work is started, it must continue until complete, particularly if initial investigations find weaknesses and risks to information security. Market research suggests an average of £1500 per day per engineer, plus their expenses when visiting sites + VAT.

You calculate the requirement as 1 engineer for a total 60 days, 20 of which will be on your premises.

The initial calculation would be something like this:

£1,500 (day rate each) x 60 (days) x 1 (engineers)
= £90,000

Plus 20 days/nights accommodation, travel and sustenance (in accordance with Cabinet Office published expenses rates), estimate £240 per engineer x per day/night stay = £4,800 in variable costs.

Indicative cost for exploratory works = £94,800

Plus VAT on above = £18,960

Indicative total no less than cost + £113,760

If the contracting authority has a genuine belief that an inestimable amount of work will be required before their system meets all required security protocols, they would also consider the following:

Likely findings of the initial investigation leading to, say, 80% probability of further work required.

Likely amount of further days required following the initial investigation? Unknown.

Likely amount of additional engineer days required on site? Unknown.

Likely amount of remote/base engineer days required following investigation? Unknown.

Likely amount of variable costs/expenses etc if required? Unknown.

Likely term duration required to complete any preventative or remedial works following initial investigation? Unknown.

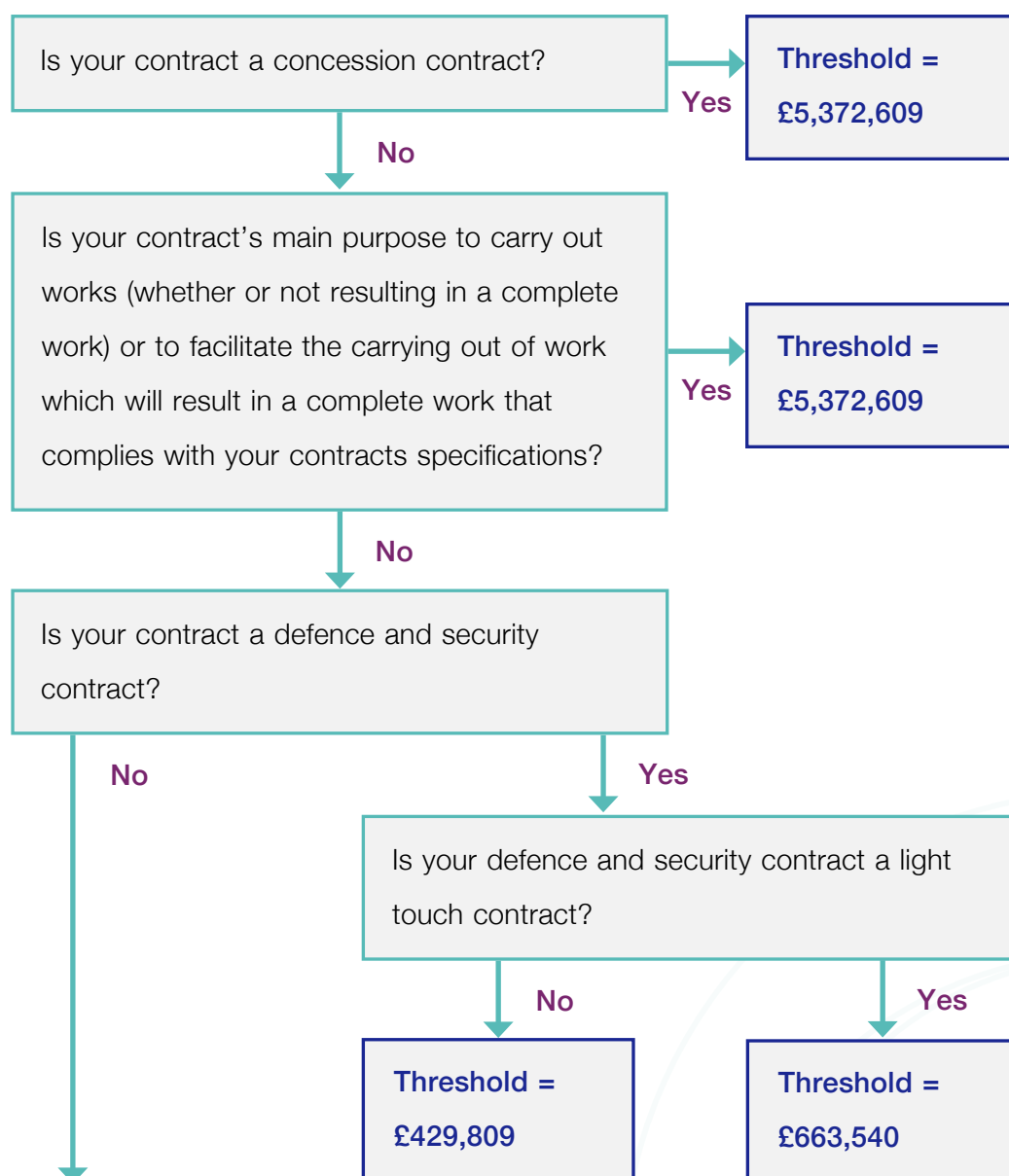
Because of genuine inability to make an estimate of the full possible contract value, they would issue the contract for 1 year in accordance with their defined maximum programme term, but allow for extension options and treat the procurement process as one that is above the threshold (£214,904 in the case of sub central organisation). The inability to provide an estimated contract value would always lead to the default procurement approach being the same that would be applied in the most relevant above threshold case.

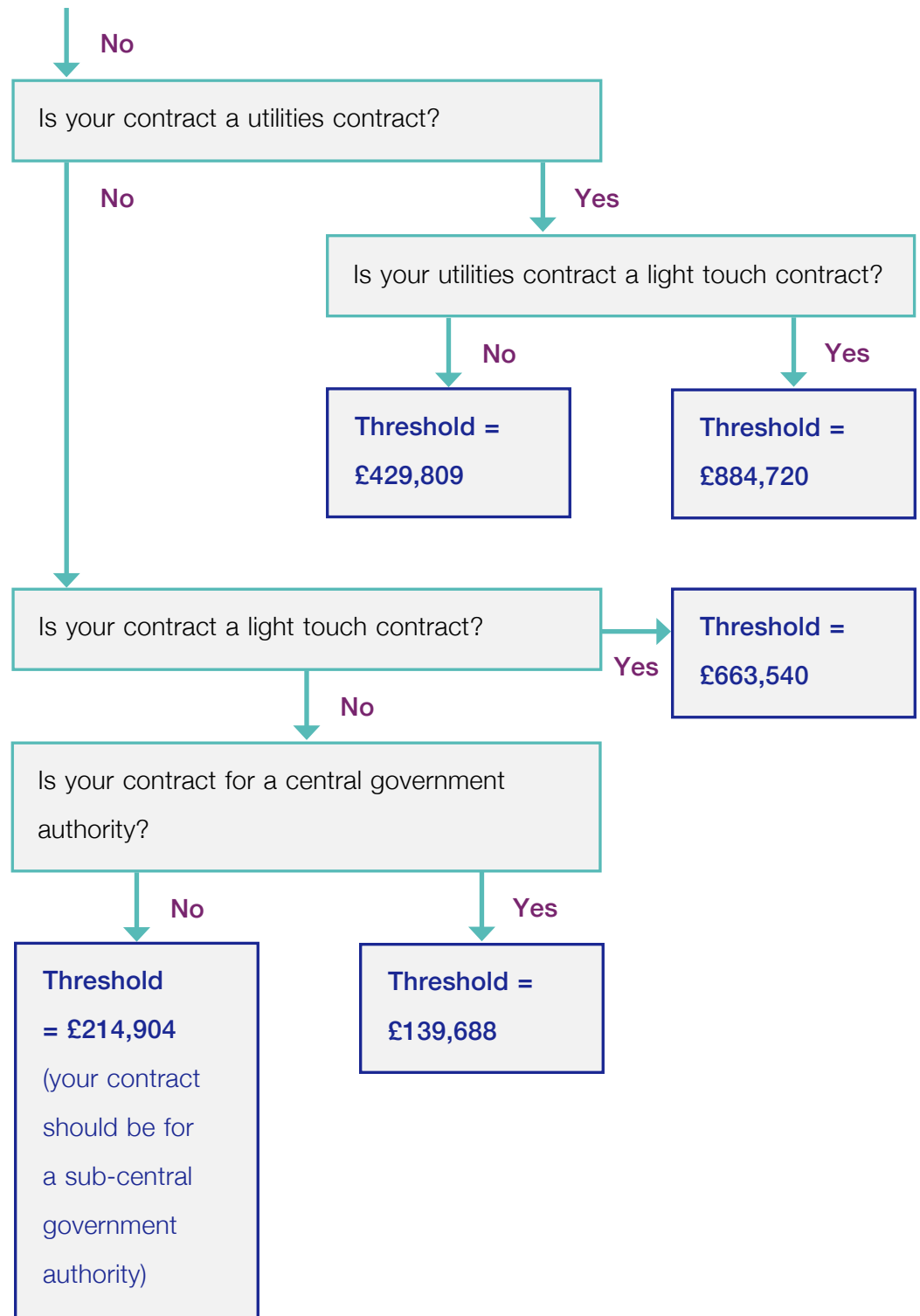


Threshold

Decision tree

Important note - all values are inclusive of VAT.







Below threshold contracts checklist

Action:

1. Confirm your total estimated contract value is below the thresholds set out in the Procurement Act schedule 1 (ensuring you are not artificially subdividing contracts).

☐

2. Undertake pre-market engagement where appropriate and proportionate.

☐

3. Have regard to the fact that small- and medium-sized enterprises may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced.

☐

Does not apply to the award of a contract in accordance with a framework.

4. Design the procurement process without restricting tenders by suppliers suitability to perform the contract (no intermediary conditions of participation stage as a way of reducing the number of suppliers to invite, previously known as 'selection stage' or 'pre-qualification stage'). *Does not apply to a works contract above £139,688 (central government), or £214,904 (others). Also does not apply to a contract awarded:*

☐

a. by a devolved Welsh authority, unless it is awarded under a reserved procurement arrangement

b. under a devolved Welsh procurement arrangement, or

c. in accordance with a framework

5. Design the procurement process with reasonable timescales which are the same for every supplier.

☐

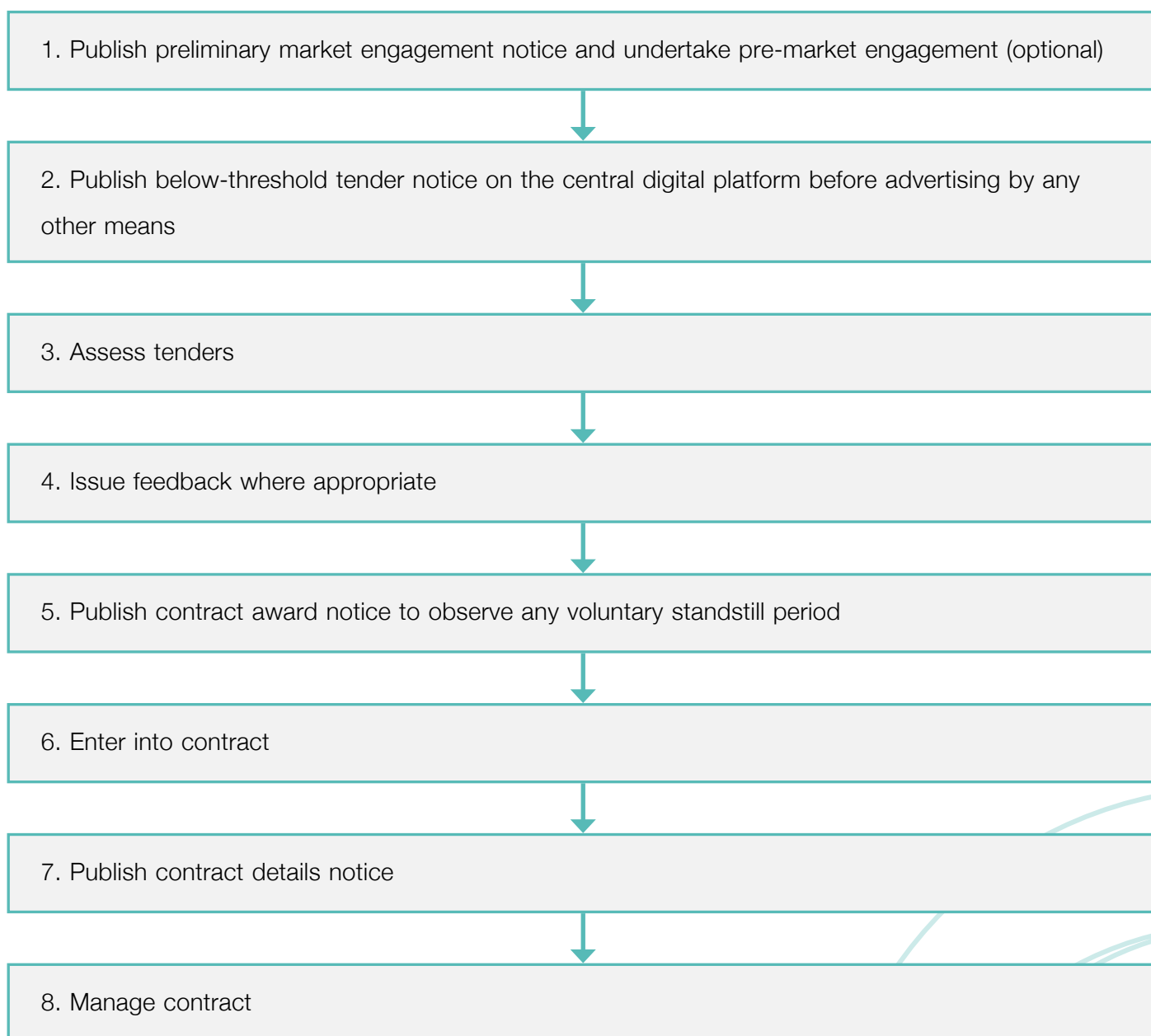
6. Publish a below-threshold tender notice on the central digital platform before advertising anywhere else. Does not apply to contracts with an estimated value of less than £12,000 (central government), or £30,000 (others).
7. Assess tenders.
8. Publish a contract details notice on the central digital platform as soon as reasonably practicable after entering into the contract.
9. Ensure successful supplier is set up on 30 days (or less) payment terms.
10. Understand the contract modification rules and debrief the contract manager as required.
11. Ensure total contract value remains under the threshold for the lifetime of the contract (including where any modifications are made) otherwise it will become a 'convertible contract'.
A regulated below threshold contract that, following modification, exceeds the relevant threshold set out in schedule 1 of the act and is now a public contract.





Regulated below-threshold contracts

Process flow





Summary of transparency notice requirements for below-threshold contracts

Mandatory

Procurement activity	Notice publication	Frequency
Invitation to tender	Tender notice	Once at the start of the procurement process
Modifications to the terms of the procurement	Tender notice (amended)	Revise and republish or provide again the tender notice each time a modification is made
Following award of a the contract	Contract details notice	Once, as soon as reasonably practicable after the contract is entered into
When a contract modification would take the value of the contract above the relevant threshold, known as “convertible contracts”	Contract change notice	Once when the below-threshold contract becomes a convertible contract and again if further permitted modifications are made

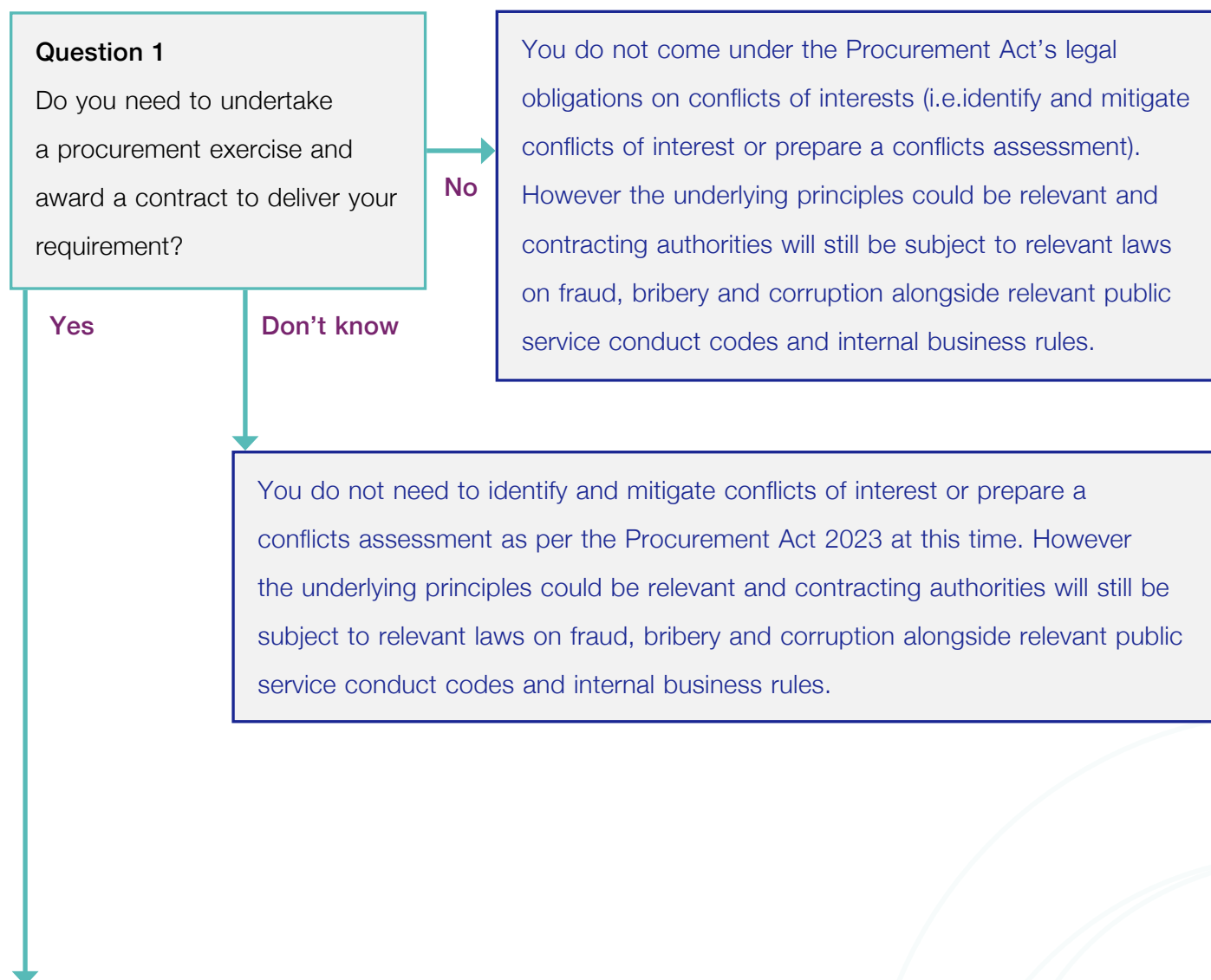
Voluntary

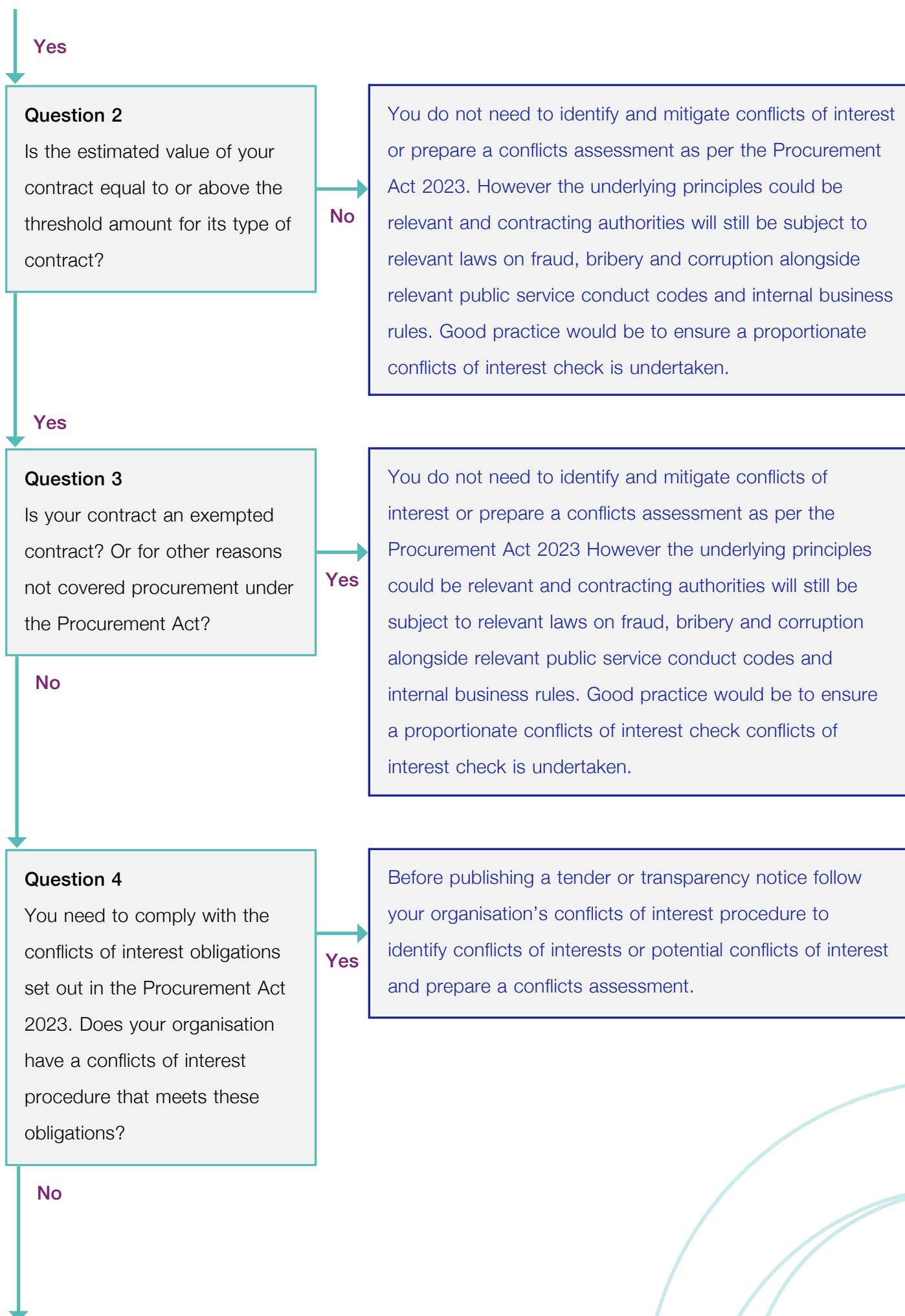
Procurement activity	Notice publication	Frequency
Procurement planning	Planned procurement notice	Once or more to advise the market of an upcoming procurement, however there is no advantage of reducing minimum tender timescales for a below-threshold contract
Preliminary market engagement	Preliminary market engagement notice	Once or more to inform the market of upcoming pre-market engagement or to provide details of any conducted pre-market engagement activities - if a preliminary market engagement notice is not published an explanation for non-publication is not required in the below-threshold tender notice
After tender assessment and before entering into a public contract	Contract award notice	Once to inform the market you are about to award a contract
End of the contract	Contract termination notice	Once when the contract ends



Conflicts of interest requirement

Decision tree





No

Question 5

For the forthcoming procurement can you list the following individuals?

- a. any persons acting for or on behalf of your organisation in relation to the procurement;
- b. any ministers acting in relation to the procurement;
- c. any persons that will have influence over a decision made in relation to your procurement?

No

You must take all reasonable steps to identify conflicts and potential conflicts, identify the individuals and follow the steps under 'yes'.

Yes

Follow the steps below:

1. Confirm you have taken reasonable steps to identify any actual or potential conflicts of interests? Make sure your consideration of interests include personal, professional or financial interest and which may be direct or indirect.
2. Think about any circumstances that are likely to cause someone to wrongly believe there is a conflict or potential conflict of interest, beyond any conflicts already identified? If so make a note of the steps taken or will be taken to demonstrate that no such conflict or potential conflict exists.
3. You must take all reasonable steps to ensure that any identified conflicts or potential conflicts of interest does not put a supplier at an unfair advantage or disadvantage in relation to your procurement (this may include requiring a supplier to take reasonable steps).
4. Before publishing a tender or transparency notice you must prepare a conflicts assessment using the information and steps taken so far.
5. Keep the conflicts assessment under review and update it as and when required - until either procurement termination, contract termination or, for dynamic markets, the market ceases to operate (via the relevant procurement notice).
6. Provide confirmation that a conflicts assessment has been prepared and revised when publishing relevant procurement notices.

Does a supplier remain at an unfair advantage - even after all reasonable steps to mitigate this? If yes, this supplier **must** be excluded.

Conflicts of interest assessment quick guide

■ When do I need to complete a conflicts of interest assessment?

At the start of the a procurement process, unless your procurement is not covered by the Procurement Act, you must prepare a conflicts assessment before you publish the following notices:

- a. a tender notice
- b. a transparency notice
- c. a dynamic market notice in relation to the establishments of a dynamic market

■ What information does my conflicts assessment need to include?

The conflicts assessment must include details of conflicts or potential conflicts of interest identified.

This could include a list of any interests (or confirmation of none) for each person:

- a. acting for or on behalf of your organisation, or individuals that influence a decision of the contracting authority in relation to the procurement
- b. a minister acting in relation to the procurement
- c. a supplier or other external body with an identified interest in the decisions in question

The conflicts assessment must include the information on what steps you have taken or will take to mitigate any identified conflicts or potential conflicts of interest and the outcome or next steps. This could include details of reasonable steps that have been requested and/or actioned by suppliers.

Also the details of any known perceived conflict of interest and the steps taken or planned to take to demonstrate that no such conflict or potential conflict exists.

■ What do I need to do to meet the transparency obligations around conflicts of interest?

When you publish one of the following notices you must confirm you have prepared and/or revised a conflicts assessment:

- a. a tender notice
- b. a transparency notice
- c. a dynamic market notice in relation to the establishments of a dynamic market
- d. a contract details notice
- e. a contract change notice

■ When do I need to review and update my conflicts of interest assessment?

Review your conflicts assessment either on a set routine basis and/or at key stages of your procurement process, such as when new information comes to light.

Update your conflicts assessment as and when required following your review, for example:

- a. when additional people acting for or on behalf of your organisation who will have influence over a decision made in relation to your procurement process and award of the contract are identified
- b. when you move to the next stage of the procurement process and new information is available, for example, when suppliers have submitted a tender you may need to cross check this information with the evaluation panel members

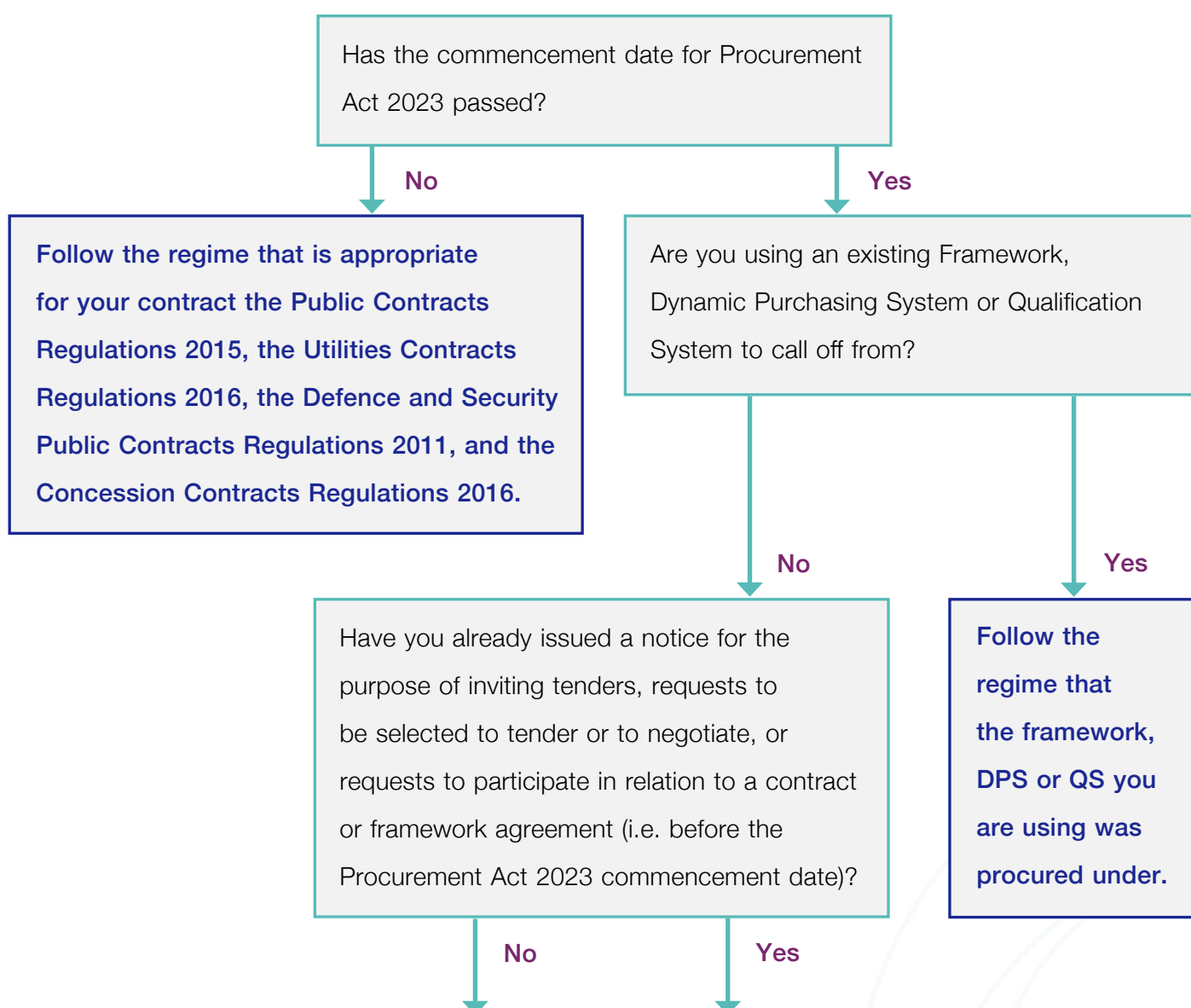
■ What should I do with my conflicts of interest assessment?

Your conflicts assessment should be held as a record as it may be needed in the future for audit purposes or as part of the application for discovery in the event of a court case.



Which procurement regime should I be following for my procurement?

Transition decision tree





No

Follow the Procurement Act 2023.



Yes

Follow the regime that the notice was issued under (the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016, the Defence and Security Public Contracts Regulations 2011, and the Concession Contracts Regulations 2016).



Module 2: Transparency

Contents

1. Introduction
2. Transparency and the Procurement Act 2023 (Overview)
3. Notices
4. Central Digital Platform and Notice Publication
5. Record Keeping
6. Commercial Tools and Registers

1. Introduction

This document is intended to provide an overview of transparency measures under the new procurement regime – including changes to the notices that must be published throughout the procurement lifecycle, the creation of the central digital platform, the introduction of new commercial tools and data resources, including the key changes against previous regulations and what contracting authorities must do to be compliant with the Procurement Act 2023.

2. Transparency and the Procurement Act 2023 (Overview)

Transparency is a fundamental, broad-reaching aspect of the Procurement Act 2023. The need to share information, enable others to understand the decision making process, and act with integrity are all set out in the procurement objectives. Transparency is embedded into every part of the procurement lifecycle – from planning to procurement, contract management and termination – by sharing information through the publication of notices.

Robust transparency provisions are essential for providing the openness, accountability and oversight to balance with the new flexibilities set out elsewhere in the Procurement Act 2023.

The legal provisions for transparency are set out in the Procurement Act 2023 and in the Regulations.

■ 2.1 Changes and Benefits

The Procurement Act 2023 aims to create a more open and transparent procurement regime, aimed at delivering “**transparency by default**” across the full commercial lifecycle.

Change: The **publication of notices** at additional stages of the procurement lifecycle, and to provide information on procurement and contracting activities.

Benefit: Allows visibility and for data to be captured about procurement and contracting activities across the full procurement lifecycle. It provides up-to-date information on procurements and contracts, which should reduce ad hoc supplier enquiries.

Change: Introducing a **central digital platform**, which consists of an enhanced version of **Find a Tender (FTS)** and new **Supplier Information System**.

Benefit: The platform will improve the quality and accessibility of commercial data for contracting authorities. It will give suppliers a single place to find tender opportunities, and functionality that will allow them to register and submit the basic business information needed when submitting a tender, reducing time, duplication and administrative costs. **Summary Document 6 – Supplier Selection.**

Change: The introduction, over time, of **commercial tools and registers** on the central digital platform.

Benefit: These will enable contracting authorities, their suppliers and other interested parties to access and analyse a range of commercial information based on the notices published to the central digital platform.

An overview of these changes is provided within this Summary Document, with the other Summary Document providing detailed information about how the changes work in practice across the procurement lifecycle.

■ 2.2 Why is Transparency Important?

Improved transparency measures are essential for securing value for money, building public confidence, acting in a fair and open manner with our suppliers, and reducing the potential for fraud and corruption. We expect this to be delivered through the new procurement regime. The new measures have been designed to deliver a number of benefits and improvements:

For procurement and contracting authorities:

- Providing access to data and information that better informs procurement decisions.
- Reducing scope for fraud and corruption.
- Finding opportunities for collaboration (with other contracting authorities, and with suppliers).
- Identifying and tackling poor contract performance.
- Enabling earlier awareness and management of commercial risk.
- Encouraging better forward planning with their procurement processes.

For suppliers:

- Making business opportunities more accessible.
- Providing a level playing field for competition.
- Driving openness and accountability in decision making.
- Allowing a seamless, consistent data flow between contracting authorities and suppliers.

For the public sector and wider society:

- Improved visibility of public sector contracting.
- Driving accountability in the way decisions are made and services delivered
- Delivering more effective competition to maximise Value for Money for the taxpayer
- Upholding the integrity of public procurement.
- Building public trust.

3. Notices

Under the previous regulations¹, contracting authorities were required to publish a series of notices throughout the procurement lifecycle, to notify the market of new procurement opportunities, contract awards and changes to contracts. Notices are a means of communicating – with suppliers, other contracting authorities and the wider public – information about procurement activities and intentions. This communication is a cornerstone of transparency.

Under the Procurement Act 2023, notices must still be published throughout the procurement lifecycle. However, there are some key changes:

1. The introduction of **new notices** that cover all stages of the procurement lifecycle, including the contract management phase.
2. An obligation to publish these notices in one place, the **central digital platform** (which may be done through a contracting authority's existing eSender (electronic procurement portal)).
3. Requirements to publish **commercial data** (as part of these new notices) that will provide additional commercial intelligence to support the design and delivery of procurement strategies.

Understanding the new notice publication requirements and preparing to share this information from the outset of a new procurement will ensure that processes can continue to be undertaken in a timely manner.

¹ Public Contracts Regulations 2015 (PCR 2015), Utilities Contracts Regulations 2016 (UCR 2016), Concessions Contracts Regulations 2016 (CCR 2016) and the Defence and Security Public Contracts Regulations 2011 (DSPCR 2011).

■ 3.1 Transparency Notices Summary

A summary of the notices publication requirements that apply under the Procurement Act 2023 are as follows. Requirements will apply to most contracting authorities and covered procurements establishing a public contract.

Ref.	Transparency Notices	Requirement
UK1	Pipeline notice	Mandatory (<i>for organisations where spend is £100m+ PA</i>). 18-month forward-look at planned procurements £2m+ value.
UK2	Preliminary market engagement notice	Mandatory where engagement is anticipated or has taken place (or, explain in tender notice why it hasn't been published).
UK3	Planned procurement notice	Optional and Best Practice Advises the market of an upcoming procurement. A <i>qualifying</i> planned procurement notice can reduce tender timescales.
UK4	Tender notice <i>Including to establish a framework and below-threshold notices</i>	Mandatory (<i>for a competitive procedure</i>) Publish when undertaking an open or competitive flexible procedure (including to establish a framework contract and procuring using a dynamic market ²) or procuring a regulated below-threshold contract.
UK5	Transparency notice	Mandatory (<i>for a direct award</i>) Publish prior to award when undertaking a direct award.
UK6	Contract award notice	Mandatory Publish to communicate the outcome of the procurement and to commence the standstill period prior to awarding a contract under the open or competitive flexible procedure (and voluntary standstill periods for direct awards).
UK7	Contract details notice	Mandatory Publish details of the awarded contract (including the contract, for public contracts £5m+), inc. regulated below-threshold contracts above a certain value and those procured by direct award.

² Exemptions apply

Ref.	Transparency Notices	Requirement
UK8	Contract payment notice³	Mandatory Publish details of payments over £30,000 made under a public contract (quarterly).
UK9	Contract performance notice	Mandatory Publish KPI scores for public contracts £5m+ (at least annually). Publish within 30 days of supplier poor performance / breach of contract.
UK10	Contract change notice	Mandatory Publish prior to a qualifying modification taking place, inc., for contracts £5m+, publication of modification.
UK11	Contract termination notice	Mandatory Publish when a public contract is terminated / comes to an end
UK12	Procurement termination notice	Mandatory Publish where, after publishing a tender or transparency notice, the process is terminated without awarding a contract.
UK13-16	Dynamic market notices	Mandatory Publish and update when advertising, establishing, changing or terminating a dynamic market (inc. utilities dynamic markets and qualifying utilities dynamic markets).
UK17	Payments compliance notice	Mandatory Publish details of performance against 30-day payment terms (twice annually).

Where requirements are marked as “**mandatory**” there are some exemptions that will apply to certain organisations and categories of procurement: these are summarised in **the Fact Sheets**.

Some notices are listed in the legislation as covering multiple different procurement procedures. For example, an open, competitive, flexible and below-threshold “version” of the tender notice (amongst others) are detailed separately. However, these are not different notices; they are the same tender notice as outlined

³ Not currently in legislation, will come into effect at a later date

in the Procurement Act 2023. In practice, what this means for contracting authorities is that they complete different fields in the tender notice, and / or submit different information alongside it, depending on the nature of the procurement.

Works Contracts and the £5m Threshold

There are various additional publication requirements that apply to contracts above the £5m threshold, throughout the procurement lifecycle.

The threshold above which a contract for works becomes a *public contract* – subject to the full Procurement Act 2023 – is £5,372,609 , as set out in Summary document 1

Where a works contract is below threshold and not classified as a public contract (or covered procurement), the £5m publication requirements do not apply. *For example, a works contract that is £5.2m in value would not require the publication of redacted contract documents or KPIs.*

The definition of a “works” contract can be found in Summary Document 1

All thresholds relating to the publication of notices and other information are correct at the time of publishing, but may be subject to change under future legislation. These thresholds include VAT and are revised at least every two years. See Summary document 1 for more details.

■ Framework Contracts

Frameworks contracts (that are public contracts) will be established using the above notices, however reporting on KPIs using the contract performance notice, contract payment and payments compliance notices are not required. When awarding a contract using a framework, the above notices should be followed with the exception of a tender notice, which is not required.

■ Dynamic Markets

A different set of publication requirements apply for the establishment and operation of a dynamic market, which take the form of dynamic market notices that are published when a new dynamic market is first advertised, established, modified and terminated. When awarding a contract using a dynamic market, the standard noticing regime should be followed, including publication of a tender notice. A separate procedure applies when establishing a utilities or qualifying utilities dynamic market, which is established using a different version of the dynamic market notice. When awarding a contract under a qualifying utilities dynamic market, a different version of the tender notice is used, and does not need to be published.

For more information on publication requirements relating to frameworks and dynamic markets, see **Summary Document 5 – Frameworks and Dynamic Markets**. For more information on utilities dynamic markets and qualifying utilities dynamic markets, see **Summary Document – Utilities**.

■ Regulated Below-Threshold Procurements

A reduced set of publication requirements apply for regulated below-threshold procurements (contracts procured under Part 6 of the Procurement Act 2023 (Sections 84 to 88)) which are notifiable due to their value. When a below-threshold contract is advertised, a tender notice must be published to the central digital platform before being published locally (e.g. on a local website or eSender portal homepage). A contract details notice must be published once a notifiable contract has been entered into. No other noticing is required during the procurement lifecycle, however contracting authorities are able to publish other notices for their below-threshold contracts.

■ 3.2 Key Changes and Benefits

While comparisons may be made between some of the notices required under PCR 2015 and the other existing regimes and those required under the Procurement Act 2023 (as identified in the table above) there are key differences to highlight, including:

- A **planned procurement notice** may not be used as a call for competition in the way that was permitted for sub-central authorities using a prior information notice.
- Unlike VEAT notices, a **transparency notice** must be published (in almost all cases) before awarding a contract using the direct award procedure.
- A new **procurement termination notice** must be published whenever a contracting authority decides not to proceed with a procurement at any stage prior to contract award, having previously published a tender or transparency notice.
- The content and purpose of a **contract award notice** has changed. It is now published *before* contract award, to notify the market of the intention to award a contract, and (following the issue of assessment summaries) is used to start the 8 working days standstill period (where applicable).
- A new **contract details notice** must now be published after any applicable standstill period has concluded and the contract has been awarded. Where the total value of the contract is over £5m, contracting authorities must also publish the contract documents, with redactions where appropriate. (see **Summary Document 7: Assessment and Award**).
- A **contract change notice** must be published prior to making a contract modification. Where a contract over £5m is modified, then copies of the contract or the modification must be published (see **Summary Document 9: Contract Governance** for more information).

- There are three new notices that will be required for publication during the contract management phase of the procurement lifecycle.

Contract performance notice: used to report supplier performance against KPIs (where the total value of the contract is over £5m) and to report poor supplier performance and breach of contract (applicable to most contracts).

Contract payment notice: used by most contracting authorities to report details of individual payments exceeding £30,000 under a public contract.

Payments compliance notice: setting out the contracting authority's performance against 30-day invoice payment terms.

Some key benefits of the new notices include:

Pipeline notice	Improves forward planning, for contracting authorities and suppliers.
Preliminary market engagement notice	Encourages contracting authorities to undertake pre-market engagement, and ensures the process is transparent.
Transparency Notice	Enhances visibility of contracts to be awarded using the direct award procedure.
Procurement termination notice	Provides clarity to suppliers when a procurement is terminated prior to award.
Contract change notice	Increases openness about the modifications made to a contract throughout its lifetime.
Contract termination notice	Enables contracting authorities, suppliers and the public to see when a contract has ended.
Contract performance notice	Records contract and supplier performance data, and makes it visible to all interested parties.

■ 3.3 Notice Development and Phases

Requirements to publish contract performance, contract payments and payments compliance notices will not come into effect when the new regime commences. These requirements will be introduced in separate, later phases. The pipeline notice will also be introduced at a later phase.

4. Central Digital Platform and Notice Publication

■ 4.1 What is the Central Digital Platform?

The Procurement Act 2023 sets out that an “online system” will be established and operated for the publication of notices, documents and other information (95_(4)). This is the Central Digital Platform.

The objectives of the Central Digital Platform include:

- Publishing information about new procurement opportunities in one place, improving access for suppliers.
- Simplifying a fragmented landscape of commercial data available through multiple (sometimes closed-access) systems and in different formats.
- Providing a registration service for all UK buyers and suppliers who participate in public procurement.
- Enabling suppliers to submit their basic business information in one place, reducing duplication and making it easier to participate in procurements.

The central digital platform consists of **an enhanced version of Find a Tender (FTS)** (the site currently used to publish notices for all public contracts) with a new **Supplier Information System**.

Contracting authorities will use FTS to publish all notices, documents and other information required during a procurement process and throughout the lifetime of a contract (to note, FTS will continue to be a noticing system only: procurements will continue to take place using a contracting authority’s eSender, or other electronic means. Suppliers will be required to register on the central Digital Platform and use the Supplier Information System to submit their basic business information. When they identify an opportunity on FTS, they then share this information when they participate in a procurement.

For more information on the Supplier Information System see **Summary Document 6**. Suppliers and contracting authorities are not required to use this functionality for below-threshold procurements, however the system will not prevent them from using it for these purposes.

■ 4.2 Central Digital Platform Development

The developments to FTS functionality will be delivered in phases.

- Essential notices that contracting authorities need to be able to run a procurement will be available when the new regime commences.
- Pipeline notices, Contract performance and payments compliance notices will follow soon afterwards.
- Contract payment notices, data analysis tools and other functionalities will follow at a later date.

The Cabinet Office will provide more information and guidance on these notices and requirements prior to their commencement.

The Act allows for various changes, over time, to what information may be required for publication or disclosure by contracting authorities (section 95). This may mean changes to:

- The form and content of notices, documents or other information.
- The information contracting authorities are required to include in or with a notice.
- The provision of information in different formats (for example, notice field requirements).

■ 4.3 Notice Publication

Contracting authorities remain responsible for publishing the **correct notices** within the **required timescales**, and **containing all required information**, for all procurements and contracts (as detailed within the Procurement Act 2023, the Regulations and guidance).

Notice Fields

The Regulations set out the information (“notice fields”) that must be completed before a notice is published. Some fields will be mandatory, others discretionary. Where a notice may be used for more than one type of procurement (e.g. the tender notice), contracting authorities may need to complete different notice fields and provide different or additional information.

Contracts Finder

FTS replaces Contracts Finder as the place of publication for below-threshold procurements.

Contracts Finder is no longer used for the publication of any notices under the new regime, but will remain available during the transition period for procurements commenced under the previous regimes.

Using an eSender

Under the previous regimes, approximately 90% of notices were submitted by contracting authorities using an eSender, whilst the rest were created directly on FTS. Where a contracting authority uses an

eSender, they can continue to do so without any change. However, they should check with their eSender that the system is fully compliant with the new regime as early as possible before commencing a new procurement. Where contracting authorities currently publish notices directly to FTS, this may also continue without change.

Process for Publication

To be compliant with the Procurement Act 2023 and Regulations, contracting authorities must publish notices to the central digital platform before publishing them elsewhere. The obligation to publish on FTS is considered to be satisfied when a contracting authority:

- Receives confirmation from the platform (e.g. via email), or
- Has checked that the notice has appeared and can be viewed publicly on FTS.

Once published on FTS, contracting authorities can publish the notice elsewhere as required, e.g. on their organisation's website or an "alternative system" (an online system for publishing and providing information, e.g. their eSender's procurement portal). When using an eSender to manage publication to FTS, it is important to remember that the notice must first be publicly visible on FTS prior to being publicly visible on an eSender's system.

Publication to an Alternative System

In the unlikely event that it is not possible to publish a notice and / or associated information on FTS (e.g. due to unplanned maintenance or unexpected breaks in service), and contracting authorities are unable to pause publication until the platform is restored (e.g. due to the requirement being urgent), then they can publish to an alternative system, as described above, without first publishing on FTS.

This is providing that:

- At least 48 hours have passed since the notice or information was submitted to FTS
- At least 4 hours has passed in the case of direct awards under Section 42 direct award to protect life, etc, and Schedule 5 paragraphs 13 and 14 Urgency.
- The contracting authority has not received notification from FTS or the Cabinet Office that their submission has successfully been published and it is not accessible via FTS.
- The contracting authority cooperates with the Cabinet Office to ensure that the notice and / or documents in question are retrospectively published to the public on FTS at the earliest opportunity.
- The alternative system used for publication is free of charge, readily accessible to suppliers and accessible to people with disabilities.

Notices published to alternative systems must contain all of the required information as set out in the Procurement Act 2023 and Regulations.

As with the previous regulations, failure to publish a notice when it is required – including compliance with required timescales and providing correct and complete information – could leave contracting authorities at risk of a legal challenge. See **Summary Document 8** for details.

■ 4.4 Electronic Communications

As far as is reasonably practicable, contracting authorities carrying out covered procurements must communicate – and ensure that participating suppliers communicate – using electronic means, as part of a procurement.

To carry out a covered procurement, contracting authorities may only use an electronic communications system that is:

- free of charge and readily accessible to suppliers
- generally available, or interoperable with other generally available systems, and
- accessible to people with disabilities.

■ 4.5 Exemptions and Confidentiality

Section 94 of the Procurement Act 2023 outlines certain circumstances where contracting authorities may be permitted to redact information or withhold it from publication entirely.

These are:

- **National Security:** Withholding information is necessary to safeguard national security. This may be the case where information prejudices the defence, security or armed forces operations.
- **Commercial Sensitivity:** The information is sensitive commercial information (information that constitutes a trade secret or that would be likely to prejudice commercial interests) and there is overriding public interest in it being withheld.

These exemptions are modelled on the equivalent exemptions outlined in the Freedom of Information Act (FOIA) and are designed to be interpreted in the same way. They needed to be detailed separately in the Procurement Act 2023 because the former relates to responding to requests for information, whereas the latter is about proactive publication.

Guidance on redaction and how to redact a contract for publication can be found in Summary Document 7 – Assessment and Award.

Where contracting authorities rely on either of the above grounds to withhold information from being published, they must (unless it would be contrary to the interests of national security) notify anyone who the information would have been provided to that this is the case, and why. This would typically be done when publishing a notice.

Other specific exemptions from publishing notices and associated information apply to certain contracts and contracting authorities: these are detailed in Modules 1-9.

Any data shared must not contravene data protection legislation, and contracting authorities should be mindful of the Data Protection Act whenever information is published or otherwise shared.

■ 4.6 Unique Identifiers

To allow the central digital platform to meet its objectives, a **unique identifier** will be assigned, on FTS, to distinguish each individual contracting authority, supplier, procurement process and contract.

A summary of the identifiers that will be used on the central digital platform are as follows:

- **Buyer identifiers:** assigned to each individual contracting authority (including agents or organisations conducting a procurement on their behalf).
- **Supplier identifiers:** assigned to each individual supplier.
- **Contracting process identifiers:** the same identifier is assigned to each notice published across the full lifecycle of a discrete procurement, known as an Open Contracting Identifier (OCID).
- **Contract identifiers:** designed to identify the contract(s) awarded under a procurement process (as above); particularly useful where a procurement is split into lots.
- **Dynamic market notice identifiers:** an OCID is assigned to each dynamic market when the first notice relating to that dynamic market is published on FTS, tracking the dynamic market through to establishment, any modification(s) and up to termination. It is also used when a contract is awarded using a dynamic market, so that the contract data may be linked back to the original dynamic market.
- **Framework identifiers:** A framework has the same identifier as the contracting process OCID that was assigned to award the framework. This identifier will be the same in each notice published about the establishment of the framework. When establishing a framework under a scheme of open frameworks, each individual framework within the scheme will have its own identifier that relates to the contracting process used to award that framework.
- **Awards in accordance with frameworks:** Awards made in accordance with the framework (call-offs) are considered separate contracting processes from the frameworks themselves, so each has its own identifier. Since there is no tender notice published, this would usually start with a contract award notice or contract details notice, depending on the value of the contract.

■ Benefits

Identifiers will link together all records related to an organisation and/or contract:

- **Procurement records:** Identifiers will enable the creation of a structured record for every covered procurement, so that data can be viewed from publication of the first notice, up to procurement termination or contract award.
- **Public contracts:** The awarded contract will be assigned its own identifier, linking it back to the original procurement, and to any modifications, performance, payment or other notices published about it, through to termination. This will enable better visibility of data
- **Contracting authorities:** The use of an organisational identifier will enable better visibility of a contracting authorities' activities across multiple procurements and contracts.
- **Suppliers:** Any notice pertaining to a particular supplier will include their identifier. This will help contracting authorities to better identify data relating to a particular supplier, and facilitate a picture of a supplier's procurement activities, contract awards and contract performance.

Overall, the use of identifiers will increase transparency for contracting authorities, suppliers and the general public, facilitating the collection and analysis of **better quality commercial data**.

Another key benefit, if eSenders can provide the associated workflow, is **reduced duplication and administration**: because the notices published are linked together by identifiers, this means that, during a procurement, the data that is input into each notice can subsequently be pulled through to automatically populate the following notice(s).

■ Buyer and Supplier Identifiers

Where a contracting authority or supplier is already assigned a unique identifier from an official register, such as Companies House, Charity Commission for England and Wales etc, this identifier should be used – and will be authenticated – when they first register on the central digital platform. Where a contracting authority or supplier is not part of an official register, the central digital platform will use their name and address (and other core business information) to generate a unique number.

The supplier's unique identifier will be provided to the contracting authority whenever they participate in a procurement process. Contracting authorities must use a supplier's unique identifier when publishing notices or information in relation to it during the course of a procurement or contract.

The Supplier Information System will allow suppliers to bid as a consortium, joint venture, or similar arrangement. Contracting authorities will need to consider what information they obtain from each member of the consortium, and how to best identify their members in any subsequent notices:

- Where there is a lead contractor, they must be registered and have an identifier. This would then be used in any subsequent notices.
- Where suppliers tender as a consortium or joint venture that is yet to be legally formalised (e.g. where it exists only for the purpose of the procurement in question), they must be registered as separate entities. The contracting authority must be able to access the basic business information for each supplier as required. Following contract award, the consortia / joint venture will need to register as such using the Platform and will be allocated a new identifier that comprises information from all suppliers involved. They should then complete the required information for the newly formed organisation on the Supplier Information System, and will be allocated a new identifier that comprises information from all suppliers involved. The new identifier and updated core information will be used in subsequent notices.
- Suppliers may register as a consortium or joint venture prior to a procurement, but this legal relationship must be formalised. They may then use this information and identifier to submit a tender.

The central digital platform will allow for changes to the structure of consortia and joint ventures, and individual suppliers within them.

■ Contracting Process Identifiers

A unique identifier will be generated by FTS when the contracting authority submits its first notice for publication under a new procurement (e.g. a pipeline notice, preliminary market engagement notice, notice of planned procurement, tender or transparency notice or contract award notice in the case of a framework call-off or procurement from a qualifying utilities dynamic market). This identifier will then be used in subsequent notices to link them together into one procurement process.

5. Record Keeping

The publication of information on the central digital platform provides a permanent record of that procurement. Under section 98 of the Procurement Act 2023, contracting authorities are required to keep records that are sufficient to explain a **“material decision”** made during the award of or entry into a public contract, for a **period of 3 years** following contract award. Contracting authorities must also keep records of any **communications with suppliers** in relation to the award of a contract (prior to the contract being entered into) for the same period.

This provision replaces regulation 84 of the PCRs, which required contract authorities to provide a written report relating to the award of a public contract.

A decision is deemed to be “material” if it’s required by the Procurement Act 2023 (for example, the decision to award the contract to a particular supplier or as to the procedure to be followed) or where a contracting authority is required to publish a notice or other information as a result of the decision.

A **material decision** may include:

- Excluding one or more suppliers subject to a mandatory or discretionary exclusion ground.
- Down selecting one or more suppliers based on the conditions of participation, or at an interim stage of a competitive flexible procedure.
- The assessment of tenders against the award criteria.
- The decision to award the contract.

Records may therefore include (but are not limited to):

- Notices and associated documents.
- Tender submissions and/or requests to participate.
- Assessment summaries.
- Correspondence with suppliers, e.g. expressions of interest, clarifications, etc.
- Internal governance documents

Where the decision is made to terminate a procurement without awarding a contract, records are only required to be kept until the day that a procurement termination notice is published.

It is worth noting that 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, for a longer period.

6. Commercial Tools and Registers

What are Commercial Tools and Registers?

Public procurement data is often incomplete, recorded in inconsistent formats, or held on separate systems. This can make it difficult to share commercial information between organisations, restrict opportunities for collaboration, and lead to resource-intensive duplication for both contracting authorities and suppliers. Improved access to good-quality commercial data is also essential for achieving accountability in public spending.

One of the long-term goals of procurement reform is for the central digital platform to be a place where contracting authorities, suppliers and the general public can access different types of data that will provide a clearer picture on public sector contract and procurement activities. As previously mentioned, the intention is to deliver these within Phase 3 of the central digital platform development.

The ambition is that the central digital platform will host a number of commercial tools and registers that aggregate transparency information that is published to the platform, including:

- **Register of commercial tools:** containing details of the different frameworks and dynamic markets that are available to access across the public sector. See Summary Document 5 – Frameworks and Dynamic Markets for more information.
- **Contract performance register:** containing information about supplier performance against KPIs for in-scope public contracts, as published instances of reportable poor performance, as detailed in section 71. See Summary Document 9 – Contract Governance for more information.
- Additional Information including **how much is being spent under public contracts** (payments over £30,000) and about **prompt payment** (how quickly contracting authorities pay invoices to their suppliers). See Summary Document 9 – Contract Governance for more information.
- **Debarment list:** A list of suppliers who, following investigation, have been debarred from taking part in public procurements (due to the application of an exclusion ground). *This may initially be published as a PDF file on gov.uk, rather than the central digital platform.* See Summary Document 8 – Remedies, Procurement oversight and the Debarment List for more information).

The public will be able to access data (excluding any sensitive data) free of charge and without the need to register.

■ How will the Data be Populated?

The intention is for many tools and registers to be populated using data that contracting authorities provide as part of the notices that will be published throughout the procurement lifecycle, from pipeline to termination. Some registers may be populated and managed centrally, such as the debarment list (by the Procurement Review Unit).

If used correctly, it is envisioned that these tools and registers will help to drive efficiency, capability and best practice throughout the public sector. It is therefore important to ensure that the data and information submitted for publication is timely, accurate and fit for purpose.

■ What are the Benefits?

There are multiple long term benefits expected as data accumulates and new functionalities become available via the central digital platform. These include:

- Providing a valuable source of meaningful, standardised data to inform commercial strategies.
- Improving visibility and sharing of information between public sector organisations.
- Facilitating opportunities for collaboration and a more joined-up approach to common procurement issues.
- Enabling benchmarking activities to improve pricing and performance.
- Driving better standards in contract delivery through enhanced accountability.
- Reducing the potential for fraud and corruption.
- Increased potential for aggregated procurement data, providing enhanced understanding of public procurement activities.



Table of transparency notices

Fact sheet

Please note the following regarding the ‘purpose / variation’ and ‘exemptions’ columns in the table.

■ Purpose / variation

In the regulations, some notices are listed as having separate versions, depending on the procedure you follow. For example, there is an open, competitive flexible and below-threshold “version” of the tender notice (amongst others). However, these are not different notices; in practice, what this means for you is that you must complete different fields in the tender notice, and / or submit different information alongside it, depending on the nature of your procurement.

■ Exemptions

Organisations and / or contracts that are exempt from publishing a particular notice and / or associated documents.

■ Table

Procurement lifecycle	Reference	Notice name	Requirement	Purpose / variations	Exemptions
Plan	UK1	Pipeline notice	Mandatory (for organisations where spend is £100m+ PA) 12-month forward-look at planned procurements £2m+ value	N/A	- Private utilities - Contracts awarded by transferred Northern Ireland (NI) authorities
Define	UK2	Preliminary market engagement notice	Mandatory where pre-market engagement is anticipated or has taken place (or , explain in the tender notice reason for not publishing)	N/A	Private utilities
Procure	UK3	Planned procurement notice	Optional and best practice advises the market of an upcoming procurement. A qualifying planned procurement notice can reduce tender timescales to 10 days	N/A	N/A

Procurement lifecycle	Reference	Notice name	Requirement	Purpose / variations	Exemptions
Procure	UK4	Tender notice	Mandatory when undertaking an open or competitive flexible procedure (including to establish a framework and award a contract under an existing dynamic market) or a regulated below-threshold procedure	- Below-threshold tender notice - Tender notice: open procedure - Tender notice: competitive flexible - Tender notice: frameworks - Tender notice: dynamic markets (for procurements awarding a contracting using an existing dynamic market or utilities dynamic market - not to establish a new dynamic market) - Tender notice: utilities dynamic markets	Qualifying utilities dynamic markets (existing members of the market may be invited directly)
Procure	UK5	Transparency notice	Mandatory when undertaking a direct award (publish prior to award)	N/A	Direct award: user choice contracts

Procurement lifecycle	Reference	Notice name	Requirement	Purpose / variations	Exemptions
Procure	UK6	Contract award notice	Mandatory communicates the outcome of the procurement and (commences standstill prior to awarding a contract open or competitive flexible procedure)	- Contract award notices except those published by private utilities - Contract award notices published by private utilities - Contract award notices published by private utilities: direct awards - Contract award notices published by private utilities: frameworks	- Direct award: user choice contracts - Defence and security contracts awarded under a defence and security framework

Procurement lifecycle	Reference	Notice name	Requirement	Purpose / variations	Exemptions
Procure	UK7	Contract details notice	Mandatory details of the awarded contract (including the redacted contract, for public contracts £5m+ and KPI information)	- Contract details notice: open or competitive flexible procedure - Contract details notice: frameworks - Contract details notice: public contracts awarded in accordance with frameworks - Contract details notice: direct award - Contract details notice: below-threshold contracts	- Private utilities - Direct award: user choice contracts - Contracts awarded by a devolved Welsh authority or transferred NI authority (unless awarded under a reserved procurement arrangement) - exempt from publishing contract documents only - Contracts awarded under a devolved Welsh or transferred NI procurement arrangement - exempt from publishing contract documents only - Framework contract - exempt from KPIs - Light touch - exempt from KPIs - Concession contracts - exempt from KPIs

Procurement lifecycle	Reference	Notice name	Requirement	Purpose / variations	Exemptions
Manage	UK8	Contract payment notice	Mandatory details of payments over £30,000 made under a public contract (quarterly)	N/A	- Utilities contracts awarded by a private utility - Concessions contracts - Contracts awarded by a school - Contracts awarded by a transferred NI authority / under a transferred NI procurement arrangement (unless awarded under a reserved procurement arrangement or devolved Welsh procurement arrangement)
Manage	UK9	Contract performance notice	Mandatory to report: - annual KPI scores for public contracts valued £5m+ - poor supplier performance / breach of contract (within 30 days of event)	- Performance against KPIs - Notification of supplier poor performance / breach of contract	- Private utilities - exempt from both - Light touch - exempt from both - Concession contracts - exempt from publishing KPIs only

Procurement lifecycle	Reference	Notice name	Requirement	Purpose / variations	Exemptions
Manage	UK10	Contract change notice	Mandatory prior to a qualifying modification taking place (copy of modified contract for public contracts over £5m)	Convertible contracts: contract change notice	- Defence and security contracts - Private utilities - Light touch contracts - Contracts awarded by a transferred NI authority / under a transferred NI procurement arrangement (unless awarded as part of a procurement under a reserved procurement arrangement or devolved Welsh procurement arrangement) - Contracts awarded by a devolved Welsh authority or under a devolved Welsh procurement arrangement (unless awarded as part of a procurement under a reserved procurement arrangement) - exempt from publishing modified contract only

Procurement lifecycle	Reference	Notice name	Requirement	Purpose / variations	Exemptions
Manage	UK11	Contract termination notice	Mandatory when a public contract ends	N/A	- Private utilities - Direct award: user choice contracts
Procure	UK12	Procurement termination notice	Mandatory where, after publishing a tender or transparency notice, the process is terminated without awarding a contract	N/A	Private utilities
Procure	UK13 to 16	Dynamic market notice	Mandatory when advertising, establishing, changing or terminating a dynamic market	- Utilities dynamic market notice - Qualifying utilities dynamic market notice	- Private utilities are not required to update the dynamic market notice when the market ceases to operate - A qualifying utilities dynamic notice must be provided to members of the market and is not required to be published
Manage	UK17	Payments compliance notice	Mandatory details of contracting authority performance against 30-day payment terms (twice annually)	N/A	- Private utilities - Concessions contracts - Contracts awarded by a transferred NI Authority - Contracts awarded by a school



Transparency

Thresholds and exemptions for publishing notices

Notice name	Threshold for publication	Exemptions
Preliminary market engagement notice	When intending to carry out or have already undertaken pre-market engagement for above threshold contracts (can be used voluntary for below-threshold contract).	Private utilities
Planned procurement notice	When notifying the market in advance. A qualifying planned procurement notice can be used to reduce tender timescales for above threshold contracts.	N/A
Pipeline notice	Within the first 56 days of the financial year where the total procurement spend is above £100m p/a (including below-threshold spend). Include details of contracts over £2m .	• Private utilities • Contracts awarded by transferred Northern Ireland (NI) authorities

Notice name	Threshold for publication	Exemptions
Tender notice	When inviting a request to participate or tender. Tender notice: above threshold contracts. Below-threshold tender notice: contract above regulated below-threshold tender threshold.	Qualifying utilities dynamic markets (no requirement to publish the tender notice, just provided directly to existing members of the market)
Transparency notice	Before awarding an above threshold contract via direct award.	Direct award: user choice contracts
Contract award notice	Before awarding an above threshold contracts (can be used voluntary for below-threshold contract).	• Direct award: user choice contracts • Defence and security contracts awarded under a defence and security framework
Contract details notice	Within the 30 days following when a contract is entered into for above threshold and regulated below threshold contracts (120 days for light touch contracts). Where total value of the contract is over £5m, publish the contract documents and details of KPIs (unless exemption applies).	• Private utilities • Direct award: user choice contracts • Contracts awarded by a devolved Welsh authority or transferred NI authority (unless it is awarded as part of a procurement under a reserved procurement arrangement) • Contracts awarded under a devolved Welsh or transferred NI procurement arrangement - exempt from publishing contract documents only

Notice name	Threshold for publication	Exemptions
Contract payment notice	Payment(s) of £30,000 or more , under an above threshold contract. Publish quarterly.	• Contracts awarded by a private utility • Concessions contracts • Contracts awarded by a school • Contracts awarded by a transferred NI authority or or under a NI procurement arrangement (unless it is awarded as part of a procurement under a reserved procurement arrangement or devolved Welsh procurement arrangement)
Contract performance notice	Contracts over £5m with KPIs set: publish KPI scores at least annually. All public contracts: in the event of poor performance/breach of contract: publish within 30 days of the event.	• Private utilities - exempt from both • Light touch - exempt from both • Concession contracts - exempt from publishing KPIs only • Framework contracts - exempt from publishing KPIs only

Notice name	Threshold for publication	Exemptions
Contract change notice	Above threshold contracts before a qualifying modification takes place. Convertible contracts before a qualifying modification takes place. Contracts over £5m: publish copy of modified contract or contract modification.	• Defence and security contracts • Private utilities • Light touch contracts • Contracts awarded by a transferred NI authority (unless it is awarded as part of a procurement under a reserved procurement arrangement or devolved Welsh procurement arrangement) or under a transferred NI procurement arrangement • Contracts awarded by a devolved Welsh authority or a devolved Welsh procurement arrangement (unless it is awarded as part of a procurement under a reserved procurement arrangement) exempt from publishing the modified contract only
Contract termination notice	Above threshold contracts (can be used voluntary for below-threshold contract) when the contract terminates/ends.	• Private utilities • Direct award: user choice contracts
Procurement termination notice	Above threshold contracts (can be used voluntary for below-threshold contract) when required.	Private utilities

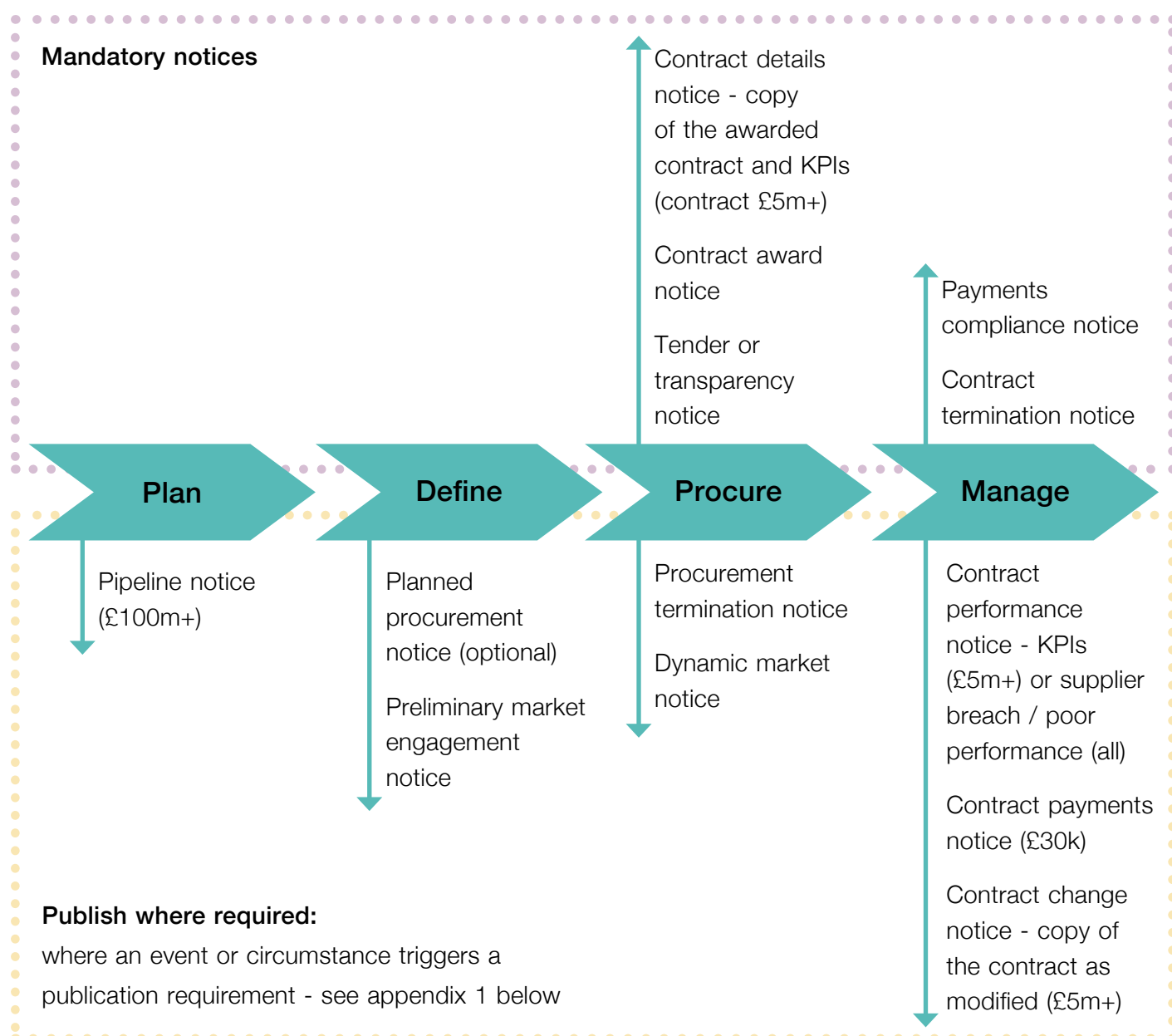
Notice name	Threshold for publication	Exemptions
Dynamic market notice	When advertising, establishing, changing or terminating a dynamic market.	Private utilities are not required to update the dynamic market notice when the market ceases to operate
Payments compliance notice	Above threshold contracts.	• Private utilities • Concessions contracts • Contracts awarded by a transferred NI authority (unless it is awarded as part of a procurement under a reserved procurement arrangement or devolved Welsh procurement arrangement) or under a NI procurement arrangement • Contracts awarded by a school



Transparency notices / publication

Flowchart

This flowchart demonstrates the notices and other information that you may publish throughout the end-to-end procurement lifecycle (depending on the procurement procedure followed, the nature of the contract and / or the contracting authority). **Further details about each notice can be found in the notices fact sheet.**



Appendix 1: publication triggers (publication when required)

The following table sets out the publication triggers that apply to notices and other information that should be 'publish when required' on the central digital platform. Exemptions to publication apply, see the notices fact sheet for more details.

Notice / information	Publication trigger
Pipeline notice	Where organisational procurement spend is £100m+, publish 12-month forward of procurements £2m+
Planned procurement notice	Publish a qualifying planned procurement notice to reduce tender timescales
Preliminary market engagement notice	Publish where pre-market engagement is planned or has taken place (or explain why not, in tender notice)
Procurement termination notice	Publish if, following a tender or transparency notice, the procurement ends without a contract award
Dynamic market notice	Publish to advertise, establish, change or terminate a dynamic market
Copy of awarded contract (and KPIs)	For contracts over £5m total value, KPIs must be set and the contract (redacted as required) published
Contract performance notice	Publish annual KPI data (contracts £5m+), and/or as required to report breach of contract / poor performance
Contract payments notice	Publish where one or more contract payment of £30k+ is made under a public contract (quarterly)
Contract change notice	Publish when making a contract modification (unless exemption applies)



Record keeping

■ What are the requirements?

The Procurement Act requires you to keep certain information that you gather during the award of an above-threshold contract. The requirement is retain:

- records that are sufficient to explain a **“material decision”** made during the award of that contract and
- records of **any communications** with suppliers in relation to the award of the contract (prior to the award taking place)

Both sets of records must be kept for a period of **three years following contract award**.

Note

Section 98(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.

■ What is a material decision?

A decision is deemed to be “material” if it’s made in relation to the award of a contract. This may include decisions relating to:

- excluding one or more suppliers based on a mandatory or discretionary exclusion ground
- excluding or reducing the number of suppliers based on conditions of participation
- conducting an interim assessment to reduce the number of suppliers during a competitive flexible procedure (e.g. a presentation or negotiation)
- the assessment of tenders against the award criteria
- the decision to award the contract (or, if applicable, to terminate the procurement without awarding a contract)

■ What records should be kept?

Types of records	Examples
Records containing material decisions, including: • what the decision was and when it took place • how the decision was made, who it was made by, and why • how that decision impacted on the award of the contract	Examples of records that may be kept include, but are not limited to: • notices and other associated procurement documents • tender submissions and/or requests to participate from suppliers • the assessment summary • other documents produced internally e.g. evaluation panel notes • internal governance documents, gateway reviews, minutes from senior stakeholder briefings
Supplier correspondence	• Correspondence with suppliers e.g. requests to participate clarification questions, pre-market engagement information etc • Expressions of interest (e.g. following publication of a planned procurement notice or preliminary market engagement notice) • Any preliminary market engagement undertaken • Clarifications raised by a supplier during the procurement • Any formal or informal challenges raised by a supplier during the procurement. • Notifications to a supplier of their exclusion from a procurement

Where you use an eSender for your procurements, this may hold many of these records. In addition, the data published on the central platform should hold, as a minimum, the notices (and any associated information) you've published in relation to the procurement.

It may help you to keep a log of records that relate to material decisions made under the contract. If so, a template can be found in Appendix 1.

Keeping a record of material decisions may help you in completing internal governance processes, and/or managing queries or challenges from suppliers post-contract award.

■ **What if a contract is not awarded?**

Where the decision is made to terminate a procurement without awarding a contract, you are only required to keep records until the point at which the procurement termination notice is published.

Annex 1: Record Keeping Template

Procurement process stage	Material decision made	Document(s) retained	Location (e.g. eSender platform)



Module 3: Procurement procedures

Contents

1. Introduction
2. Overview
3. Pre-Procurement Preparation
4. Selecting a Procedure
5. Other means of Contracting

1. Introduction

This document intends to provide a summary of the pre-procurement tools, procurement procedures and various means of contracting available under the Procurement Act 2023. It will identify the key changes against the previous regulations (primarily by reference to the Public Contracts Regulations 2015 (PCR 2015)) and set out what a contracting authority must do to be compliant with these changes. It will also highlight the opportunities in the new Act and how they can be used to get the most benefit.

2. Overview

One of the key benefits of the new regime is that the competitive procedures available under the PCR 2015 have been simplified to improve efficiency and flexibility. Whilst the single stage open procedure has been retained, the multi-stage procedures (restricted, competitive procedure with negotiation, competitive dialogue, innovation partnerships and design contests) have been reduced to a single competitive tendering procedure known as the competitive flexible procedure. This procedure provides the ability to design and undertake a bespoke procedure most appropriate for the requirement and the market whilst complying with the rules of the Procurement Act 2023, including having regard to the procurement objectives.

Where a competitive tendering procedure is not appropriate or cannot be used, direct award now replaces the negotiated procedure without prior publication. The grounds on which a direct award can be made are broadly similar to those of PCR 2015, UCR 2016, and DSPCR 2011, but include a new additional ground, section 42 direct award to protect life, etc. This allows a Minister of the Crown to use a regulation making power to allow the direct award of specified contracts where considered necessary to protect human, animal or plant life and health or public order and safety.

There are also two new grounds which are specific to defence and security contracts, further detail is provided in the Defence and Security Summary Document.

There is also a new ground to direct award for user choice for light touch contracts. Light touch contracts cover specific services which are specified under the light touch CPV codes that can be found in the Procurement Regulations 2024, further detail is provided in the Light Touch Summary Document.

3. Pre-Procurement Preparation

The Act has a number of provisions to support pre-procurement preparation, helping contracting authorities to fully understand and engage with the market, develop their strategy and plan their procurement process effectively.

The Central Digital Platform

Change: As explained in the transparency summary document the central digital platform has been introduced which will provide a single digital platform to standardise and improve the accessibility of commercial data across the public sector.

Benefits: As part of pre-procurement preparation, contracting authorities will be able to take advantage of this platform to:

- find information on the market and supply base that is already contracting with the public sector.
- review other contracting authorities' data.
- understand suppliers performance.
- use this information to assist in the development of the procurement strategy, and help further understand the market.

In time, contracting authorities will also be able to find out whether there are existing routes to market such as frameworks or dynamic markets and which suppliers have been awarded a place on these agreements through the Register of Commercial Tools. By using this, existing arrangements may be identified, removing the need for a full procurement process.

■ Planned procurement notice

When a contracting authority intends to undertake a procurement they should consider notifying the market of their plans in advance to allow them time to prepare to respond to the potential opportunity, creating a more competitive environment and driving best value. Publishing a planned procurement notice is not a commitment to undertake that procurement.

Change: A planned procurement notice has been introduced (section 15) which is an **optional** notice.

This notice is used to signal a contracting authority's intent to publish a tender notice in the future in the same way that the prior information notice (PIN) does in the PCR 2015 regulations.

Benefits:

- Gives the market early visibility of the opportunity and alerts them to the fact that a tender notice will be published.
- Allows interested suppliers to prepare to respond to the opportunity.
- Can be used to reduce tendering timescales (where it is a qualifying notice) .

■ When would a planned procurement notice be used?

- To alert the market as early as possible of an upcoming procurement to ensure that there is a good level of competition and the best outcome is achieved
- When a contracting authority has a requirement that is of significant value, complex or high risk
- When you envisage disaggregating or using lots in larger value or multiple category contracts.

Reducing timescales

If this notice is published between 12 months and 40 days before the tender notice and the subject matter of the procurement remains the same, then it would become a qualifying planned procurement notice (section 15(3)). A **qualifying planned procurement notice** can be used to reduce tendering timescales, if required, to a minimum of 10 days (timescales will be covered later in this document).

However, if this notice is published outside these timescales or the details of the procurement change significantly by the time the tender notice is issued, then the planned procurement notice is no longer a qualifying notice and it cannot be used to reduce timescales.

■ What information needs to be in the notice?

Regulation 16 of the Procurement Regulations 2024 sets out the requirements for a planned procurement notice.

It should set out, amongst other things:

- as much information as possible about the nature and scope of the requirement
- an estimate of when the tender notice will be published
- an estimated value (if available)

■ Preliminary market engagement

Section 16 of the new regime broadly replicates regulation 40 of the PCR 2015 with regards to preliminary market engagement, or pre-market engagement as it is often referred to.

Change: The main change is that there is a new preliminary market engagement notice¹ set out in section 17 of the Procurement Act 2023 which is now required to be published in line with the transparency requirements to inform the market when a contracting authority intends to conduct or has already conducted any preliminary market engagement activities. Preliminary market engagement activities are set out in section 16(1).

¹ Exemptions apply

Benefits:

- It gives the market the chance to fully understand or help to develop the requirements and the procurement procedure a contracting authority intends to undertake
- It is more likely to create a more competitive tendering environment and ensure a good level of response to the tender opportunity.
- It helps the contracting authority to understand the capacity and capability of the market and the art of the possible

When is preliminary market engagement recommended?

- where requirements are specialist, complex or niche,
- where the market is unknown or limited, or
- where a contracting authority has an idea of their requirements but wants to understand further what is available.
- where a contracting authority wants to test their potential procedure to understand whether it is suitable or not.
- to assist in the design and development of conditions of participation, award criteria or contractual terms.
- to engage with suppliers new to tendering for public contracts and encourage them to participate.

Whilst preliminary market engagement is not mandatory, contracting authorities are encouraged to engage with the market wherever practical to help inform the procurement process.

Where preliminary market engagement is undertaken, then the preliminary market engagement notice must be published before the tender notice or the contracting authority must provide the reasons for not publishing a preliminary market engagement notice in the tender notice.

If the contracting authority has not conducted any preliminary market engagement, there is no need to justify such a decision in the tender notice.

It is worth noting that there are no minimum timescales required between publishing a preliminary market engagement notice and the tender notice. Publishing a preliminary market engagement notice is not a commitment to undertake a procurement.

Contracting authorities will need to ensure that all departments and stakeholders that engage with the procurement process are aware of the requirement to publish this notice and encourage them to coordinate any engagement with the market through their procurement or commercial teams to ensure compliance.

Regulation 17 of the Procurement Regulations 2024 sets out the information that must be contained in a preliminary market engagement notice, which includes, amongst other things:

- The initial scope of the requirement or outcome that needs to be achieved
- The nature of the engagement
- The date the preliminary market engagement will, or intends to, close

Examples of preliminary market engagement may include:

- Questionnaires - questionnaires can be used to obtain basic information from the market about the types of solutions available and whether there would be interest in bidding for the opportunity.
- Supplier Day - supplier days offer the opportunity to present the requirements and the procurement procedure that is being considered to the market. It allows for real time feedback on current thinking, as well as discussions to explore the feasibility of alternative or innovative solutions.
- Site Visits - undertaking supplier site visits offer the opportunity to see potential solutions in practice. Alternatively, suppliers may visit the contracting authority's site so they can understand the requirements better through seeing what is currently in operation
- Product Demonstrations - These allow the market to demonstrate a potential specific solution that may meet the requirements and may help to develop specifications and assessment criteria
- Workshops - may be best used as a more collaborative approach, where the requirement or solution to the problem is not yet known, working with the market to identify potential solutions to help to define the requirements and the most appropriate procurement procedure
- Presentations - presentations allow suppliers to present their potential solutions to the requirements and may explore alternative solutions to be considered

In appropriate circumstances, contracting authorities may also consider limited or informal market engagement. This could be done in a number of ways:

- Consultation with existing suppliers - engaging with existing suppliers will enable greater understanding of how the product offering and market has developed and what solutions are now available
- Selective engagement - selecting a number of known suppliers to have initial discussions with or by approaching a representative sample of the market rather than invite suppliers to engage.

Where this limited or informal type of engagement has been undertaken, there is still the requirement to publish the preliminary market engagement notice to notify the market of the activities taken place to ensure transparency or provide reasons in the tender notice for not doing so.

As a reminder, when conducting preliminary market engagement, whether the whole market, existing suppliers or selectively, contracting authorities must ensure that:

- Suppliers participating in the preliminary market engagement are not put at an unfair advantage; and
- The competition for the award of the contract is not otherwise distorted.
- They have regard to the importance of the objective of acting and being seen to act with integrity eg through ensuring they meet the transparency requirements and treating suppliers the same; and
- The appropriate steps are taken in relation to conflicts of interests.

Through preliminary market engagement, contracting authorities must consider their duty to have regard to barriers to participation faced by SMEs and aim to identify and encourage such suppliers to participate, which can help to improve service delivery. Assessments of the market and preliminary market engagement should consider opportunities for wider social, economic and environmental 'social value' benefits that can be achieved through the performance of the contract whilst ensuring that this is not done in a way which discriminates against a treaty state supplier.

There are no set timescales for undertaking preliminary market engagement but contracting authorities should ensure that all interested suppliers have sufficient time to prepare and participate and that it is proportionate to the type of engagement being undertaken.

For example, where suppliers are required to read documentation, submit conflict of interest declarations and prepare feedback, then this would require more time for response than simply asking suppliers to confirm their attendance at a meeting to discuss proposals where no preparation is required.

If multiple stages of preliminary market engagement are required, for example initial questionnaires and then identifying suppliers to engage further with, then this process should be described in the preliminary market engagement notice. There is no requirement to publish multiple notices for this type of preliminary market engagement unless it leads to a significant change of scope that may mean additional engagement is needed with a different market.

It's important that records of any engagement undertaken and any relevant information or findings are kept which can be shared as part of the tender process where relevant and obtained for audit trail purposes in accordance with section 98 (Record-keeping).

The information gathered from engaging with the market can be used in the planning of the procurement procedure, provided it doesn't put a supplier at an unfair advantage, that competition is not distorted or conflict with the procurement objectives.

As best practice, the outcome of the engagement may be included in the tender notice or tender documentation, to ensure that all suppliers have access to the same information and that the procurement objectives of sharing of information and treating suppliers the same are met.

■ Collaborative and joint preliminary market engagement

It is possible to undertake a joint preliminary market engagement exercise with another contracting authority if the intention is to undertake a joint procurement or a contracting authority wants to understand whether a joint procurement would be more beneficial or attractive to the market.

In this instance there would only need to be one preliminary market engagement notice published in the name of the lead contracting authority but any collaborating contracting authorities would need to be clearly named.

If following this engagement, it results in separate tenders then the named authorities would not need to publish another preliminary market engagement notice, and the rationale for progressing separate procurements could be outlined in the tender notice as the reason for the collaborating authority not having published a preliminary market engagement notice and explained in the associated tender documents.

■ Pre Procurement Transparency

Depending on the nature of the requirement and the market, a contracting authority may wish to use both the planned procurement notice and the preliminary market engagement notice as part of the procurement process either of which could be published first, there is also the option to use one or the other, or none at all.

Example:

A contracting authority is aware of an upcoming procurement from their pipeline that they may need to reduce timescales for and would like to undertake some preliminary market engagement prior to issuing the tender notice. However, following the preliminary market engagement some of the initial detail in the qualifying planned procurement notice has changed significantly, and therefore it needs republishing in order to qualify for reduced tender timescales.

1. Qualifying planned procurement notice becomes non qualifying.
2. Preliminary market engagement notice.
3. Qualifying planned procurement notice.
4. Tender notice.

A contracting authority would like to, or has already undertaken preliminary market engagement, and there is sufficient interest to not require any additional notice to generate competition and there is no requirement to reduce timescales at the tender stage.

1. Preliminary market engagement notice.
2. Tender notice.

Further examples can be found in the pre-procurement transparency learning aid

■ Duty to consider lots

The duty to consider lots is a new duty which means lots should be considered prior to undertaking a procurement and publishing a tender notice (section 18) rather than just simply giving reasons for not splitting into lots as required under PCR 2015. Considering lots may also contribute to the objective of having regard to and removing barriers for SMEs.

Preliminary market engagement can help to identify whether the goods, service or works to be supplied could reasonably be provided under more than one contract and whether the contract could be awarded in lots.

Example:

Generic office cleaning service with a large number of competitors could be procured as a single contract for all sites to a large nationwide supplier, likely benefiting from economies of scale in securing value for money. However, you should consider other factors like supporting SMEs or ensuring resilience across the supply chain to avoid over-dependency on one supplier. Therefore, choosing to divide into lots based on geographical area may be an appropriate solution. This may allow smaller suppliers to compete for one location against a bigger supplier competing for multiple locations.

Where a contracting authority determines that lots could be reasonable and appropriate, they must either use lots or provide the reasons for not doing so in the tender notice (section 18(2)).

If a contracting authority choose to include lots in their procurement, they must:

- Clearly state that the contract will be split into lots
- Provide the details of each lot.
- Clearly define the award criteria for each lot based on the principles of most advantageous tender (MAT) (assessment and award summary document).

Contracting authorities can:

- Limit the number of lots a supplier can tender for.
- Limit the number of lots a supplier can be awarded.
- Combine multiple lots into a single contract if a supplier wins multiple lots (provided that this is stated this in the tender notice and / or associated tender documents).

■ Identifying Risk

Taking time at the planning stage of the procurement lifecycle to identify and measure risks is an essential element of pre-procurement activity.

Prior to commencing a procurement process, it is essential that different types of risks are identified. The impact of such risks will also need to be considered in terms of how they could affect the future operation of the contract so that such risks can be managed through the process, for example by designing an appropriate specification or use of relevant key performance indicators (KPIs) (contract governance summary document).

Risks can be categorised in 3 ways:

- Known Unknowns - Risks that an organisation is aware of, but is unaware of the size and effect of their impact.
- Unknown Unknowns - Risks that an organisation is not aware of, and therefore is also unaware of the size and effect of their impact.
- Known Knowns - Risks that an organisation is aware of, and is also aware of the size and effect of their impact.

For the purposes of taking advantage of the Act later in the procurement lifecycle, contracting authorities should give further consideration to known unknown risks. These are risks that a contracting authority can identify upfront, prior to commencing a procurement process, but where the likelihood of that risk materialising, or the impact if it did materialise, are not quantifiable.

A risk may be classified as a “known unknown” because:

- There is insufficient information to allow consequences to be known and therefore clearly defined in advance.
- The risk is lower priority or not seen as critical, due to unknown probability and impact.
- The cost of defining the risks up-front and building this into the contract may be disproportionate against the actual cost paid should the risk materialise.

Paragraph 6 of Schedule 8 of the Procurement Act 2023 requires that, if a contracting authority wants to be able to modify a contract on the materialisation of these known unknown risks, within the tender documentation and relevant transparency notices, the details of these risks should be set out including:

- How the risk, or risks, may impact on the satisfactory performance of the contract
- Why it is not possible to address the potential impact of such risks upfront in the contract; and
- The possibility that the contract may require modification if one of the identified risks materialise

The benefit of identifying the risks and providing this detail upfront, is that it may allow the modification of the contract at a later stage should the risk materialise. The contract governance summary document provides further detail about permitted modifications.

Example:

A Hospital intends to refurbish part of a wing that was originally constructed in the 1960s. Prior to commencing the tender process for construction works, as part of the specification design process, a site survey was commissioned to determine the condition of the existing building and the presence of any contaminants. Whilst the surveys do not identify any problems, the risk remains that some issues with the building fabric may still be uncovered as some areas of the hospital were unable to have a full survey due to patient occupancy prior to works commencing.

Known elements of a risk are those that can be reasonably identified in advance of the risk materialising. In this scenario, the contracting authority should reasonably be able to identify risks that the building fabric condition may be poor, that specialist surveys may be needed, and the potential for additional costs and delay if investigative and remedial works are needed.

The unknown elements of a risk are those that cannot be reasonably identified in advance of the risk materialising due to insufficient information on the probability and impact. In this scenario, the contracting authority is unlikely to be able to forecast, at this stage, the extent of any building fabric issues, the scope or cost of remedial works, or the time delay to the programme.

By identifying these risks, the contracting authority is able to provide the detail up front in their tender documentation, potentially allowing them the option to modify the contract in future if these risks actually materialise.

■ Requirements

The Procurement Act 2023 makes reference to the contracting authority's requirements which are defined at section 19(a) as the requirements as set out in the tender notice and associated tender documents.

Section 21(6) provides that the requirements must

- Be sufficiently clear and specific
- Not break the rules on technical specifications (section 56)

Examples of such requirements include:

- Any minimum requirements for the delivery of the contract (which are separate to any conditions of participation set under section 22 of the Act - see supplier selection summary document).
- Specification.
- Terms and conditions.
- Any procedural requirements such as deadlines, word limits and any other information required from the supplier.

■ Technical specifications

Change: Section 56 of the Procurement Act 2023 requires contracting authorities to base technical specifications on performance or functional requirements and not particular design, licensing model or descriptive characteristics, unless it is not appropriate to do so. (It differs from the PCR 2015 in that it does not contain examples of the types of characteristics, such as environmental performance or quality levels, that contracting authorities may want to include in their technical specifications, although these are all still permitted).

Contracting authorities should be mindful to ensure that they are not unnecessarily limiting competition through the use of their technical specifications and be aware of their non-discrimination duties.

Benefit: This is designed to simplify the provisions on technical specifications.

The Act retains the ability to require UK standards, providing the UK standard specified adopts an internationally recognised equivalent or there is no internationally recognised equivalent.

■ Sub-contracting specifications

Change: Where an element or part of a contract awarded following a competitive tendering procedure could be awarded to a particular supplier under a direct award ground (covered later in this document), contracting authorities have the ability to specify that they require the supplier to sub-contract those elements to that particular supplier (section 25).

Benefit: This means that there is greater flexibility to ensure that factors such as interchangeability or interoperability with existing equipment or services can be considered and allowed for in a competitive procurement. It also means that there is less of an administrative burden from managing two contracts and reduces operational risk in terms of there being a single supplier responsible for the delivery of the requirement overall.

Any requirement for a supplier to sub-contract the supply of certain goods, services or works to a particular supplier under section 25 should be clearly set out in the tender notice and any associated tender documents as part of contract subject-matter information and in order to provide information sufficient to allow suppliers to prepare such a tender.

This approach could be discussed as part of any preliminary market engagement to ensure the feasibility and highlight any issues or risks from the suppliers' perspectives.

■ Mixed Procurements

Before commencing a procurement, a contracting authority needs to identify which rules are applicable. The Procurement Act has simplified the rules around mixed procurements both for above and below threshold / mixed goods, works and services contracts, and where one or more elements of the requirement could be supplied under a special regime contract.

Change: The approach to mixed procurement as codified in section 5 of the Procurement Act 2023 has not substantially changed from that applied in the PCRs. However, as the multiple regulations (PCR 2015, UCR 2015, CCR 2016 and DSPCR 2011) have been consolidated under the Act, there is no longer a need to undertake multiple tests to determine which procedure should apply to a mixed procurement.

Benefits:

- Flexibility to procure contracts separately or have mixed procurements
- Single test of reasonable separability - providing the ability to assess each procurement on a case by case basis

The Act allows for goods, works or services elements to be procured separately. However, the Act also permits contracting authorities to combine one or more of these elements in one contract where those elements are properly inseparable; i.e. cannot reasonably be supplied under separate contracts.

If, however, splitting out a contract into separable elements is reasonably possible, and a contracting authority chooses not to separate, where the resulting mixed contract contains both above and below threshold elements, it must be treated as an above-threshold contract and therefore subject to the relevant

rules set out in Parts 3 & 4 of the Procurement Act 2023. When determining whether or not separation is reasonably possible, the contracting authority can take into account factors such as any practical and financial consequences of splitting out the requirement.

When determining the contract type, there is no need to differentiate between goods and services as the threshold is the same. However, if the main purpose of the contract is carrying out, or facilitating the carrying out of works (Paragraph 4 of Schedule 1) but there are additional goods and/or services elements then the contract is a works contract, and subject to the applicable works threshold. However, if the additional goods and/or services elements are above the goods/services thresholds and could reasonably be supplied under a separate contract then the entire contract must be treated as above threshold even if the whole contract value was not above the works threshold. Conversely if the main purpose of the contract is not works, but is for the supply of goods and/or services, with additional work's elements that cannot reasonably be supplied under a separate contract, then the contract would be subject to the goods/services thresholds.

Example:

A contract is worth £4.3 million, comprising mixed elements of works (£4 million, therefore below the works threshold) and services (£300,000, therefore above the services thresholds). The main purpose of the contract is works. If the additional services element of £300,000 is inseparable from the works elements, i.e. can not reasonably be supplied under a separate contract, then the contract is a below-threshold works contract worth £4.3 million.

If the additional £300,000 services element could reasonably be supplied under a separate contract, then because the separate contract for the services element only would be above the relevant services threshold, the entire contract must be treated as above threshold.

If the main purpose of the contract was not works, then the contract is not a works contract and cannot take advantage of the higher works threshold. The entire £4.3 million contract is therefore assessed against the lower services threshold and would clearly be above threshold.

What the rules do is ensure that if that services contract could reasonably be procured separately, then it should either be procured separately or the whole mixed contract will be deemed above threshold and must be procured in accordance with the Procurement Act 2023.

■ Special regime contracts

Similar principles apply under section 10 where the contract is a special regime contract, and therefore could benefit from higher thresholds and/or various exemptions from the rules in the Act, but includes additional goods, services or works elements which, if procured as a separate contract would not be the same type of special regime contract or a special regime contract at all.

■ Special regime contract and non special regime contract elements

If a special-regime contract includes additional non-special-regime elements, and separation of these elements is possible but a contracting authority chooses to award one contract, then that mixed contract will not qualify as a special regime contract. This means that none of the special regime contract thresholds or exemptions can be used.

Example:

A contracting authority requires a training provider for a corporate refresh of all mandatory training (i.e. Health and Safety, Data Protection etc), this training can be delivered both face to face, virtually or through e-learning. They expect the solution to have an associated system to host any relevant e-learning and to track progress of individuals as they complete the corporate training programme. The estimated contract value is £800,000 excluding VAT, being £550,000 for the supply of the training and £250,000 for the supply of the system.

The contract is mainly for the supply of training services and is therefore a light touch contract. The supply of the system to host e-learning etc. is not within the specified light touch services and therefore if procured separately would not be considered a light touch contract but an above-threshold services/goods contract, procured under the general rules instead. However, as the system is an integral part of the requirement and cannot reasonably be procured separately without practical and financial consequences to the contracting authority, this contract would be treated as a light touch contract and subject to the light touch threshold and exemptions.

If the total contract value was £650,000, with the system element still valued at £250,000 and inseparable from the services element, then the contract would still be considered a light touch contract, but would benefit from the higher light touch threshold of £663,540 and could be procured as a below-threshold contract.

If, in either of the above scenarios, the system is not intrinsically linked to the training and could reasonably be supplied under a separate contract, then as this separate contract would be above the goods/services threshold the entire mixed contract cannot be treated as a light touch contract and must be procured under the general rules.

■ Mixed special regime contract elements

If a special regime contract includes additional elements that, if procured separately would be considered an above-threshold special regime contract of a different type, and separation of these elements is possible but the contracting authority chooses to award one contract anyway, then that mixed contract cannot be considered a special regime contract of any type and must be awarded in accordance with the general rules². For example, light touch services valued greater than the relevant light touch threshold cannot be procured as part of a utilities contract under the utilities provisions if that light touch element could be reasonably supplied under a different contract but the contracting authority chooses not to do so. Nor could the supply of additional above threshold utilities elements be procured in a light touch contract under the light touch provisions if the above threshold utilities provisions could be reasonably supplied under a different contract but the contracting authority chooses not to do so.

■ 4. Selecting a Procedure

The competitive tendering procedures under the regime have been simplified from several prescribed procedures in the PCR (shown on the left-hand side in the diagram below) to two methods for conducting competition under the Act (shown on the right hand side in the diagram below):

Open Procedure

Restricted Procedure

Competitive Procedure with Negotiation

Competitive Dialogue Procedure

Innovation Partnerships

Design Contest



Open Procedure

Competitive Flexible Procedure

² Exemptions apply for defence and security contracts

■ Open Procedure

Changes to the open procedure

The open procedure remains a single stage procedure (section 20(2)(a)) where there is no restriction on who can submit tenders and all information needs to be provided at the point of tender and is made available to all suppliers.

Exclusion grounds must be considered prior to assessing tenders (section 26) (supplier selection summary document). There is no longer a requirement to set conditions of participation, or selection criteria as they were previously known. Where conditions of participation are set, and a supplier fails to meet them, you are not obliged to consider the tender any further and the supplier must not be awarded the public contract.

The timescales for determining how long a supplier has to submit its tender (tendering period) have now **reduced** to³:

- 25 days where tenders are submitted by electronic means
- 10 days where a qualifying planned procurement notice has been published
- 10 days in a state of urgency where any other minimum timescale is impractical

Tendering period means the period beginning with the day following the day on which a contracting authority invites the submission of tenders as part of a competitive tendering procedure and ending with the day by which tenders must be submitted.

Setting Time Limits

Whilst it may be beneficial in some cases to have a quicker procedure, contracting authorities must remember that the timescales mandated in the Act are just the minimum. A contracting authority must have regard to various factors when setting time limits including (but not limited to) the nature and complexity of the contract (section 54(1)) and the procurement objective to have regard to SME barriers and whether these can be removed or reduced (section 12(4)).

Further consideration should be given as to what timescales are appropriate and proportionate.

What should contracting authorities consider?

- Ensure sufficient time is allowed for suppliers to respond.
- If there is a need for them to subcontract, is additional time needed for suppliers to arrange this?.

³ Exemptions apply

- Ensure that timescales are realistic and do not result in unnecessary delays to the process if sufficient time is not allowed.
- The timescales start once all tender documentation, which includes all relevant and necessary information required by suppliers to submit a response, has been issued.
- There are no maximum time periods.

Tender notice for the open procedure

Under the Procurement Act 2023 the tender notice is still used to invite suppliers to submit a tender under the open procedure and must be published prior to commencing the process (section 21(1)(a)).

Regulation 18 of the Procurement Regulations 2024 sets out the information that must be contained in a tender notice for the open procedure, which includes, amongst other things:

- The subject matter and estimated value of the contract
- How the tenders will be assessed including any conditions of participation and the criteria for awarding the contract
- The timescales for both the procurement process and delivery of requirements
- Any other relevant information

In addition, to follow the thread of transparency, contracting authorities must also provide in the tender notice:

- The reasons why a preliminary market engagement notice was not published if preliminary market engagement had been carried out
- Where the contract is not to be awarded in lots, but it would have been reasonable and appropriate to do so, the reasons for not doing so
- Confirmation that a conflicts assessment has been undertaken.

In the open procedure, the tender notice and the associated tender documents (where used) should be published at the outset noting the obligation in section 21(5) that the contracting authority must be satisfied, before inviting tenders, that the tender notice or associated tender documents provide sufficient information in order for tenders to be prepared.

The associated tender documents may include information supplementing the tender notice, and may duplicate the information already stated in the tender notice where appropriate.

Modifications during the open procedure

The terms of an open procedure can be modified up until the tender deadline (section 31(1)(a)).

This may include changes to:

- The requirement or specification
- Conditions of participation
- Award criteria

Where a modification is brought about by the contracting authority, for example due to new or additional information becoming available which is relevant to the market, contracting authorities must consider revising applicable tender deadlines and other timescales laid out in the process (section 31(4)). It will be sensible to revise the timescales based on the nature and complexity of the change and to ensure that all suppliers have the same time limits set based on the duty to treat suppliers the same.

Any modifications made during the open procedure must be communicated in writing at the time of modification. The contracting authority must amend and republish the tender notice and any tender documents affected by the modification or time limit changes.

Note that such modifications are modifications to the procurement process itself, and not modifications to the resulting contract which is covered in the Contract Governance Summary Document.

■ Competitive flexible procedure

Where the requirements are more complex, specialist or a large market exists, a competitive flexible procedure (section 20(2)(b)) may be more appropriate than an open procedure.

The competitive flexible procedure replaces many of the previous prescriptive procedures and provides the flexibility to design and run a bespoke procurement procedure and utilise the necessary commercial skills such as negotiation and dialogue. Contracting authorities have the flexibility to design their own process by building in multiple stages providing that the tender notice and associated tender documents clearly set out how the process will be carried out. Failure to comply with the process described in the notice and documents will mean there is grounds for legal challenge and would be subject to the necessary remedies (Remedies, Procurement Oversight and the Debarment List summary document).

In designing and conducting this procedure, contracting authorities must have regard to the procurement objectives and meet the procedural requirements applicable to the competitive flexible procedure, such as time limits and transparency. In addition, they must ensure that the process is proportionate to the contract having regard to the nature, complexity and cost of the contract and should be mindful of having a process which encourages suppliers to participate as well as being mindful of the associated costs and resources of both the contracting authority and the supplier.

Preliminary market engagement is recommended to set the context of the procurement, the objectives and explain how the process is intended to run to obtain feedback from suppliers.

The benefits of the competitive flexible procedure are that it will;

- Allow maximum flexibility to procure goods, works and services.
- Allow the design of a procurement process which best fits the organisational objectives, local needs and the nature of the market.
- Enable contracting authorities to use and take advantage of their commercial skills by including stages of negotiation and modern commercial tools.
- Reduce risk through fit for purpose procurements; and.
- Encourage innovation and attract a more diverse range of suppliers including SMEs.

The competitive flexible procedure summary document provides further detail on this procedure.

■ Direct Award

In the Procurement Act 2023, direct award in special cases (section 41) and switching to direct award (section 41) have replaced the negotiated procedure without prior publication procedure under PCR 2015.

Contracting authorities must only consider the use of a direct award where one or more of the grounds for direct award are met and ⁴should first consider whether it is possible to undertake a competitive tendering procedure (open and competitive flexible). Direct award should only be used where a competitive tendering procedure has been explored and is not appropriate or cannot be used, even under the reduced timescales permitted in a state of urgency or any other exemptions.

The grounds for direct award in special cases are set out in Schedule 5 similar to those of Regulation 32 in the PCR 2015 (excluding Regulation 32(2)(a), which is dealt with under Section 43). Under Schedule 5 of the Procurement Act 2023, a direct award can be used where⁵:

- The contract involves the production of a prototype or other novel goods or services for testing the suitability or researching the viability of producing or supplying the goods or services at scale and developing them for that purpose or for other research, experiment, study or development (**prototypes and development**).
- The goods, services or works can only be supplied by a particular supplier i.e. where competition is absent for technical reasons or due to the supplier having intellectual property or other exclusive rights

⁴ It is a requirement of paragraph 13 (urgency) of Schedule 5 that this is done

⁵ Additional provisions apply for user choice contracts and defence and security contracts

and only a particular supplier can supply the goods, services or works and there is no reasonable alternative. It can also be used where the contract is for the creation or acquisition of a unique work of art or artistic performance. **(Single Suppliers)**

- The contract concerns good purchased on the commodity market **(Commodities)**
- Awarding a contract to a particular supplier will ensure particularly advantageous terms due to the supplier undergoing insolvency proceedings **(advantageous terms on insolvency)**
- The requirement for goods, services or works is strictly necessary for reasons of extreme urgency and cannot be procured via a competitive tendering procedure and has been brought about by circumstances unforeseeable by and unattributable to the contracting authority **(Urgency)**

Direct award can also be used for **additional or repeat goods, services or works** from the same supplier where the original contract was awarded under a competitive tendering procedure. This again is broadly similar to PCR 2015, however the timeframe in which the original contract must have been competitively tendered has **increased from 3 years to 5 AND the intention to rely on a direct award for subsequent procurements must have been set out in the tender notice and associated tender documents.**

■ New Ground – direct award to protect life, etc

Change: A new ground has been introduced to allow the award of a contract directly where a Minister considers it is necessary to protect human, animal or plant life or health, or to protect public order and safety.

Section 42 of the Procurement Act 2023 introduces a power for a Minister of the Crown to make regulations if it considers it necessary to allow certain specified contracts to be awarded in line with the same requirements for undertaking a direct award, i.e. following the same procedural and transparency requirements.

Should this occur and regulations are made, this will be communicated to contracting authorities via a procurement policy note (PPN) or other suitable means. This will set out the specified contracts and may, for example, include conditions that must be met before a direct award can be made.

Benefit: This will allow contracting authorities to respond quickly where necessary, for example in emergencies and unforeseen, large-scale events such as Covid-19 pandemic. However, before making a direct award under this ground a contracting authority will need to determine whether the contract is within scope of the Minister's regulations.

Subject to what the regulations made by the Minister say, contracting authorities should still also consider whether a competitive tendering procedure can be undertaken in the circumstances

Example: An unknown contaminated substance started coming up from the sewers across England which may be a threat to animal and plant life. As a result, a Minister of the Crown considered it necessary to make regulations which allow contracting authorities to procure relevant goods and services directly to deal with removing the substance from the streets and the clean up operation whilst investigation work is underway to identify the substance. The regulations specified certain contracts could be awarded by direct award, the categories included were:

- any personal protective equipment required;
- cleaning substances and chemicals required to aid the clean up;
- veterinary services for affected animals;
- provision of specialist advice or cleaning services.

Within a local authority, a stakeholder from the street cleansing department wants to expedite procurement for street sweeping machines as some of their existing machines are now out of support, in need of repair or out of service. This is impacting their service levels. They are asking for a direct award to be used to procure new street sweeping machines as they will be used following the clean up operation and they have already identified a supplier.

This is an existing requirement that the contracting authority had failed to act upon sooner resulting in the equipment being out of support. Whilst the street sweeping machines are needed to keep the streets clean following the incident, they are not required to remove the substance. A direct award cannot be undertaken on the ground of to protect life etc as this does not fall within the categories in the regulations and it would not be appropriate to use the ground of urgency as the circumstances have been brought about by the contracting authority and should have been foreseen by the authority.

In this instance the direct award would not be compliant and a competitive tendering process should be undertaken.

Awarding a contract under a direct award

When using direct award, there may be circumstances where some form of competition is still possible and contracting authorities may consider some form of limited competition where it considers that to be appropriate and to meet its objectives, including the timescales required for contracting.

When there are a number of potential suppliers and scope to undertake such competition, contracting authorities are encouraged to do so, considering the procurement objectives - e.g. value for money - even in emergency situations where the direct award is required to protect life, etc.

The competition in its most basic form could be:

- requests for quotes and deciding on price.
- an expedited process involving negotiation with selected suppliers,
- requests for proposals (where a specific budget applies) to understand the selected suppliers' methodology for delivery.

Before entering into a contract, a contracting authority must determine whether the supplier is an excluded or an excludable supplier. As is currently the case, a contract must not be awarded to a supplier who is an excluded supplier (i.e. a mandatory exclusion ground applies and the contracting authority has determined that the circumstances giving rise to the ground are continuing or are likely to occur again), unless the contracting authority considers that there is an overriding public interest to do so. This may be the case in certain circumstances such as:

- emergency situations to protect life etc,
- certain other urgent situations and
- certain infrastructure and defence/security related circumstances.

Where a supplier is an excludable supplier, then the contracting authority has the discretion to decide whether to directly award the contract to them or not. Further information on excluding a supplier can be found in the Supplier Selection Summary Document.

Transparency requirements for direct awards

Change: There is a new transparency notice⁶ which must be published prior to a contracting authority making a direct award (section 44). This notice replaces the optional voluntary transparency notice under the PCR 2015.

This requirement applies to all grounds covered under section 41 and schedule 5, except for:

- user choice contracts (paragraph 15 of schedule 5) covered in the light touch summary document

Benefit: If contracting authorities are able to publish the transparency notice early, prior to undertaking any engagement with suppliers, the market will be notified of the intention to undertake the direct award. This will help to identify any potential concerns amongst suppliers early on in the process before time and resources have been invested into finding a potential supplier. It will also help to identify if alternative suppliers exist for an opportunity the contracting authority thought only one supplier could deliver the requirement.

⁶ Exemptions apply

Regulation 26 of the Procurement Regulations 2024 sets out the information that must be contained in a transparency notice, which includes, amongst other things:

- The goods, services or works to be provided
- The direct award justification that applies and the reasons as to how the ground is met
- The supplier’s details (if known)
- An estimate of when the contract will commence.

■ Choosing the right procedure

The following characteristics can help determine which procedure could be used:

Open	Competitive Flexible	Direct Award
• Known requirement • Simple Requirement • Emerging Market (SMEs) • Small market • Established / known market	• Unknown solution • Complex Requirement • Novel / innovative goods and services • Large market • Would require formal engagement with bidders during the process (i.e. negotiation or dialogue) • Small specialist market	• Prototypes and development • Single supplier where only one supplier exists due to technical or IP reasons • Purchase of any additional or repeat goods from existing suppliers • Pursuant to regulations made by a Minister of the Crown • Purchase of commodities • Urgent requirements

5. Other means of Contracting

There are other procedures and means of contracting under the Act:

■ Frameworks and Dynamic Markets

Frameworks have been retained within the Procurement Act, but an additional open framework has now been introduced, which allows for the award of successive frameworks over a longer period on substantially the same terms and, in some circumstances, for suppliers to be appointed to each framework. In addition, The Procurement Act 2023 has introduced a new commercial tool, dynamic market⁷, which are similar to dynamic purchasing systems and qualification system for utilities, in that they are a list of qualified suppliers who are eligible to participate in future procurements. Dynamic markets are a more flexible and agile commercial tool for contracting authorities which can be used for a wider range of goods, services or works than is the case for dynamic purchasing systems. More detail on these commercial tools, how they can be established and how to identify existing frameworks and dynamic markets and call off from them, can be found in the Frameworks and Dynamic Markets summary document.

■ Reserving Contracts to supported employment providers⁸

Any public contract can be reserved to a supported employment provider (section 32). Contracting authorities should consider whether a reserved procurement would be suitable and may undertake preliminary market engagement to help inform the decision.

Where a contract is being reserved to a supported employment provider, only the competitive flexible procedure can be used. The open procedure cannot be used (section 32(1)) as the market is being restricted to suppliers who meet this requirement. As highlighted earlier in this module, with the competitive flexible procedure there is the opportunity to design and undertake a bespoke procurement process that best suits the contracting authorities requirements.

⁷ Exemptions apply

⁸ Additional provision for light touch contracts

■ Horizontal and Vertical contracting arrangements

Horizontal and vertical arrangements are generally what are currently commonly known as the in-house exemptions; 'Hamburg' (reflecting horizontal arrangements) and 'Teckal' (reflecting vertical arrangements).

The practical application of these arrangements remains the same as under the PCR 2015 (regulation 12), the language has simply changed to better align with UK law rather than EU law and add clarity as to how the exemptions are applied.

The details of these arrangements are detailed under Schedule 2 of the Procurement Act⁹ and the regulations.

⁹ Exemptions apply



Tendering time limits

Cheat sheet / decision tree

This learning aid is designed as a quick reference guide to the different time limit requirements under the Procurement Act 2023.

Definitions

Participation period means the period beginning with the day following the day on which a contracting authority invites the submission of requests to participate in a competitive flexible procedure and ending with the day by which those requests must be submitted.

Tendering period means the period beginning with the day following the day on which a contracting authority invites the submission of tenders as part of a competitive tendering procedure and ending with the day by which tenders must be submitted.

Remember, these are minimum timescales. You should consider the nature and complexity of your requirements and allow sufficient time for suppliers to respond, particularly if there is a need for them to subcontract whilst balancing this against the importance of avoiding unnecessary delays.

All contracting authorities

Scenario	Participation period (days)
Minimum timescale	25
Where the contracting authority considers there to be a state of urgency that means that a 25 day participation period is impractical	10
The contract is a light touch contract	No minimum

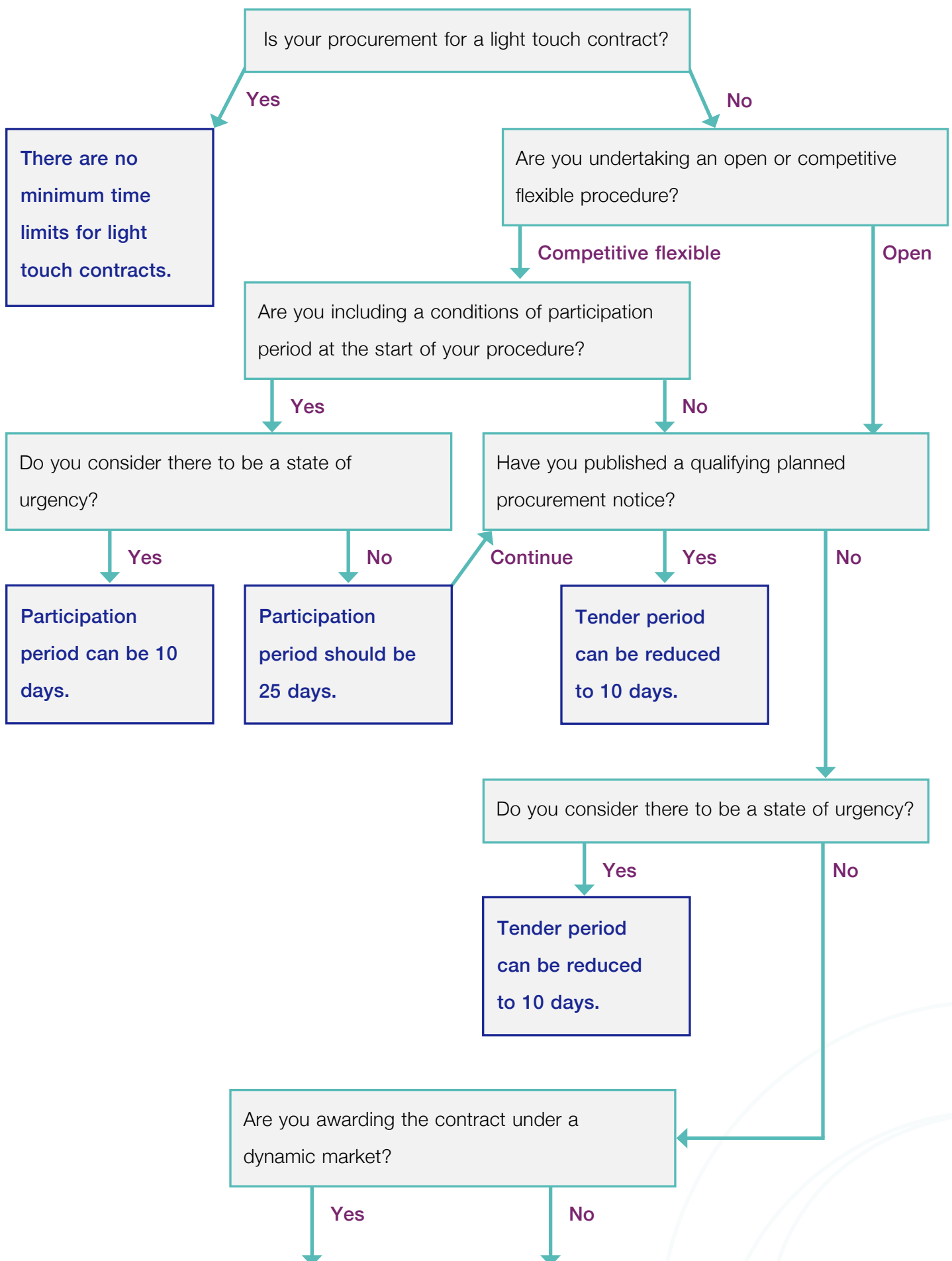
Central government authorities

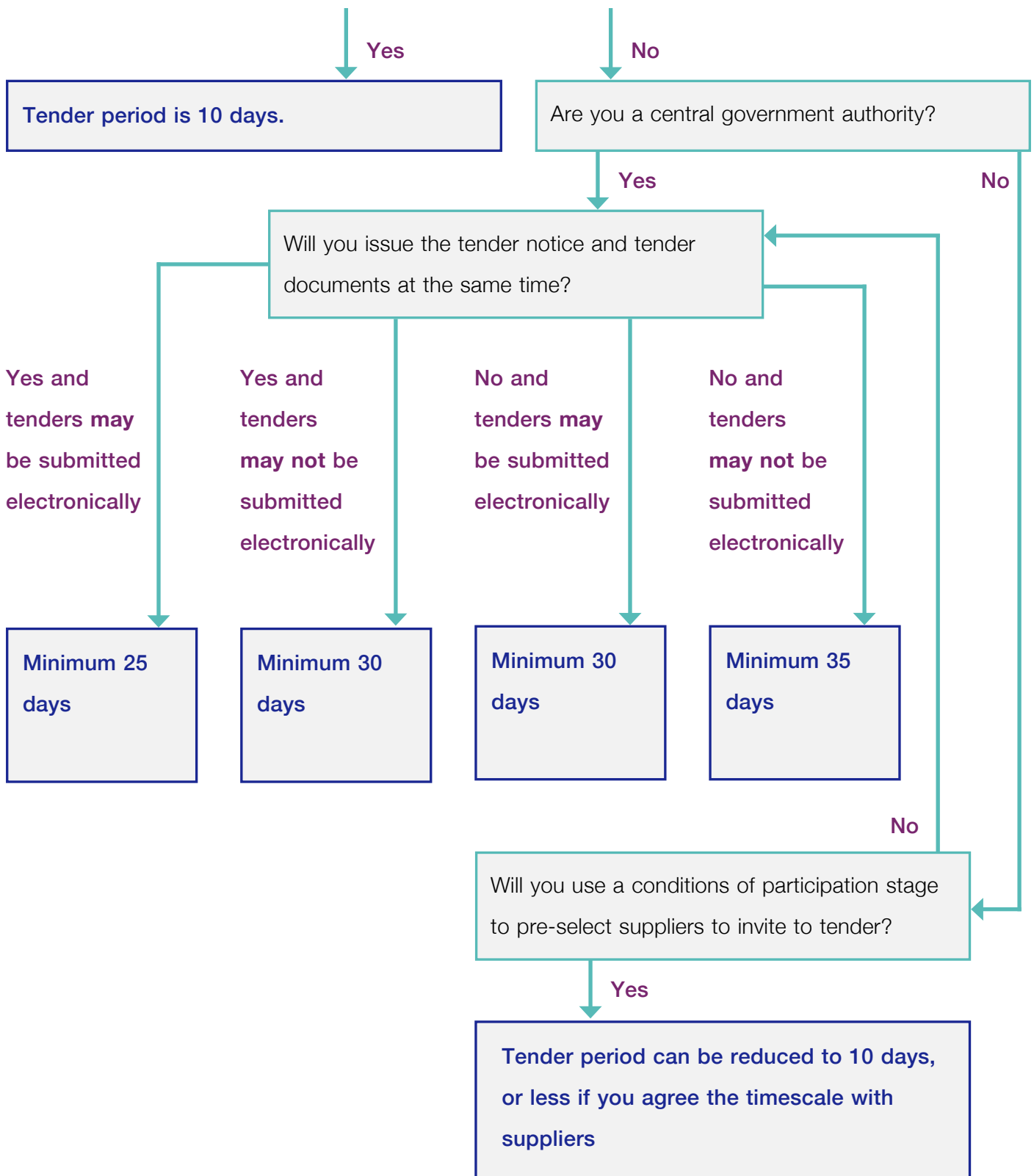
Scenario	Tendering period (days)
Where tenders may not be submitted electronically and all associated tender documents are not provided at the same time as the tender notice	35
Where tenders may not be submitted electronically but all associated tender documents are provided at the same time as the tender notice	30
Where tenders may be submitted electronically but all associated tender documents are not provided at the same time as the tender notice	30
Where tenders may be submitted electronically and all associated tender documents are provided at the same time as the tender notice	25
A qualifying planned procurement notice has been issued	10
Where the contracting authority considers there to be a state of urgency that means any other applicable minimum tender period is impractical	10
Where a contract is being awarded under a dynamic market	10
The contract is a light touch contract	No minimum

Non-central government authorities

Scenario	Tendering period (days)
Where tenders may not be submitted electronically and all associated tender documents are not provided at the same time as the tender notice	35
Where tenders may not be submitted electronically but all associated tender documents are provided at the same time as the tender notice	30
Where tenders may be submitted electronically but all associated tender documents are not provided at the same time as the tender notice	30
Where tenders may be submitted electronically and all associated tender documents are provided at the same time as the tender notice	25
A qualifying planned procurement notice has been issued	10
Where the contracting authority considers there to be a state of urgency that means any other applicable minimum tender period is impractical	10
Where a contract is being awarded under a dynamic market	10
The contract is a light touch contract	No minimum
Where you have included a condition of participation stage and only pre-selected suppliers are invited to submit a tender	10
Where you have included a conditions of participation stage and only pre-selected suppliers are invited to submit a tender, and you have agreed a timescale with those suppliers	No minimum

Decision tree - determining the minimum time limits





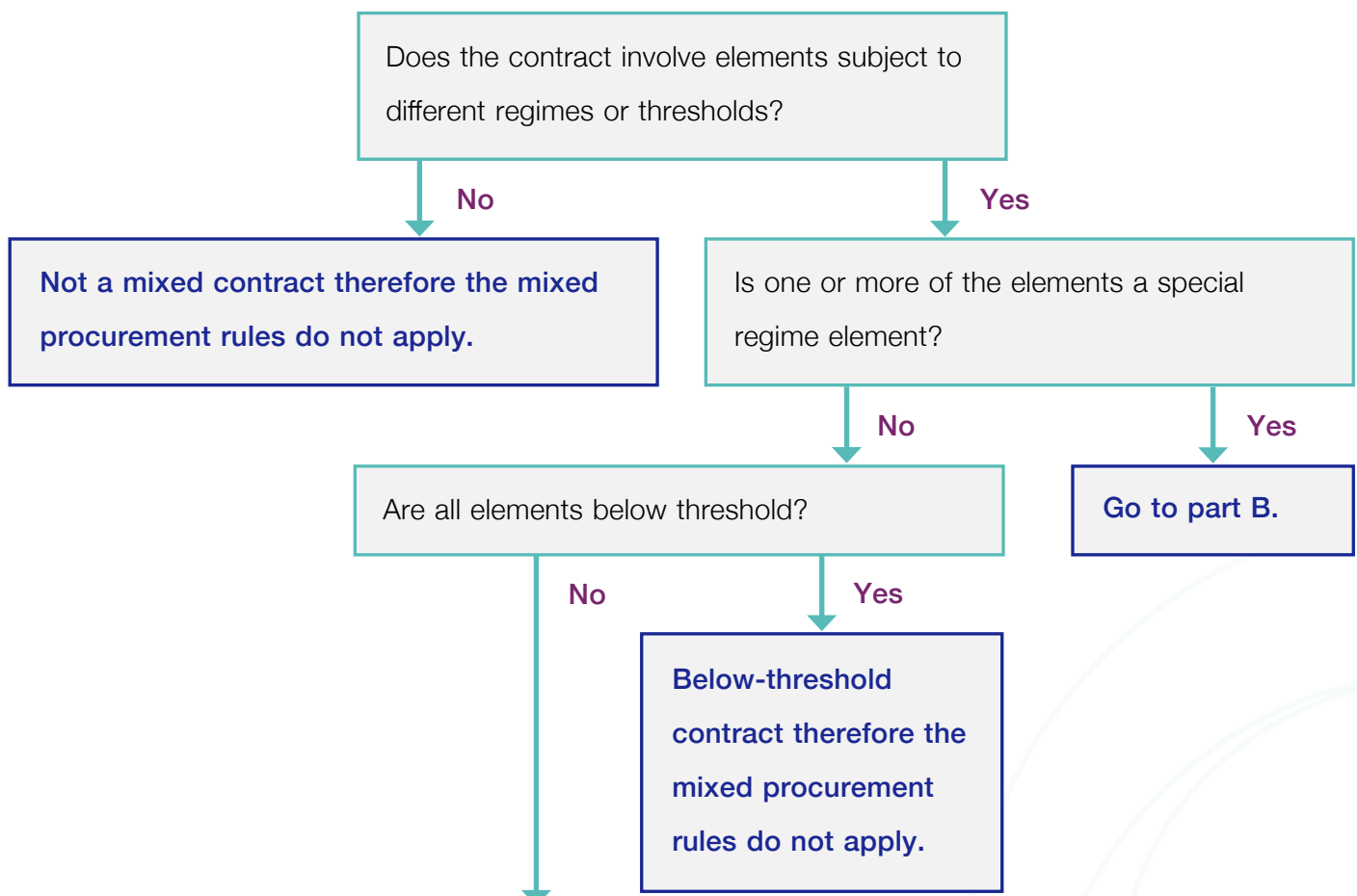


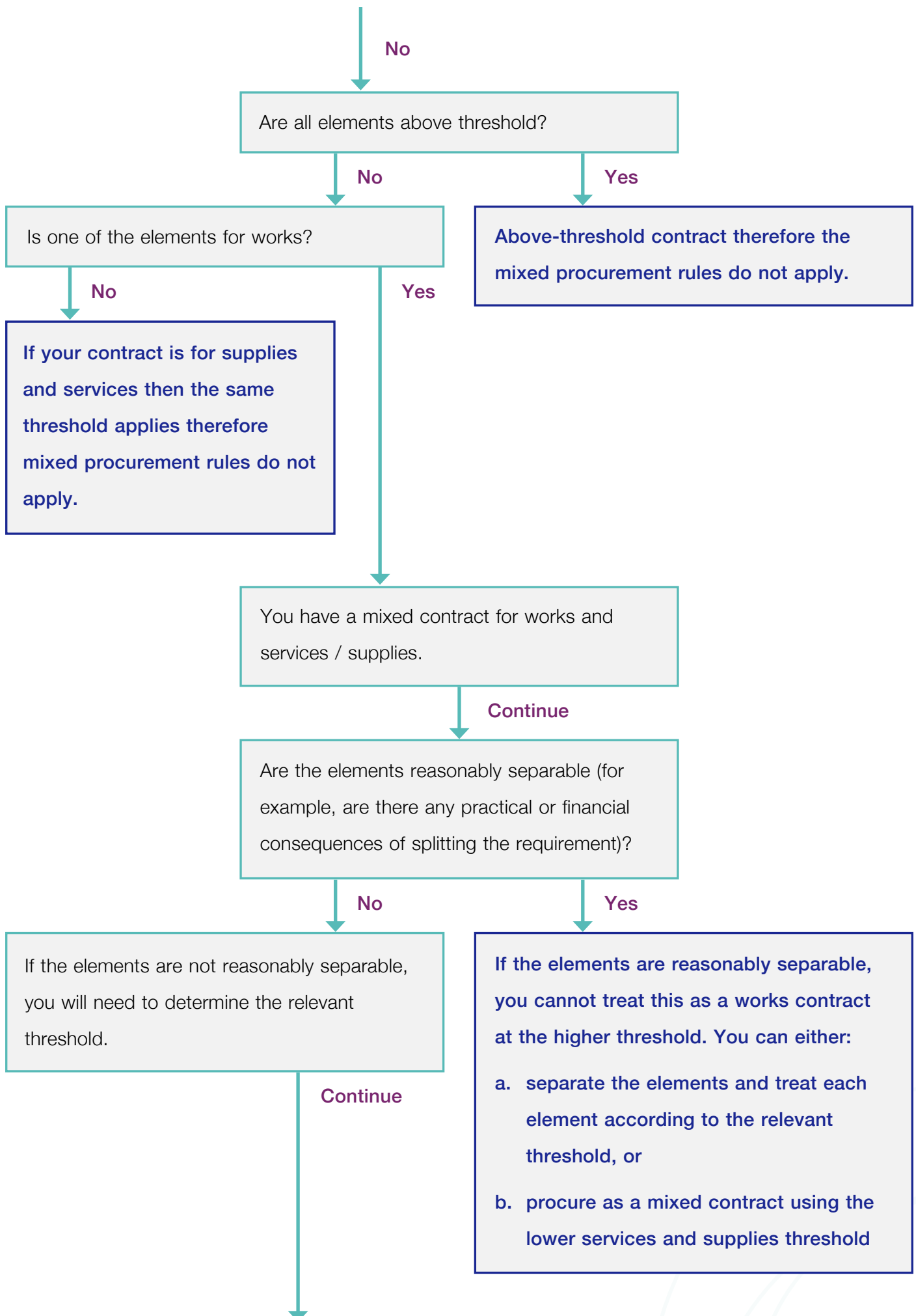
Mixed procurement

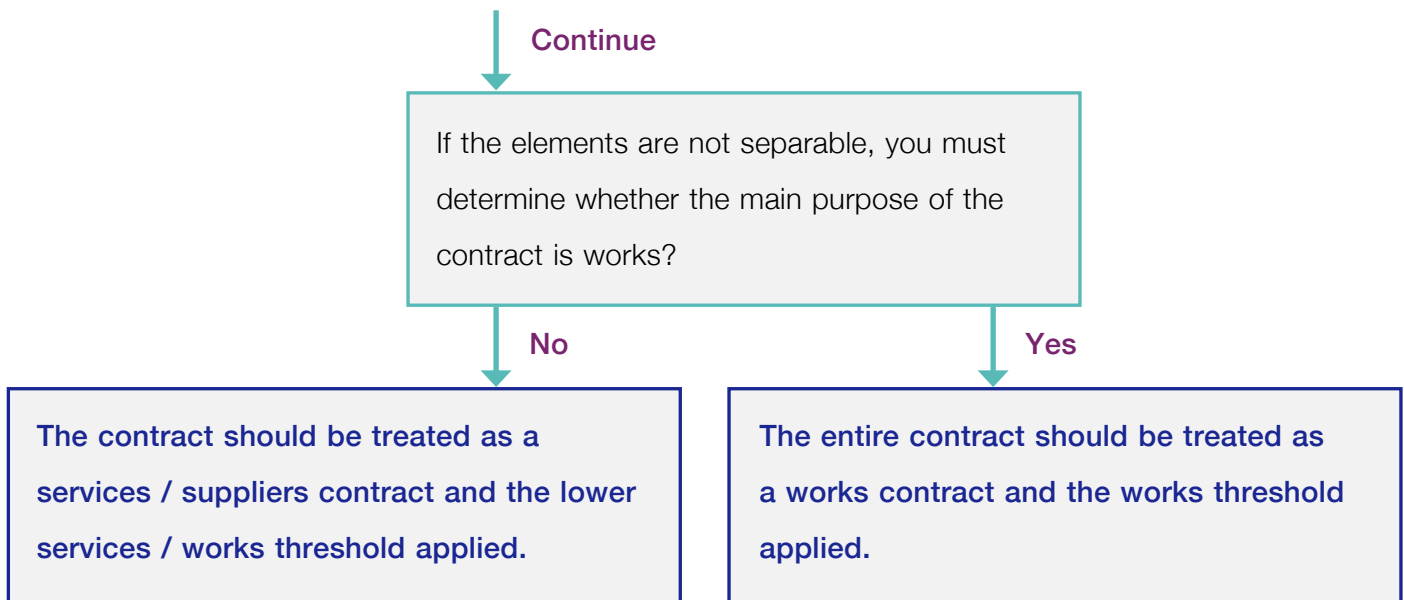
Decision tree

This learning aid is designed to assist you to determine whether or not the mixed procurement rules under the Procurement Act 2023 apply to your contract.

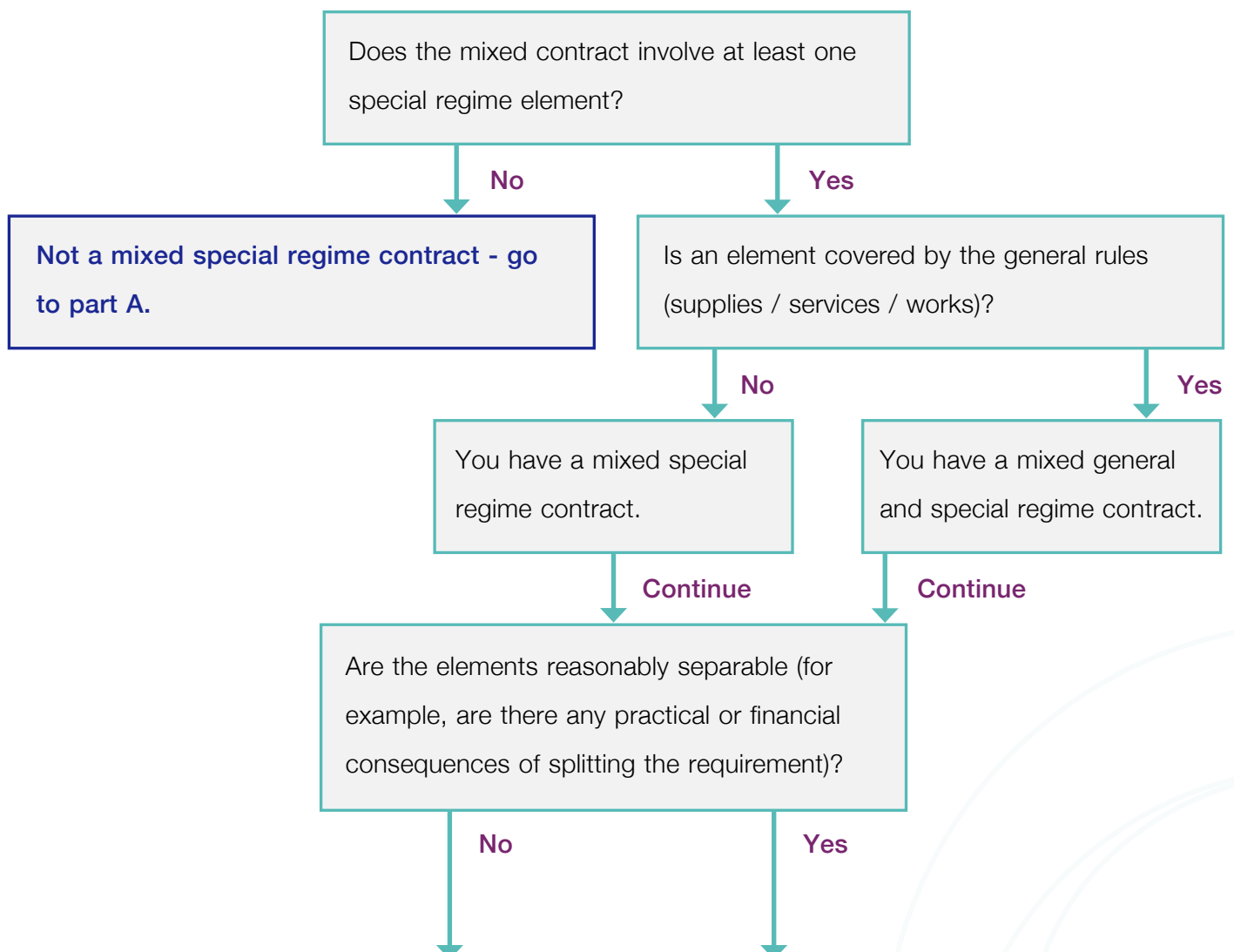
Part A - mixed procurement - above and below threshold







Part B - mixed procurement - special regime





No

Treat the whole mixed contract as the special regime contract (based on the relevant thresholds and exceptions).



Yes

The mixed contract does not qualify for the special regime rules. You can either:

- a. separate the elements and treat each element according to the relevant threshold, or
- b. procure as a mixed contract under the general rules applying the relevant threshold (supplies / services / works)



Open procedure

Process flow

This learning aid is designed to demonstrate step by step the procedures under the general rules of the Procurement Act 2023, including transparency requirements, minimum time periods and aspects of best practice.

1. Publish planned procurement notice (optional) or qualifying planned procurement notice (minimum 40 days before tender notice if using to reduce timescales).



2. Publish preliminary market engagement notice (you must publish a preliminary market engagement notice if undertaking pre-market engagement, but pre-market engagement is optional) and undertake pre-market engagement (optional).



3. Publish tender notice and associated tender documents for open procedure.



4. Observe minimum tender timescales.



5. Determine whether the supplier is an excluded or an excludable supplier.



```
graph TD; A[ ] --> B[6. Assess whether the tender is suitable, including:  
a. assessing the conditions of participation  
b. where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender  
c. whether the tendered price is abnormally low  
d. whether there is evidence of corruption or collusion  
e. whether the tender meets all of the requirements  
f. whether the tender has breached any procedural requirements]; B --> C[7. Assess award criteria.]; C --> D[8. Issue assessment summaries.]; D --> E[9. Publish contract award notice.]; E --> F[10. Observe mandatory standstill period - 8 working days.]; F --> G[11. Enter into contract (providing no issues were raised during standstill).]; G --> H[12. Publish contract details notice and contract where applicable (contracts over £5m).]; H --> I[ ]; style A fill:none,stroke:none; style I fill:none,stroke:none;
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6. Assess whether the tender is suitable, including:

- a. assessing the conditions of participation
- b. where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender
- c. whether the tendered price is abnormally low
- d. whether there is evidence of corruption or collusion
- e. whether the tender meets all of the requirements
- f. whether the tender has breached any procedural requirements

7. Assess award criteria.

8. Issue assessment summaries.

9. Publish contract award notice.

10. Observe mandatory standstill period - 8 working days.

11. Enter into contract (providing no issues were raised during standstill).

12. Publish contract details notice and contract where applicable (contracts over £5m).



13. Could happen at any time during the term of the contract:

- a. publish contract payment notice (where applicable - payments over £30k)
- b. publish contract performance notice (where applicable)
- c. publish payments compliance notice
- d. publish contract change notice (if / when modifications are made) and observe voluntary standstill period (8 working days) if chosen to do so
- e. publish a copy of the modification (where applicable - contracts over £5m)



14. Publish contract termination notice.

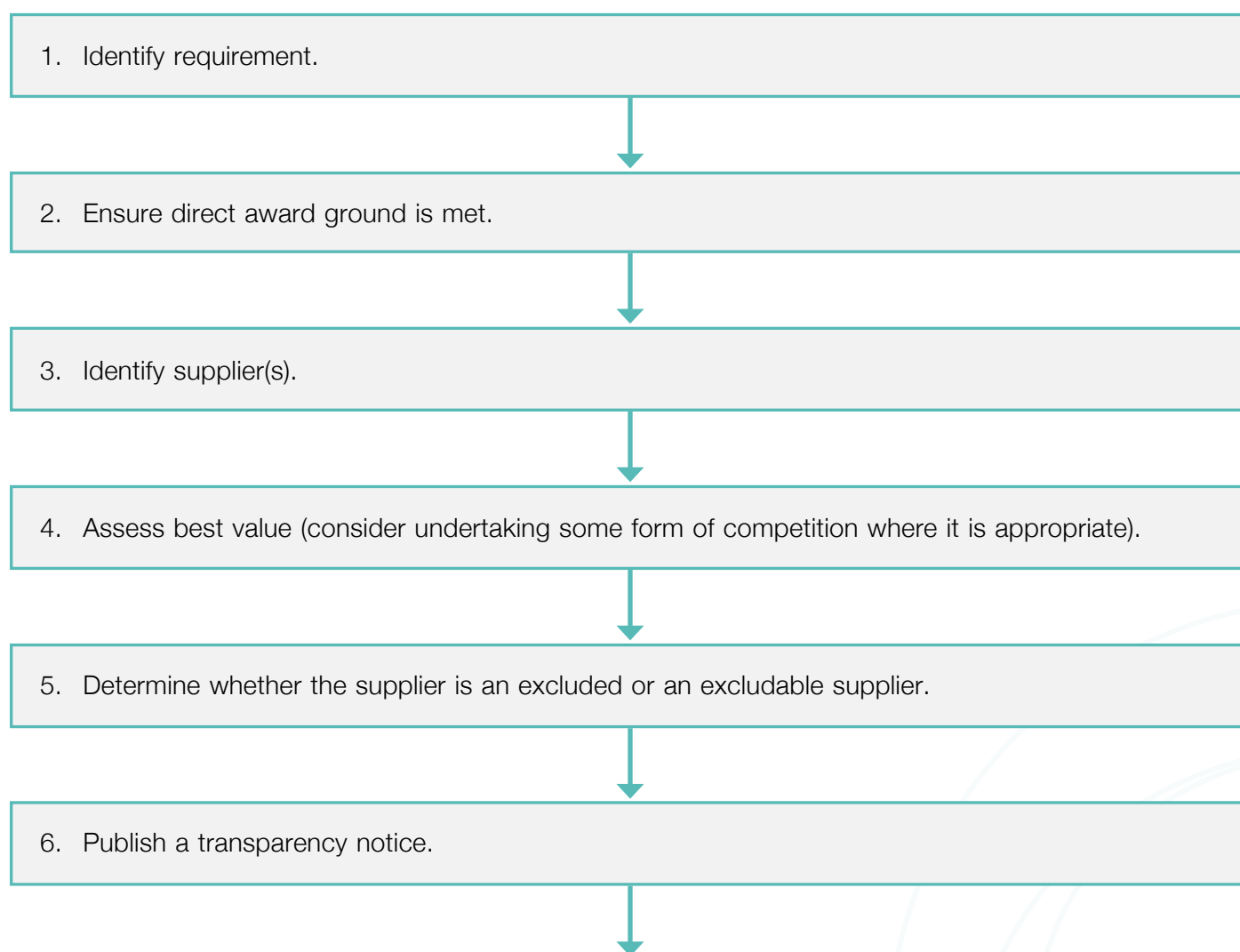
The *timescales cheat sheet* is a useful related learning aid.

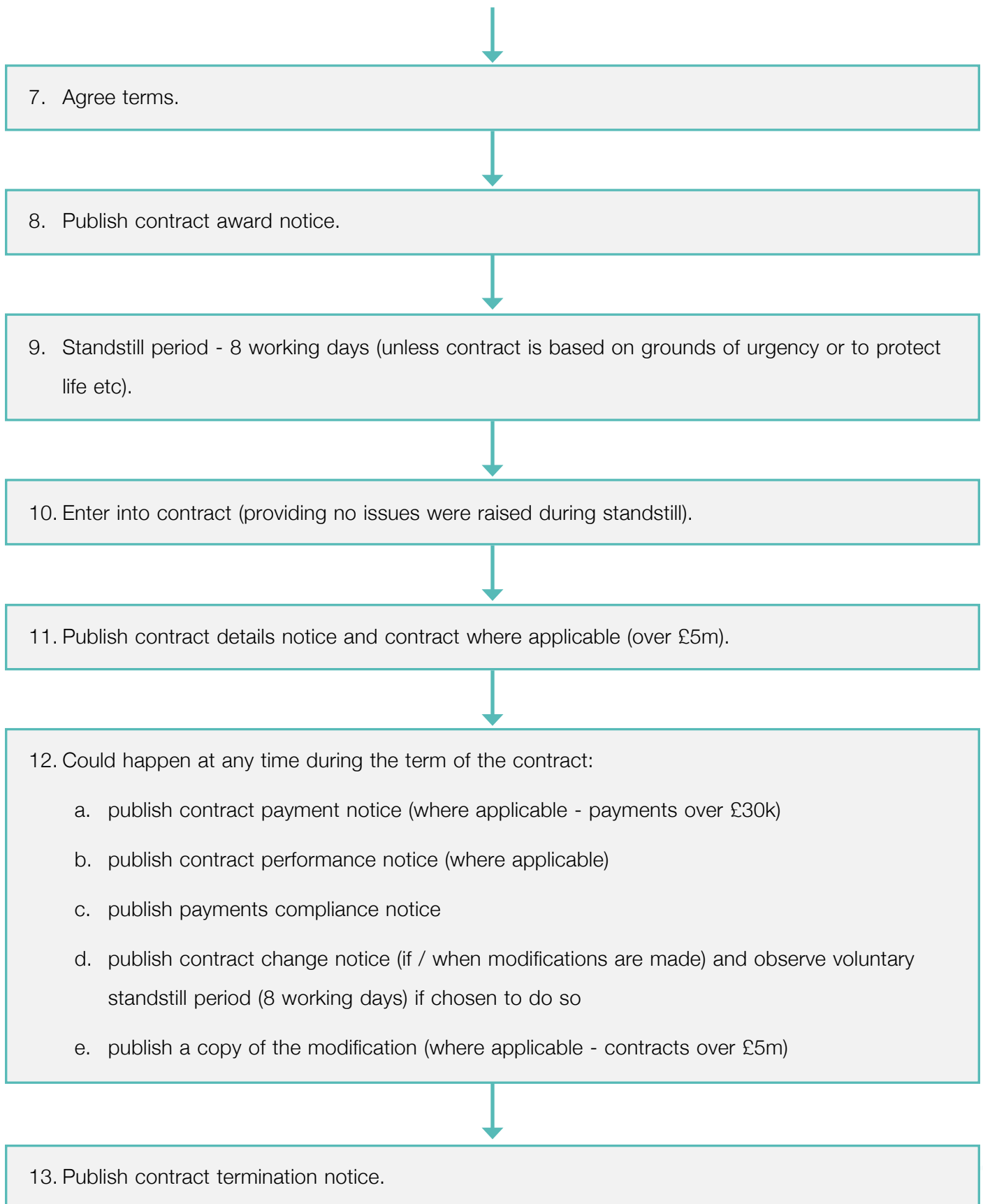


Direct award

Process flow

This learning aid is designed to demonstrate step by step the procedures under the general rules of the Procurement Act 2023, including transparency requirements, minimum time periods and aspects of best practice.



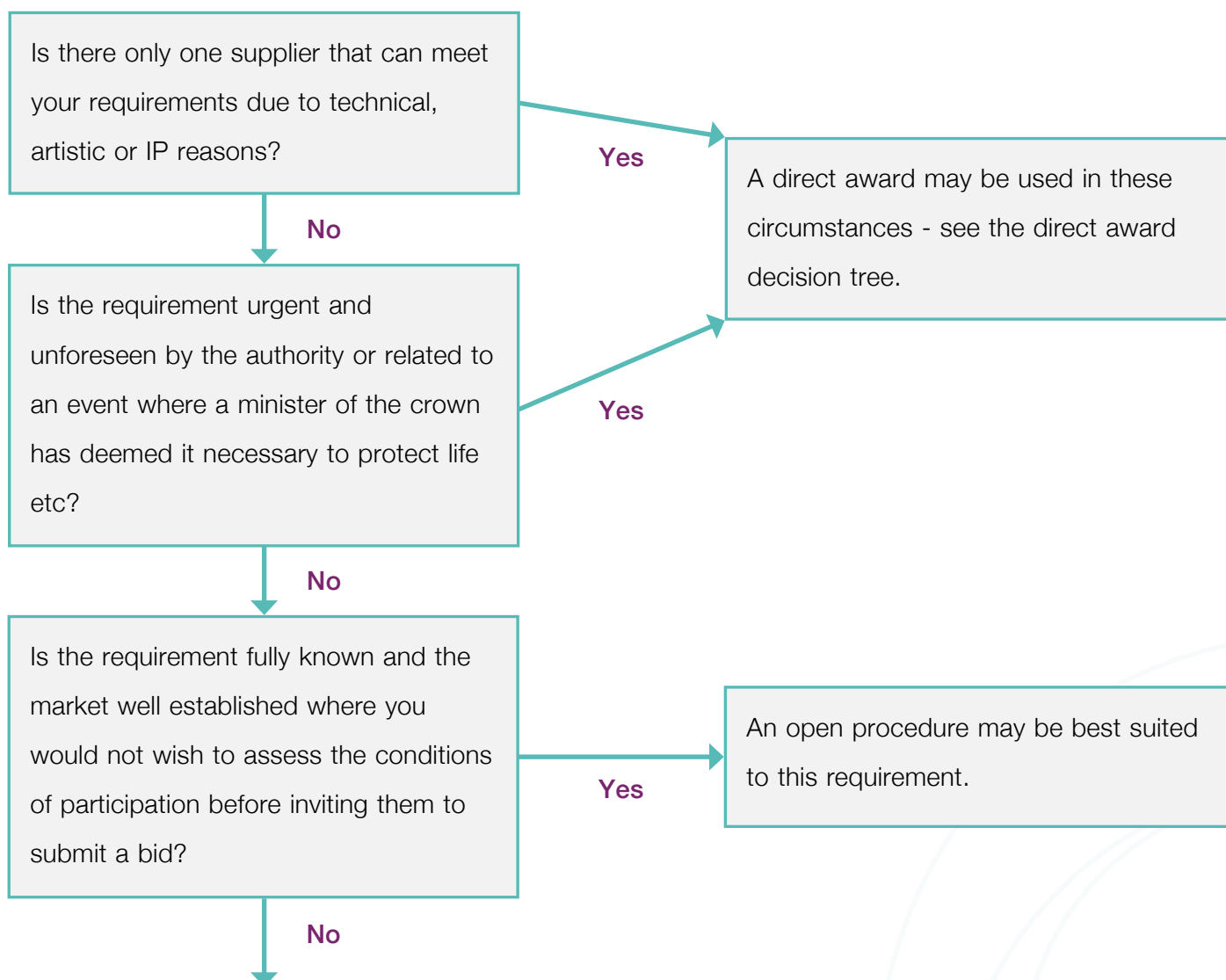


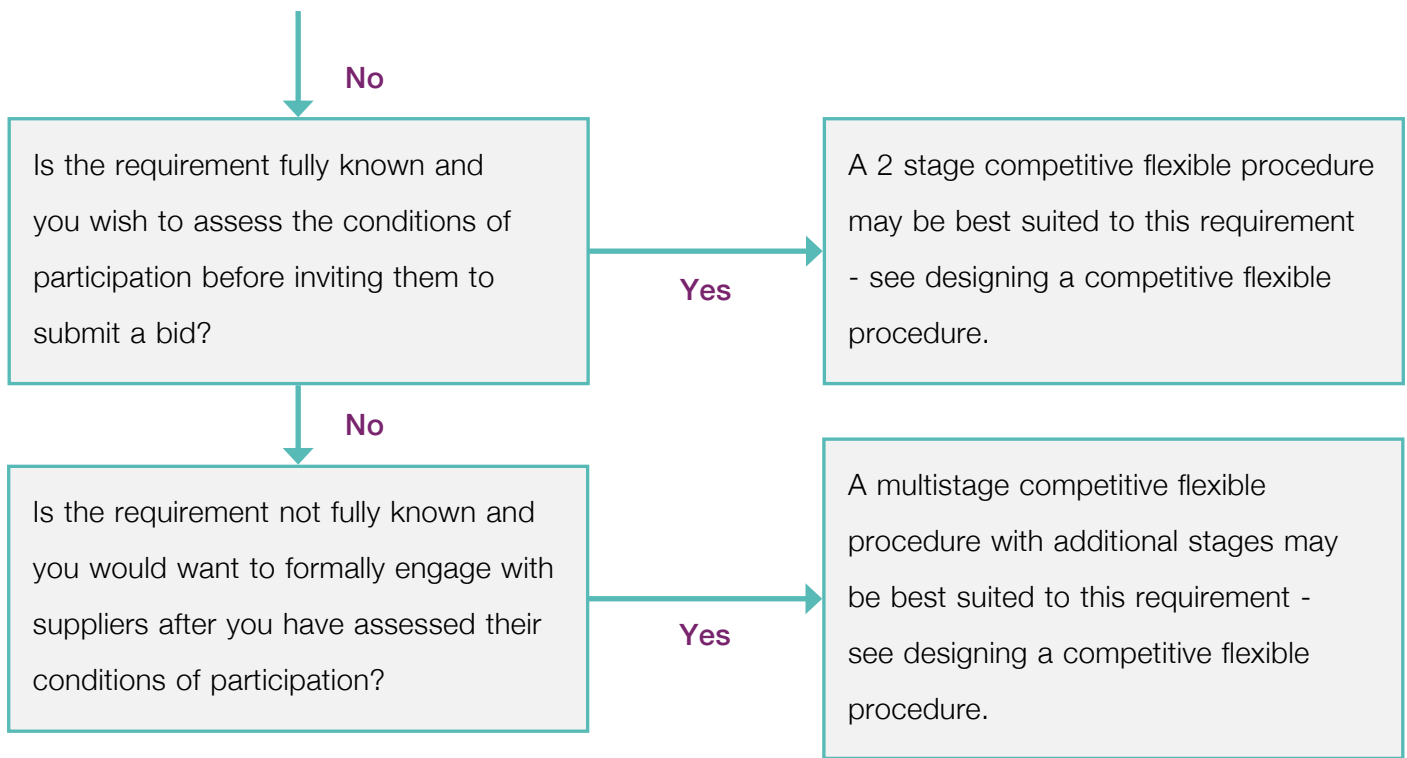
The *timescales cheat sheet* and *unsuitable tenders or requests checklist* are useful related learning aids.



Choosing a procedure

This learning aid is designed to assist you in determining the most suitable procedure under the Procurement Act 2023.





This is intended to be a guide to choosing the most appropriate procurement procedure, it is not an exhaustive list of all options available. You should make your own considerations and seek legal advice as necessary.



Direct award (section 41)

Decision tree

This learning aid is designed to assist you in determining whether a direct award would be compliant under the Procurement Act 2023.

1. Why do you want to undertake a direct award?
 - a. The requirement is urgent (extreme and unavoidable urgency or necessary to protect life etc) - **go to question 2**
 - b. The requirement is specialist (prototypes and development, single supplier, user choice, defence and security) - **go to question 5**
 - c. A different reason (commodity, advantageous terms on insolvency, additional / repeat goods, services or works) - **go to question 8**
2. Is the contract necessary to protect life etc (see section 42)?
 - a. Yes - **go to question 3**
 - b. No - **go to question 4**
3. Have regulations been made in accordance with section 42 and is the contract a specified contract as defined by those regulations?
 - a. Yes - **a direct award may be compliant in these circumstances - you should read the full justification in the act, check the guidance and if necessary consult with your commercial lawyers to assure yourself of compliance**
 - b. No - **go to question 4**

4. Is the requirement necessary due to extreme and unavoidable urgency, which is not caused by or foreseeable by the contracting authority, meaning a competitive tendering procedure cannot be run?
- a. Yes - [go to question 11](#)
 - b. No - **a direct award may not be compliant in the circumstances**
5. Is the direct award for a prototype, for research and development purposes or where there is only a single supplier?
- a. Yes - [go to question 11](#)
 - b. No - [go to question 6](#)
6. Is the contract a user choice contract (see schedule 5 (15-17)) ?
- a. Yes - [a direct award may be compliant in these circumstances](#)
 - b. No - [go to question 7](#)
7. Is the direct award for a defence and security contract (see schedule 5 (18-20))?
- a. Yes - [go to question 11](#)
 - b. No - **a direct award may not be compliant in the circumstances**
8. Is the contract for goods purchased on a commodity market?
- a. Yes - [go to question 11](#)
 - b. No - [go to question 9](#)
9. Will the award of the contract to a particular supplier be particularly advantageous to the contracting authority due to the supplier undergoing insolvency proceedings?
- a. Yes - [go to question 11](#)
 - b. No - [go to question 10](#)
10. Is the direct award for the supply of goods, services or works from an existing supplier which are an extension to or partial replacement of goods, services or works where a change of supplier would result in incompatibility or disproportionate technical difficulties?
- a. Yes - [go to question 12](#)
 - b. No - [go to question 11](#)

11. Is the direct award for repeat goods, works or services that have been competitively tendered previously in the last 5 years and you set out your intention to direct award for subsequent procurements for similar goods, services and works in the tender notice or associated tender document?

- a. Yes - [go to question 12](#)
- b. No - **a direct award may not be compliant in the circumstances**

12. Is the supplier an excluded supplier?

- a. Yes - [go to question 13](#)
- b. No - [go to question 14](#)

13. Is there an overriding public interest to award the contract to this supplier?

- a. Yes - **a direct award may be compliant in these circumstances - you should read the full justification in the act, check the guidance and if necessary consult with your commercial lawyers to assure yourself of compliance**
- b. No - [go to question 14](#)

14. Is the supplier excludable and you have decided not to exclude them?

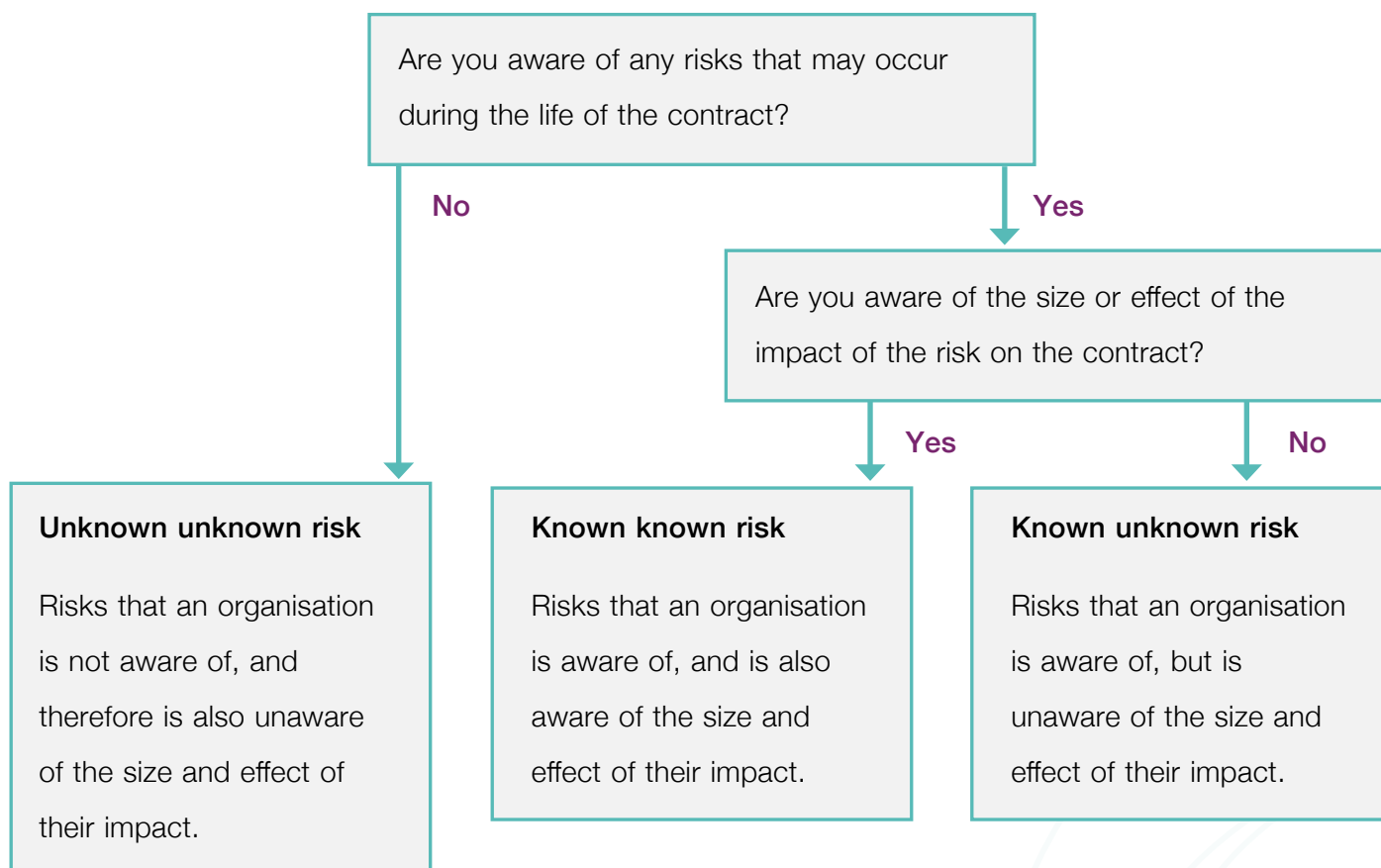
- a. Yes - **a direct award may not be compliant in the circumstances**
- b. No - **a direct award may be compliant in these circumstances - you should read the full justification in the act, check the guidance and if necessary consult with your commercial lawyers to assure yourself of compliance**



Identifying risk

This learning aid is designed to assist you in identifying the types of risks that may exist during the life of the contract and recommends actions you should take in your procurement process to deal with such risks.

Identifying the type of risk



I know the type of risk, what should I do now?

For unknown unknown

Undertake pre-market engagement to help identify potential risks using market / supplier knowledge.

For known known

Undertake pre-market engagement to help identify any other potential risks using market / supplier knowledge.

Design an appropriate specification that considers the risks.

Develop relevant KPIs to manage the risk or likelihood of it occurring.

Include full details of the risks within your tender documentation and the relevant notices, outlining who the risks will be assigned to.

For known unknown

Undertake pre-market engagement to help identify any other potential risks using market / supplier knowledge.

Design an appropriate specification that considers the risks.

Develop relevant KPIs to manage the risk or likelihood of it occurring.

Include details of the risks within your tender documentation and relevant notices, such as:

- a. how the risk, or risks, may impact on the performance of the contract
- b. why it is not possible to address the potential impact of such risks upfront in the contract
- c. who the risks are assigned to i.e. contracting authority or supplier
- d. the possibility that the contract may require modification if one of the identified risks materialise

In the future, you may be able to modify your contract should the risk materialise and the contract cannot be performed to the satisfaction of the contracting authority without any modification, providing awarding a new contract would not be in the public interest.



Pre-procurement transparency

This learning aid is designed to demonstrate how the pre-procurement transparency requirements can be used. Depending on the nature of your requirement and the market you may wish to use the planned procurement notice and the preliminary market engagement notice as part of your procurement process - either of which could be published first, you also have the option to use one or the other or none at all.

The scenarios below show the different ways the planned procurement notice, preliminary market engagement notice and tender notice may be sequenced:

■ Scenario 1

You are aware of an upcoming procurement from your pipeline where you may need to reduce your timescales and you would like to undertake some pre-market engagement prior to issuing the tender notice.

1. Qualifying planned procurement notice
2. Preliminary market engagement notice
3. Tender notice

■ Scenario 2

You are aware of an upcoming procurement so would like to alert the market early, whilst preparing your pre-market engagement approach, but do not intend on reducing your timescales and you would like to engage later with the market prior to issuing the tender notice.

1. Planned procurement notice
2. Preliminary market engagement notice
3. Tender notice

■ Scenario 3

You would like to or have already undertaken pre-market engagement and that engagement results in the need to reduce timescales at the tender stage.

1. Preliminary market engagement notice
2. Qualifying planned procurement notice
3. Tender notice

■ Scenario 4

You have already undertaken pre-market engagement and the response was limited. To generate more competition you use a planned procurement notice to add further information to the market of your upcoming opportunity but do not wish to rely on this to reduce timescales.

1. Preliminary market engagement notice
(published after the event to inform the market of the outcomes)
2. Planned procurement notice
3. Tender notice

■ Scenario 5

You are aware of an upcoming procurement from your pipeline that needs its timescales reduced but does not require any pre-market engagement.

1. Qualifying planned procurement notice
2. Tender notice

■ Scenario 6

You would like to alert the market to an upcoming opportunity to generate competition but do not wish to rely on this to reduce timescales or undertake any pre-market engagement.

1. Planned procurement notice
2. Tender notice

■ Scenario 7

You would like to or have already undertaken pre-market engagement and there is sufficient interest to not require any additional notice to generate competition and you do not wish to reduce timescales at the tender stage.

1. Preliminary market engagement notice
2. Tender notice

■ Scenario 8

You are aware of an upcoming procurement from your pipeline where you may need to reduce your timescales and would like to undertake some pre-market engagement prior to issuing the tender notice.

1. Qualifying planned procurement notice
2. Preliminary market engagement notice

However, following the pre-market engagement some of the initial detail in the qualifying planned procurement notice has changed significantly, and therefore it needs republishing in order to qualify for reduced tender timescales.

3. Qualifying planned procurement notice
4. Tender notice



Procurement

Checklist

This learning aid is designed to assist in carrying out a compliant award of public contract following a competitive tendering procedure under the Procurement Act 2023. It includes the transparency requirements and aspects of best practice. This is not an exhaustive list and should be considered alongside your organisation policy.

Plan

1. Consult with the wider organisation on upcoming procurement requirements
2. Complete and publish upcoming procurement details on your pipeline notice
3. Determine whether preliminary market engagement is required - if required, publish a preliminary market engagement notice

Define

1. Publish a planned procurement notice / qualifying planned procurement notice (optional)
2. Conduct preliminary market engagement
3. Confirm the requirement and conduct project validation review (conduct delivery model assessment and should cost modelling)
4. Identify risks
5. Undertake conflicts of interest assessment

6. Determine relevant contract threshold and if special regime applies
7. Agree appropriate procurement procedure
8. Draft scope
9. Draft conditions of participation (if required)
10. Draft minimum requirements
11. Draft award criteria (MAT) and assessment methodology
12. Consider and include timescales that are reasonable and proportionate to the requirement
13. Define any other procedural requirements
14. Draft KPIs
15. Draft associated tender documents including terms and conditions

Procure

1. Publish a tender notice and associated tender documents
2. Record and manage clarifications
3. Deal with any modifications as a result of clarifications (where required)
4. Brief assessment panel on assessment methodology
5. Record tender submissions
6. Check debarment list
7. Assess exclusions
8. Assess tender suitability, including the following in a public contract:
 - a. Assessing the conditions of participation
 - b. Where a supplier or any of their nominated sub-contractors are not a UK or treaty state supplier whether you choose to disregard the tender
 - c. Whether the tendered price is abnormally low
 - d. Whether there is evidence of corruption or collusion

- e. Whether the tender meets all of the requirements
- f. Whether the tender has breached any procedural requirements

9. Assess tenders

10. Produce and issue assessment summaries

11. Publish a contract award notice

12. Commence 8 day standstill (where required)

13. Record and manage any clarifications

14. Agree minimum of 3 KPIs for reporting purposes with successful supplier (where required)

15. Publish a contract details notice and a copy of the contract where required

Manage

1. Act in accordance with the 30 days payment terms

2. Publish contract performance notices to report on KPIs where applicable

3. Act in accordance with the supplier breach or poor performance reporting requirements if required

4. Publish a contract change notice and copy of modification for contract amendments or extensions where applicable - consider observing a voluntary standstill period

5. Publish contract payment notices for spend reporting requirements of individual amounts of £30,000 or more where applicable

6. Publish a contract termination notice issued within 30 days from the day the contract ends



Preliminary market engagement checklist

This learning aid is designed to be a list of considerations you should take when undertaking preliminary market engagement, this includes requirements under the Procurement Act 2023 and aspects of best practice.

Action

1. Check Register of Commercial Tools for any existing frameworks or dynamic markets that you could use as your route to market ☐
2. Check central digital platform for supplier performance data and spend for that category to obtain greater understanding of current suppliers to the public sector, understand any performance issues or trends and level of spend ☐
3. Use any available market analysis tools or software to understand current market conditions and identify market leaders, new entrants, SMEs, VCSEs ☐
4. Consider who you want to engage with or encourage to participate (have regard to SMEs, VCSEs etc) ☐
5. Consider how you will engage with the market (questionnaire, supplier day, meetings etc) ☐
6. Develop any necessary documentation or make arrangements for engagement (ensuring it is easily accessible and fit for purpose) ☐
7. Publish preliminary market engagement notice ☐

8. Consider other means of advertising (using own e-procurement system / web page / specialist publications if necessary etc) - **preliminary market engagement notice must be published first** ☐
9. Undertake engagement and record minutes or key findings ☐
10. Collate and review any relevant information or findings from the engagement to develop your procurement strategy ☐
11. Identify information which can be shared as part of the tender process where relevant and obtained for audit trail purposes ☐



Tender notice fields

Open procedure

Tender notices: open procedure

Regulation 18 - (1) This regulation sets out other information which must be included in a tender notice for the award of a public contract through an open procedure published under section 21(1) of the PA 2023.

(2) The information is:

(a) the contracting authority information

‘Contracting authority information’ means:

- a. where there is one contracting authority for a procurement, the name of the contracting authority
- b. where there are two or more contracting authorities acting jointly for a procurement:
 - i. the name of the contracting authority that the contracting authorities acting jointly determine is the lead authority for the procurement, and
 - ii. the name of each of the other contracting authorities
- c. a contact postal address and email address for the contracting authority or for each contracting authority acting jointly

- d. the unique identifier for the contracting authority or for each contracting authority acting jointly
- e. for any person carrying out the procurement, or part of the procurement, on behalf of the contracting authority or one or more of the contracting authorities acting jointly:
 - i. the person's name
 - ii. the person's contact postal address and email address
 - iii. the person's unique identifier, and
 - iv. a summary of the person's role, and
- f. in respect of a notice published by the contracting authority, the name, contact postal address and email address of the person who should be contacted in the event of an enquiry about the notice

(b) the title of the procurement

Title should be relative to what suppliers may search for, e.g. supply of multi-site, multi region security provision.

(c) the unique identifier for the procurement

Will be issued during creation of the first notice for your procurement on the central digital platform e.g. pipeline notice, planned procurement notice, preliminary market notice, tender notice.

(d) a statement that the tender notice is for the award of a public contract through an open procedure in accordance with section 20(1) and (2)(a) of the PA 2023

State and copy on any issued associated tender documents: This tender notice is for the award of a public contract through an open procedure in accordance with section 20(1) and (2)(a) of the Procurement Act 2023.

(e) whether the tender notice relates to a special regime contract and, if so, whether that contract is:

- i. a concession contract
- ii. a defence and security contract
- iii. a light touch contract, or
- iv. a utilities contract

Confirm if a special regime contract applies.

(f) the contract subject-matter

“Contract subject-matter” means the following information, so far as it is known to the contracting authority when the information is published -

- a. whether the contract is mainly for the supply of goods, services or works
- b. a description of the kinds of goods, services or works which will be supplied
- c. a summary of how those goods, services or works will be supplied
- d. the estimated date when, or period over which, the goods, services or works will be supplied
- e. the estimated amount of goods, services or works which will be supplied
- f. the relevant CPV codes, and
- g. the geographical classification, where it is possible to describe this

(g) the estimated value of the public contract

The estimate of the total contract value including any possible extensions, renewals etc. in accordance with schedule 3 of the Procurement Act.

(h) where the public contract is for goods, services or works which the contracting authority expects will be needed after the expiry of the contract:

- i. whether the contracting authority intends to carry out a subsequent procurement of similar goods, services or works in reliance on the direct award justification in paragraph 8 of schedule 5 to the PA 2023, or
- ii. an estimate, if possible, of the date when any subsequent tender notice will be published

This relates to the further or subsequent contract situation and what might happen after the conclusion of the contract you are procuring. The responses may be, for example:

- i. whether the contracting authority intends a “subsequent procurement” of “similar goods, services or works” by relying on the direct award justification provided at para 8 of schedule 5, PA 2023, or
- ii. “estimated if possible” when any subsequent tender notice inviting competition or transparency notice intending direct award will be published

(i) whether an electronic auction will be used and, if so, the technical details of how suppliers may participate in the electronic auction

The procurement auction or reverse auction portal details that you will use. Clear instructions and ideally a link to some form of familiarisation or training resource for suppliers using the platform would be recommended.

(j) how tenders may be submitted and the date by when they must be submitted

This field requires the deadline for submissions of tenders and usually confirms any instructions if using eSenders e.g. “on the tender response forms provided in the commercial and technical envelopes”. Other details such as attachments or other returned information and/or data can be defined here.

(k) the award criteria, or a summary of the award criteria, for the public contract

The award criteria, the ranking, weighting or describing the importance in another way. In more complex cases of award criteria, a summary of the award criteria with the detail described in the associated tender documents.

(l) the languages in which tenders or enquiries in connection with the tendering procedure may be submitted

Advise whether the tender submission should be made in English and/or other languages, such as Welsh or Gaelic or any alternative language are permitted.

(m) whether the public contract is a contract for which the United Kingdom has obligations under the GPA

Confirm if the contract is covered under the Agreement on Government Procurement signed at Marrakesh on 15 April 1994(b), as amended from time to time (see also s.4 of the procurement regs 2024 and PA 2023, schedule 1, s5(1).

(n) from the date when the Comprehensive and Progressive Agreement for Trans-Pacific Partnership enters into force for the United Kingdom, whether the public contract is a contract for which the United Kingdom has obligations under that agreement

Confirm if the contract is covered under trade obligations under this agreement here <https://commonslibrary.parliament.uk/research-briefings/cbp-9121/>

(o) whether the public contract is awarded by reference to lots and, if so, for each lot:

- i. the title of the lot
- ii. the distinct number given to the lot by the contracting authority
- iii. the following information, so far as it is known to the contracting authority when the tender notice is published -
 - a. a description of the kinds of goods, services or works which will be supplied
 - b. a summary of how those goods, services or works will be supplied
 - c. the estimated date when, or period over which, the goods, services or works will be supplied
 - d. the estimated amount of goods, services or works which will be supplied
 - e. the estimated value of the lot
 - f. the relevant CPV codes
 - g. the relevant award criteria in relation to the lot
 - h. any option in relation to the lot, and
 - i. the geographical classification, where it is possible to describe this

As part of a contracting authorities duty to consider lots, this is the section where summative description of the lots, geographies, amounts and respective values by lot (inc VAT), which should correspond in total provided earlier in section (g).

(p) where the public contract is awarded by reference to lots—

- i. whether a supplier may only submit a tender for a maximum number of lots and, if so, the maximum number
- ii. whether a supplier may only be awarded a maximum number of lots and, if so, the maximum number, and
- iii. whether the authority will award multiple lots to the same supplier in accordance with criteria and, if so, a summary of the criteria

Assuming lots are adopted, the contracting authority may, for example make the following type of conditions:

- i. suppliers may bid for all lots (1 to 4) however
- ii. no-more than two lots will be awarded to any one supplier
- iii. where a supplier is the initially evaluated most economic tender on all 4 lots, the contracting authority is permitted to consider the two lots that the supplier prefers - whereas the suppliers 3rd and 4th preferencel will be subject to a re-evaluation with that supplier removed from the competition

(q) where the contracting authority considers under section 18(2) of the PA 2023 that the public contract could be awarded by reference to lots but it is not, the reasons for this, except in the case of a utilities contract or a light touch contract

The reasons for not using lots could, as an example, include, software being better performance managed and guaranteed within the 'full-wrap' supply of a bespoke system including hardware.

(r) a description of any option which will be included in the public contract:

- i. to supply additional goods, services or works, or
- ii. to extend or renew the term of the contract

Provided the rationale and scope is a defined option in the tendered contract, the contracting authority could:

- i. define an option or intent to add or increase the scope and value of the contract provided that the additions remain of the same purpose and reason as the original tender or
- ii. confirm a contracting authority option to offer extensions period(s) to the original contract or state an intent, subject to suitable performance and terms, an option to issue a further contract, perhaps to an equal terms as the 1st, to the successful supplier

(s) whether the contracting authority proposes to set the shortest minimum tendering period by reference to one of the following entries in the table in section 54(4) of the PA 2023 and, if so, which entry:

- i. entry 2 (certain contracts awarded by a contract authority which is not a central government authority subject to a negotiated tender period)
- ii. entry 3 (certain contracts awarded by a contracting authority which is not a central government authority where tenders may be submitted only by preselected suppliers)
- iii. entry 4 (a qualifying planned procurement notice has been issued)
- iv. entry 5 (state of urgency)

This section of the notice refers to s.54 of PA 2023, particularly subsection (3) and the approach to correctly determining the minimum amount of time a tendering period, under this part, must equal or exceed. If the minimum tendering period is to be used, the circumstance should be stated, for example:

- i. contracting authorities other than central government authority where, by consent of the parties, the tender period had been negotiated and agreed by the parties (to the tender)
- ii. contracting authorities other than central government authority where tenders can only be submitted by pre-selected suppliers
- iii. where a qualifying planned procurement notice has been previously issued and contained such an intent
- iv. where a contracting authority genuinely believes there to be a genuine state of urgency and where the contracting authority considers any other means of applicable minimum tender is impractical

(t) whether the contracting authority considers that the public contract or any lot forming part of the contract may be particularly suitable to be awarded:

- i. to a small or medium-sized enterprise, or
- ii. to a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives

This section is where confirmation is given if it is considered the whole, or any particular lot is suited to SME's or NGO's.

(u) whether associated tender documents are being provided in accordance with the tender notice at the same time that the notice is published and, if so:

- i. the title of each associated tender document,
- ii. whether each associated tender document is attached to the tender notice, and
- iii. if an associated tender document is not attached to the tender notice, a link to the web page where it is provided

This is where definition of associated tender documents should either confirm attachments or whether links will be provided to data rooms, etc. for access to related tender resources.

(v) whether an associated tender document is being, or may be, provided in accordance with the tender notice after the date when that notice is published and, if so, a link to the web page where it will be provided, or an explanation of how the document will be provided

Typically this could be used where a 'data-drop' might be provided after publication of the tender notice and associated tender documents.

(w) a description of any technical specifications which are expected to be met or a cross reference to where they can be accessed

Provided these are available, a simple description or reference to the appropriate location within the associated tender documents.

(x) a description of any conditions of participation under section 22 of the PA 2023

Any conditions of participation set that the supplier must meet to be awarded the contract in accordance with s.22, e.g. legal, financial and/or technical ability to perform contract.

(y) any payment terms (in addition to those mentioned in section 68 of the PA 2023)

This could relate to such as staged payments or gateways.

(z) a description identifying any risk that:

- i. the contracting authority considers:
 - a. could jeopardise the satisfactory performance of the public contract, but
 - b. because of its nature, may not be addressed in the public contract as awarded, and
- ii. may require a subsequent modification to the public contract under paragraph 5 of schedule 8 to the Procurement Act 2023 (modification of contract following materialisation of a known risk)

What you define here will determine the extent and scope of whether the materialisation of a risk and the need for modification under paragraph 5 of Schedule 8 to the Procurement Act 2023 to enable satisfactory performance in limited circumstances can be conducted by the contracting authority. The detail of such should be drafted into the tender notice and/or associated tender documents.

(z1) the estimated date when the public contract will be awarded

The estimated date.

(3) In paragraph (2), “electronic auction” means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders

An electronic auction, presented by suppliers of either new prices or new value for quantifiable non-price elements related to the evaluation criteria would typically mean informed best bids for a part of tender, e.g. a reverse auction for certain goods administered through an appropriate electronic reverse bidding tool.

(4) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice

This means the detail in tender notice and associate tender documents can be far more detailed than required in the tender notice.

(5) This regulation does not apply to a tender notice for the award of a framework through an open procedure (see instead regulation 20)

This confirms a different tender notice is required for establishing frameworks.



Below-threshold tender notice

Below-threshold tender notices

Regulation 24 (1) This regulation sets out other information which must be included in a below-threshold tender notice published under section 87(1) of the PA 2023.

(2) The information is:

(a) the contracting authority information

‘Contracting authority information’ means:

- a. where there is one contracting authority for a procurement, the name of the contracting authority
- b. where there are two or more contracting authorities acting jointly for a procurement
 - i. the name of the contracting authority that the contracting authorities acting jointly determine is the lead authority for the procurement, and
 - ii. the name of each of the other contracting authorities
- c. a contact postal address and email address for the contracting authority or for each contracting authority acting jointly
- d. the unique identifier for the contracting authority or for each contracting authority acting jointly

- e. for any person carrying out the procurement, or part of the procurement, on behalf of the contracting authority or one or more of the contracting authorities acting jointly:
 - i. the person's name
 - ii. the person's contact postal address and email address
 - iii. the person's unique identifier, and
 - iv. a summary of the person's role, and
- f. in respect of a notice published by the contracting authority, the name, contact postal address and email address of the person who should be contacted in the event of an enquiry about the notice

(b) the title of the procurement

Title should be relative to what suppliers may search for, e.g. Supply of multi-site, multi region security provision, for the delivery of...

(c) the unique identifier for the procurement

Will be issued during creation of the first notice for your procurement on the central digital platform.

(d) the contract subject-matter

"Contract subject-matter" means the following information, so far as it is known to the contracting authority when the information is published:

- a. whether the contract is mainly for the supply of goods, services or works
- b. a description of the kinds of goods, services or works which will be supplied
- c. a summary of how those goods, services or works will be supplied
- d. the estimated date when, or period over which, the goods, services or works will be supplied
- e. the estimated amount of goods, services or works which will be supplied

- f. the relevant CPV codes, and
- g. the geographical classification, where it is possible to describe this

(e) the estimated value of the contract

This is the estimated maximum contract value at the time of issue and includes extensions and VAT.

(f) how tenders may be submitted and the date by when they must be submitted

This field requires the deadline for submissions of tenders and usually confirms any instructions if using eSenders.

(g) whether the notice is being used to invite tenders for a special regime contract and, if so, whether that contract is a defence and security contract or a light touch contract

Confirm if the contract is a defence and security or a light-touch contract.

(h) whether the contracting authority considers that the contract or any lot forming part of the contract may be particularly suitable to be awarded:

- i. to a small and medium-sized enterprise, or
- ii. to a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives

This section is where confirmation is given if it is considered the whole, or any particular lot is suited to SME's or NGO's.

(i) an explanation of the criteria against which the award of the contract will be assessed

The award criteria, the ranking, weighting or describing the importance in another way. In more complex cases of award criteria, a summary of the award criteria with the detail described in the associated tender documents.

(j) a description of any conditions of participation in relation to the award of the contract

Define any conditions of participation set that the supplier must meet to be awarded the contract.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

This means the detail in tender notice and associate tender documents can be far more detailed than required in the tender notice.



Module 4: Competitive flexible procedure

Contents

1. Introduction
2. Overview
3. When could the competitive flexible procedure be used?
4. Transparency Requirements
5. Designing a process
6. Example Processes
7. Modifications during a competitive flexible procedure
8. Top tips and key takeaways

1. Introduction

Following on from the Procedures Summary Document, this document intends to provide further detail of the new competitive flexible procedure available under the Procurement Act. It will cover how this procedure can be used to design fit for purpose procurements that achieve organisational objectives, value for money, meet national and local priorities and encourage innovation.

2. Overview

Change:

The multi-stage procedures under the PCR 2015 have been consolidated into a single competitive tendering procedure, known as the competitive flexible procedure (section 20(2)(b)). This procedure provides contracting authorities with the opportunity and flexibility to design and undertake a bespoke multi-stage procurement process. However, in designing and conducting this procedure, regard must be given to the procurement objectives and meet the procedural requirements applicable to the competitive flexible procedure, such as time limits and transparency.

Benefits:

- It provides greater flexibility to design a multi-stage process that will best fit organisational objectives, local needs and the nature of the market rather than being constrained by prescriptive procedures that may not achieve the best outcome
- Ability to modify, refine and adapt the procedure as it progresses within certain parameters
- It allows contracting authorities to utilise and take advantage of their commercial skills by including stages of negotiation, dialogue, presentations etc to procure the right solution and reduce risks
- It will enhance and encourage innovation through the possibility of engagement with suppliers throughout the process
- It can be designed to fit the market and reduce barriers to attract a more diverse range of suppliers including SMEs

3. When could the competitive flexible procedure be used?

There are no rules regarding when you should use the competitive flexible procedure rather than the open procedure. The Competitive Flexible Procedure may be suitable for:

Standard requirements: common / off the shelf requirements where a large market exists and an initial participation stage (previously known as selection stage) is needed to limit the number of suppliers submitting tenders

Simple requirements: where requirements are clear and low risk, but engagement with suppliers as part of the process would be beneficial in delivering better value for money

Niche requirements: where the requirement is of a specialist nature although a limited market does exist so there is no need to reduce the number of suppliers, but engagement with suppliers would be beneficial in helping them to understand the requirement or help the contracting authority to better understand the supplier's solution

Complex requirements: where negotiations or dialogue with suppliers would be beneficial in helping them understand the requirements and/or to deliver better value for money and innovation

Innovative procurements: when the contracting authority may not want to limit the market through an early participation stage without first reviewing the product, technology, or software being supplied. This would be especially useful in situations when a prototype or other form of practical demonstration is necessary

Research and Development: when contracting authorities need to run a process to identify a new solution and may want to be able to procure the 'end result' of an R&D exercise without having to start a new procurement procedure.

Design competitions / contests: for town and country planning, architecture and engineering, or data processing, where several stages may be needed to reach a final solution

4. Transparency Requirements

Preliminary market engagement and preliminary market engagement notice

For an effective competitive flexible procedure, preliminary market engagement (section 16) is not only encouraged but is recommended as it provides the opportunity to understand: the market, the deliverability of requirements, feasibility of alternative options and identify whether innovative solutions could help to deliver better public services and deliver value for money.

Preliminary market engagement can also be used to inform the development of the future procurement procedure, possible award criteria, and overall project timetable to ensure that when going to the market, potential suppliers have sufficient time to respond to requests to participate and prepare tenders.

Where a process has already been scoped out, preliminary market engagement can be used to explain this and obtain feedback as to whether it is relevant and proportionate to the requirement and the market and gauge whether it would encourage supplier participation, particularly small and medium-sized enterprises (SMEs), and whether it would generate sufficient competition and achieve value for money.

As a reminder, the preliminary market engagement notice must be published to inform the market when a contracting authority intends to conduct or have already conducted any preliminary market engagement activities. If a preliminary market engagement notice is not published, the contracting authority must provide reasons for not publishing a preliminary market engagement notice in the tender notice (section 17) .

Remember that good, transparent and open communication with potential suppliers builds trust and can reduce the risk of issues or challenges arising during or after the procedure.

See procedures summary document for more information on preliminary market engagement and the preliminary market engagement notice.

■ Tender Notice and associated tender documents

The competitive flexible procedure is centred on the tender notice and associated tender documents (section 21); these must clearly explain how the procedure will be carried out. The tender notice is used to invite suppliers to submit a request to participate or submit their first or only tender as part of the competitive flexible procedure.

As set out in the procedures summary document, the minimum requirements for the tender notice and associated tender documents are set out in the Procurement Regulations 2024. For the open procedure, these requirements include:

- The subject matter and estimated value of the contract
- How the tenders will be assessed including any conditions of participation and the criteria for awarding the contract
- The timescales for both the procurement process and delivery of requirements
- Any other relevant information
- Where preliminary market engagement has been undertaken but a preliminary market engagement notice has not been published, the reasons why a preliminary market notice was not published
- Where the contract is not to be awarded in lots, but it would have been reasonable and appropriate to do so, the reasons for not doing so
- Confirmation that a conflicts assessment has been undertaken

For the competitive flexible procedure the tender notice must also include:

- A description of the process to be followed during the procedure, including whether there is negotiation at any stage
- Any conditions of participation that will be used to reduce or limit the number of suppliers progressing to the next stage of the process

- Any other criteria (for example, award criteria) that will be used to reduce or limit the number of suppliers progressing to the next stage of the process
- Whether the award criteria may be refined during the process (see assessment and award summary document)

Failure to comply with the procedure described in the tender notice, unless modified as covered later in this module, could be grounds for legal challenge against the authority and subject to the relevant remedies.

In a competitive flexible procedure, the contracting authority may not have all the tender documents available at the point at which the tender notice is published, particularly in circumstances where elements of the final documents may necessarily depend on the outcomes of negotiations or dialogue. Therefore, as the procurement and competition develops, it is likely more documents will be generated.

The contracting authority will be required by the tender notice to set out minimum information which must be provided about the requirement, this may be supported by tender documents provided with the tender notice; in any case, there should be enough detail provided to allow suppliers to determine whether or not they wish to participate and respond appropriately.

What's the benefit:

- Contracting authorities have the discretion to utilise and release associated tender documents as they see fit, subject to the requirements in the Procurement Regulations 2024
- Allows for additional information to be provided at different stages of the competitive flexible procedure
- Although there are mandatory information fields in the tender notice, contracting authorities can determine the level of detail they wish to provide in the tender notice and how much they will supplement that information with the tender documents.

For example, for a simple procurement a contracting authority may choose to provide all of the award criteria in the tender notice and the tender documents may be less substantial. Whereas for a complex procurement, they may choose to keep the award criteria high level in the tender notice and detail all of the sub-criteria in the associated tender documents.

It is worth noting that the issue of tender documentation will have an impact on the deadlines for tender return, covered later in this summary document.

5. Designing a process

There are a number of factors that should be considered when designing a procurement process under the competitive flexible procedure:

Number of stages

There is no limit to the number of stages or supplementary processes that can be included in the competitive flexible procedure. However, contracting authorities:

- Should consider the costs and complexity of the procedure for both themselves and the suppliers.
- Have a duty to ensure that the procedure is proportionate having regard to the nature, complexity and cost of the contract – overly complicated procedures can limit competition and fail to achieve best value
- Must comply with certain minimum time periods
- Should sufficiently plan each of the stages to avoid unnecessary delays which can impact on time and therefore costs
- Should determine whether they wish to set and assess conditions of participation and / or include a participation stage
- Should determine whether they wish to include stages for product development or prototypes, which encourages innovative solutions.

Exclusions

- Whether a supplier is an excluded or excludable supplier must always be considered before suppliers are permitted to participate beyond the initial submission of tenders or requests to participate in a competitive flexible procedure. There will therefore need to be an appropriate time in all competitive flexible procedure procurements to consider exclusions.

Conditions of participation

- There is no requirement to include a selection stage as tenders can be invited as the first stage
- Contracting authorities may wish to invite requests to participate which require potential suppliers to meet conditions of participation to reduce the number of suppliers proceeding to the next stage in the process (section 20 (5)(a))
- Conditions of participation, where set but not used as a formal stage in order to exclude suppliers earlier in the process, must be met by the supplier to be awarded the contract.

What can a stage be used for?

- To reduce the number of suppliers who progress to the next stage through a selection process (down selection) (section 20(4)(a))
- To undertake an intermediate assessment of tenders to exclude suppliers (section 20(5)(b)) who do not meet the assessment criteria in accordance with the assessment methodology and provide feedback to those who do to allow suppliers to improve their proposals, i.e. assessing draft tenders in order to identify items which require dialogue or negotiation
- To provide feedback on draft tenders/presentations etc without reducing the number of suppliers and then signify the move to the next stage in the procurement process.

The intention of each stage, i.e. whether it is to reduce the number of suppliers, and any use of selection or intermediate assessment criteria should be clearly set out in the tender notice and any associated tender documents.

■ Supplementary processes

Whilst the procedures similar to the restricted procedure or competitive dialogue under the PCR 2015, can be undertaken using the competitive flexible procedure, contracting authorities are encouraged to consider and, where appropriate, take full advantage of the additional flexibilities this new procedure offers. Contracting authorities can design a bespoke process that best meets their requirements and will offer the most advantageous tender through the use of different supplementary processes.

Supplementary process	Description
Participation Stage	Inviting suppliers to participate and using published criteria (such as conditions of participation) to reduce the number of suppliers proceeding to the next stage
Non Disclosure Agreement / Confidentiality agreement	Enables the contracting authority to share information with suppliers which is deemed sensitive but is needed to inform a supplier's decision to participate or inform their tender
Supplier funding	For more complex or novel requirements (and subject to complying with all relevant rules on subsidy control) some funding may be provided to chosen suppliers to support them in participating in a procurement process. This supplementary process is unlikely to be applicable other than when significant and costly product development is required by the contracting authority to test the deliverability of tenders.

Supplementary process	Description
Clarification Process	Questions can be raised by suppliers about the procurement process or any element of the procurement pack, or by the contracting authority where information is unclear, contains obvious error, false statements, abnormal offers or where items are missing
Dialogue	Aimed at improving all parties' understanding of the requirement, can happen at any or all stages of the procurement.
Negotiation	A strategic discussion aimed at improving the supplier's offer and creating an agreeable set of terms
Supplier Presentations	Aimed at confirming that the proposals being made are deliverable.
Product Demonstrations	Aimed at testing the deliverability of key aspects of tenders.
Site Visits	Aimed at identifying whether key supporting processes have been developed, necessary equipment has been obtained or configured or that systems and processes are in place to deal with the required demands / volumes.
Audits and other checks	Used to see, confirm and check what is being offered is compliant with any requirements and/or accurately described. They are used to confirm statements made in writing by suppliers.
e-Auctions	Process used to derive the lowest price.
Preferred supplier stage	Allows the contracting authority to clarify or confirm any commitments made or engage in post-tender negotiation
Intermediate assessment of tenders to narrow competition	Reduces the number of suppliers based on the quality of their current proposals. This can reduce the administrative effort and cost for all parties. It can also exclude suppliers who are least competitive. Such assessment can take place more than once, so that the number of suppliers is gradually reduced whilst maintaining a level of competition.
Assessment of tenders with the option to award prior to negotiation or dialogue	The option to award a contract to a supplier based on the assessment of the tender without undertaking any negotiation or dialogue which may have been intended to be part of the process. For example, the contracting authority may feel confident that it is possible to accept tenders without the need for negotiation, however, there is risk that the tenders may not be optimum due to the complexity which can be resolved through dialogue and/or negotiation.

Supplementary process	Description
Final tenders	Drives a focus on price, so the stage must be used carefully to avoid abnormally low tenders (also known as best and final offer – BAFO).
Variant tenders	Allows suppliers to tender one or more alternative solution which meets the requirements

This list is not exhaustive and is used as an example only see Summary of competitive flexible supplementary processes learning aid for other examples

Number of suppliers

There is no specified minimum or maximum number of suppliers who can be invited to participate at any stage of the procedure. Contracting authorities may limit the number of suppliers (section 20(4)(a)) provided it is set out in the tender notice and any associated tender documents, along with the criteria which will be used to reduce the number of suppliers.

Contracting authorities should use their findings from preliminary market engagement to determine whether the number of suppliers should be limited throughout the process.

By limiting the number of suppliers, contracting authorities can:

- ensure that the process is manageable particularly where a large market exists;
- help to reduce the administrative costs and time associated with the procurement, particularly if the evaluation is likely to be complex;
- make the procurement more attractive to suppliers by removing the need for them to submit time consuming and expensive tenders and increase their potential to be successful due to reduced competition .

However, reducing the number of suppliers can also be a barrier to start-ups and new entrants, who may have the ability to offer the most advantageous solutions but lack experience of delivery due to being new to the market.

In carrying out the procedure, a contracting authority must have regard to the fact that small and medium-sized enterprises may face particular barriers to participation, and consider whether such barriers can be removed or reduced. This may be, for example, ensuring that the conditions of participation set are accessible for SMEs, such as by ensuring that insurance and turnover requirements are reasonable.

Therefore, careful consideration should be given to limiting the number of suppliers and should be informed by preliminary market engagement.

Notifying suppliers

Where a participation stage or intermediate assessment is being used to reduce the number of suppliers, contracting authorities must have regard to the importance of sharing information as part of the procurement objectives. This means that:

- Suppliers should, as best-practice, be notified of the outcome as soon as possible following the conclusion of the assessment.
- It is considered best practice to provide feedback to suppliers who have taken the time to submit a tender. Although it is not a requirement to provide an assessment summary to suppliers who are unsuccessful at an intermediate assessment stage, it is recommended that contracting authorities follow the assessment summary requirements, as doing so should demonstrate compliance with the regime and provide suppliers sufficient explanation for the outcome of assessment, which may help suppliers to improve any future tender responses and avoid legal challenges.

For suppliers who reach the final tender stage, the requirements of awarding a contract apply – see assessment and award summary document.

Time limits

The minimum time periods under the competitive flexible procedure are as follows¹:

Participation period (section 54(3)) (where including a participation stage) – **25 days**

→ Unless

- The contracting authority considers there to be a state of urgency – **10 days**

Tendering period (section 54(4)) – applies to each stage where a tender is submitted unless the contracting authority considers supplier responses to e.g. simply be an update to an earlier tender (for example as an outcome of negotiations rather than new information); in which case a reasonable time limit which is the same for all suppliers would be required. Minimum tendering periods are:

- **25 days** where tenders may be submitted electronically and the tender notice and associated tender documents are all provided at the same time, or
- **30 days** where tenders may be submitted electronically and the tender notice and associated tender documents are not all provided at the same time

¹ Exemptions apply

The tendering period can be reduced to **10 days** where:

- a qualifying planned procurement notice has been published, or
- the contracting authority considers there to be a state of urgency that means any other applicable minimum tender period is impractical

However for contracting authorities that are not central government authorities, tendering periods can also be reduced to:

- **10 days where:**
 - a condition of participation stage has been included and only pre-selected suppliers are invited to submit a tender
- **No minimum timescales** where:
 - a conditions of participation / participation stage has been included and only pre-selected suppliers are invited to submit a tender, **and**
 - A timescale has been agreed with those suppliers

Whilst the Procurement Act prescribes minimum time periods for the key stages of the procedure, when setting time limits contracting authorities should think about the time required to undertake each of the stages and must, where relevant, have regard to:

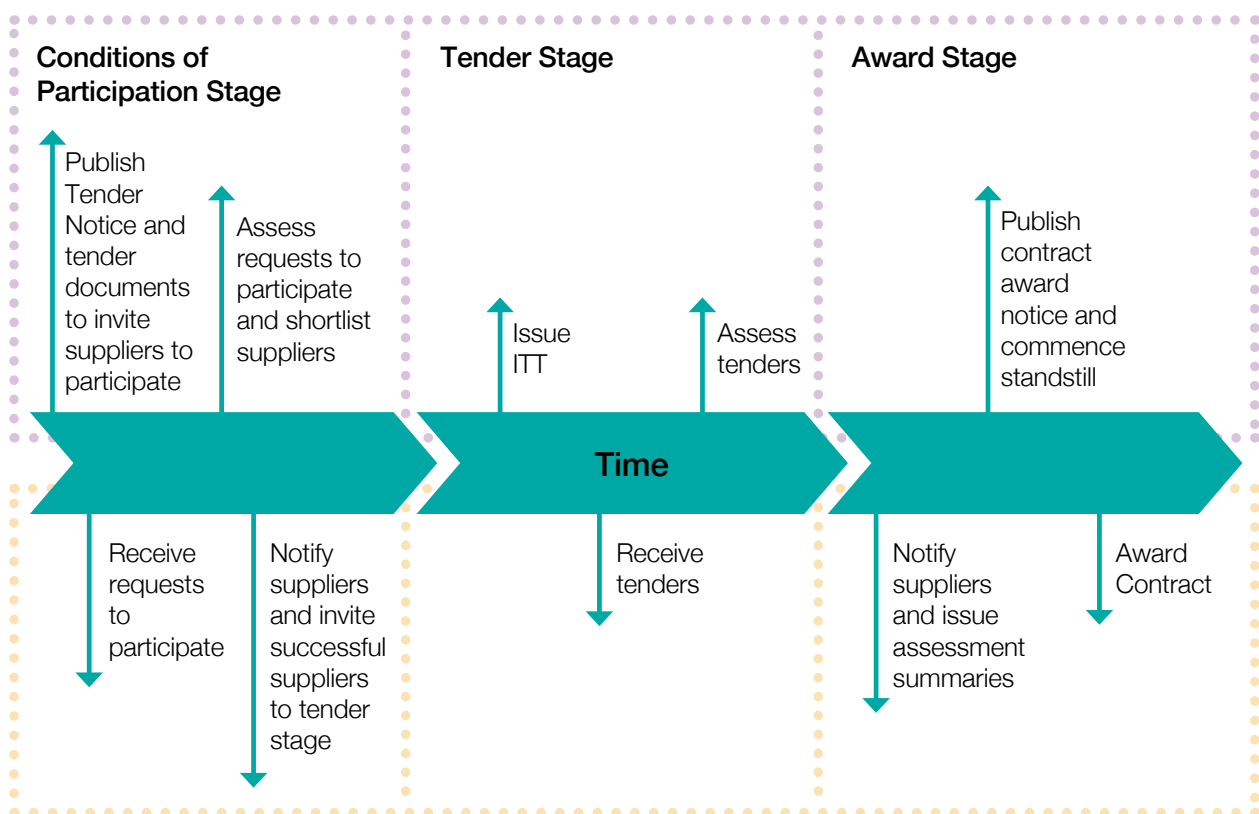
- The nature and complexity of the contract
- The need for site visits, physical inspections and other practical steps eg where scheduling and availability needs to be considered
- The need for sub-contracting;
- The nature and complexity of any modification to the tender notice or associated tender documents for example to allow suppliers to consider and respond
- The importance of avoiding unnecessary delays – for example not making the process longer than it needs to be, costing time and resource for both the contracting authority and the suppliers

6. Example Processes

Regardless of the process that is designed and undertaken, contracting authorities **must always consider whether any supplier is an excluded or excludable supplier** before suppliers are permitted to participate in a competitive flexible procedure meaning participating beyond the initial submission of tenders or requests to participate.

Two – stage process

In its simplest form, the competitive flexible procedure could be a two-stage process. The example below is similar to that of the restricted procedure (PCR 2015). The key difference between an open procedure and this example process under the competitive flexible procedure is the introduction of a participation stage.



This example process could be used for **standard requirements** where:

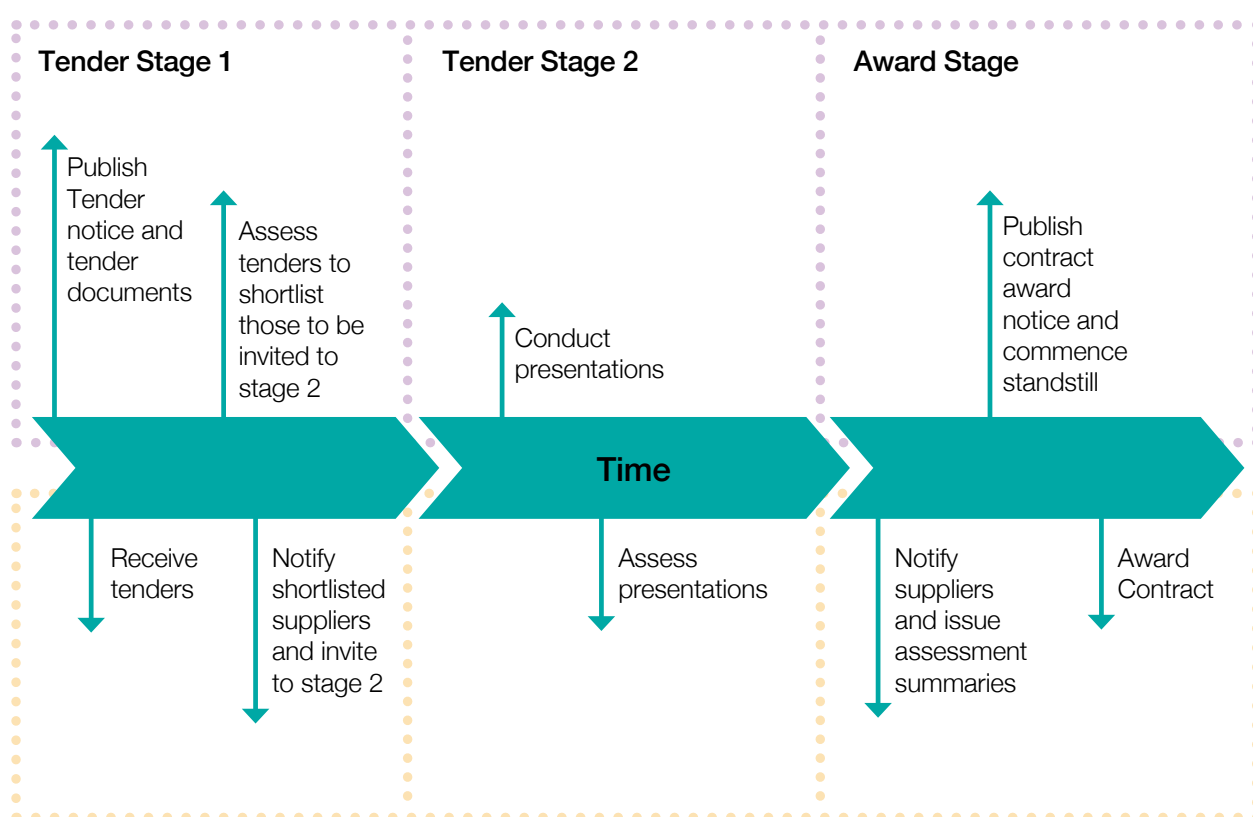
- a large market exists and the scale of competition will impact on a supplier's decision to tender
 - a large market exists and the cost of the procedure to the contracting authority would impact on value for money unless the number of tenders is manageable
- or
- there is sharing of sensitive information and the number of suppliers needs to be restricted to allow it to be shared in a controlled manner i.e under a confidentiality agreement or non-disclosure agreement

Two-stage process using a supplementary process

In the competitive flexible procedure there is no requirement for a conditions of participation / participation stage.

Tenders can be invited in the first stage, as per the open procedure. Following an intermediate assessment of the tenders received, the highest scoring tenders may be taken forward to a further stage before having a final assessment stage.

Contracting authorities are to be able to engage with suppliers under the competitive flexible procedure to discuss the requirement and improve tenders as long as they do so in accordance with the tender notice and any associated tender documents.



This example process could be used where there is no need to undertake a formal participation stage, but it would be beneficial to include stages to engage with suppliers to help them understand the requirement or help the contracting authority to understand their solution further in order to achieve value for money, for example for **simple** or **niche** requirements:

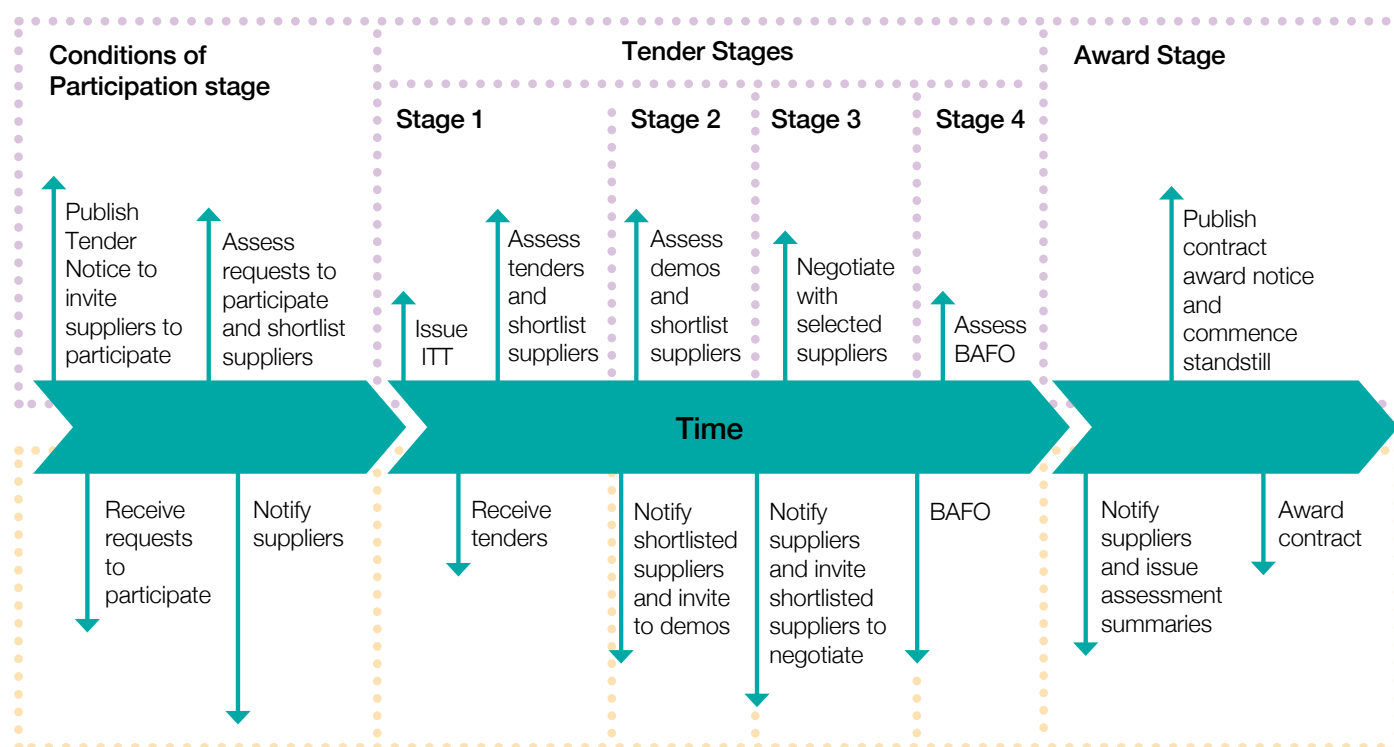
- Where an 'off the shelf' solution exists but may need some configuration for a specific purpose
- When procuring creative or design services and solutions, where the requirement or solution needs to be brought to life
- Specialist consultancy or specific services

In this process, the second tender stage could include the following different supplementary processes. Examples include:

- Presentations
- A reverse auction for high volume standardised ICT equipment
- A demonstration for low carbon specialist vehicles
- A site visit for waste management and recycling services

■ Multi-stage processes

The next example demonstrates how the process can be designed using the supplementary processes to address **complex requirements**, where a participation stage would be needed *and* engagement with suppliers would be beneficial in helping to understand the requirements and / or in delivering better value for money.



Following the conditions of participation / participation stage, the number of suppliers would be reduced by assessing whether they meet certain standards.

Successful suppliers would be invited to Tender Stage 1 and following an intermediate assessment, the highest scoring suppliers would then be taken forward to Tender stage 2

Tender stage 2 would involve demonstrations and following another assessment, the highest scoring suppliers would be taken to Tender stage 3.

Tender stage 3 is a Best and Final Offer (BAFO) stage to determine the Most Advantageous Tender.

This example could be used where:

- there is a need to ensure suppliers meet certain standards and to demonstrate their capability
- there is a need to reduce the numbers of suppliers invited to submit a tender, and
- engagement with suppliers during the process would be beneficial in helping suppliers understand the requirements and/or helping to understand the solution being presented, for example:
 - where the requirement is clear but negotiations or dialogue etc. may enhance value for money
 - where the detailed requirements may be complex which means there needs to be additional engagement throughout the process to explain or clarify to ensure suppliers can submit clear and fit for purpose tenders
 - where the potential solution may be complex or may attract risk, which means engagement throughout the process will ensure compliant and fit for purpose tenders

The time, cost and resources required for a successful dialogue and/or negotiation will vary enormously, from a single meeting with all suppliers on one subject to multiple meetings on many subjects. The time and cost expended is dependent on the scale and complexity of the requirement and identified solutions, and the capacity and capability of all those involved. The general duty to ensure a competitive tendering procedure is proportionate will be particularly relevant in the use of dialogue or negotiation stages.

■ Preferred supplier stage and post tender negotiation

Using the competitive flexible procedure there is the ability to include what is sometimes known as a preferred supplier stage. This allows a contracting authority to clarify or confirm any commitments made in the tender or engage in post-tender negotiation with the final supplier(s), as long as it does not have the effect of altering the competition outcome and it follows the process outlined in the tender notice and any associated tender documents.

A preferred supplier stage can be useful, particularly for complex procurements, for example to ensure that there is an agreed understanding of how the contract will operate and reduce the risk of issues arising once the contract has been entered into.

The preferred supplier stage:

- Is conducted after final tenders have been received and assessed, and prior to the award of the contract
- Should not change the outcome of the procurement process
- Can be used to refine and improve a tender to drive additional value
- Should not distort the competition – meaning the discussions/negotiations would have no impact on the outcome of the procurement

- Should be conducted in a transparent and auditable manner. Contracting authorities should ensure that any details of discussions/negotiations, key points or outcomes are recorded and kept (Scope summary document).

Following this stage, the contracting authority should review any agreed changes to ensure that it is still appropriate to award the contract to the preferred supplier and any agreed changes should be reflected in the contract that is entered into.

■ Procuring innovation

What is innovation?

- The design and implementation of goods and services which do not yet exist
- Testing of solutions that exist but not currently used for the required purpose
- Bespoking or developing goods and services in order for them to meet the requirement.

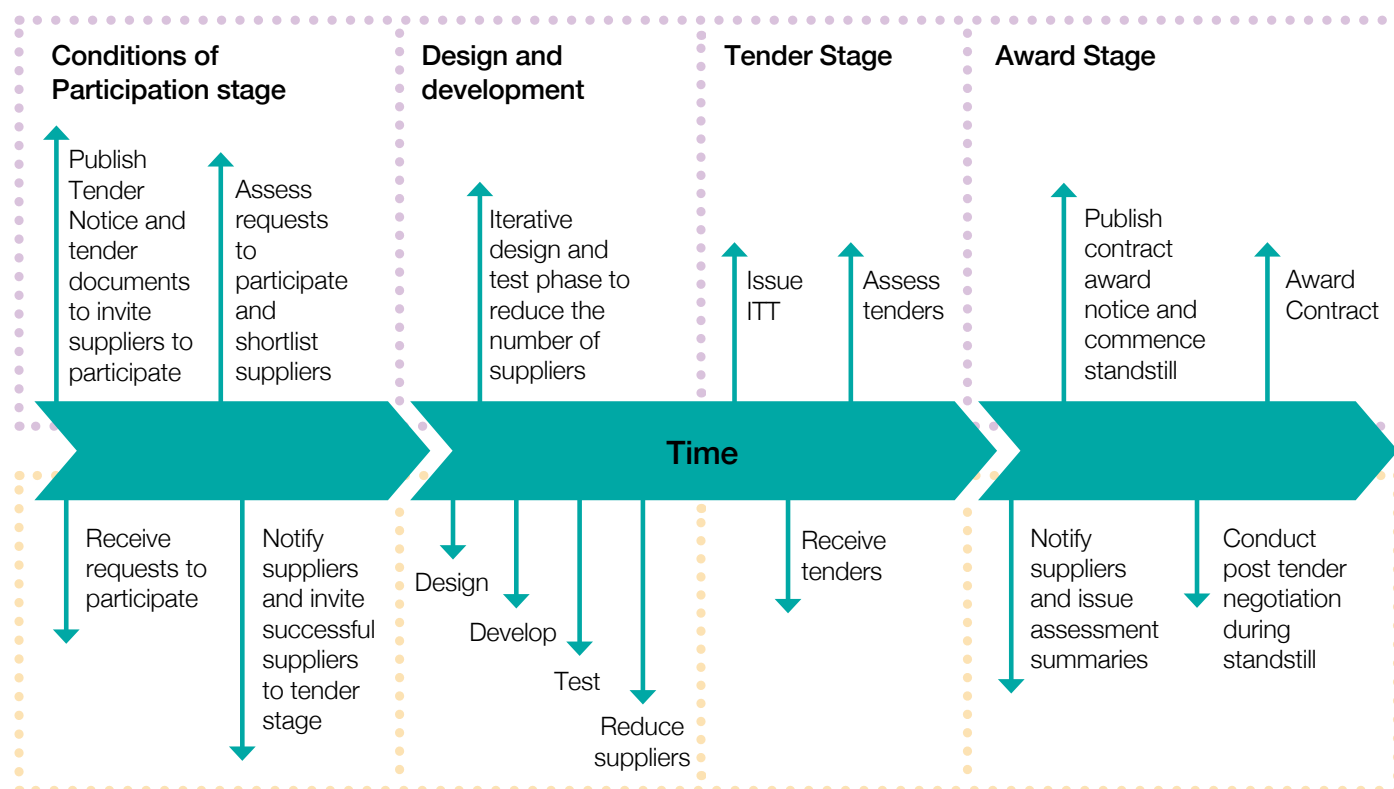
Change:

Within the competitive flexible procedure, a bespoke multi-stage process can be designed which allows for 'pre-commercial procurement' such as research and development, the development of a prototype **and** the purchase of the innovative goods or services under one continuous process.

Benefits:

- End to end process removing additional administrative burden and resource for contracting authorities
- Can be a fully agile process, which can be modified or concluded at any stage provided it is set out in the tender notice and associated documents
- More attractive and easier for small and medium-sized enterprises and new entrants to access and participate
- Reduces risk of solution failure and result in better proposals

The example below demonstrates how a process can be designed to run as a multi stage competition for the design, development and purchase of innovative goods, works or services under one continuous process.



This process could be used where:

- The goods or services are available in the market but not in the form or utilised in the way that is required and therefore development may be needed
- The solution does not yet exist but is needed to address a new challenge or need and requires research, design or development. A staged approach is required in order to enable competition, test ideas and solutions, and eliminate weak/unworkable solutions.

This process allows both the contracting authority and the market to understand the requirement or solution fully, reducing delivery risks and resulting in better proposals which the contracting authority can have confidence in. It also allows for an agile process which can be concluded at any stage, provided this process has been described in the tender notice and the associated documents.

7. Modifications during a competitive flexible procedure

Change:

There is the ability to make modifications during the competitive flexible procedure following the publication of the tender notice and associated tender documents.

- Any modification can be made provided that the deadline to participate or submit a first or only tender has not passed (section 31(1)(b))
- ²**Non substantial modifications** can be made up to the deadline of the final tendering stage (section 31(2)(a))

A modification is considered **substantial** if it would mean that suppliers who could not participate could now do so or where participating suppliers can no longer participate (section 31(3)).

Benefits:

- Amendments to the tender documents which may provide clarification
- Refining specification as the competitive flexible procedure progresses
- Reducing timescales (where all pre-selected suppliers are in agreement)
- Adding in additional stages (where doing so would not have impacted the initial market response)

A contracting authority:

- Must notify suppliers of any changes, which may include revising the tender notice and any associated tender documents as required, making it clear what changes have been made (section 31(5))
- Must make details of the changes available to all suppliers at the same time (section 31(6));
- Must consider revising submission deadlines and any other timescales to ensure that appropriate time is given to suppliers to acknowledge and respond to the change (section 31(4))
- Must treat all suppliers the same e.g. not change the requirements or award criteria as a result of having seen suppliers' tenders or in any other manner that favours certain supplier/s
- Should ensure that any modifications made do not distort competition
- Must ensure the modification does not impact the market response where the modification is made after the deadline for requests to participate/submitting first or only tender (section 31(2))

² Exemptions apply

The provision to modify a procurement is in addition to the ability to refine or supplement the award criteria in a competitive flexible procedure, as long as this is provided for in the tender notice or associated tender documents (section 24(1)).

8. Top tips and key takeaways

- Consider the requirements and what outcome needs to be achieved – this should drive the design of the process
- Design a process that is proportionate to the requirement and will encourage suppliers to participate
- Be mindful of the associated costs and resources on both the contracting authority and suppliers
- Preliminary market engagement is recommended to set the context of the procurement, the objectives and explain how the process is intended to run to obtain feedback from suppliers
- Focus on functional or output based specifications and consider allowing for more innovative solutions to be proposed
- Make use of commercial skills – contracting authorities now have the ability to use a variety of tools within a competitive procedure to get to the best outcome or solution.

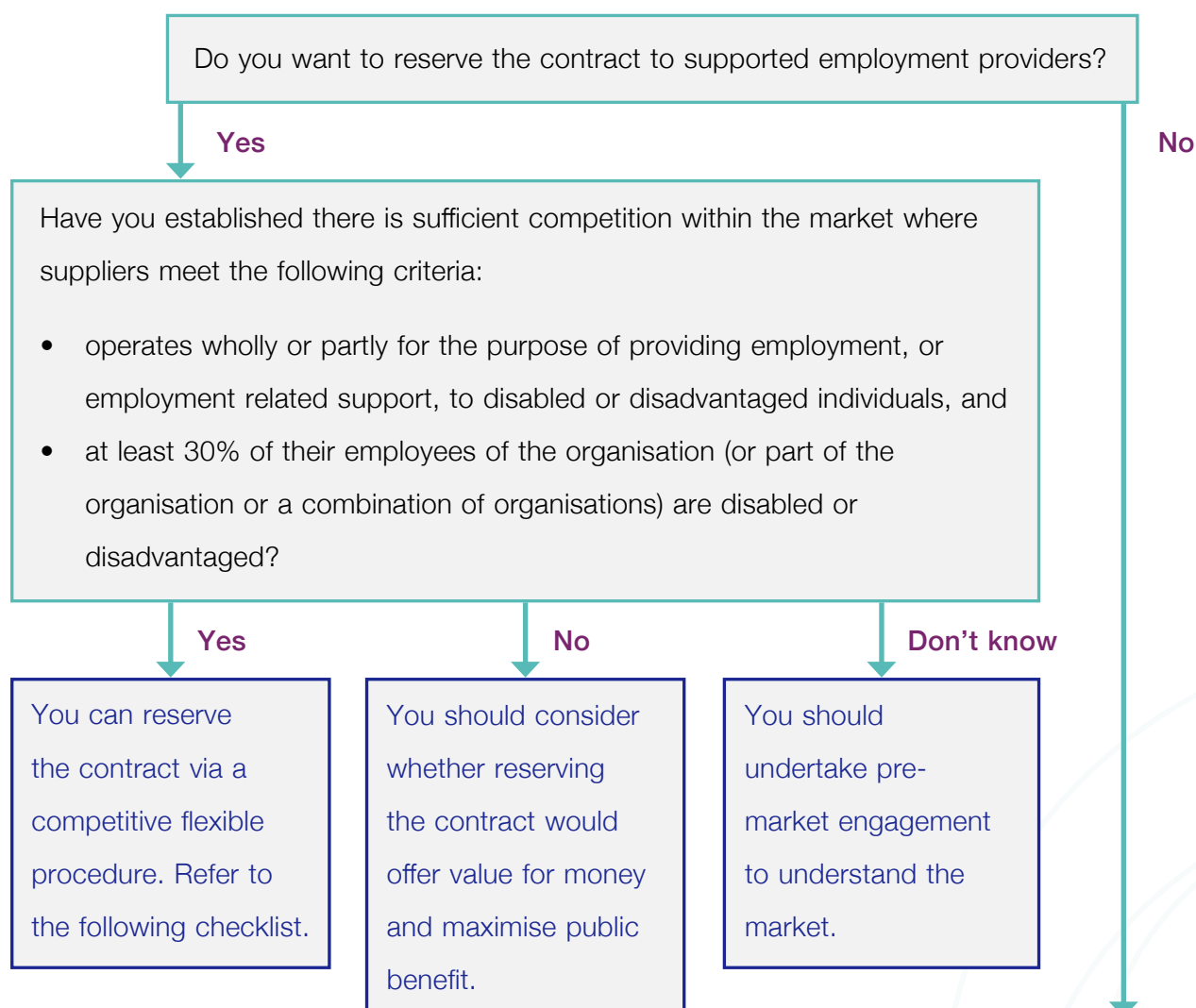


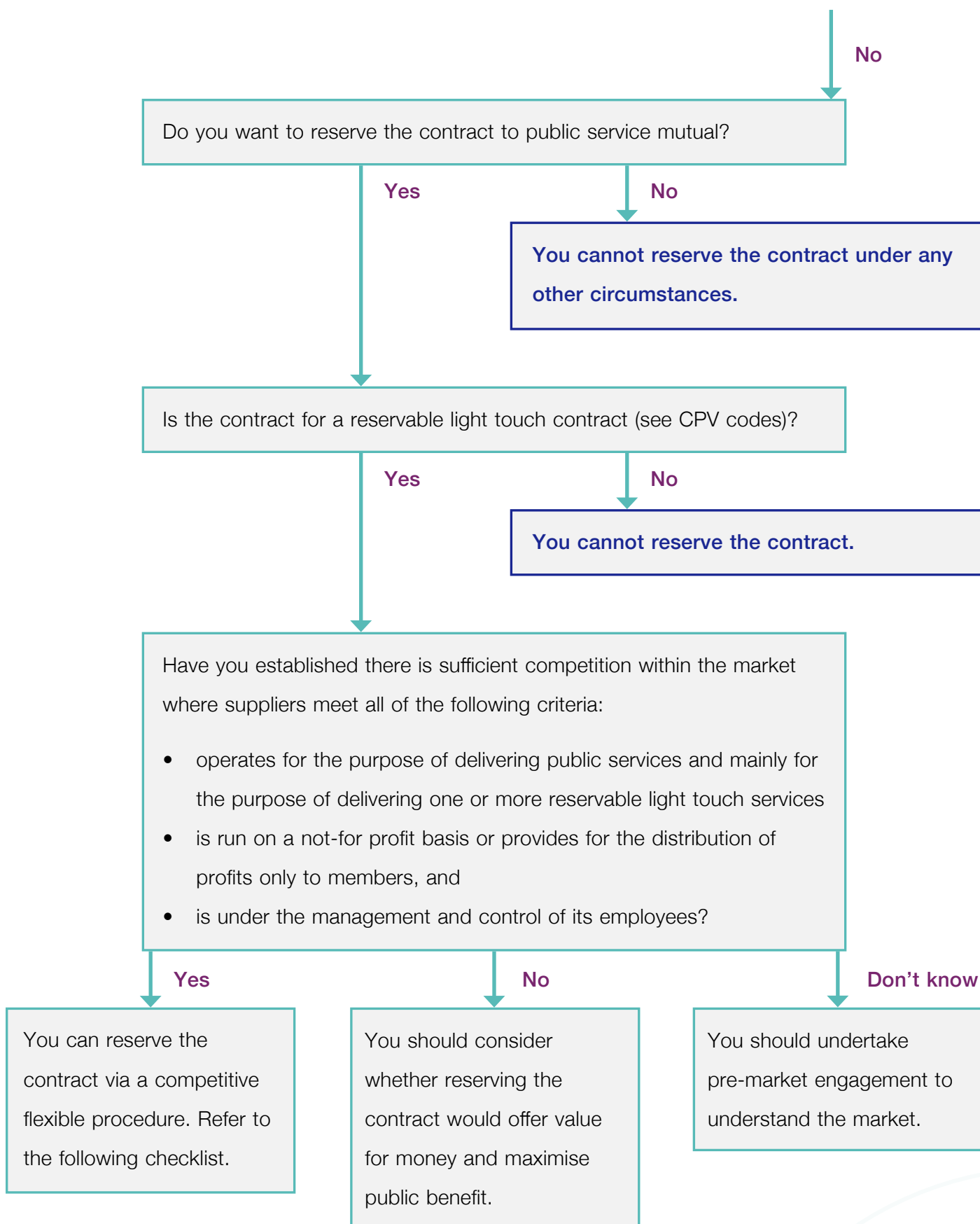
Reserving contracts

Decision tree and checklist

This learning aid is designed to assist you in determining whether you can reserve your procurement under the Procurement Act 2023.

Decision tree





Checklist

Action

1. You have identified that there is sufficient level of competition that will offer value for money and maximise public benefit when reserving the contract. ☐
2. You have checked that the contract can be reserved (based on CPV codes for light touch contracts). ☐
3. You have designed a competitive flexible procedure to allow for the procurement to be restricted to these suppliers (supported employment provider or public service mutual). ☐
4. You have set out in your tender notice that it is a reserved procurement. ☐
5. You have clearly set out in your tender notice or associated tender documents the requirement for a supplier to meet the criteria to qualify for the specific type of supplier you are reserving for (supported employment provider or public service mutual). ☐
6. You have clearly set out in your assessment methodology (within your associated tender documents) that you will exclude any supplier that does not qualify as the particular type of supplier you are reserving for (supported employment provider or public service mutual). ☐



Summary of supplementary processes for the competitive flexible procedure

Supplementary process	Description
Non disclosure agreement (NDA) / confidentiality agreement	Enables the contracting authority to share information with suppliers, which is deemed sensitive but is needed to inform a suppliers decision to participate or inform their tender.
Supplier funding	For more complex or novel requirements (subject to subsidy controls) funding may be provided, on equal terms, to all suppliers to support them in participating in a procurement process. This tool is unlikely to be applicable other than when significant and costly product development is required by the contracting authority to test the deliverability of a tender.
Clarification process	Questions can be raised by suppliers about the procurement process or any element of the procurement pack, or by the contracting authority where information is unclear, contains obvious error, false statements, abnormal offers or where items are missing.
Dialogue	Aimed at improving all parties' understanding of the requirement, can happen at any or all stages of the procurement.

Supplementary process	Description
Negotiation	A strategic discussion aimed at creating an agreeable set of terms but not used in a competitive procedure to obtain the lowest offer or negotiate down a price.
Supplier presentations	Aimed at confirming that the proposals being made are deliverable.
Product demonstrations	Allows to test the deliverability of key aspects of tenders.
Site visits	Aimed at identifying whether key supporting processes have been developed, necessary equipment has been obtained or configured or that systems and processes are in place to deal with the required demands / volumes.
Audits and other checks	Used to try to see, confirm and check what is being offered is compliant with any requirements and/or accurately described. They are used to confirm statements made in writing by suppliers.
eAuctions	Process used to derive the lowest price e.g. reverse auction.
Preferred supplier stage	To confirm solutions and/or finalise the draft contract. This stage may include post tender negotiation with the objective of improving the final tender but without changing requirements.
Interim assessment of tenders to narrow competition	Reduces the number of suppliers based on the quality of their current proposals. This can reduce the administrative effort and cost for all parties. It can also eliminate suppliers who are least competitive. Such assessments can take place more than once, so that the number of suppliers is gradually reduced whilst maintaining a level of competition.

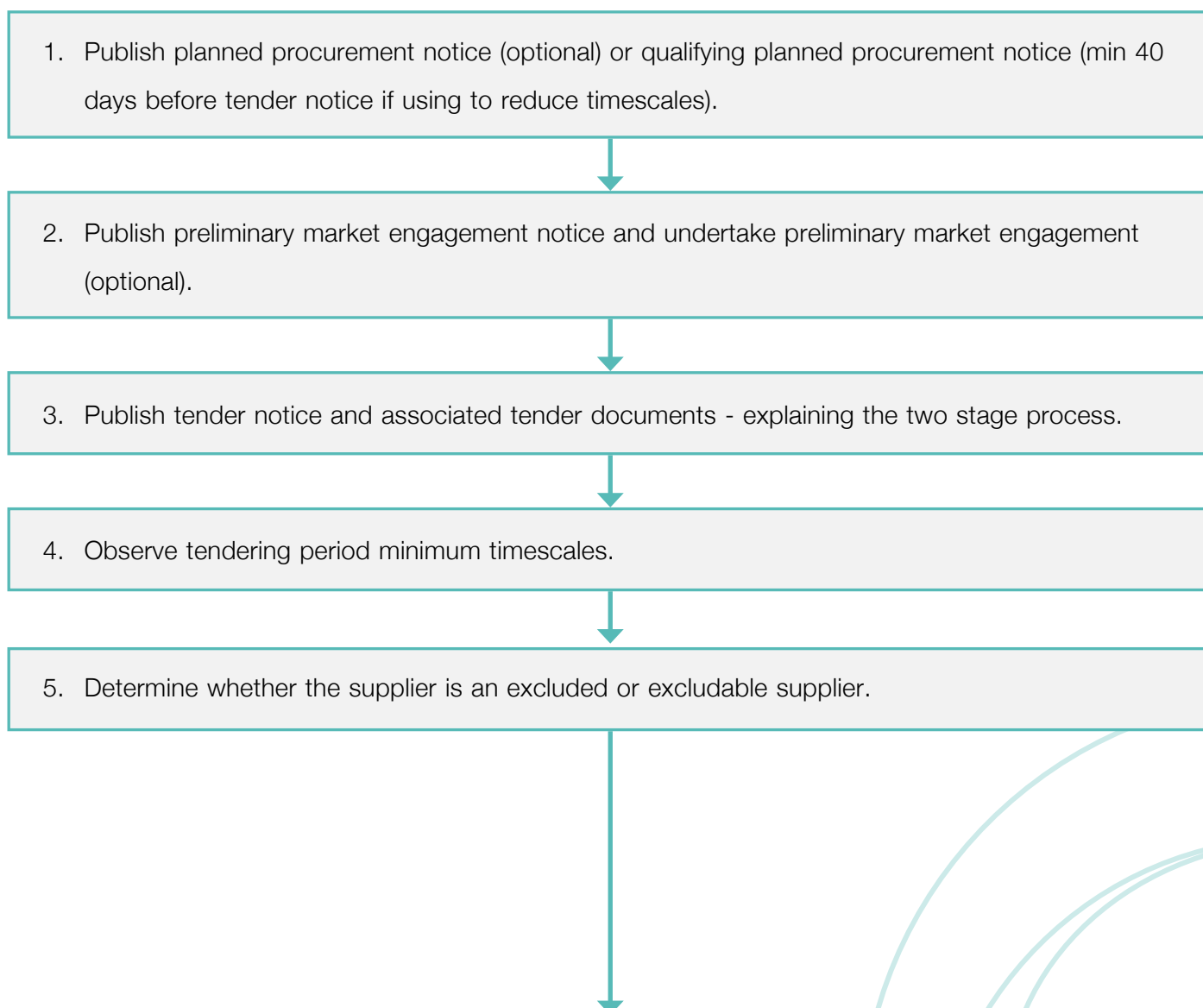
Supplementary process	Description
Assessment of tenders with the option to award prior to negotiation or dialogue	The option to award a contract to a supplier based on the assessment of the tender without undertaking any negotiation or dialogue which may have been intended to be part of the process. For example, the contracting authority may feel confident that it is possible to accept tenders without the need for negotiation, however, there is risk that the tenders may not be optimum due to the complexity which can be resolved through dialogue and/or negotiation.
Final tender / best and final offer (BAFO)	Intended to drive a focus on price, so the stage must be used carefully to avoid abnormally low tenders.
Variant tenders	Allows suppliers to tender one or more alternative solution which meets the requirements.



Competitive flexible procedure

Process flows

An example of a two-stage process



```
graph TD; A[6. Assess whether the tender is suitable, including where appropriate:  
a. assessing the conditions of participation  
b. where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender  
c. whether the tendered price is abnormally low  
d. whether there is evidence of corruption or collusion  
e. whether the tender meets all of the requirements  
f. whether the tender has breached any procedural requirements] --> B[7. Undertake intermediate assessment and exclude any suppliers who do not meet the minimum requirements (or quality threshold if set).]; B --> C[8. Notify suppliers and invite to the next stage.]; C --> D[9. Conduct presentations and assess based on criteria set.]; D --> E[10. Issue assessment summaries.]; E --> F[11. Publish contract award notice.]; F --> G[12. Observe mandatory standstill period - minimum 8 working days.]; G --> H[13. Enter into contract (providing no issues were raised during standstill).];
```

6. Assess whether the tender is suitable, including where appropriate:

- a. assessing the conditions of participation
- b. where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender
- c. whether the tendered price is abnormally low
- d. whether there is evidence of corruption or collusion
- e. whether the tender meets all of the requirements
- f. whether the tender has breached any procedural requirements

7. Undertake intermediate assessment and exclude any suppliers who do not meet the minimum requirements (or quality threshold if set).

8. Notify suppliers and invite to the next stage.

9. Conduct presentations and assess based on criteria set.

10. Issue assessment summaries.

11. Publish contract award notice.

12. Observe mandatory standstill period - minimum 8 working days.

13. Enter into contract (providing no issues were raised during standstill).

```
graph TD; A[14. Publish contract details notice and contract where applicable (contracts over £5m).] --> B[15. Could happen at any time during the term of the contract: a. publish contract payment notice (where applicable - individual payments over £30k) b. publish contract performance notice (where applicable) c. publish payments compliance notice d. publish contract change notice (if / when modifications are made) and copy of the modified contract (contracts over £5m) e. observe any voluntary standstill period (minimum 8 working days) if and when modifications are made and a contract change notice has been published]; B --> C[16. Publish contract termination notice.];
```

14. Publish contract details notice and contract where applicable (contracts over £5m).

15. Could happen at any time during the term of the contract:

- a. publish contract payment notice (where applicable - individual payments over £30k)
- b. publish contract performance notice (where applicable)
- c. publish payments compliance notice
- d. publish contract change notice (if / when modifications are made) and copy of the modified contract (contracts over £5m)
- e. observe any voluntary standstill period (minimum 8 working days) if and when modifications are made and a contract change notice has been published

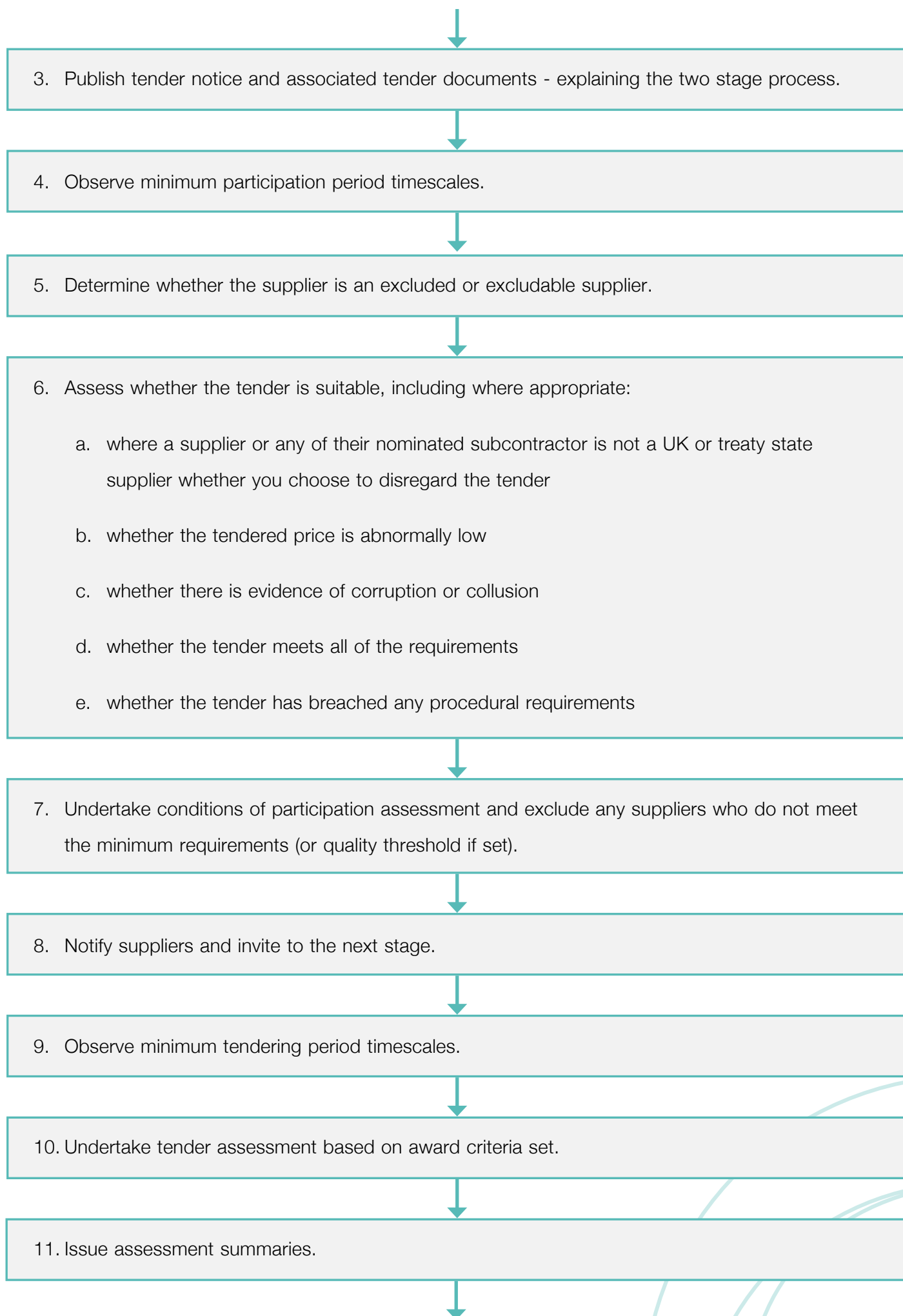
16. Publish contract termination notice.

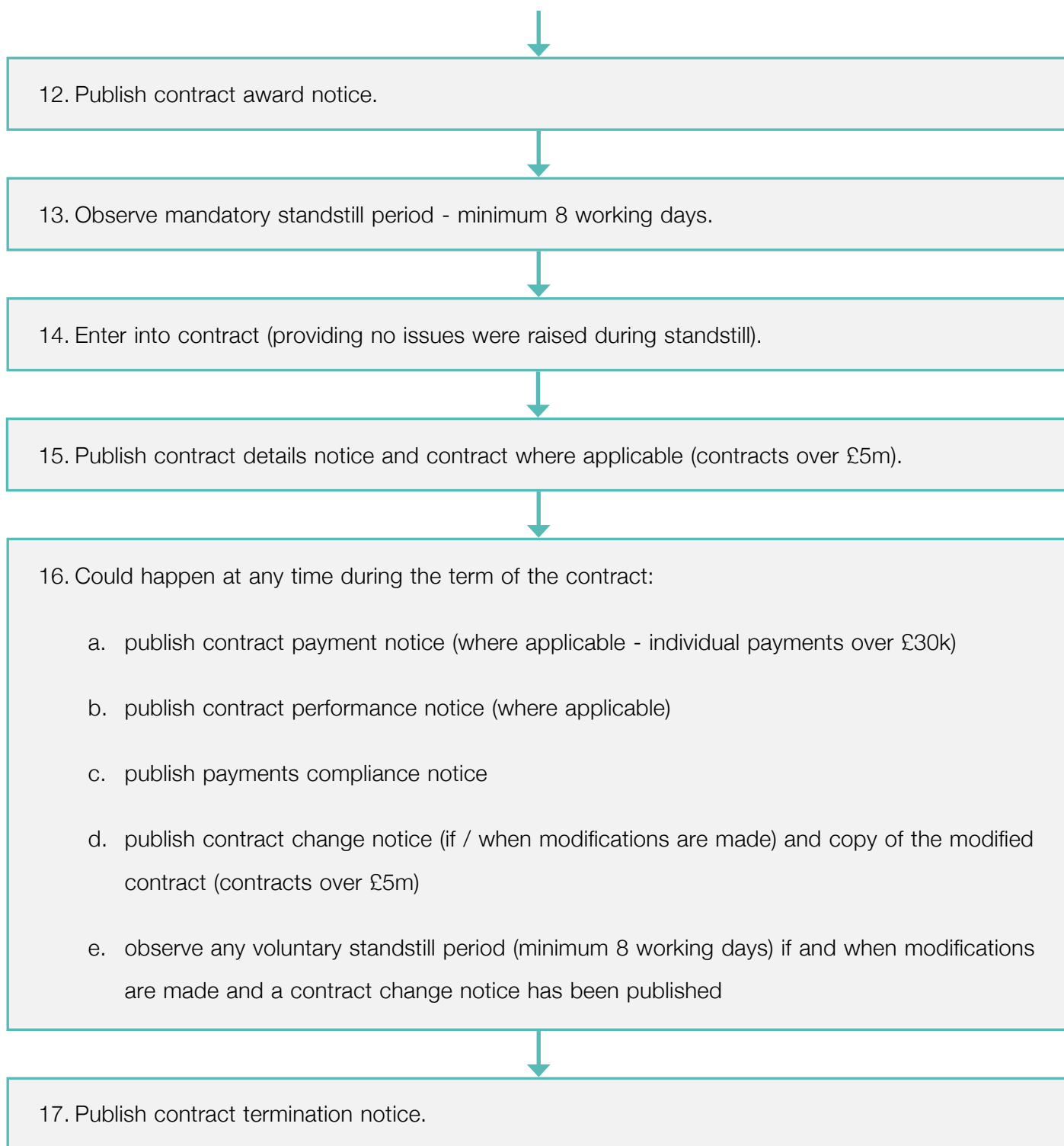
Note - assessing any conditions of participation set or other suitability requirements may be carried out at any point prior to contract award as described in the tender notice and/or associated tender documents.

An example of a two-stage process with participation stage

1. Publish planned procurement notice (optional) or qualifying planned procurement notice (min 40 days before tender notice if using to reduce timescales).

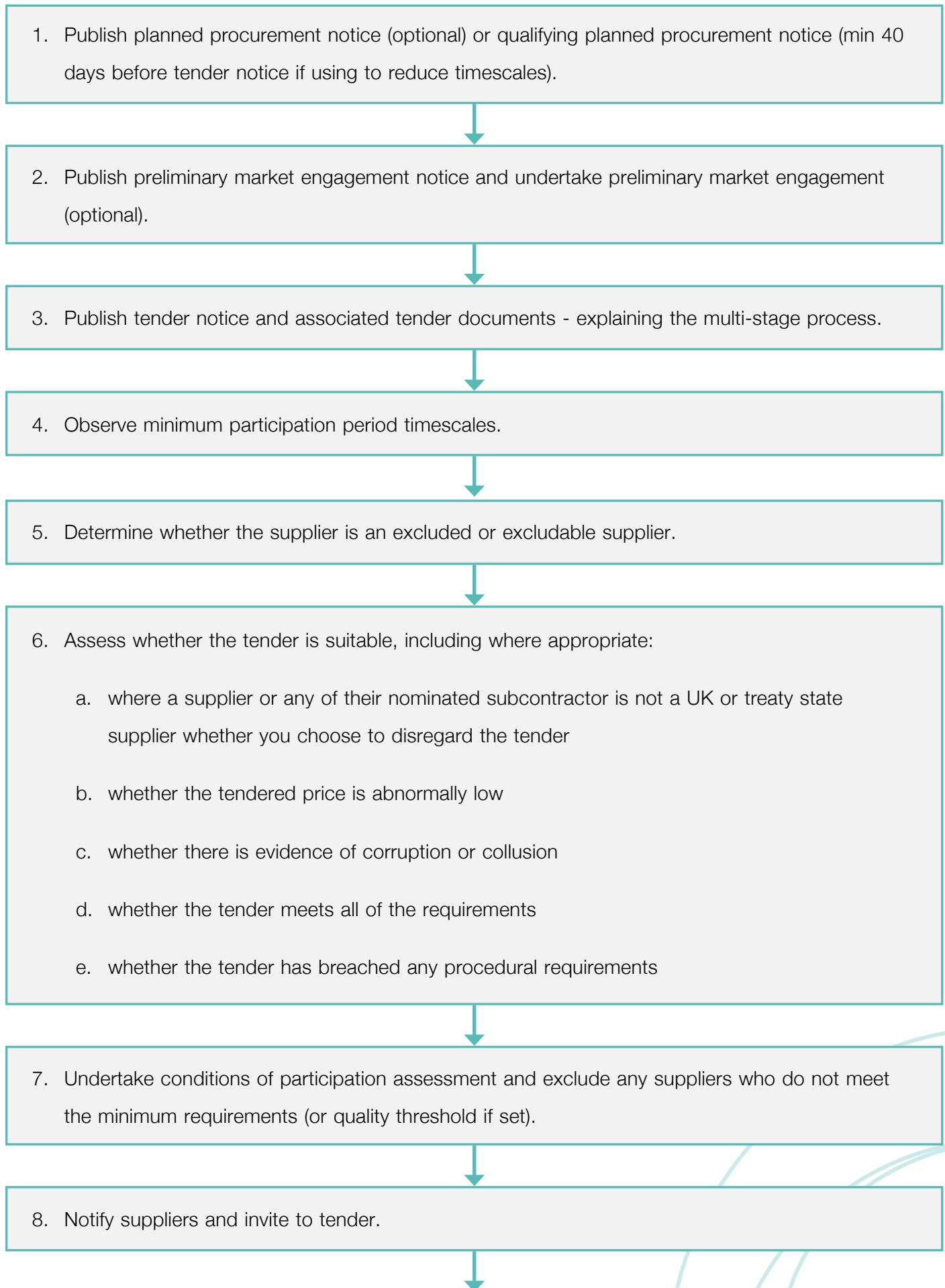
2. Publish preliminary market engagement notice and undertake preliminary market engagement (optional).

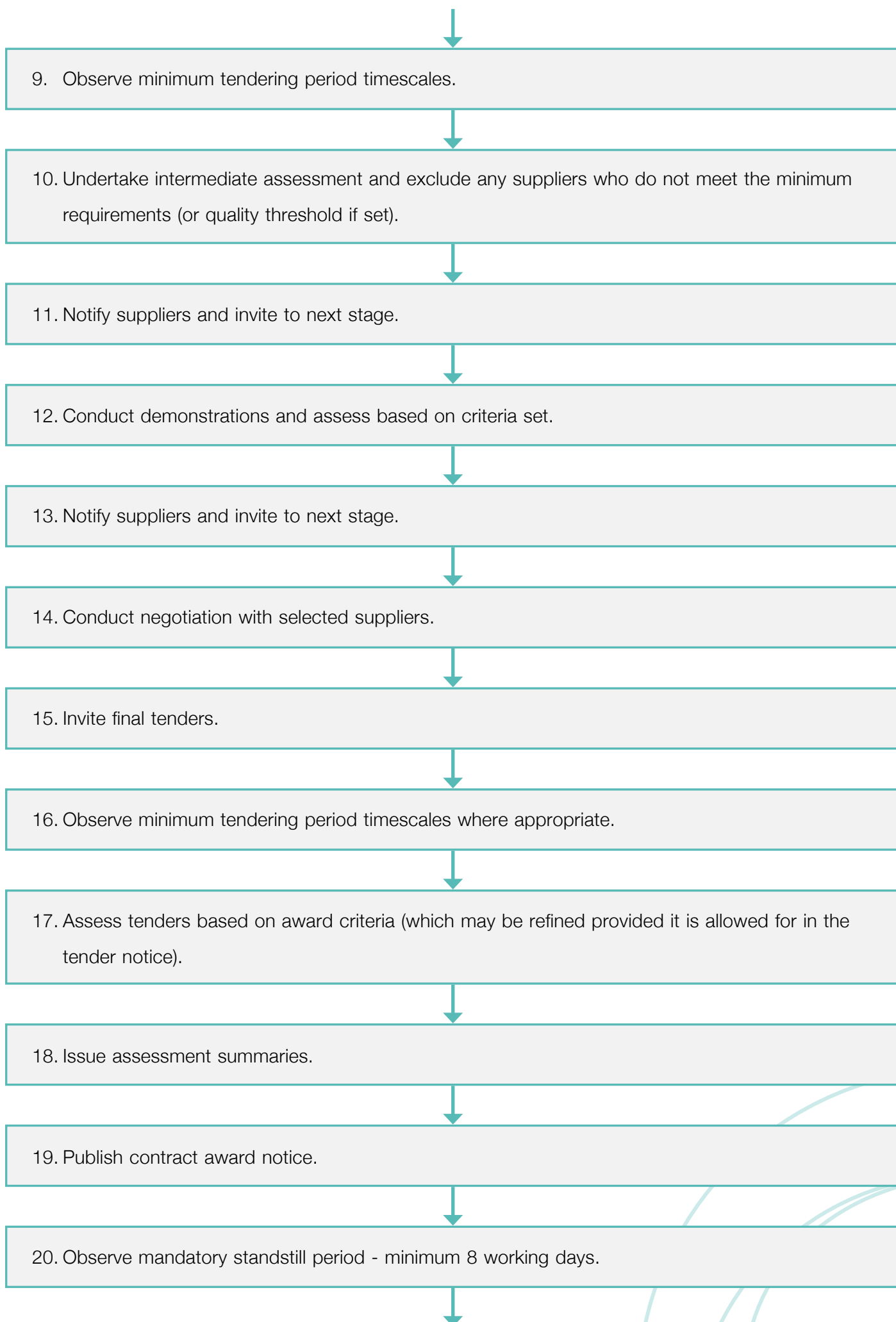


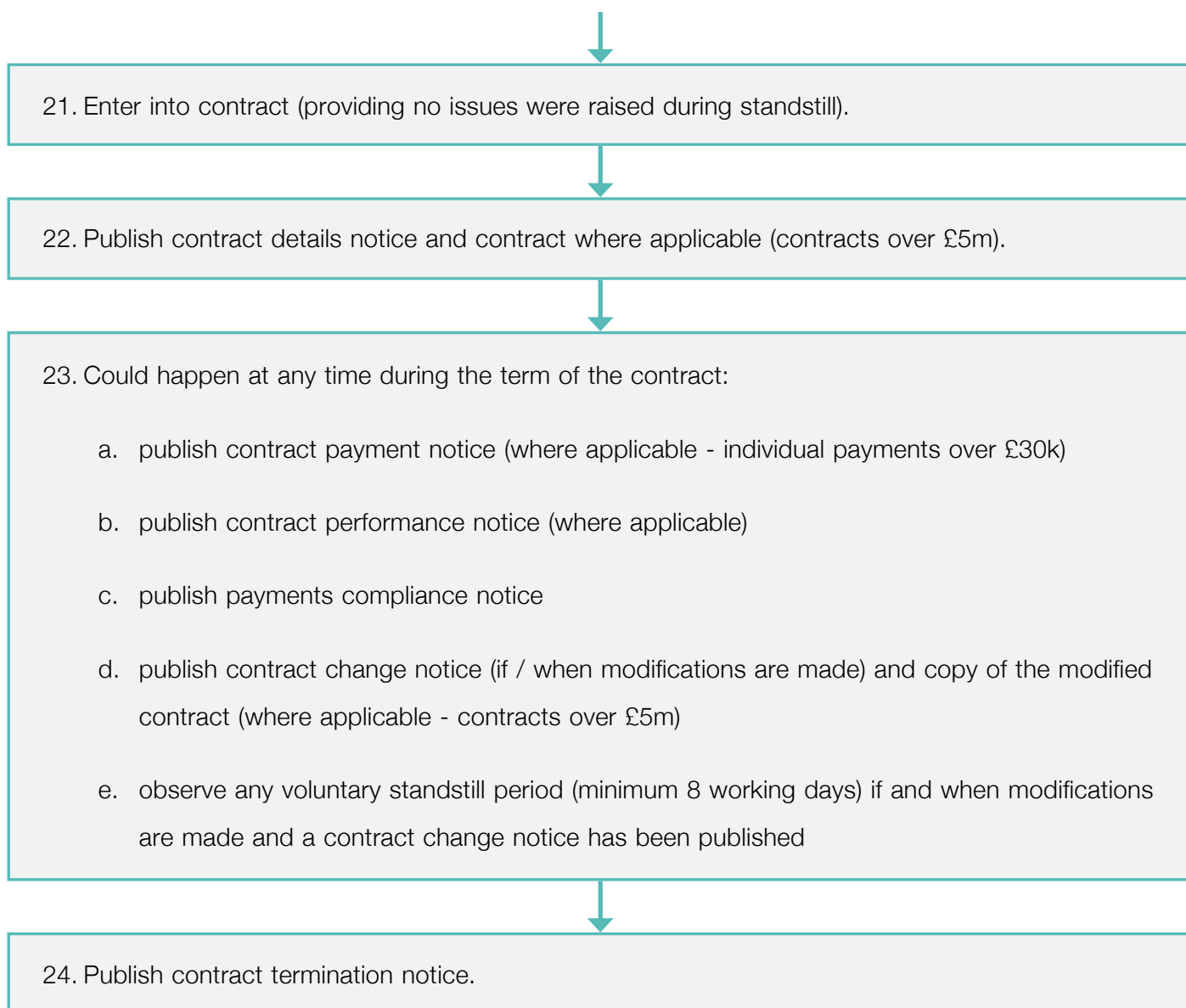


Note - assessing suitability requirements may be carried out at any point prior to contract award as described in the tender notice and/or associated tender documents.

An example of a multi-stage process

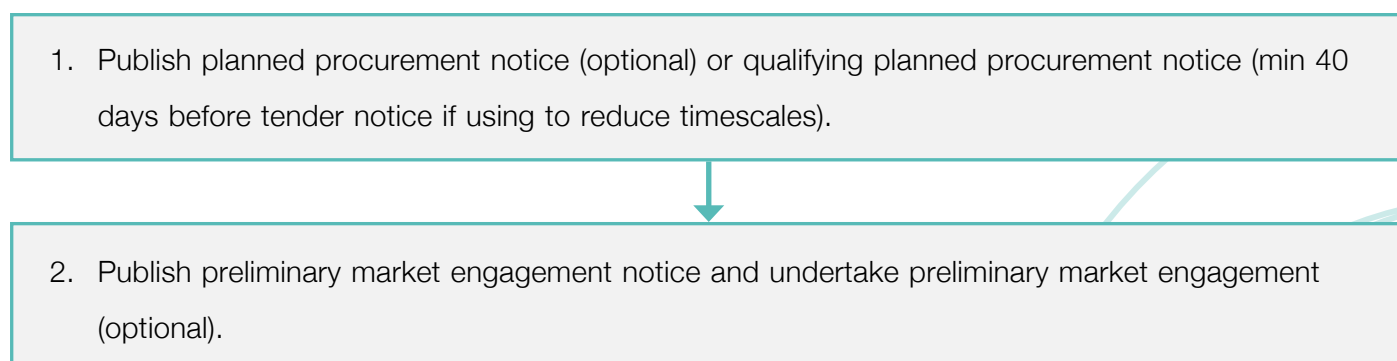


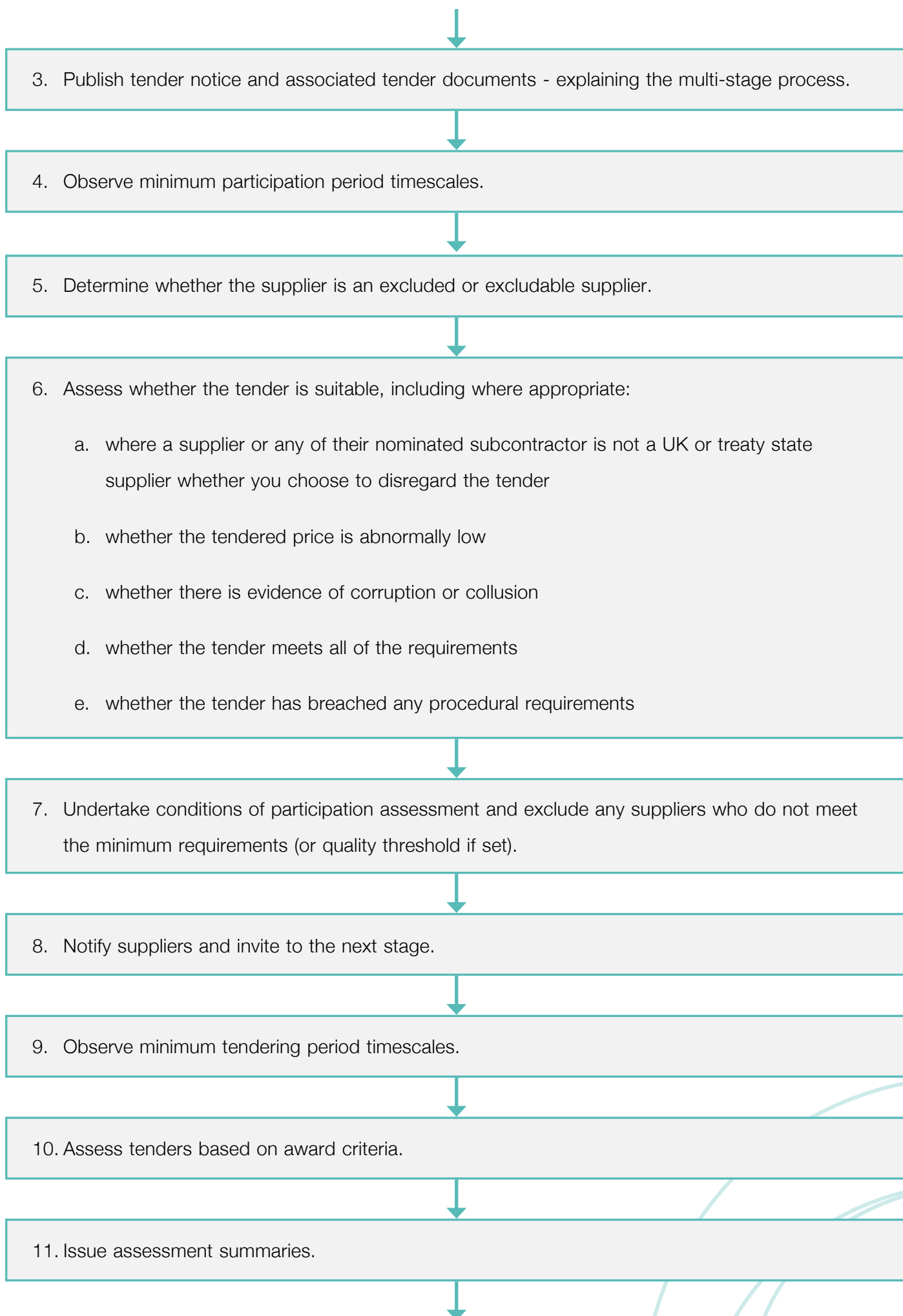


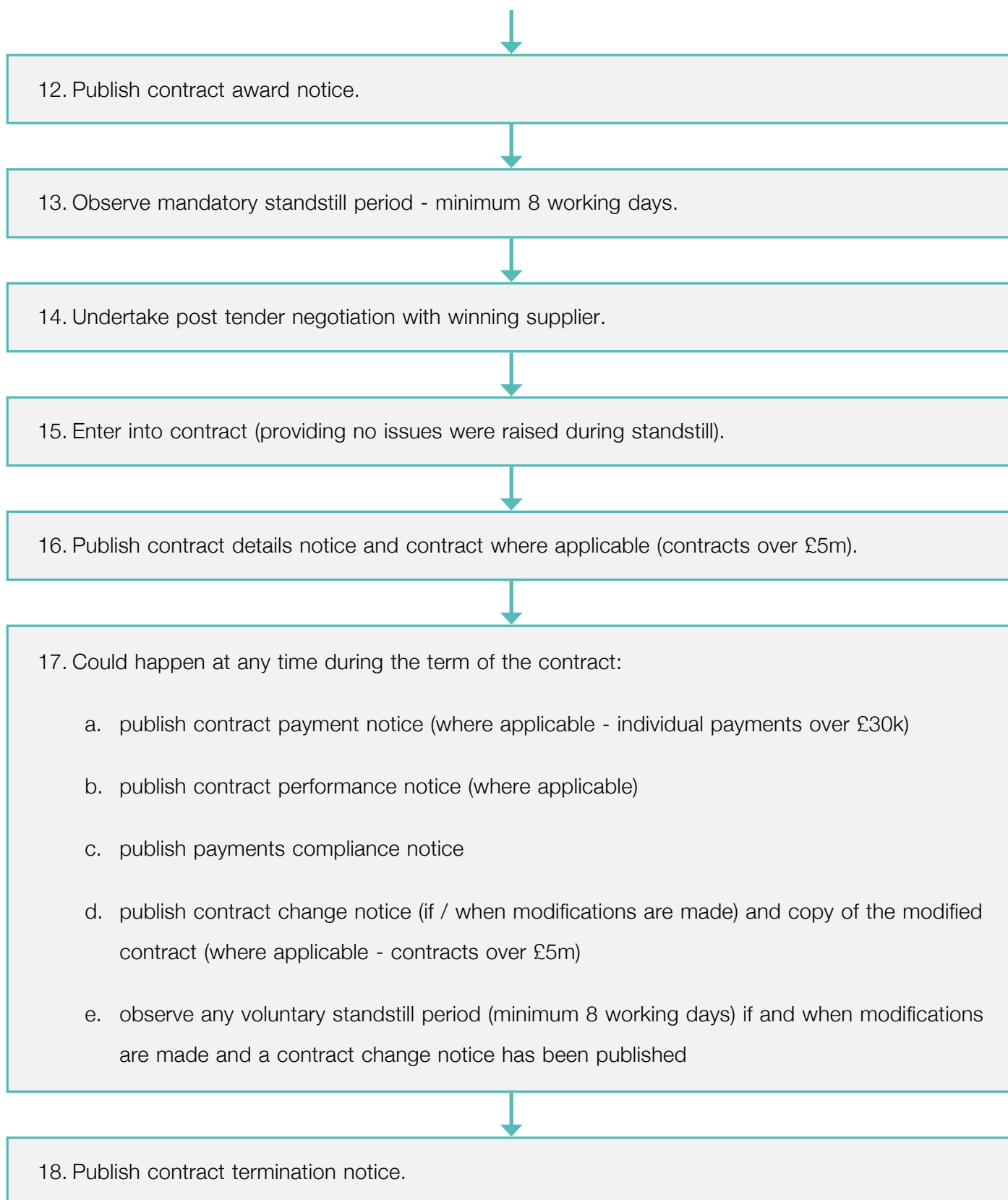


Note - assessing suitability requirements may be carried out at any point prior to contract award as described in the tender notice and/or associated tender documents.

An example of a process with post tender negotiation

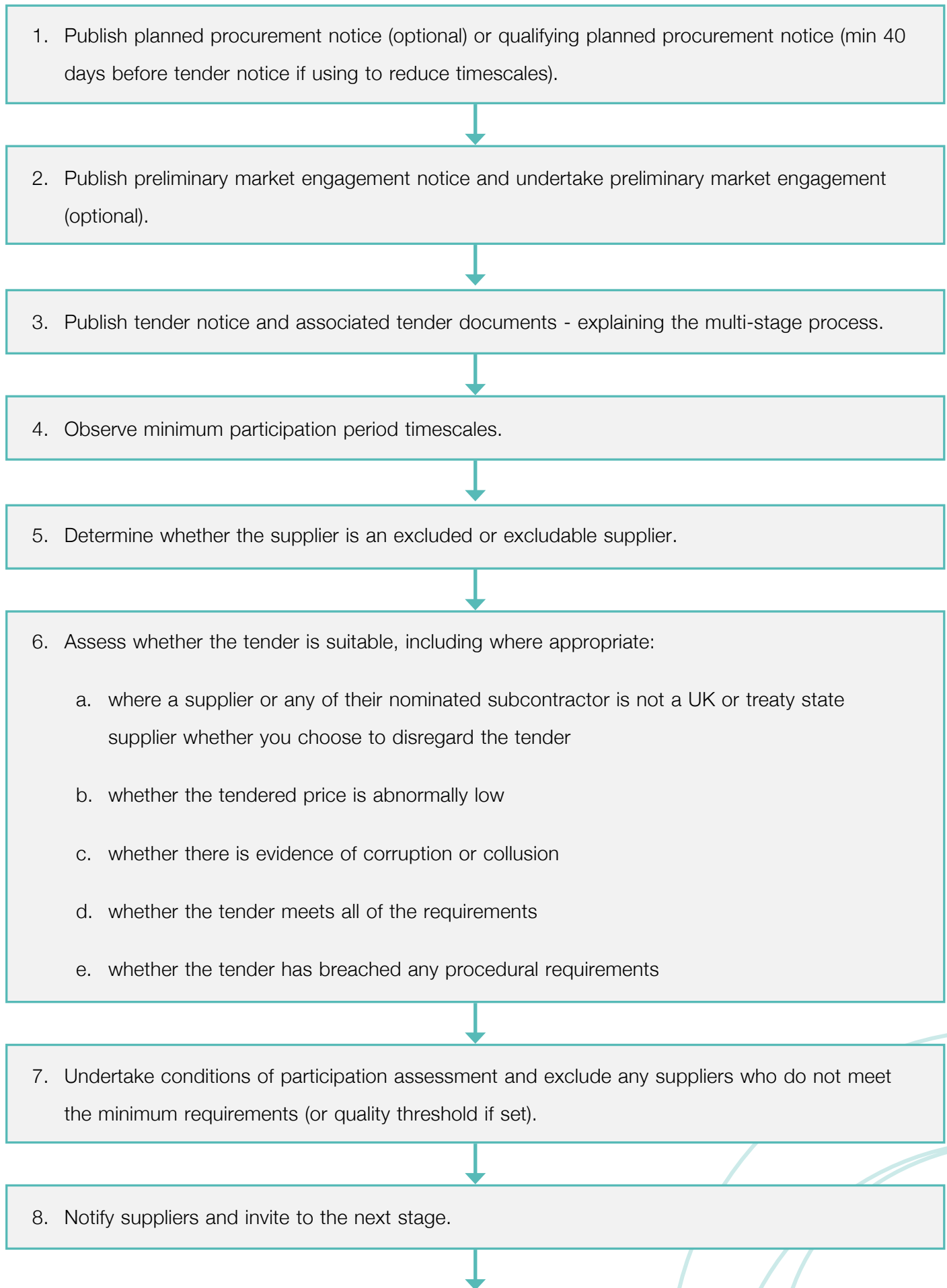


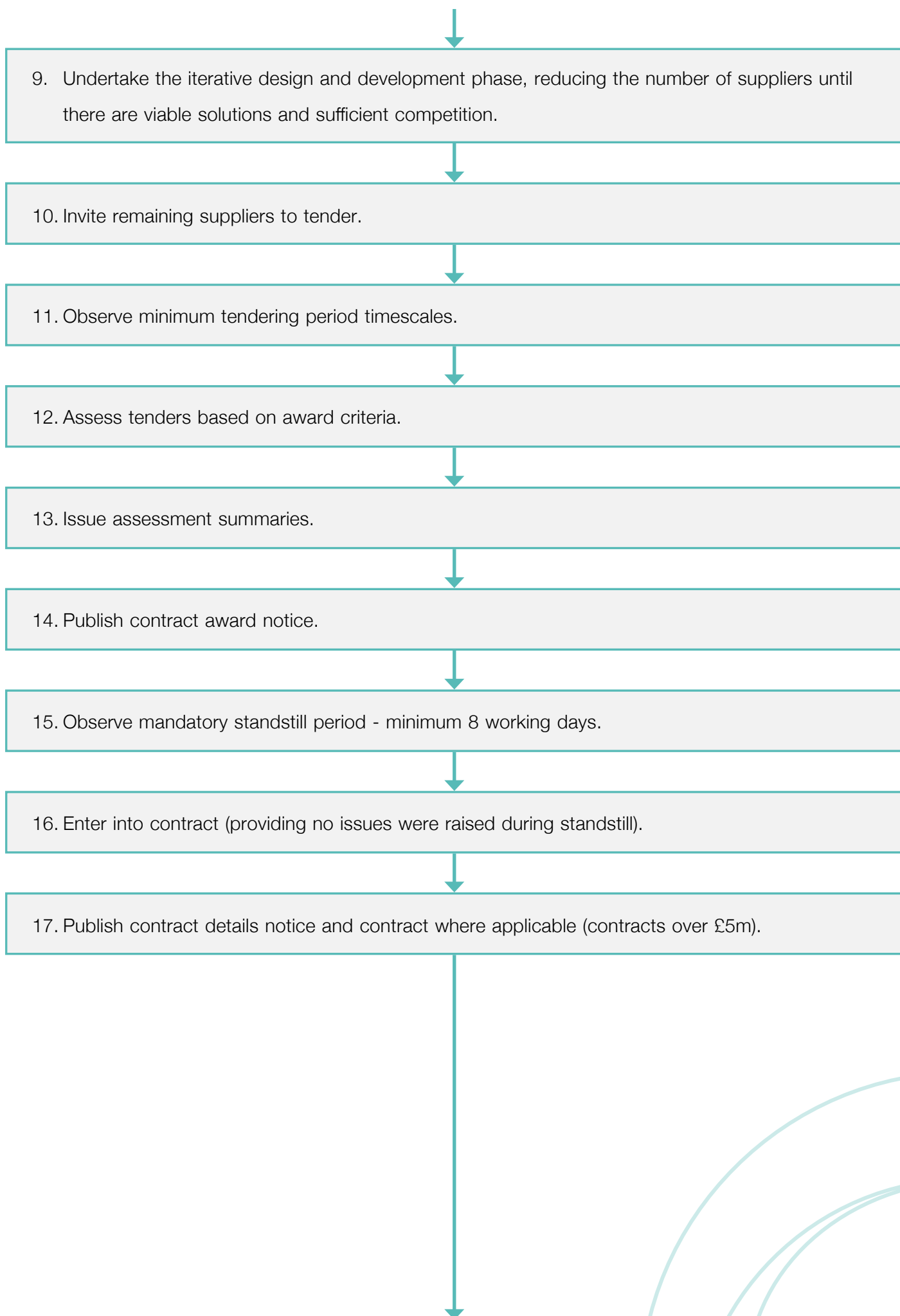




Note - assessing suitability requirements may be carried out at any point prior to contract award as described in the tender notice and/or associated tender documents.

An example of innovation process







18. Could happen at any time during the term of the contract:

- a. publish contract payment notice (where applicable - individual payments over £30k)
- b. publish contract performance notice (where applicable)
- c. publish payments compliance notice
- d. publish contract change notice (if / when modifications are made) and copy of the modified contract (where applicable - contracts over £5m)
- e. observe any voluntary standstill period (minimum 8 working days) if and when modifications are made and a contract change notice has been published



19. Publish contract termination notice.

Note - assessing suitability requirements may be carried out at any point prior to contract award as described in the tender notice and/or associated tender documents.



Tender notice fields

Competitive flexible procedure

Tender notices: competitive flexible procedure

Regulation 19 - (1) This regulation sets out other information which must be included in a tender notice for the award of a public contract through a competitive flexible procedure published in accordance with section 21(1) of the PA 2023.

(2) The information is:

(a) the same information referred to in regulation 18(2) except sub-paragraphs (d) and (j)

The initial fields of regulation 19(1) are the same as the fields set out in regulation 18(2), the tender notice for the open procedure with 2 exceptions.

(b) a statement that the tender notice is for the award of a public contract through a competitive flexible procedure in accordance with section 20(1) and (2)(b) of the PA 2023

State and copy on any issued associated tender documents: This tender notice is for the award of a public contract through a competitive flexible procedure in accordance with section 20(1) and (2)(b) of the Procurement Act 2023.

(c) a description of the process to be followed during the procedure, including:

- i. whether the procedure may include negotiation at any stage,
- ii. if the contracting authority proposes to rely on section 24 of the PA 2023 (refining award criteria), a summary of how it will rely on that section

Clearly describe the process and stages, including where appropriate any conditions of participation (CoP) or negotiation stage.

If you intend to refine the award criteria then provision for the refinement must be made here.

(d) where the number of suppliers is, or may be, no more than a maximum number of suppliers, generally or in respect of particular tendering rounds or other selection processes, the maximum number of suppliers and the criteria used to select the limited number of suppliers

Confirm the maximum numbers of suppliers to be carried forward after each stage e.g. CoP, Dialogue, intermediate assessment of tenders. You must describe the process used in each stage.

(e) where the number of suppliers is, or may be, no less than an intended minimum number of suppliers, generally or in respect of particular tendering rounds or other selection processes, the intended minimum number of suppliers

Confirm any minimum acceptable number of suppliers you intend to accept at each stage.

(f) where the tender notice is being used for the purpose of inviting suppliers to submit a request to participate, how requests to participate may be submitted and the date by when they must be submitted

This field requires the deadline for requests to participate and usually confirms any instructions if using eSenders. Other details such as attachments or other returned information can be defined here.

(g) where the tender notice is being used for the purpose of inviting suppliers to submit their first, or only, tender, how tenders may be submitted and the date by when they must be submitted

This field requires the deadline for submissions of tenders and usually confirms any instructions if using eSenders.

(h) whether the tender notice is being used:

- i. to reserve a contract to supported employment providers in accordance with section 32 of the PA 2023, or
- ii. to reserve a contract to public service mutuals in accordance with section 33 of the PA 2023

This is where contracting authorities indicate the reserving of procurement participation for

- a. supported employment providers or
- b. public service mutual

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

This means the detail in tender notice and associate tender documents can be far more detailed than required in the tender notice.

(4) This regulation does not apply to:

- a. a tender notice for the award of a framework through a competitive flexible procedure (see instead regulation 20), or
- b. a tender notice for the award of a public contract by reference to suppliers' membership of a dynamic market (see instead regulation 21)

This confirms a different tender notice is required for establishing frameworks or contracts awarded under dynamic markets.



Module 5: Frameworks and dynamic markets

Contents

1. Introduction
2. Overview
3. Frameworks
4. Dynamic Markets
5. Framework, open framework or dynamic market?
6. Estimating the Value of a Framework or Dynamic Market
7. Fees and charging
8. Register of Commercial Tools
9. Frameworks and dynamic markets established by non-contracting authorities

1. Introduction

This document intends to provide an overview of the commercial tools known as frameworks and dynamic markets available under the Procurement Act 2023 , how these differ from the frameworks and dynamic purchasing systems of the PCR 2015 and qualification systems for utilities under the UCR 2016 and how contracting authorities can best utilise them. It will explain the transparency requirements related to the establishment, awarding and managing contracts under frameworks and dynamic markets, as well as the new register of commercial tools.

2. Overview

Frameworks have been retained in the Procurement Act 2023 and are contracts between a contracting authority and one or more suppliers that provide for the future award of contracts, via, what we refer to as a “call off”, by a contracting authority to a supplier. However there are some changes:

Change: In addition to the existing framework, a new concept of an open framework has been introduced (section 49), which is a scheme of frameworks that provides additional flexibility to appoint new suppliers during the life of the framework scheme.

Benefit: This means that the framework remains competitive, drives value for money and reduces the administration involved in undertaking a full procurement.

Change: Dynamic markets have been introduced which are similar to dynamic purchasing systems (DPS) and qualification systems for Utilities, in that they are a list of qualified suppliers who are eligible to participate in future procurements with the flexibility to be utilised for a wider range of goods, services or works than was previously the case for DPS (section 36).

Benefit: Dynamic markets can be used for a wider range of goods, services and works.

Change: Increased transparency requirements such as in tender notices for frameworks and dynamic market notices.

Benefit: Will give greater detail about frameworks and dynamic markets allowing full visibility of opportunities and their terms.

3. Frameworks

A framework must set out the selection process for the future award of contracts (call offs from the framework) (section 45) which are awarded without having to undertake a full tender process.¹

The general rules around frameworks have remained broadly the same, in that, for example:

- They have a maximum four-year term² (although they can last longer if the contracting authority considers the nature of the goods, services or works to be supplied under contracts awarded under the framework warrant a longer term and clearly sets out the reasons for this in the tender notice³) (section 47).
- Suppliers who are awarded a place on the framework remain fixed for the duration, and there is no minimum or maximum number of suppliers although a contracting authority may wish to limit suppliers.
- They must set out the scope of goods, services and works to be procured under it (section 45(5)), in a lotted structure if applicable (section 18)
- They must state the estimated value of the framework – i.e. the estimated total value of the contracts to be awarded under it (section 45(5))
- They must set out the selection process to be followed when awarding contracts under it – which can be either award with or (in certain circumstances) without competition, or both (section 45(5))
- They must set out the price payable under call offs or mechanism for determining the price payable (section 45(5))
- They must clearly identify the contracting authorities it can be used by, this could be done through naming or categorising contracting authorities.

The changes to frameworks are:

Change: A term is now implied into every framework that allows a contracting authority to exclude a supplier from participating in any selection process under the framework if they are an excluded supplier or have, since the award of the framework, become an excludable supplier (section 48)

Benefit: This ensures that the suppliers on the framework continue to be fit to deliver public contracts and reduces risk in terms of the protection of public funds, the public, the environment, national security and the rights of their employees. The contracting authority is also protected as the implied term cannot be overridden (section 48(4)) therefore ensuring that contracting authorities retain the right to exclude such suppliers.

¹ Exemptions apply

² Exemptions apply

³ Or transparency notice if the framework is being established via a direct award.

Either of the competitive tendering procedures (open or competitive flexible) (see procedures and competitive flexible summary documents) can be used when setting up a framework.

■ Open Frameworks

Open frameworks (section 49) have been introduced in the Procurement Act 2023 as a more flexible alternative to the existing framework arrangements. An open framework is a scheme of successive frameworks for the same goods, services or works on substantially the same terms. This means that the scope of the open framework, award criteria and the terms and conditions should remain substantially the same. However there is the ability to modify a framework in the scheme where it is in line with the requirements around modifications section 31 – if there has been a modification to a framework in the scheme, subsequent frameworks must still be awarded under a tender notice that is substantially the same as other tender notices in the scheme (section 49(9)).

Benefits:

Open frameworks are “reopened” (i.e. one framework in the scheme expires as the next one commences) periodically throughout the term to allow new suppliers to tender for a place on the framework.

The framework must be reopened at least:

- Once during the period of 3 years from award of the first framework under the scheme, **and**
- Within a period of 5 years beginning on the award of the second framework in the scheme.

This means:

- There is the opportunity to re-test the market and refresh the supplier base as and when market conditions change
- Suppliers who are new entrants to the market have the ability to join the open framework who may offer the most advantageous solutions
- Improved value for money can be achieved through maintaining the level of competition through the appointment of new suppliers
- There is the potential to reduce administrative overheads of not having to re-assess all suppliers tenders.

There is no limit on the number of times the framework can be reopened or the number of frameworks within the scheme. For example, a contracting authority may choose to reopen on an annual basis depending on the type of requirement and pace of the market.

Open frameworks can run for a maximum duration of 8 years, and therefore can better align to longer term projects or requirements (section 49(2)(c))

Establishing an open framework

Just as when establishing a framework, either of the competitive tendering procedures (open or competitive flexible) (see procedures and competitive flexible procedure summary documents) can be used when setting up an open framework.

Many of the same framework rules apply to an open framework in that it must, for example:

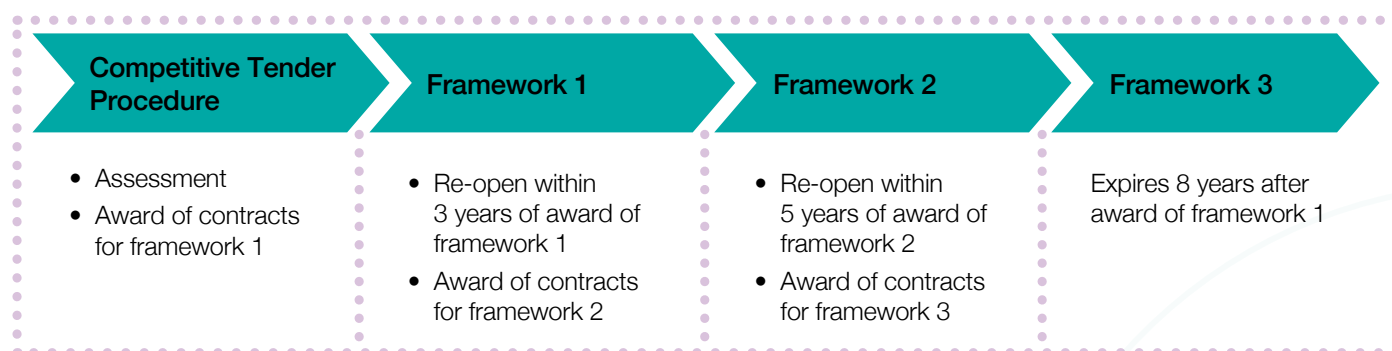
- set out the scope of goods, services and works to be provided under it, in a lotted structure if applicable.
- state the estimated value of the open framework, i.e. the estimated total value of the contracts to be awarded under it.
- set out the selection process to be followed when awarding contracts under it – which can be either award with or (in certain circumstances) without competition, and how the competition can be undertaken (e.g. allow for multi-stage processes)
- set out the price payable under call offs or mechanism for determining the price payable.
- clearly identify the contracting authorities it can be accessed and utilised by, this could be done through naming or categorising contracting authorities.

Number of suppliers

There is no limit to the number of suppliers that can be admitted on to the open framework, a contracting authority can determine whether or not they would wish to limit the number of suppliers to be awarded a place. However, there must be a minimum of two suppliers for the full flexibility of the open framework to apply.

Reopening and awarding an open framework

The diagram below shows the basic reopening process:



The framework in the scheme immediately prior to the award of the next framework must expire when the new framework in the scheme is awarded (section 49(2)(b)). Any ongoing selection processes for the award of a call off under the previous framework in the scheme can continue beyond the expiry of that framework but no new ones can start (section 49(3)).

The term of the framework must be set out in the framework tender notice and / or associated tender documents (Regulation 20) (as well as in the framework (section 45(5)(e))), however contracting authorities may wish to allow for extension periods in one or more of the frameworks in the scheme to provide additional flexibility. The benefit of doing so is that it provides an option as to whether the framework is reopened at that point or extended, which may be influenced by market conditions. However, these extension periods must not mean that the term of a framework in the scheme extends beyond the required reopening periods.

Example:

A tender notice for a framework sets out an open framework of 8 years with the intention that it is to be opened every 2 years, however the initial framework has an extension option of a year.

- Framework 1 – has an initial term of 2 years with an option to extend for a further year, with an expiry date 8 years from the award of the framework.
- As the expiry of Framework 1 approaches, the contracting authority determines that due to the current market conditions taking the extension would be appropriate.
- Framework 1 now expires 3 years after it was awarded, which is compliant with the required opening periods of the open framework. It will still expire 8 years from the award of framework 1.

If following the competitive tendering procedure only one supplier is appointed to the framework then the open framework overall would be limited to a maximum of 4 years from the point of award of the single supplier framework (section 49(6)). However, the open framework can still be reopened and new suppliers appointed during this period, but if there is more than one supplier awarded a place, then the open framework still can not be extended beyond the four year period.

Example:

A tender notice for a framework sets out an open framework for a maximum term of 8 years with the intention that it is to be opened every 2 years and limited to 5 suppliers

- Framework 1 – 3 suppliers awarded.
- The open Framework was reopened at year 2 and only 1 supplier was awarded to Framework 2.
- Framework 2 and the overall open framework can now only last 4 years from the date framework 2 commenced. This means that the open framework can last a total of 6 years (the first 2 years under

framework 1, plus 4 years under framework 2 or any future frameworks) and not the maximum 8 year term. If more suppliers are awarded when it is reopened at a later date, the maximum term remains 6 years (i.e. 4 years from the commencement of the single supplier framework).

- The open Framework was reopened at year 4 and 4 suppliers were awarded a place on Framework 3. Framework 3 and therefore the open framework expired after 2 years.

Appointing suppliers to an open framework

Where there is no limit on the number of suppliers, then existing suppliers from a previous framework in the scheme may be re-awarded a place on the framework based on one of the following:.

- The fact that the supplier has previously been awarded to a framework in the scheme, i.e. be carried forward.
- A tender relating to an earlier award.
- A new tender relating to the re-award.

(section 49(4))

Where the number of suppliers has been limited, a contracting authority may only re-award to an existing supplier based on either of the following:

- A tender relating to an earlier award
- A new tender relating to the re-award

(section 49(5))

The contracting authority should set out the process for reopening and awarding the framework within the associated tender documents for the framework. This process should include how existing suppliers would be dealt with; whether (if appropriate) they are required to confirm that they wish to remain on the framework, and whether they wish to be evaluated using their previous tender or submit a new tender. Contracting authorities must adhere to the process that they have set out.

The award criteria for appointing suppliers to the framework must remain substantially the same for each framework in the scheme, allowing all suppliers tenders to be assessed on the same terms. Frameworks within a scheme must be substantially the same (section 49(1)).

Example – limiting suppliers:

A contracting authority has reopened an open framework after 2 years (Framework 1) and is assessing the tenders for Framework 2. The number of suppliers on the framework is limited to 3.

Supplier A is an existing supplier, awarded a place on Framework 1. They have chosen not to resubmit a tender, and have maintained the assessment scoring from the award of Framework 1. Suppliers B and C are also existing suppliers, but have submitted a new tender to be assessed. Suppliers D and E are new suppliers.

Assessment scores:

	Framework 1 Score	Framework 2 Score
Supplier A	85%	85%
Supplier B	72%	75%
Supplier C	70%	65%
Supplier D	N/A	74%
Supplier E	N/A	70%

Suppliers A, B and D will now be awarded a place on the framework and supplier C would lose their place.

Awarding in accordance with a framework or an open framework (calling off a framework)

The rules for awarding a contract under a framework have broadly remained the same, however there is some additional flexibility in how suppliers on the framework can be assessed.

Change: There is now the ability to use conditions of participation to assess legal and financial capacity and technical ability to perform the call off contract as part of the competitive selection stage when calling off a framework, providing they are proportionate, taking into account the nature, cost and level of complexity of the contract (section 46(1) and (5)). This is in addition to any assessment of conditions of participation under section 22 as part of the procedure for the award of the framework. However, contracting authorities must comply with the competitive selection process set out in the associated tender documents for the framework.

Benefit: This ensures that only suppliers who meet the specific requirement of the call off contract, by meeting such conditions, can participate in the opportunity.

This would:

- give greater confidence that the supplier can deliver the specific requirements
- allow the number of suppliers to be reduced further, and

Example:

The framework allows for a multi-stage competitive selection process.

A contracting authority has a requirement that is within scope of Lot 1 on the framework, which has ten suppliers awarded.

The framework public liability insurance requirement was £5m, whereas for the contracting authority's specific requirement they consider it would be proportionate to require £10m public liability insurance,

In the competitive selection process being used to award a call off contract, the contracting authority could include as a condition of participation a requirement for the supplier to make a commitment to having £10m public liability insurance in place on award of the contract and determine which suppliers on the lot could meet this requirement before inviting them to submit proposals to deliver the contract.

If only five of the ten suppliers could meet this requirement, and therefore only those five chose to participate then the contracting authority would only need to invite those suppliers to submit proposals. Where a supplier who cannot meet this requirement, still chooses to participate in the selection process, the contracting authority would be able to disregard their proposal on the basis that they fail to meet the condition.

Key points to remember when calling off a framework

- If it is above the relevant threshold and not an exempted contract, a framework is a public contract and both below and above threshold contracts can be awarded in accordance with that framework.
- For a framework with a single supplier, contracts can be awarded without competition (section 45(4)(a)).
- Contracting authorities can ask suppliers to provide additional supplementary information which are specific to the requirements of the call off contract (section 45(6)).
- For frameworks with more than one supplier, contracts may be awarded either with or without competition but in each case the selection process must be provided for in the framework tender notice (Regulation 20(c)) and the associated documents for the framework (section 45(5)). Contracts may only be awarded to a supplier without competition if the framework sets out the core terms of the contract to be awarded and an objective mechanism for supplier selection (section 45(4)(b)).
- When undertaking a competitive selection process, proposals can only be assessed by reference to the same award criteria that tenders were assessed on when awarding the framework; new criteria cannot be introduced (section 46(8)), but the criteria can be refined (section 46(9)).
- There are no minimum time limits for submission of proposals under a framework, however, a contracting authority must, for example, have regard to the nature and complexity of the contract being awarded and ensure time limits are the same for each supplier (section 54(1)).

- A mandatory standstill period is not required for a call off contract (Section 51(3)(d)), however the contract award notice may provide for the provision of a voluntary standstill period (see assessment and award summary document).

■ Transparency requirements

Establishing the framework

In establishing the framework transparency obligations of the procedure being used to establish the framework must be followed (see procedures and competitive flexible procedure summary documents), as a reminder they are:

- Planned procurement notice (optional).
- Preliminary market engagement notice (where pre-market engagement is undertaken).
- Tender notice (mandatory) with the relevant detail for the open or competitive flexible procedure depending on which procedure is being used.
- Transparency notice (mandatory, unless the framework is being awarded by virtue of paragraph 15 of Schedule 5) where a framework is awarded ⁴directly.

Tender Notice

Regulation 20 of the Procurement Regulations 2024 sets out the requirements for a tender notice for a framework. In addition to the basic details required in a tender notice, a tender notice for a framework must also set out, amongst other things:

- Identification of the contracting authorities that may award contracts under the framework during its term.
- the nature, scope and overall maximum value of the works, services or supplies that may be awarded under the framework.
- whether they intend to appoint a maximum number of suppliers, specifying what that number is or alternatively to give a range.
- whether the framework is an open or closed framework. And, for open frameworks may state the indicative reopening periods.

⁴ A framework under an open framework cannot be awarded directly (section 51(10))

Reopening and awarding frameworks in a scheme of an open framework

To reopen and award frameworks in a scheme of an open framework, the following must be published:

- A new tender notice – This must be substantially the same as the tender notice published originally for the award of the framework. This notice is used to re-advertise the opportunity and the next framework in the scheme and will link back to the original tender notice for the framework.
- Assessment summaries (not published but provided to suppliers).
- A contract award notice.
- A contract details notice.

Awarding under a framework (calling off)

Under a framework, a tender notice **is not** published when undertaking a procurement under the framework. However, where a competitive selection process is being used, there is a requirement to notify and invite all suppliers who are capable of meeting the requirement (e.g. under a specific lot if applicable) to participate in the opportunity.

Before awarding a call off, a contract award notice must be published and following contract award a contract details notice and, if the value of the contract is over £5 million, a copy of the contract must be published (see assessment and award summary document).

4. Dynamic Markets

The Procurement Act 2023 has introduced a new commercial tool, dynamic markets⁵, which are similar to dynamic purchasing systems (DPS) and qualification systems for utilities, in that they are lists of qualified suppliers who are eligible to participate in future procurements. Dynamic markets offer greater flexibility to utilise them for a wider range of goods, services or works than dynamic purchasing systems did, which would benefit emerging and niche markets, rather than commonly used goods and services.

Benefits:

- New suppliers can be added through the lifetime of the dynamic market
- The use of the dynamic market can be particularly beneficial for emerging markets, as new suppliers can join at any time.
- There are no restrictions on the term or the number of suppliers that can be part of the dynamic market.

⁵ Exemptions apply

- Suppliers not on the dynamic market have visibility of new advertised opportunities, as tender notices are published for each procurement, so that they can submit an application for membership and participate in the procurement process.
- Dynamic markets have a much greater scope than dynamic purchasing systems in that they can be set up for a wider range of goods, services and works covered under the Procurement Act 2023.

■ Establishing the Dynamic Market

Dynamic markets are established following the publication of a dynamic market notice (Section 39).

What must be included in a dynamic market notice is set out in (Regulation 25). Although there is no duration mandated in the Procurement Act 2023, contracting authorities should consider whether they wish to impose a maximum or minimum term for the dynamic market. Consideration should be given when choosing to set a minimum or maximum duration, in that doing so may limit the flexibility and the attractiveness of the market to suppliers.

Dynamic markets will operate as a two-stage process:

1. the dynamic market is established and suppliers who meet the conditions for membership are admitted to the market
2. competitive flexible procedures are undertaken (and tender notices published) to award contracts.

Dynamic markets could be divided into categories or parts, as long as they are described in a manner that they can be easily identified by contracting authorities and potential suppliers.

Examples of how categories or parts could be defined include:

- by reference to the value of contracts to be awarded, e.g., categories of low value (£500,000 or less), medium value (£500,001 – £1m) and high value (£1m plus);
- by reference to the geographic areas in which contracts can be awarded e.g., categories by reference to local authority boundary areas; or
- by reference to the specific types of works, services or supplies e.g., categories of maintenance services, cleaning services and catering services.

This is not exhaustive and other categorisation may be used as required.

Application for membership

Contracting authorities may set conditions for membership for a dynamic market, which are similar to the conditions of participation, in that they must be proportionate and only assess whether the suppliers have the legal and financial capacity and technical ability to perform the contracts awarded under the dynamic market (section 36(1)) (see supplier selection summary document).

Also, as is the case for conditions of participation, contracting authorities must not require:

- the provision of audited annual accounts from suppliers that are not required by the Companies Act 2006 or an overseas equivalent to have their accounts audited (for example small companies);
- insurance relating to the performance of a contract to be in place before a supplier becomes a member of the dynamic market or before an award of the contract under the dynamic market.

(section 36(2))

This allows suppliers, usually small and medium-sized enterprises, that are not legally required to have their accounts audited to provide alternative evidence of financial capacity and allows suppliers to commit to having insurance in place at the point they are awarded a contract under the dynamic market.

A contracting authority may not limit the number of suppliers that can be admitted to a dynamic market (section 36(7)(a)).

Suppliers can submit their application for membership at any time during the life of the dynamic market. Once received, the contracting authority who owns or has established the dynamic market must:

- assess the application within a reasonable time.
- consider whether the supplier is an excluded or excludable supplier. Where a supplier is an excluded supplier, the contracting authority must not admit them to the dynamic market. Where a supplier is an excludable supplier, the contracting authority can consider whether or not to admit them to the dynamic market (see supplier selection summary document).
- ensure that the supplier satisfies the conditions for membership, and
- inform the supplier of the outcome, together with the reasons for the decision as soon as reasonably practicable, although a specific timescale is not mandated by the Procurement Act 2023.

(section 36(6))

Unlike frameworks, the establishment of a dynamic market does not result in the award of a public contract, therefore in admitting a supplier to the dynamic market a standstill period does not have to be observed.

Where a supplier has been unsuccessful in being admitted to the dynamic market, they have the opportunity to reapply at any time and have their application assessed.

■ Managing the Dynamic Market

Modifying a dynamic market

Once the Dynamic Market has been established, modifications are permitted (subject to the procurement objectives such as to treat suppliers the same (unless differences justified) (section 12)), these include:

- how the dynamic market will operate,
- the goods, services or works for which the dynamic market can be used,
- the categories of goods, services or works under the dynamic market and
- the contracting authorities which can award contracts under the dynamic market.

However changes **must not** be made to the conditions for membership to the dynamic market (section 36(7)(b)). These must remain the same throughout the life of the dynamic market to ensure fairness to all suppliers.

After modifying the dynamic market, the dynamic market notice must be updated, covered later in this document. Contracting authorities will also be obligated to ensure that they maintain accurate and up to date information about the dynamic market via the register of commercial tools, which is detailed later in this document.

Re-assessing and removing suppliers from the market

Suppliers on the dynamic market may be reassessed at any time to check:

- Their excluded or excludable status,
- Whether they are on the debarment list
- If they still meet the conditions for membership

A contracting authority **must** remove a supplier from the market if they have since joining the market been added to the debarment list on a mandatory exclusion ground section 37(1).

A contracting authority **may** remove a supplier from the market where the supplier:

- Is considered by the contracting authority to be an excluded supplier but is not on the debarment list
- Has, since becoming a member of the market, become an excludable supplier
- Does not meet the conditions for membership or
- Was an excludable supplier when it became a member of the market, but the contracting authority was not aware. (section 37(2)(a) and (b))

Whilst removing such suppliers is discretionary, it is best practice to do so to help ensure suppliers on the dynamic market continue to be fit to deliver public contracts and reduce risk in terms of the protection of public funds, the public, the environment, national security and the rights of their employees.

Before removing the supplier from the market, the contracting authority **must** inform the supplier of the decision to remove them and the reasons for doing so (section 37(4)).

Awarding contracts under a Dynamic Market (calling off)

When awarding a contract under a dynamic market, a competitive flexible procedure must be used as there is already a restriction on who can participate (by the requirement to be a member of the dynamic market) and therefore an open procedure cannot be used.

When the opportunity is advertised (by publishing a tender notice for dynamic markets (Regulation 21)), the contracting authority must include a statement that the tender notice is for the award of a public contract under a dynamic market. This allows suppliers who are not currently members of the dynamic market to submit an application for membership and participate in the procurement process if they are admitted to the market.

If a contracting authority is carrying out a procurement under a dynamic market, it can only consider tenders or requests to participate in the procurement from suppliers that are on the dynamic market (section 34(3)). This means that suppliers who are not already on the dynamic market must become members before their tenders/requests to participate can be assessed. Contracting authorities are required to consider applications for membership from suppliers who apply to join the market so that they are eligible to have their tenders/requests to participate assessed (section 34(4)). Only in exceptional circumstances due to the complexities of the procurement, which mean that the deadline for submission of tenders/requests to participate does not allow the contracting authority to consider the supplier's application for membership in time, can a supplier be excluded or their tender rejected because they are not a member of a dynamic market (section 34(5)).

Where a contract is being awarded under a dynamic market established by another contracting authority, you should ask suppliers to confirm that they are a member of the relevant dynamic market when they submit their request/tender or, if they have submitted their tender or request to participate early, that they will be a member by the deadline for submission. Suppliers should be required to provide evidence of this. In some cases there may be a need to verify this with the contracting authority who established the dynamic market.

Contracting authorities may also wish to notify the dynamic market owner of their upcoming procurement and the deadlines for submissions, so that they can consider applications for membership within a reasonable period of time and admit suppliers within a reasonable period in compliance with their obligations (section 36(6)).

Whilst contracting authorities may set conditions for membership to join a dynamic market, they may still assess and exclude suppliers by reference to conditions for participation as part of the competitive flexible procedure when awarding a contract under a dynamic market (calling off) (section 20(5)(a)).

It is possible that a supplier who has become an excluded supplier since joining the dynamic market may still be a member. As there is an obligation to exclude an excluded supplier from participating in, or progressing as part of, the competitive flexible procedure, contracting authorities should check to ensure that such suppliers are identified and excluded (section 27(2)).

Although the minimum time limit for the submission of tenders under a dynamic market is 10 days (section 54(4)), contracting authorities should consider allowing as long as possible to allow suppliers to apply to join the dynamic market if they are not already members.

Only above threshold contracts can be awarded under a dynamic market⁶. This is because the submission of tenders is restricted based on the requirement for a supplier to be a member of the dynamic market. Below threshold contracts cannot be restricted by reference to a supplier's suitability (section 85(1)), and suppliers have already been assessed based on this to become a member of the dynamic market.

However, they can be used for works contracts provided the contract value is:

- For a central government authority, not less than £138,760
- Otherwise, not less than £213,477.

■ Transparency

Notices for the establishment of dynamic markets are different. Rather than having a tender notice, contract award notice and contract details notice, etc., when establishing a dynamic market, the dynamic market notices⁷ must be used and updated throughout the life of the market (section 39). The dynamic market notices (Regulation 25) are used to:

⁶ Exemptions apply

⁷ Exemptions apply

1. Advertise the dynamic market (Regulation 25(2)), the information includes:
 - Information about the goods / services or works to be procured via the dynamic market
 - Conditions for membership
 - Categories or parts
 - The authorities who can access the dynamic market
 - Dates for the establishment and where relevant the expiry of the dynamic market
 - Information about fees
2. Notify of the establishment of the dynamic market (Regulation 25(4)), the information includes:
 - Details of suppliers who have been admitted to the dynamic market, and the categories / parts they have been admitted to where relevant
3. Notify of changes or modifications to the dynamic market (Regulation 25(6)), the information includes:
 - Details of suppliers being added or removed from the dynamic market, and the categories / parts they have been admitted to / removed from where relevant.
 - Date from which the modification will have effect.
 - Summary of any other modification made.
4. Notify of the termination of the dynamic market⁸ (Regulation 25(8)):
 - State that the dynamic market has ceased to operate.
 - Date it ceased to operate.

Awarding a contract under a dynamic market

Change: A tender notice is required⁹ to openly advertise an opportunity under a dynamic market. The tender notice should make it clear that being a member of the dynamic market is a requirement of the procurement.

Benefit: This alerts not only the existing members of the dynamic market of the opportunity but may also encourage new suppliers to submit an application for membership in order to participate.

⁸ Exemptions apply

⁹ Exemptions apply

5. Framework, open framework or dynamic market?

The table below summarises some of the key features to help determine which would be best suited for the type of requirement and the nature of the market. Pre-market engagement can also be used to help determine which type of framework would be most suitable.

	Framework	Open Framework	Dynamic Market
Is it a public contract?	Yes	Yes – the frameworks in the scheme are each public contracts, but the open framework is not a contract	No
Maximum duration	4 Years Unless defence and security, utilities or justified and set out in the tender or transparency notice for the framework	Maximum 8 Year term (with minimum reopening periods) <i>final framework in the scheme to expire 8 years from the day the first framework was awarded, unless single supplier</i>	No maximum term
Number of Suppliers	No minimum or maximum of suppliers	Minimum of two suppliers to take advantage of maximum 8 year term, no maximum	No minimum or maximum of suppliers
Can number of suppliers be limited	Yes	Yes	No
Ability to add additional suppliers throughout the term	No	Yes, when the framework is reopened	Yes, throughout the term at any time
Flexibility to operate	Award with or without further competition	Award with or without further competition	Must consider new applicants at every call off

6. Estimating the Value of a Framework or Dynamic Market

Change: There is no longer a need to assign a value to the contracts that may be awarded under each individual lot, category or part of a framework or dynamic market. Now it is only the value of the potential contracts for the framework or dynamic market as a whole that need to be stated.

Benefit: This prevents whole frameworks or dynamic markets from having to be re-procured because the value of one particular lot, category or part has exceeded the estimated value and allows much more flexibility across the framework as a whole.

Contracting authorities may still choose to publish the values associated with each lot, category or part depending on the nature of the requirement and the market, for example making the lot, category or part more attractive to larger suppliers or being clearer about smaller lots being aimed at small and medium-sized enterprises or new entrants. However, by doing so, those values would have to be adhered to and modified accordingly if needed and provided there was a ground available for doing so under the rules on modifying contracts (Contract Governance Summary Document).

7. Fees and charging

Through frameworks and dynamic markets contracting authorities may charge suppliers a fixed percentage fee of the contracts awarded to them under the framework or dynamic market¹⁰. Suppliers cannot be charged to gain access to a framework or a dynamic market. Fees must be set and stated in the tender notice or dynamic market notice and may not change during the lifetime of the framework or dynamic market, it should also include provisions as to how these fees will be paid.

¹⁰ Exemptions apply – charging of fees to suppliers may only be made in connection to obtaining and maintaining membership of the market for utilities dynamic markets

8. Register of Commercial Tools

Previously there has been no easily available, searchable resource that contracting authorities can use in order to determine whether a framework or dynamic purchasing system currently provides the goods, services or works they are seeking.

Over time, a Register of Commercial Tools will provide a single location where details of all frameworks, dynamic markets, call off contracts awarded under them, and all charges applicable under them will be held.

This will be a publicly available tool to increase visibility and transparency, making it easier to find and compare active frameworks and dynamic markets. It will also reduce unnecessary searching, the payment of high fees to a specific agent to carry out a search or unnecessary work to undertake a full procurement exercise when a simple call off might have been possible.

Note: The register of commercial tools will only record those frameworks and dynamic markets set up under the Procurement Act 2023 and therefore won't be in place at the commencement date.

9. Frameworks and dynamic markets established by non-contracting authorities

Under the Procurement Act 2023, contracting authorities cannot award public contracts under frameworks or dynamic markets established by private companies, except where the private company is acting as the agent of a contracting authority.

There is one exception which allows utilities to award contracts under a utilities dynamic market set up by any person as long as it complies with the requirements applicable to private utilities establishing a utilities dynamic market (Section 35(3)).

Organisations that are not contracting authorities are not regulated by the Procurement Act 2023 and therefore any frameworks or dynamic markets established by them will not be compliant with the Procurement Act 2023 as far as contracting authorities are concerned.

Contracting authorities have a responsibility to ensure that any framework or dynamic market they access and award a contract under is compliant with the Procurement Act 2023. In time, the register of commercial tools will help to identify frameworks or dynamic markets that have been established under the Act and that can therefore be used by contracting authorities.

It is common for third parties, who are not contracting authorities, to wish to partner with contracting authorities to establish a framework or dynamic market for commercial purposes. When entering into these partnerships it is important that contracting authorities consider the following:

- The obligation to comply with the Procurement Act 2023 when setting up a framework or dynamic market sits with them as the contracting authority
- The framework or dynamic market should be proportionate to the size of the organisation, for example a small district council setting up a national framework could carry significant risk.

It is advised that contracting authorities seek legal advice when considering such partnerships.



Frameworks vs dynamic markets

Cheat sheet

This learning aid is designed to highlight the different characteristics of frameworks, open frameworks and dynamic markets under the Procurement Act 2023 to assist you in determining which would be most suitable.

Framework, open framework or dynamic market?

	Framework	Open framework	Dynamic market
Public contract?	Yes	Yes	No
Maximum duration	4 years (unless defence and security, utilities or justified and set out in the tender notice for the framework)	Maximum 8 year term (with minimum reopening periods) - final framework in the scheme to expire 8 years from the day the first framework was awarded	No maximum term
Number of suppliers	No minimum or maximum	Minimum of two suppliers - to take advantage of maximum 8 year term	No minimum or maximum

	Framework	Open framework	Dynamic market
Can the number of suppliers be limited	Yes	Yes	No
Ability to add additional suppliers throughout the term	No Suppliers are fixed from the point of award to termination (up to 4 years)	Yes Suppliers may be refreshed during the term of the open framework	Yes Suppliers can apply to join at any time
Market conditions	Stagnant / stable	Developing / limited new entrants	Emerging / new entrants
Resource to establish and maintain	- Any competitive tendering procedure can be used to establish - May choose to reassess exclusions during the life of the framework	- Any competitive tendering procedure can be used to establish - Competitive process must be repeated within required timescales to appoint new suppliers - May choose to reassess exclusions	- Assess applications for membership - Applications can be submitted at any time and must be assessed within a reasonable time period - May choose to reassess exclusions and conditions of membership during the life of the dynamic market
Awarding a contract (calling off)	Award with or without competition from fixed pool of suppliers	Award with or without competition from fixed pool of suppliers within a framework in the scheme	Award with competition - must consider potential new members for every call off

	Framework	Open framework	Dynamic market
Flexibility to adapt during lifetime	None	• Reopen and re-award framework as needed (within minimum parameters) • Can add or remove suppliers in accordance with the processes set in the framework	• Unlimited • Open for new suppliers to join at any time • Suppliers can only be removed based on exclusion grounds or failure to continue to meet conditions of membership
Best for...	• Fixed need • Small supply base • Supplier and product certainty (quality, lead time)	• Some flexibility required due to market development • Value through repeated competition • Manageable supply base	• Large supply base with a mix of big suppliers and SMEs • Agile response to innovation • Social value, can be less resource intensive for SMEs and small local suppliers to participate

You should consider which type of framework is most appropriate for your particular requirement and the current market. Pre-market engagement can also be used to help determine which type of framework would be the most suitable solution.



Frameworks and dynamic markets: establishing a framework

Process flow

1. Publish planned procurement notice (optional) or qualifying planned procurement notice (min 40 days before tender notice if using to reduce timescales).
2. Publish preliminary market engagement notice and undertake pre-market engagement. You must publish a preliminary market engagement notice if undertaking pre-market engagement, but pre-market engagement is optional.
3. Publish tender notice and associated tender documents for framework (open or competitive flexible procedure).
4. Observe participation stage and / or tendering period minimum timescales.
5. Determine whether the supplier is an excluded or an excludable supplier.

```
graph TD; A[6. Assess whether the tender is suitable, including:  
a. assessing the conditions of participation  
b. where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender  
c. whether the tendered price is abnormally low  
d. whether there is evidence of corruption or collusion  
e. whether the tender meets all of the requirements  
f. whether the tender has breached any procedural requirements] --> B[7. Undertake intermediate assessment(s) (if applicable for competitive flexible procedure) and assess tenders.]; B --> C[8. Issue assessment summaries.]; C --> D[9. Publish contract award notice.]; D --> E[10. Observe mandatory standstill period - minimum 8 working days.]; E --> F[11. Enter into contract.]; F --> G[12. Publish contracts details notice.];
```

6. Assess whether the tender is suitable, including:

- a. assessing the conditions of participation
- b. where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender
- c. whether the tendered price is abnormally low
- d. whether there is evidence of corruption or collusion
- e. whether the tender meets all of the requirements
- f. whether the tender has breached any procedural requirements

7. Undertake intermediate assessment(s) (if applicable for competitive flexible procedure) and assess tenders.

8. Issue assessment summaries.

9. Publish contract award notice.

10. Observe mandatory standstill period - minimum 8 working days.

11. Enter into contract.

12. Publish contracts details notice.



13. Could happen at any time during the term of the framework:

- a. publish contract change notice (if / when modifications are made)
- b. observe any voluntary standstill period (minimum 8 working days) if and when modifications are made
- c. contract performance notice (in the event of breach or poor performance of the framework contract as specified in the T&Cs)



14. Publish contract termination notice when framework comes to an end.



Frameworks and dynamic markets: establishing an open framework (initial and every framework in the scheme)

Process flow

1. Publish planned procurement notice (optional) or qualifying planned procurement notice (min 40 days before tender notice if using to reduce timescales).
2. Publish preliminary market engagement notice and undertake pre-market engagement. You must publish a preliminary market engagement notice if undertaking pre-market engagement, but pre-market engagement is optional.
3. Publish tender notice and associated tender documents for framework (open or competitive flexible procedure).
4. Observe participation stage and / or tendering period minimum timescales.
5. Determine whether the supplier is an excluded or an excludable supplier.

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- a. assessing the conditions of participation
- b. where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender
- c. whether the tendered price is abnormally low
- d. whether there is evidence of corruption or collusion
- e. whether the tender meets all of the requirements
- f. whether the tender has breached any procedural requirements

7. Undertake intermediate assessment(s) (if applicable for competitive flexible procedure) and assess tenders.

8. Issue assessment summaries.

9. Publish contract award notice.

10. Observe mandatory standstill period - minimum 8 working days.

11. Enter into contract.

12. Publish contract details notice.



13. Could happen at any time during the term of the open framework:

- a. publish contract change notice (if / when modifications are made)
- b. observe any voluntary standstill period (minimum 8 working days) if and when modifications are made
- c. contract performance notice (in the event of breach or poor performance of the framework contract as specified in the T&Cs)



14. Repeat process for reopening (linking back to initial tender notice notice).

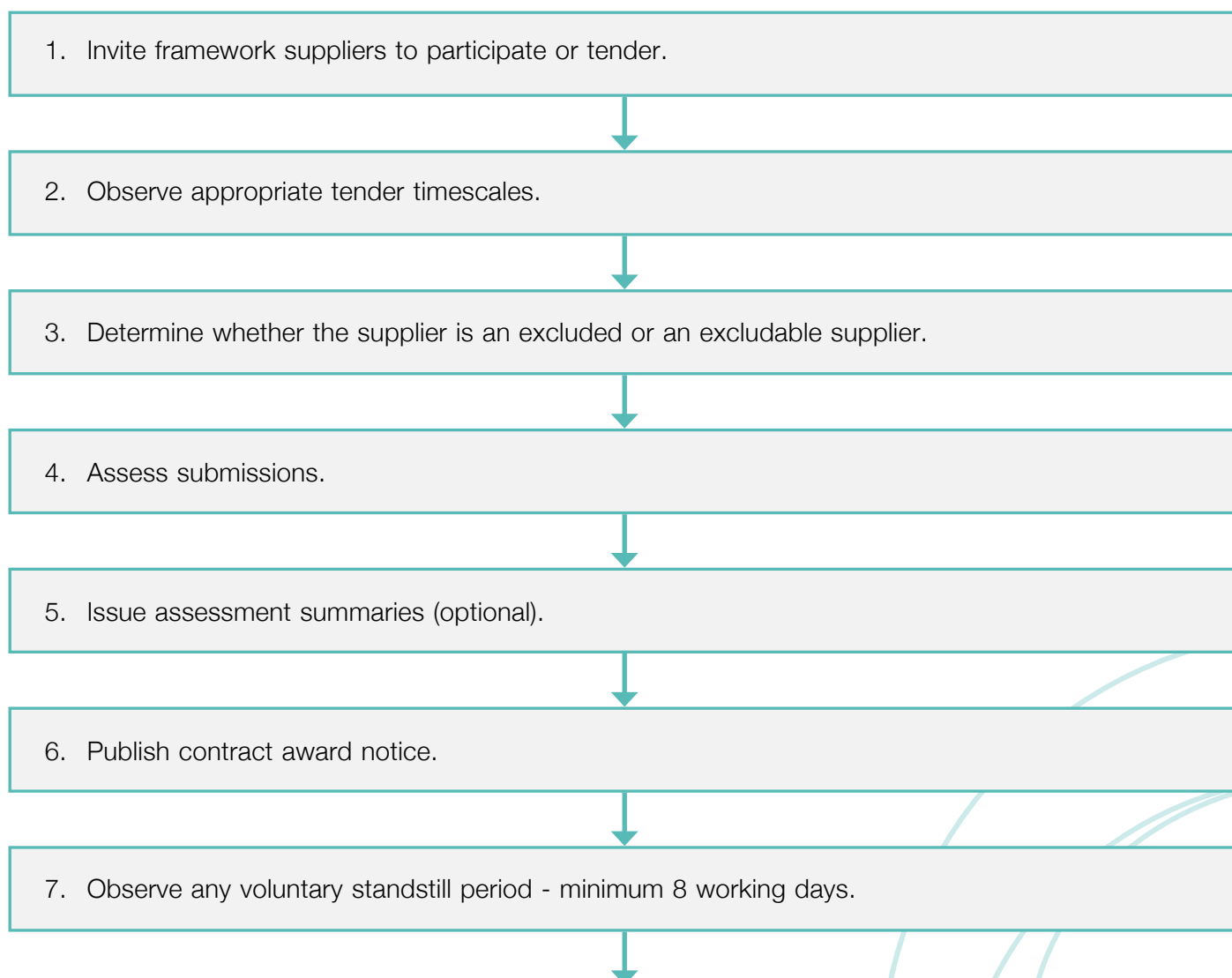


15. Publish contract termination notice when framework comes to an end.



Frameworks and dynamic markets: awarding a contract under a framework - with competition

Process flow



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graph TD; A[8. Enter into contract.] --> B[9. Publish contract details notice and contract where applicable (contracts over £5m).]; B --> C[10. Could happen at any time during the term of the contract:  
a. publish contract payment notice (where applicable - individual payments over £30k)  
b. publish contract performance notice (where applicable)  
c. publish payments compliance notice  
d. publish contract change notice (if / when modifications are made)  
e. observe any voluntary standstill period (minimum 8 working days) if and when modifications are made]; C --> D[11. Publish contract termination notice.];
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8. Enter into contract.

9. Publish contract details notice and contract where applicable (contracts over £5m).

10. Could happen at any time during the term of the contract:

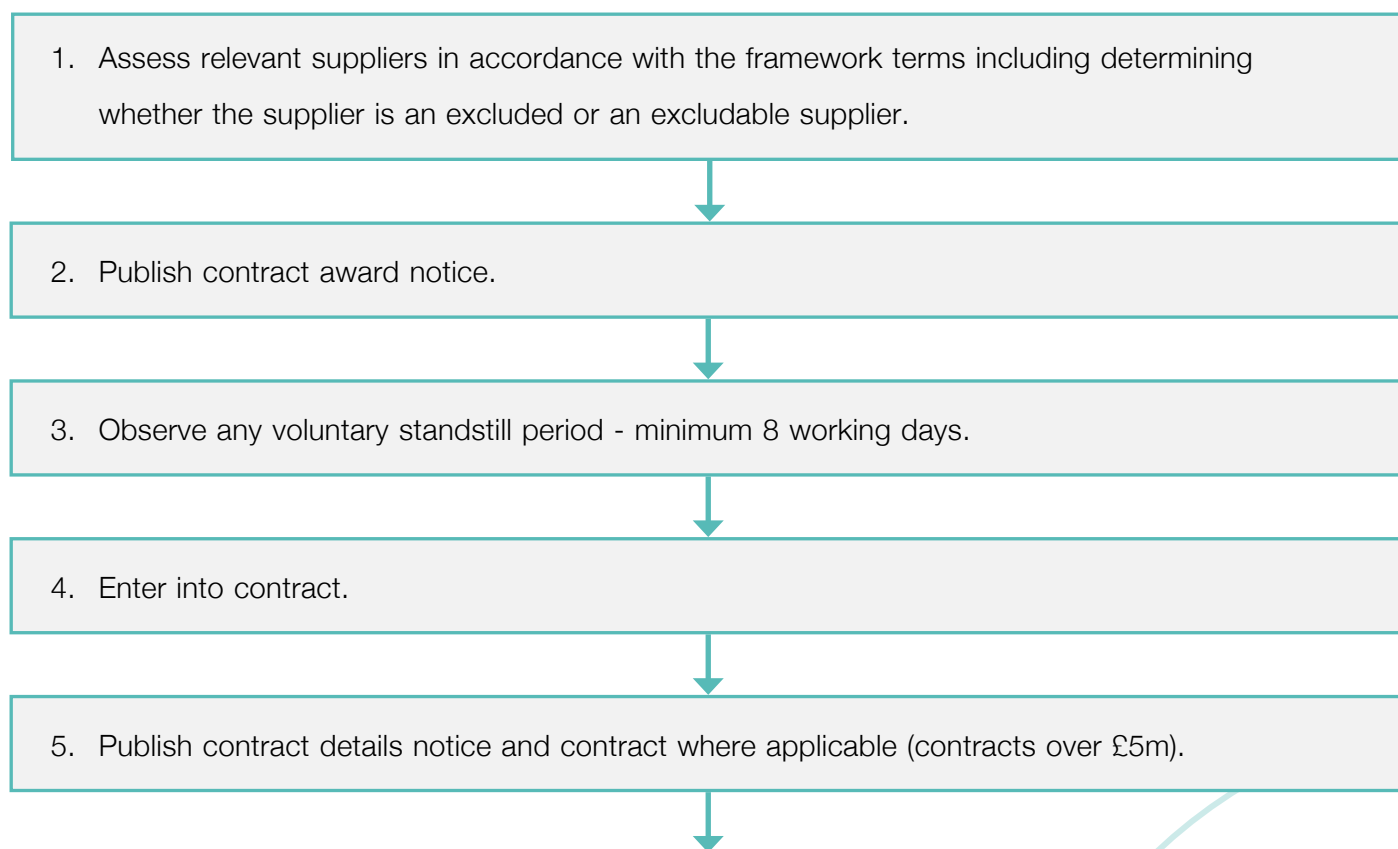
- a. publish contract payment notice (where applicable - individual payments over £30k)
- b. publish contract performance notice (where applicable)
- c. publish payments compliance notice
- d. publish contract change notice (if / when modifications are made)
- e. observe any voluntary standstill period (minimum 8 working days) if and when modifications are made

11. Publish contract termination notice.



Frameworks and dynamic markets: awarding under a framework - without competition

Process flow





6. Could happen at any time during the term of the contract:
- a. publish contract payment notice (where applicable - individual payments over £30k)
 - b. publish contract performance notice (where applicable)
 - c. publish payments compliance notice
 - d. publish contract change notice (if / when modifications are made)
 - e. observe any voluntary standstill period (minimum 8 working days) if and when modifications are made

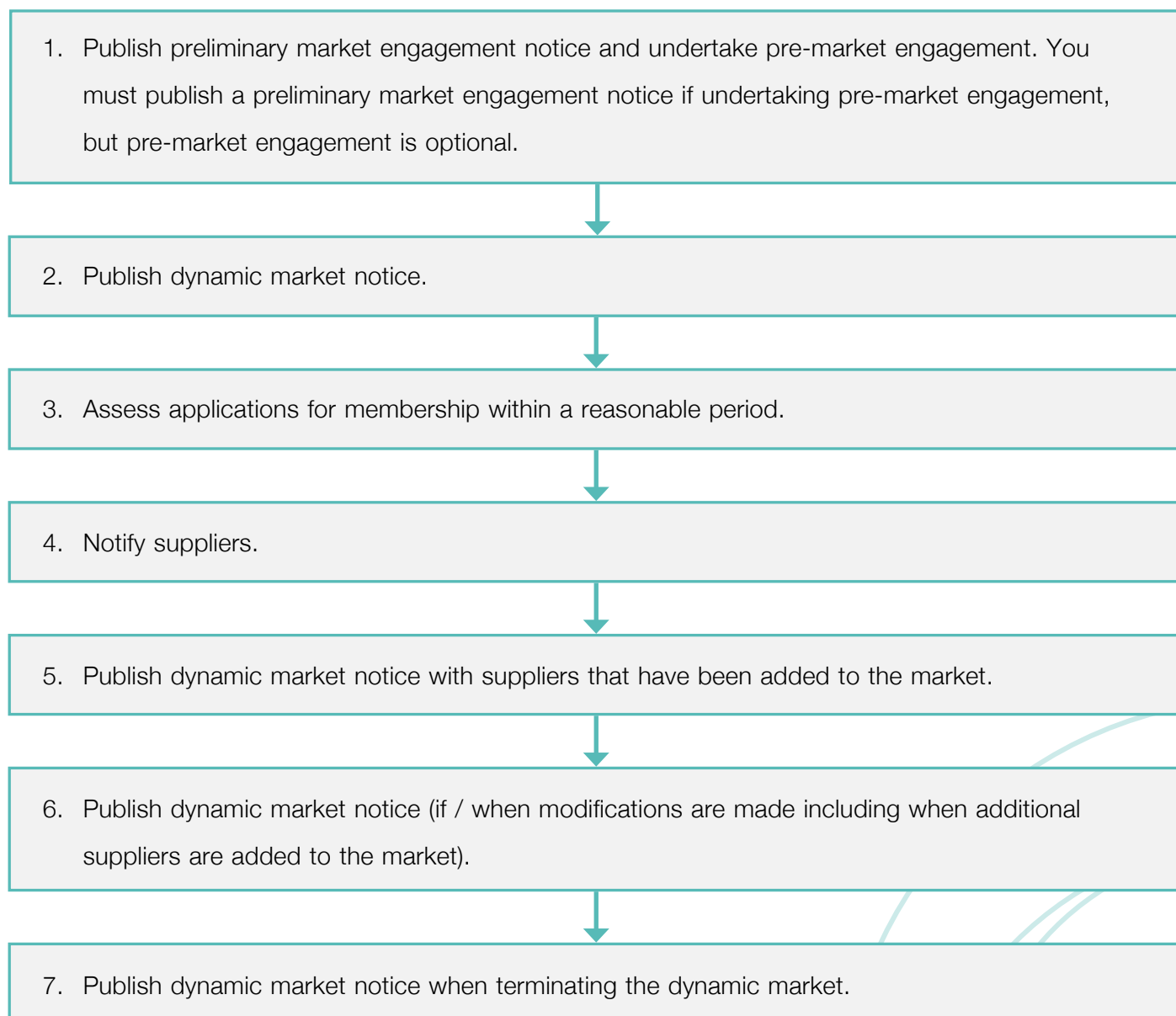


7. Publish contract termination notice.



Frameworks and dynamic markets: establishing a dynamic market

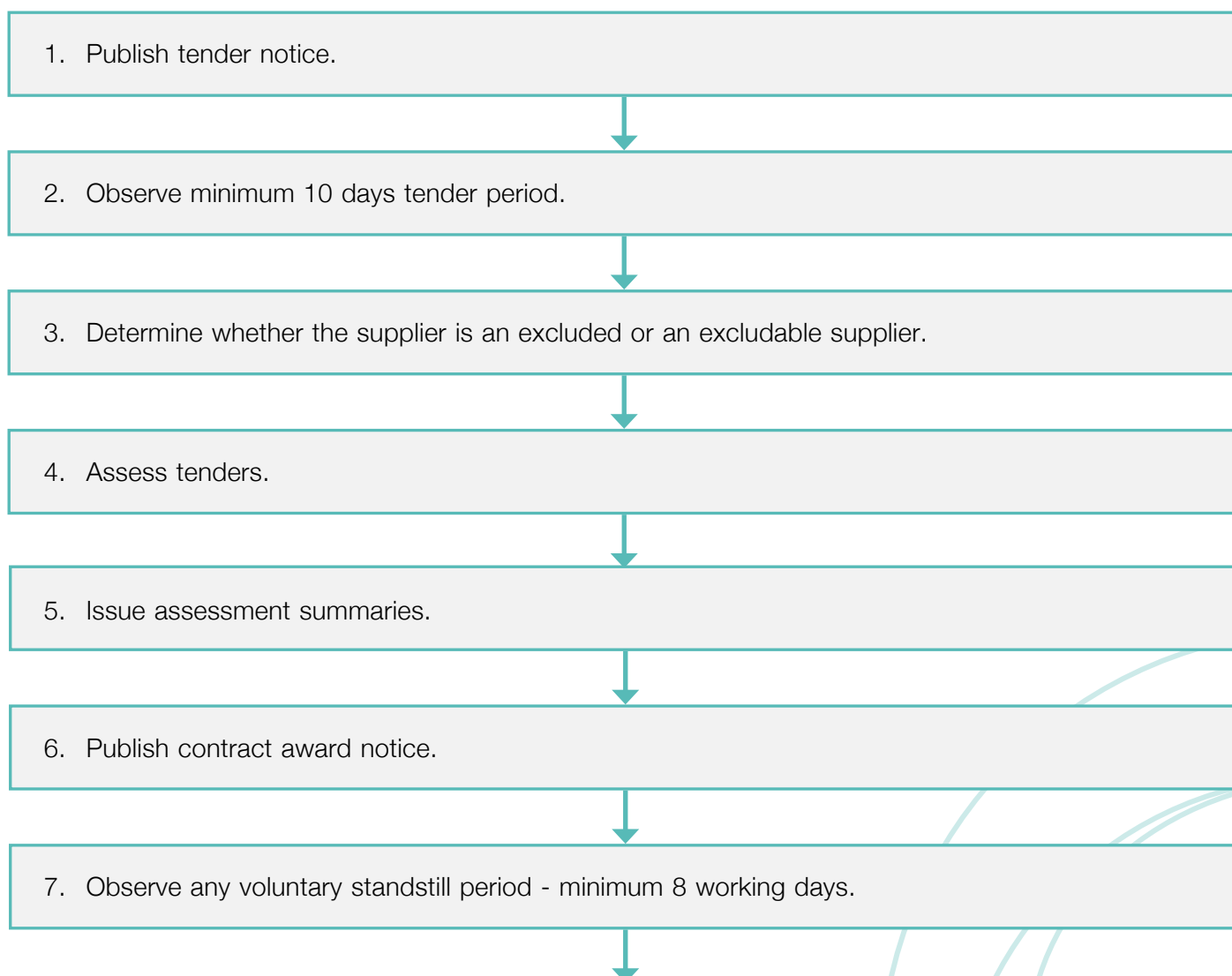
Process flow





Frameworks and dynamic markets: awarding a contract under a dynamic market

Process flow



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graph TD; A[8. Enter into contract.] --> B[9. Publish contract details notice and contract where applicable (contracts over £5m).]; B --> C[10. Could happen at any time during the term of the contract:  
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9. Publish contract details notice and contract where applicable (contracts over £5m).

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- b. publish contract performance notice (where applicable)
- c. publish payments compliance notice
- d. publish contract change notice (if / when modifications are made)
- e. observe any voluntary standstill period (minimum 8 working days) if and when modifications are made

11. Publish contract termination notice.

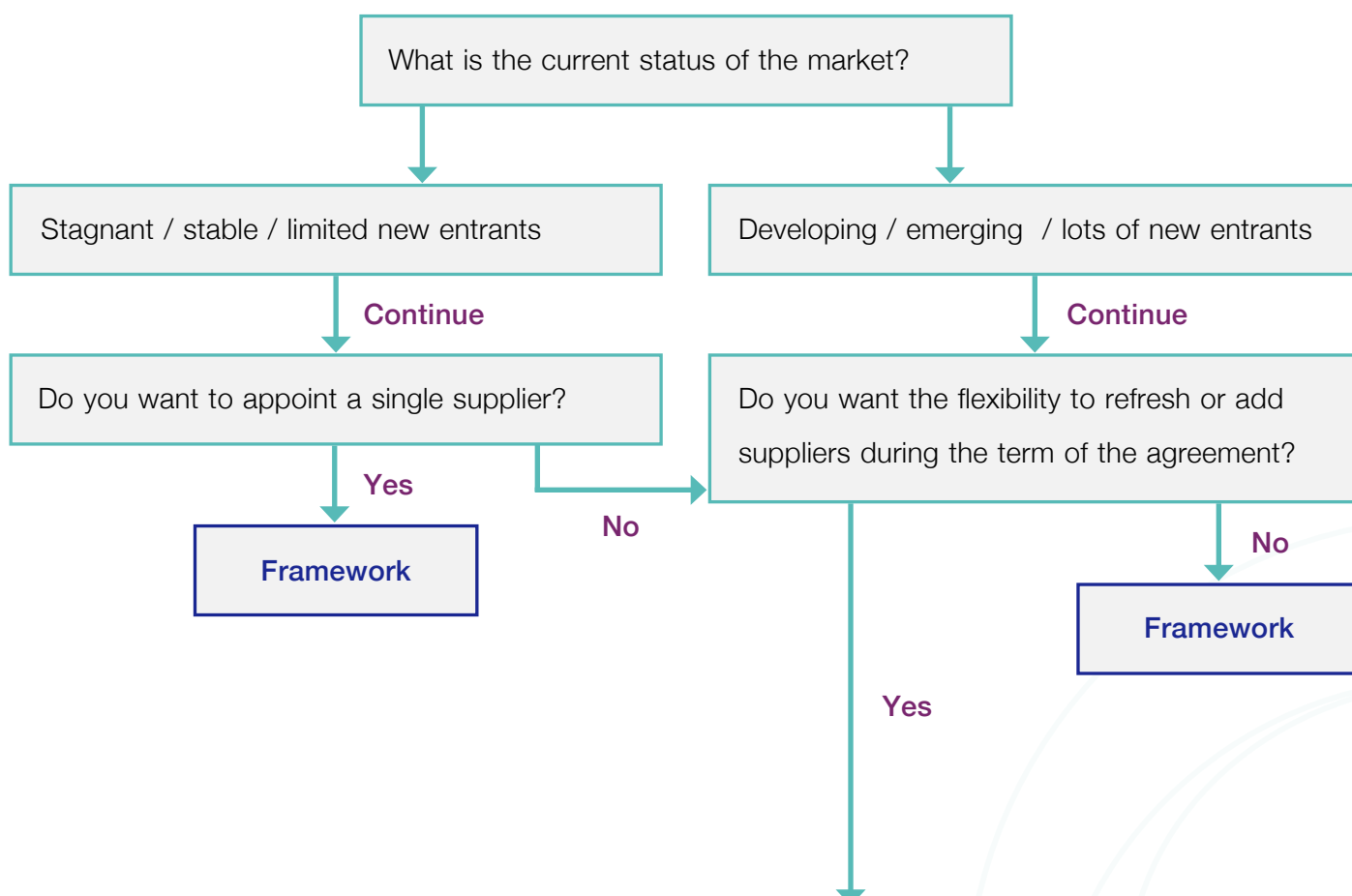


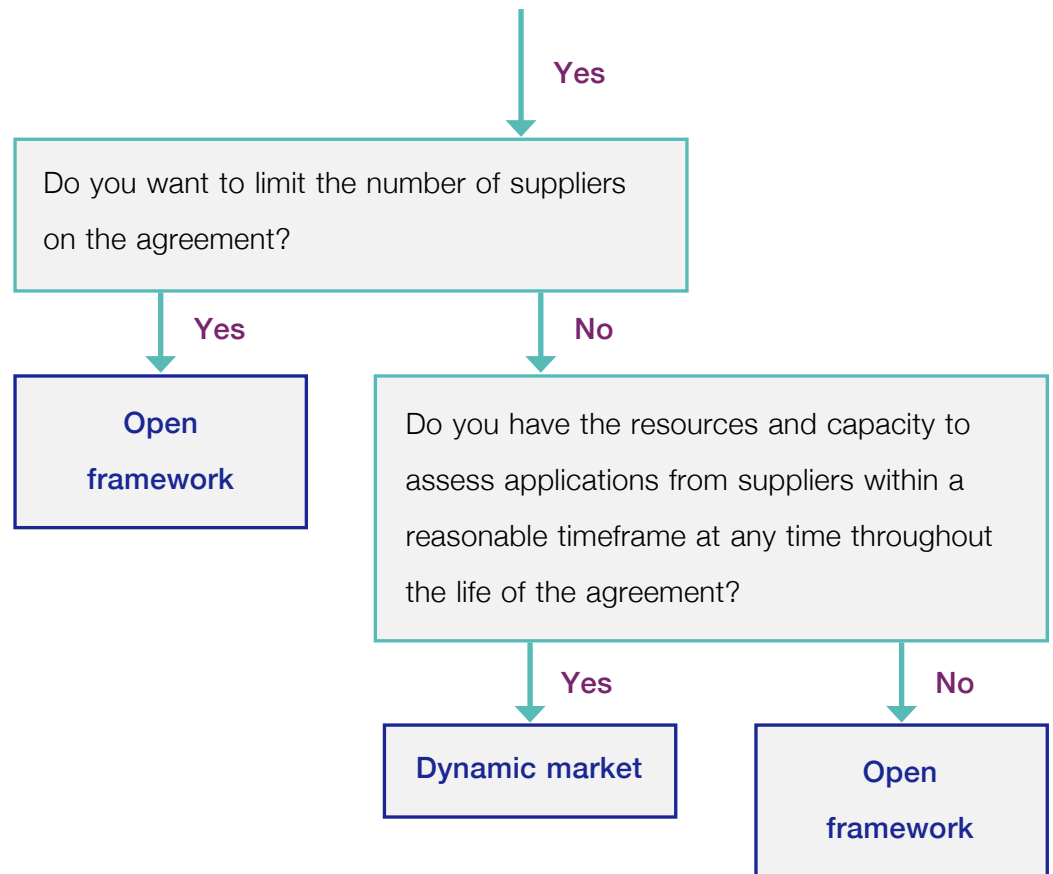
Frameworks and dynamic markets

Decision tree

This learning aid is designed to assist you to determine whether a framework, open framework or dynamic market may be most suitable for your requirements.

Establishing a framework, open framework or dynamic market?







Tender notice fields

Frameworks

Tender notices: frameworks

Regulation 20 - (1) This regulation sets out other information which must be included in a tender notice for the award of a framework published under section 21(1) of the PA 2023.

(2) Depending on the procedure adopted for the framework, the required information is:

The **open procedure** information is:

(a) where the open procedure is being used, the same information referred to in regulation 18(2)

The initial fields are the same as the fields set out in regulation 18(2). Tender notice for the open procedure.

The **competitive flexible procedure** information is:

(b) where the competitive flexible procedure is being used, the same information referred to in regulation 19(2)

The initial fields are the same as the fields set out in regulation 19(2). Tender notice for the competitive flexible procedure.

(c) details of the selection process to be applied on the award of contracts

Detail the process of how contracts will be awarded under the framework.

(d) the term of the framework

Confirm the framework term.

(e) the contracting authorities entitled to award contracts in accordance with the framework (whether by listing the names of those authorities or by describing categories of authorities)

Confirm the contracting authorities that may use the framework to award call off contracts. Either list by name, category or insert link to the list.

(f) whether the framework is being awarded under an open framework

Confirm if the framework is an open framework.

(g) where the framework is being awarded under an open framework, the unique identifier for the procurement of the last framework awarded under the open framework (unless no framework has previously been awarded under the open framework)

This is where you insert the first open framework unique identifier.

(h) where the framework is being awarded under an open framework, the estimated end date of the open framework

Confirm the 'estimated' end date for the open framework.

(i) whether the intention is to award the framework to:

- i. a single supplier
- ii. a maximum number of suppliers, or
- iii. an unlimited number of suppliers

Define here whether you intended to appoint a single, multiple or unlimited amount of suppliers, considering lots where appropriate, to the proposed framework.

(j) where the intention is to award the framework to a maximum number of suppliers, the maximum number of suppliers

Define any maximum number of suppliers, if any, you will apply to the framework, considering lots where applicable.

(k) whether the framework provides for the charging of fees in accordance with section 45(7), and, if so, the fixed percentage of the estimated value of any contract awarded to the supplier in accordance with the framework and any other information needed in order to understand how fees will be charged

Confirm and define the fee mechanism.

(l) where the framework is being awarded by reference to suppliers' membership of a dynamic market:

- i. the unique identifier for the dynamic market against which the public contract is being awarded
- ii. a statement that the tender notice is for the award of a public contract which is to be awarded by reference to suppliers' membership of a dynamic market, and
- iii. where the public contract is being awarded under an appropriate part of a dynamic market:
 - a. the title of the part, and
 - b. the distinct number given to the part by the person who established the dynamic market

If awarding a framework under a dynamic market:

- i. the unique identifier for the dynamic market
- ii. a statement that the tender notice is for the award of a public contract which is to be awarded by reference to suppliers' membership of a dynamic market, and
- iii. if awarding under part of a dynamic market:
 - a. the title of the part, and
 - b. the distinct number given to the part by the person who established the dynamic market

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice

This means the detail in tender notice and associate tender documents can be far more detailed than required in the tender notice.



Dynamic markets (except qualifying utilities dynamic markets) tender notice

Tender notices: dynamic markets except qualifying utilities dynamic markets

Regulation 21 - (1) This regulation sets out other information which must be included in a tender notice for the award of a public contract by reference to suppliers' membership of a dynamic market published under sections 21(1)(b) (competitive flexible procedure) and 34(1) (excluding non-members from competitive procurement) of the PA 2023.

(2) The information is:

(a) the same information referred to in regulation 19(2)

The initial fields are the same as the fields set out in regulation 19(2) tender notice for the competitive flexible procedure.

(2) The further information is:

(b) the unique identifier for the dynamic market against which the public contract is being awarded

This is the unique identifier related to the dynamic market you are using to award your contract.

(c) a statement that the tender notice is for the award of a public contract which is to be awarded by reference to suppliers' membership of a dynamic market, and

Note this doesn't restrict a new supplier making an application to join the DM and being accepted before the deadline for tenders from members.

(d) where the public contract is being awarded to suppliers that are members of an appropriate part of a dynamic market:

- i. the title of the part, and
- ii. the distinct number given to the part by the person who established the dynamic market

This is where, when dynamic markets consist of parts, such as for different goods or services, you would define the title of the part, as defined by the dynamic market and the distinct number assigned to that particular part of the dynamic market.

(3) Nothing in this regulation prevents a contracting authority from providing other information that relates to the same procurement in the notice.

This means the detail in tender notice and associated tender documents can be far more detailed than required in the tender notice.

(4) This regulation does not apply to a tender notice for the award of a framework by reference to suppliers' membership of a dynamic market (see instead regulation 20)

Use the tender notice in regulation 20 in respect of a framework being awarded by reference to the supplier membership of a dynamic market.

(5) This regulation does not apply to a tender notice of the type mentioned in regulation 22(1)

22(1) of the 2024 regulations relates to qualifying utilities dynamic market notices. This tender notice is not used for the award of a public contract by reference to a utilities dynamic market established under a qualifying utilities dynamic market notice.



Tender notice for qualifying utilities dynamic markets

Tender notices: qualifying utilities dynamic market notices

Regulation 22 - (1) This regulation sets out other information which must be included in a tender notice for the award of a public contract by reference to a utilities dynamic market established under a qualifying utilities dynamic market notice provided under section 40(2) or (3) of the PA 2023.

(2) The information is:

(a) the contracting authority information

“Contracting authority information” means:

- a. where there is one contracting authority for a procurement, the name of the contracting authority
- b. where there are two or more contracting authorities acting jointly for a procurement:
 - i. the name of the contracting authority that the contracting authorities acting jointly determine is the lead authority for the procurement, and
 - ii. the name of each of the other contracting authorities
- c. a contact postal address and email address for the contracting authority or for each contracting authority acting jointly

- d. the unique identifier for the contracting authority or for each contracting authority acting jointly
- e. for any person carrying out the procurement, or part of the procurement, on behalf of the contracting authority or one or more of the contracting authorities acting jointly:
 - i. the person's name
 - ii. the person's contact postal address and email address
 - iii. the person's unique identifier, and
 - iv. a summary of the person's role, and
- f. in respect of a notice published by the contracting authority, the name, contact postal address and email address of the person who should be contacted in the event of an enquiry about the notice

(b) the unique identifier for the dynamic market against which the public contract is being awarded

This is the unique identifier related to the qualifying utilities dynamic market you are using to award your contract.

(c) the contract subject-matter

“Contract subject-matter” means the following information, so far as it is known to the contracting authority when the information is published:

- a. whether the contract is mainly for the supply of goods, services or works
- b. a description of the kinds of goods, services or works which will be supplied
- c. a summary of how those goods, services or works will be supplied
- d. the estimated date when, or period over which, the goods, services or works will be supplied
- e. the estimated amount of goods, services or works which will be supplied
- f. the relevant CPV codes, and
- g. the geographical classification, where it is possible to describe this

(d) where the public contract is for goods, services or works which the contracting authority expects will be needed after the expiry of the contract, an estimate, if possible, of the date when any subsequent tender notice will be provided

This relates to the further or subsequent contract situation and what might happen after the conclusion of the prospective term arrangement. The detail might state, for example, to be advised within 6-months of the termination of the proposed contract or, if concluded, by way of the respective contract termination notice.

(e) a description of any option which will be included in the public contract:

- i. to supply additional goods, services or works, or**
- ii. to extend or renew the term of the contract**

Provided the rationale and scope is a defined option in the tendered contract, the contracting authority could:

- i. define an option or intent to add or increase the scope and value of the contract provided that the additions remain of the same purpose and reason as the original tender or**
- ii. confirm a contracting authority option to offer extensions period(s) to the original contract or state an intent, subject to suitable performance and terms, an option to issue a further contract, perhaps to an equal terms as the 1st, to the successful supplier**

(f) whether an electronic auction will be used

The procurement auction or reverse auction portal details that you will use. Clear instructions and ideally a link to some form of familiarisation or training resource for suppliers using the platform would be recommended.

(g) how requests to participate may be submitted and the date by when they must be submitted

This field requires the deadline for requests to participate and usually confirms any instructions if using eSenders. Other details like attachments or other returned information can be defined here.

(h) how tenders may be submitted and the date by when they must be submitted

This field requires the deadline for submissions of tenders and usually confirms any instructions if using eSenders.

(i) whether the contracting authority proposes to rely on one of the following minimum tendering periods mentioned in the table in section 54(4) of the PA 2023 and, if so, which one:

- i. entry 1 (contract being awarded is a light touch contract)
- ii. entry 2 (utilities contracts or contracts awarded by a contract authority which is not a central government authority subject to a negotiated tender period)
- iii. entry 3 (certain contracts awarded by a contracting authority which is not a central government authority where tenders may be submitted only by preselected suppliers)
- iv. entry 5 (state of urgency)

This section of the notice refers to s.54(4) of PA 2023, and the approach to correctly determining the minimum amount of time a tendering period. If the minimum tendering period is to be used, the circumstance should be stated.

(j) a description of the kinds of goods, services or works which will be supplied, and

This is where you provide a general description of the goods and/or services and works that should be within the scope or type of the definitions of the same defined within the details provided when establishing a dynamic market.

(k) the estimated amount of goods, services or works which will be supplied

The estimate of the total contract value including any possible extensions, renewals etc. in accordance with schedule 3 of the Procurement Act.

(3) Where a contracting authority has already published information mentioned in paragraph (2) in the qualifying utilities dynamic market notice to which the tender notice relates in accordance with regulation 25(2)(i)(ii), the contracting authority is not required to provide that information in the tender notice

This section confirms that a tender notice for the award of a public contract by reference to a utilities dynamic market established under a qualifying utilities dynamic market notice where the details required in “(2) Information required” has already been provided in the qualifying utilities dynamic market notice, there is no need to provide that detail in this tender notice.

(4) In paragraph (2), “electronic auction” has the meaning given by regulation 18(3)

“Electronic auction” means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders.

(5) Nothing in this regulation prevents a contracting authority from providing other information in the notice

This means the detail in tender notice and associate tender documents can be far more detailed than required in the tender notice.



Dynamic market notice

Dynamic market notices (including qualifying utilities dynamic market notices)

Regulation 25 - (1) Paragraph (2) sets out other information which must be included in a dynamic market notice published under section 39(2) of the PA 2023 (dynamic market notices: intention to establish a dynamic market).

(2) The information is:

(a) the name of the person establishing the dynamic market

The person or contracting authority establishing the dynamic.

(b) where there are two or more persons who are jointly establishing the dynamic market:

- i. the name of the lead person, and
- ii. the name of each of the other persons

The persons or contracting authorities establishing the dynamic.

(c) a contact postal address and email address for the person establishing the dynamic market or where there are two or more persons jointly establishing the market that information for each such person

The person or contracting authority address.

(d) the unique identifier for the person establishing the dynamic market or where there are two or more persons jointly establishing the market the unique identifier for each such person

The person or contracting authority unique identifier as issued by the central digital platform.

(e) the name of any person ("A") establishing the dynamic market on behalf of another person and:

- i. A's contact postal address and email address
- ii. A's unique identifier, and
- iii. a summary of A's role in relation to the dynamic market

The "person ("A") could include the name and details of any agents, consultants and such.

(f) the name, contact postal address and email address of any person who can be contacted in the event of an enquiry about the dynamic market

The details would normally be those of the office that deals with membership and other enquiries relating to the general administration of the respective dynamic market.

(g) the title of the dynamic market

Insert the title name that will be used to refer to this particular dynamic market.

(h) the unique identifier for the dynamic market

Will be issued during creation of the first notice in relation to the dynamic market on the central digital platform.

(i) in the case of a qualifying utilities dynamic market notice:

- i. a statement that only members of the market, or part of the market, will be notified of a future intention to award a contract by reference to suppliers' membership of the market, or part of the market, and provided with a tender notice in accordance with section 40(1) and (2) of the PA 2023, and
- ii. as much of the information as would be published in any tender notice published in accordance with regulation 21(2) that is available when the qualifying utilities dynamic market notice is published

Only applies to qualifying utilities dynamic markets.

(j) how documents relating to the dynamic market may be obtained

Where and how will documents relating to the dynamic market be stored and shared.

(k) how an application to join the dynamic market may be made

Detail how suppliers can make an application to join the dynamic market.

(l) whether the dynamic market is mainly for the supply of goods, services or works

Although the word "mainly" is used, this could be a combination of those goods, services or works.

(m) a description of the kinds of goods, services or works to which the dynamic market relates, given in such detail that a reader of the dynamic market notice can determine if they wish to apply to join the dynamic market, or appropriate part of the market

This content should be detailed enough so that a supplier can make a reasonably informed decision whether to make an application to join the dynamic market.

(n) the relevant CPV codes

Define the CPV codes for the works, goods or services available under the dynamic market.

(o) the conditions for membership of the dynamic market, or part of the market, set in accordance with section 36 of the PA 2023

Define the conditions of membership.

(p) a description of the methods that will be used to verify whether a supplier meets those conditions, including any different conditions for different kinds of goods, services or works

Define the assessment methodology for determining whether a supplier meets the conditions for membership.

(q) whether the dynamic market may be used to award a public contract for which the United Kingdom has obligations under the GPA

Confirm if the dynamic market can be used to award a contract covered under the Agreement on Government Procurement.

(r) from the date when the Comprehensive and Progressive Agreement for Trans-Pacific Partnership enters into force for the United Kingdom, whether the dynamic market is one for which the United Kingdom has obligations under that agreement

Refer to trade obligations under this agreement at <https://commonslibrary.parliament.uk/research-briefings/cbp-9121/>

(s) whether the dynamic market may be used to award a special regime contract and, if so, whether that contract is:

- i. a concession contract
- ii. a defence and security contract
- iii. a light touch contract, or
- iv. a utilities contract

Confirm if any special regime contracts can be awarded under the dynamic market.

(t) where the dynamic market is divided into appropriate parts for the purpose of excluding suppliers that are not members of an appropriate part:

- i. the title of each part
- ii. a description of each part including any relevant CPV codes, and
- iii. the distinct number given to each part by the person establishing the dynamic market

This provides the description and CPV codes of any part, as well as the title of those parts, including the unique identifier along so that suppliers can make the appropriate application to be considered members for the purpose of supplying the part(s).

(u) information enabling a reader to identify which contracting authorities will, or may apply to, use the dynamic market (either by reference to a list of authorities or a list describing categories of authorities)

Confirm the contracting authorities that may use dynamic market to award contracts. Either list by name, category or insert link to the list.

(v) the geographical classification, where it is possible to describe this

Geographic areas, such as post-codes or regional boundaries.

(w) in the case of a dynamic market with an estimated date when it will cease to operate:

- i. the estimated date when the dynamic market will be established, and
- ii. the estimated date when the dynamic market will cease to operate

Estimated dates when the dynamic market will be open and closed.

(x) in the case of a dynamic market without an estimated date when it will cease to operate:

- i. the estimated date when the dynamic market will be established, and
- ii. a statement that the dynamic market is an open-ended market

Alternate to (w) above, this is where the start of a dynamic market can be defined but the approach is “open-ended”, without a pre-determined end date.

(y) in the case of a dynamic market which is not a utilities dynamic market, whether the dynamic market provides for the charging of fees in accordance with section 38(1) of the PA 2023 and if so:

- i. the fixed percentage to be applied to the estimated value of any public contract awarded to a supplier by reference to the dynamic market, and
- ii. any other information needed in order to enable suppliers to understand how fees will be charged, and

This applies to all dynamic markets other than utilities where the scale of fee as a fixed % of the estimated value of the proposed contract is defined. Note general membership or access fees are not permitted.

(z) in the case of a utilities dynamic market:

- i. whether the utilities dynamic market provides for the charging of fees in accordance with section 38(3) of the PA 2023, and
- ii. if so, information needed in order to enable suppliers to understand how fees will be charged

The alternate to (y) above, for utilities dynamic markets to define membership charges related to accessing and maintaining the membership of the utilities dynamic market.

(3) Paragraph (4) sets out other information which must be included in a dynamic market notice published under section 39(3) of the PA 2023 (establishment of a dynamic market)

Confirms the dynamic market notice must be published once the market is established and the additional detail required for that notice.

(4) The information is:

- a. the same information referred to in paragraph (2)(a) to (h)
- b. the date on which the dynamic market was established, 26
- c. for each supplier that is a member of the dynamic market:
 - i. the supplier's name
 - ii. the supplier's contact postal address and email address
 - iii. the unique identifier for the supplier, and
 - iv. whether the supplier is:
 - 1. a small and medium-sized enterprise, or
 - 2. a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives, and
- d. where the dynamic market is divided into parts, the part of which each of those suppliers is a member

This detail is completed for each member of the dynamic market, completed upon the award of membership to the supplier at the start (establishment) of the dynamic market.

(5) Paragraph (6) sets out other information which must be included in a dynamic market notice published under section 39(4) of the PA 2023 (modifications to a dynamic market)

Confirms the dynamic market notice must be published if any modifications are made to the dynamic market and the additional detail required for that notice.

(6) The information is:

- a. the same information referred to in paragraph (2)(a) to (h)
- b. the date from when the modification has effect
- c. if a supplier is being admitted to the market, a statement to that effect and:
 - i. their name, contact postal address, email address and unique identifier, and
 - ii. where the dynamic market is divided into parts, the part of which the supplier is a member
- d. whether the supplier is:
 - i. a small and medium-sized enterprise, or
 - ii. a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives
- e. if a supplier is being removed from the market, a statement to that effect and:
 - i. their name, contact postal address, email address and unique identifier, and
 - ii. where the dynamic market is divided into parts, the part of which the supplier is a member, and
- f. a summary of any other modification being made

The detail of any and all modification, which includes the addition of new members to the dynamic market during the lifetime of the dynamic market.

(7) Paragraph (8) sets out other information which must be included in a dynamic market notice published under section 39(5) of the PA 2023 (cessation of a dynamic market)

Confirms the dynamic market notice must be published once the market is closed (ceases to operate) and the additional detail required for that notice.

(8) The information is - (a) the same information referred to in paragraph (2)(a) to (h), and (b) the date when the dynamic market ceased to operate

Includes the date the dynamic market ceases to operate.

(9) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in a dynamic market notice

This means the detail in tender notice and associate tender documents can be far more detailed than required in the tender notice.



Module 6: Supplier selection

Contents

1. Introduction
2. Central Digital Platform – Supplier Information
3. Grounds for Exclusion
4. Assessing Grounds for Exclusion
5. Conditions of Participation

1. Introduction

The Procurement Act 2023 aims to provide a simplified and more robust set of rules governing what was previously known as the selection stage of a procurement procedure, including grounds for exclusion and conditions of participation. Key changes from the previous regulations include:

- A more efficient process for submitting and receiving commonly used supplier information during a procurement.
- Strengthened grounds for supplier exclusion.
- To ensure SMEs are not shut out of procurements and are able to provide alternative evidence, contracting authorities are prevented from requiring, as a condition of participation, the provision of audited annual accounts from suppliers that are not otherwise required by the Companies Act 2006, or insurance relating to the performance of the contract to be in place before award.
- No requirement to include conditions of participation as part of a procurement.

- Increased flexibility in how contracting authorities may design and assess conditions of participation, including at which stage they are included in a competitive tendering procedure.
- The ability to consider a broader range of evidence when assessing exclusions and conditions of participation.
- The application of exclusions to a supplier where an exclusion ground applies to certain individuals and entities linked to the supplier: associated persons, connected persons and subcontractors (discussed later in the module).

2. Central Digital Platform – Supplier Information

Changes: The central digital platform includes a new supplier information system where suppliers will register and provide their basic supplier information. Registration is free of charge and data is held and stored privately.

When a supplier registers on the platform, they will need to self-authenticate their identity. As there is no single register of UK suppliers, a variety of official registers (e.g. Companies House) will be used to validate the supplier's identity. If a supplier is not found on any register, the platform will use alternative means to validate a supplier's identity. Once this process is complete, a unique identifier will be assigned to the supplier. Multiple individual user log-ins can be linked to a single supplier organisation.

Suppliers will input and store their commonly used supplier information on the platform so that they can then send this information to contracting authorities to use in their procurements as required.

Benefits:

- Reduces the time taken by suppliers to bid for public procurement opportunities by ensuring that common data can be submitted more efficiently and effectively (i.e. without having to duplicate basic information with each bid they submit) The information provided to the supplier information service will not be published, but may be used for policy making purposes through unattributed data.
- Using identifiers improves data quality and supports greater consistency and linkage across the procurement lifecycle using identifiers.
- Contracting authorities have certainty regarding the identity of the suppliers participating in procurements, through the process of self-authentication.

■ 2.1 Information to be Submitted

Information about suppliers in an above threshold procurement process will no longer be captured using the Standard Selection Questionnaire (SQ) used under PCR 2015. The basic “mandatory” information for above threshold procurements will be captured using the Supplier Information System on the central digital platform, and the conditions of participation will be captured separately.

Supplier Information System (Central Digital Platform)	Conditions of Participation
• Basic supplier information (e.g.name, address, contract details, etc.) • Exclusion grounds • Some economic and financial standing information, such as audited accounts • Details of connected persons and beneficial ownership.	As discussed in Part 4 of this document, this will include information relating to conditions on a supplier’s legal and financial capacity, and technical ability, to perform the contract.

The central digital platform will be developed over time to include additional modules which will contain policy driven questions that are business and not procurement specific to further reduce duplication for contracting authorities and suppliers. Including additional modules on policy driven topics such as modern slavery, payment, carbon net zero and data protection.

■ 2.2 Supplier Information System and Procurements

Contracting authorities must ensure they use supplier information as provided via the central digital platform whenever a supplier applies to take part in, or submits a tender for, any above-threshold procurements. In the case of a direct award, a contracting authority will need supplier information from the central digital platform in order to complete relevant notices, and must ensure they are able to access supplier information before awarding the contract. This is not mandatory for below-threshold procurements, however, it is encouraged to save time, duplication and maximise the accuracy of information (although it’s important to note that contracting authorities must not set conditions of participation for below-threshold procurements).

The contracting authority must obtain confirmation from the supplier before awarding a contract that

- the supplier has registered on the central digital platform,
- the supplier has submitted any updated or corrected supplier information to the central digital platform
- the supplier has shared any updated or corrected supplier information with the contracting authority

3. Grounds for Exclusion

The exclusions regime is designed to protect the public from the risks posed by suppliers who have been convicted of certain offences or misconduct, or who may be in circumstances not compatible with the delivery of public contracts. These include risks to:

- Reliable delivery of public contracts.
- Effective competition for public contracts.
- Public confidence in the honesty, integrity and probity of suppliers.
- Protection of public funds.
- Protection of the public, the environment, national security interests and the rights of employees.

A supplier is an “**excluded supplier**”¹ if a mandatory exclusion ground applies to the supplier or an associated person and the circumstances giving rise to that ground are continuing or likely to occur again, or if the supplier or an associated person is on the debarment list (see summary document 8:Remedies, Procurement Oversight and the Debarment List) on the basis of a mandatory exclusion ground Section 57(1).

A supplier is an “**excludable supplier**” if a discretionary exclusion ground applies to the supplier or an associated person and the circumstances giving rise to that ground are continuing or likely to occur again or if the supplier or an associated person is on the debarment list on the basis of a discretionary exclusion ground Section 57(2).

Exclusion is the ‘gateway’ that a supplier must get through in order to:

- **In the case of an open procedure:** have their tender assessed.
- **In the case of a competitive flexible procedure:** participate or progress in the procurement or have their tender assessed.
- **For direct awards:** be awarded a contract.

■ 3.1 Overview of Changes

Changes to the exclusions regime under the Procurement Act include:

- New grounds for exclusion.
- Strengthened and expanded grounds for exclusion.

¹ Exceptions apply

- Application of exclusion where an exclusion ground applies to a supplier's "connected persons", "associated persons" and other sub-contractors.
- Gradual alignment of the period of time suppliers are subject to exclusion, increasing discretionary grounds to five years from when the contracting authority knew or ought to have been aware of it, matching mandatory grounds of five years from when the event occurred.
- The creation of a debarment list, which is covered in Summary Document 8.

There are two types of exclusion grounds, set out in section 57:

- **Mandatory Exclusion grounds (Schedule 6):** covering the most serious, high-risk scenarios.

Where a mandatory ground applies and the circumstances giving rise to that ground are continuing or are likely to occur again, or that supplier is on the **debarment list** for a mandatory ground, the supplier is considered to be an **excluded supplier** in relation to the procurement and may proceed no further.

- **Discretionary Exclusion grounds (Schedule 7):** covering serious scenarios which may or may not merit exclusion depending on the circumstances. Where a discretionary ground applies and the circumstances giving rise to that ground are continuing or are likely to occur again, or that supplier is on the **debarment list** for a discretionary ground, the supplier is considered to be an **excludable supplier** and contracting authorities may choose, at their discretion, to exclude them from the procurement.

■ 3.2 Changes to Exclusion Grounds

The key changes to the exclusion grounds, under the Procurement Act 2023, are:

Exclusion ground	Change
Mandatory exclusion grounds (Schedule 6)	
Corporate manslaughter and corporate homicide	New
Theft, robbery, burglary, offences relating to stolen goods and certain other dishonesty offences	New
Blackmail, fraud and fraudulent trading	Extended
Labour market, slavery and human trafficking offences	Extended
Tax offences & misconduct in relation to tax	Extended
Cartel offences and competition law infringements	Extended
Failure to cooperate with debarment investigation	New
Threat to national security for particular types of contracts	New

Exclusion ground	Change
Equivalents outside the UK	Extended
Ancillary offences (such as aiding and abetting)	Extended
Discretionary exclusion grounds (Schedule 7)	
Labour market misconduct	New
Environmental misconduct	New
Poor performance	New
Threat to national security	New
Ancillary offences (such as aiding and abetting)	Extended

Terrorism, bribery, money laundering, certain slavery and trafficking offences and organised crime have been clarified but remain mandatory exclusion grounds. Insolvency and bankruptcy, potential competition infringements, professional misconduct, breach of contract and acting improperly in a procurement have been clarified but remain discretionary exclusion grounds.

Further detail on specific grounds are:

1. National Security

Under the Procurement Act 2023, contracting authorities have a discretion to exclude a supplier where the supplier (or associated person or connected person) poses a or there is a current threat to national security of the UK and where the circumstances giving rise to that situation are continuing or are likely to occur again. The supplier can only be excluded from a procurement on this ground where a Minister of the Crown agrees that the ground applies and that the supplier should be excluded. Contracting authorities are required to exclude a supplier from particular types of contracts where the supplier is on the debarment list on the basis that the supplier (or associated person or connected person) poses a threat to the national security of the UK and poses such a threat in relation to contracts of that description.

These two new national security grounds (one mandatory, and one discretionary) are included with the objective of protecting the UK's national security interests.

The national security grounds provide a new lever to mitigate national security risks to the UK. Threat actors may wish to target the UK, including its critical infrastructure and services. These exclusion provisions provide a way of protecting the supply chain where the supply chain is the vector through which adversaries target the UK government.

The National Security Unit for Procurement (NSUP) has been established in the Cabinet Office to support coordination of national security assessments for exclusion and debarment decisions. NSUP will work across government, including with the national security community, to ensure ministerial decisions on exclusions and debarments are made with the most relevant and accurate information to hand. Contracting authorities will be able to refer cases to NSUP where they suspect a supplier poses a national security risk. Public guidance will be issued to support contracting authorities in understanding when referring a company to NSUP might be appropriate.

Mandatory ground (Schedule 6, paragraph 35) National security

This exclusion ground applies where a supplier has been put on the debarment list in relation to public contracts of a particular description where the supplier (or an associated person):

- a. poses a threat to UK national security and
- b. poses a threat to the delivery of contracts of a particular description, which may include:
 - The goods, works or services being supplied (e.g. software, communications equipment, data services).
 - The location of contract delivery or supply (e.g. for sensitive sites or critical national infrastructure).
 - The contracting authority in question (where the risk is particularly acute for a specific organisation)

This mandatory ground differs from the others under schedule 6 in that it can only be used by contracting authorities when the supplier concerned is on the debarment list for this ground. Where the exclusion ground applies, Ministers will have the power to place a supplier on a debarment list, following an assessment, on this national security ground. The supplier will usually remain on the debarment list for 5 years unless the supplier has been able to demonstrate that they have 'self-cleaned' with evidence the Minister agrees is sufficient to demonstrate that the circumstances giving rise to the ground is no longer continuing or is not likely to recur, or with evidence the Minister agrees that the ground no longer applies. Contracting authorities then **must** exclude that supplier from a covered procurement for contracts of the description specified in the debarment list. For other types of contracts, then there is no obligation to exclude the supplier (although contracting authorities will have a discretion to exclude on the basis of the discretionary exclusion ground as that will apply to any supplier on the debarment list on this basis).

Scenario 1:

A central government department is undertaking a procurement for supplying stationery. They receive a tender from Supplier A, who are on the debarment list under the mandatory national security ground with respect to contracts for digitisation and digital storage of sensitive information. Because the procurement in question relates only to the supply of stationery, with no sensitive information being handled by Supplier A, they are not an excluded supplier on this basis for this procurement.

Scenario 2:

A police force is procuring new wireless video and radio communication equipment for their officers. They receive a tender from Supplier B, who are on the debarment list for under the mandatory national security ground with respect to contracts for the provision of electronic communications equipment used in secure environments. Because the procurement in question is for electronic communication equipment which will be used within a secure environment, Supplier B is an excluded supplier for this procurement.

The investigation process for debarment for the UK Government will be managed by the newly established National Security Unit for Procurement (NSUP) – more information can be found in Summary Document 8 – Remedies, Procurement Oversight and the Debarment List.

A contracting authority excluding a supplier on this ground must follow the Ministerial notification process set out by NSUP (and/or the Welsh Ministers or Northern Ireland department department if the contracting authority is a devolved Welsh authority or a transferred Northern Ireland authority).

Discretionary ground (Schedule 7, paragraph 14 & Section 29)

A discretionary exclusion ground applies to a supplier if the contracting authority determines that the supplier (or an associated person or a connected person) poses a threat to the national security of the United Kingdom. This applies to all covered procurement (i.e. above threshold and not exempt). However, contracting authorities **must** seek Ministerial approval before excluding the supplier on this ground. As with all exclusions, they must also notify the relevant Minister of the Crown, or the Northern Ireland or Welsh ministers where applicable when they exclude. Further guidance will be provided by the National Security Unit for Procurement on the steps contracting authorities should take.

Suppliers may have already been put on the debarment list on this discretionary ground, or on the mandatory ground previously described. If this is the case, they will appear on the debarment list. If the supplier is on the debarment list on the discretionary ground, then contracting authorities may consider the

details of that debarment investigation to determine whether or not to exclude them from their procurement. The same applies for private utilities, irrespective of whether the mandatory or discretionary ground applies, as all exclusion grounds are discretionary for private utilities. Further guidance will be provided.

2. Breach of Contract & Poor Performance (Schedule 7(12))

The discretionary exclusion ground relating to poor performance in PCR 2015 only covered 'significant or persistent deficiencies' in contract performance, where they led to early termination, damages or comparable sanctions. Such poor performance was not always visible to the marketplace and therefore it was difficult for contracting authorities to exclude suppliers on this basis.

The Procurement Act 2023 has made breach of contract and poor performance more visible by the requirement to publish contract performance notices in particular circumstances. This will support contracting authorities exercising the new exclusion grounds. These have been extended to cover sufficiently serious breaches (where the breach results in termination, damages or settlement) and, importantly, to also cover where a supplier:

(3) (a) has not performed a relevant contract to a relevant authority's satisfaction,

(b) was given proper opportunity to improve performance, and

(c) failed to do so.

A separate ground applies if a contracting authority has published information under section 71(5) in respect of breach or poor performance.

This means that contracting authorities now have the discretion to exclude suppliers where it can be demonstrated that they have not performed one or more contracts to a satisfactory level, and have failed to improve that failure. A supplier may be given proper opportunity to improve performance by way of contractual measures put in place by the contracting authority, for example, notification of poor performance and clear time periods to rectify, rectification plans or improvement plans. Contracts should also include clear performance requirements, by way of a clear specification and other performance requirements, and clear thresholds for when performance is not satisfactory, such as thresholds for failure to comply with particular KPIs over a set period.

Section 71(5) relates to a new requirement for contracting authorities to publish, on the central digital platform, a **contract performance notice** in the event of supplier breach or poor performance, as detailed above. Further details about this notice are provided in Summary Document 9: Contract Governance.

This is a ground for discretionary exclusion in itself but the data contained within the notice can also provide a useful source of information about the breach or poor performance to help contracting authorities in

exercising their discretion to decide whether or not a supplier is to be excluded. Information should be treated proportionately, and steps taken to acquire further details, if required, as part of the due diligence process, should also be proportionate.

3. Modern Slavery

Labour market, slavery and human trafficking offences, Schedule 6 (19-26)

The PCR 2015 included mandatory exclusion grounds for certain offences under the Modern Slavery Act 2015. These grounds covered certain slavery and human trafficking offences only.

The Procurement Act 2023 has:

- Extended the types of offences (under a wider range of legislation) as mandatory exclusion grounds for labour market, slavery and human trafficking offences: specifically an offence under section 30 of the Modern Slavery Act 2015 for breach of certain orders made under that Act
- Included, in addition to slavery and human trafficking, offences of breach of labour market enforcement orders, refusal or wilful neglect to pay national minimum wage and offences relating to gangmasters.
- Included a new discretionary ground covering labour market misconduct: specifically where certain slavery, trafficking, exploitation or labour market orders have been made or where there is sufficient evidence of labour market, slavery or human trafficking offences but no conviction.

In addition, across many exclusion grounds – including modern slavery grounds – the Act has made the grounds more specific and easier to assess by making it clearer which UK laws are associated with each ground.

4. Tax Offences (Schedule 6, paragraphs 29-31)

The PCR 2015 included one mandatory and one discretionary exclusion ground relating to the non-payment of taxes. To reflect the seriousness of these matters, the Act has included three mandatory grounds for tax offences (schedule 6, paragraphs 29-31) and five mandatory grounds for misconduct in relation to tax (schedule 6, paragraphs 36-40) which:

- Listed specific tax-related offences as mandatory exclusion grounds: cheating the public revenue, fraudulent evasion of certain taxes and failure to prevent facilitation of tax evasion.
- Ensuring the mandatory exclusion grounds apply where such relevant tax-related offences have been committed irrespective of whether the supplier has repaid or committed to repay the tax.
- Broaden and clarify the range of situations covered under the discretionary exclusion grounds for tax misconduct, including stating which penalties and HMRC findings are grounds, to cover more areas of misconduct.

5. Overseas Misconduct

Equivalents outside the United Kingdom (Schedule 6, paragraphs 34 and 42)

The Act now also clarifies and strengthens provisions for offences and misconduct that are committed overseas.

There are now specific mandatory exclusion grounds where the supplier

- Is convicted under a non-UK law of an offence that would be an offence in the UK if it had been committed in the UK.
- Has been subject to a tax-related penalty or decision by a non-UK regulator, court or authority that would give rise to a penalty or decision in the UK if it had been committed in the UK, or has had a tax advantage outside the UK that would have resulted in a tax defeat in the UK if the advantage had arisen in respect of tax payable in the UK.

■ 3.3 Additional Circumstances for Exclusion

The Procurement Act 2023 also sets out additional circumstances under which a supplier must be excluded. These relate to the specific procurement process they are participating in:

- **Improper behaviour** which results in the supplier having an unfair advantage that cannot otherwise be avoided (section 30), such as:
 - Accessing confidential information,
 - Unduly influencing the decision-making process,
 - Failing to provide information (or providing information that is incomplete, inaccurate or misleading).
- Participation in **pre-market engagement** that has put the supplier at an unfair advantage that cannot otherwise be avoided (section 16).
- **A conflict of interest** that puts a supplier at an unfair advantage that cannot otherwise be avoided or the supplier refuses to take steps to avoid it (section 82).

In these cases, the supplier must be treated as an excluded supplier. In relation to these matters, there is no assessment of self-cleaning.

Other circumstances in which tenders must or may be disregarded, such as abnormally low tenders, breaching procedural requirements or where there's evidence of collusion are covered in Summary Document 7: Assessment and Award.

■ 3.4 Duration of Exclusion

Under the PCR 2015, suppliers were subject to exclusion for up to five years (mandatory exclusions) and 3 years (discretionary exclusions).

The Procurement Act 2023 *will align this period to five years for both categories of exclusion*, extending the relevant events that can be taken into account for discretionary exclusion grounds from 3 to 5 years.

To address this transition, different timings will apply based on the status of the exclusion ground under the PCR 2015:

- Where a ground was a mandatory exclusion ground under PCR 2015: events which occurred prior to five years ago cannot be taken into account.
- Where the ground was a discretionary exclusion ground under PCR 2015: events which were known about or which ought to have been known about prior to 5 years ago cannot be taken into account and events which were known about or which ought to have been known about 3 years prior to commencement of the new regime also cannot be taken into account.
- Where the ground was not an exclusion ground under PCR 2015: events which occurred / were known about or which ought to have been known about prior to 5 years ago cannot be taken into account and events which occurred / were known about or which ought to have been known about prior to the regime coming into effect cannot be taken into account.

The relevant date of the event for these purposes is, for mandatory exclusion grounds, the date of a relevant conviction or ruling. For discretionary grounds, it is the date by when the decision-maker was aware of or when a reasonably well-informed contracting authority would have been aware of.

■ 4. Assessing Grounds for Exclusion

In accordance with section 58 of the Procurement Act 2023, a supplier is considered to be an excluded supplier (where a mandatory exclusion ground applies) or an excludable supplier (where a discretionary exclusion ground applies) if:

1. They are on the debarment list for a mandatory or discretionary exclusion ground, or
2. The contracting authority considers that
 - (i) a mandatory or discretionary exclusion ground applies either to the supplier or an associated person, and
 - (ii) the circumstances that led to the exclusion ground applying are continuing or are likely to occur again

A supplier can be an excluded or excludable supplier if an exclusion ground applies to an associated person. Most of the exclusion grounds will also apply to a supplier if they apply to a connected person. Finally, the Act allows contracting authorities to consider the exclusion grounds in relation to all or some sub-contractors. These concepts are all covered later in this document.

An overview of key changes between the Procurement Act and PCR 2015 include:

- The right for suppliers to make representations to contracting authorities prior to exclusion.
- A new test now focused on confirming whether 'the circumstances giving rise to the application of an exclusion ground are continuing or are likely to occur again' (referred to as 'self-cleaning').
- Greater flexibility over what self-cleaning evidence can be considered as part of this test, including time elapsed.

■ 4.1 Timing for Exclusions

Within any competitive tendering procedure (open or competitive flexible) suppliers must be assessed against exclusion grounds **as the first step**. For open procedures, this is following receipt of tenders and, for competitive flexible procedures, this is requests to participate. For competitive flexible procedures, exclusions should also be assessed (or confirmed) as part of each progressive stage of the procurement and when final tenders are assessed. Assessing exclusion grounds at the start of a competitive flexible procedure means that the question becomes "is the supplier fit to compete" rather than just "is the supplier fit to be awarded the contract?". Exclusion grounds should be reviewed as follows:

Open procedure: following receipt of tenders, contracting authorities must / may disregard any tender from a supplier who is excluded / excludable. This should usually happen prior to the assessment of the tenders.

Competitive flexible procedure: following requests to participate or submission of initial tenders, contracting authorities must / may disregard any tender or request to participate from a supplier who is excluded / excludable. If a supplier is excluded, they may not participate or progress in the procurement. This means that exclusions must be considered at the first stage of the procurement and (as a minimum) finally following receipt of final tenders.

Direct Award: contracting authorities must not directly award a contract to an excluded supplier unless there is an overriding public interest in the award of that contract to that supplier. They must consider whether a supplier they wish to directly award to is an excludable supplier and can exercise their discretion to award to an excludable supplier.

Framework call offs: before allowing a supplier to participate in any selection process under the framework, contracting authorities should assess exclusion grounds to check if they have, since the award of the framework, become an excluded or excludable supplier.

■ 4.2 Process for Exclusions

1) Debarment List

If the supplier or an associated person of the supplier appears on the debarment list for a mandatory exclusion ground, then the supplier must be excluded. If they appear on the debarment list for a discretionary exclusion ground, then they may be excluded subject to the contracting authority's discretion. Where the exclusion ground applies to an associated person, the supplier must be given the opportunity to replace the associated person.

2) Self-Declarations and provision of information

To enable appropriate consideration of potential exclusions, contracting authorities should ask suppliers for the following information to be submitted with their requests to participate in a competitive flexible procedure or with their tenders in an open procedure.

- basic information about themselves and their connected persons
- self-declarations as to whether any mandatory or discretionary exclusion grounds apply to the supplier, **any associated person** and **any connected persons**
- where the supplier self-declares that an exclusion ground applies:
 - which exclusion ground applies
 - whether the exclusion ground applies to the supplier, an associated person or a connected person
 - details of the associated person or connected person if a ground applies to them
 - a copy of a recorded decision which is the authoritative basis of a conviction or other event or a website address where it can be obtained;
 - any relevant self-cleaning evidence as to whether the circumstances giving rise to an exclusion ground are continuing or likely to occur again.

At the same time. Contracting authorities must ask suppliers whether they intend to subcontract the performance of all or part of the contract and details of all known sub-contractors. If contracting authorities wish to consider exclusions with respect to sub-contractors other than associated persons (namely sub-contractors they are relying on to meet conditions of participation), they should also ask for self-declarations from relevant sub-contractors and, if an exclusion ground applies to a sub-contractor, the information listed above.

At this point, contracting authorities must check whether the supplier, associated person or intended sub-contractor is on the debarment list.

Information about the supplier and connected persons may be provided by the supplier via the central digital platform or directly to the contracting authority. Information about associated persons and other

sub-contractors will be provided directly and not via the platform. Before the end of the tendering period in open procedures and competitive flexible procedures (or prior to contract award for a direct award or a competitive selection process under a framework), contracting authorities must seek confirmation from the supplier that they have registered on the central digital platform, submitted the above information about itself and connected persons to the platform and shared that information with the contracting authority via the platform. It is best practice to seek confirmation that any information provided directly to the contracting authority is also up-to-date.

- If an exclusion ground does or may apply, contracting authorities may wish to ask for additional information such as further details of the circumstances surrounding the event and any further evidence they wish to consider for self-cleaning purposes.

As per section 57 of the Act, contracting authorities must then determine:

- whether an exclusion ground applies, and if so
- whether the circumstances surrounding it are continuing or are likely to occur again.

3) Self-Cleaning evidence

The supplier may submit evidence to the contracting authority to determine whether the circumstances giving rise to the ground are continuing or are likely to occur again. If the evidence is sufficient, then the supplier will not be an excluded or excludable supplier.

The Act replaces three exhaustive tests that must be satisfied for self-cleaning with a broader and more flexible list of factors that may be considered:

Summary of PCR 2015 (Reg. 57(15))	Summary of Procurement Act (Section 58(1))
Suppliers must fulfil all of the following: a. paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct; b. clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and c. taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.	Contracting authorities may have regard to the following: a. evidence that the supplier, connected person or associated person has taken the circumstances seriously, for example by paying compensation; b. steps that the supplier, connected person or associated person has taken to prevent the circumstances occurring again, for example by changing staff or management, or putting procedures and training in place; c. commitments that such steps will be taken, or to provide information or access to allow verification or monitoring of such steps; d. the time that has elapsed since the circumstances last occurred; e. any other evidence, explanation or factor that the authority considers appropriate.

The Act imposes a duty on contracting authorities to take account of any self cleaning evidence. If they intend to exclude the supplier, they must allow the supplier a reasonable opportunity to make representations more generally (e.g., to set out their case that they are not subject to an exclusion ground) and to provide self cleaning evidence.

However, contracting authorities may not request **specific pieces of evidence** unless this is proportionate to the circumstances, e.g. in relation to a specific conviction, a ruling by a particular professional body, etc.

Contracting authorities should complete due diligence on relevant supporting evidence to ensure that self-cleaning has taken place. Supporting information and evidence provided by a supplier should be **independently verifiable** where possible.

It is not essential to consider all of the matters outlined in section 58(1); those that the contracting authority “may have regard to” should be relevant and proportionate to the risk posed by the supplier.

Examples of how each of the matters under 58(1) may be considered by contracting authorities may include, but is not limited to:

(a) Evidence that the supplier, associated person or connected person has taken the circumstances seriously (etc.): for example, by paying compensation, making public statements, cooperating with any relevant authorities, etc.

(b) Steps that the supplier, associated person or connected person has taken to prevent the circumstances occurring again (etc.): for example, by changing staff or management (directly related to the exclusion ground), putting improved governance procedures or training in place, or by improving IT systems, etc.

(c) Commitments that such steps will be taken (etc.): for example, agreeing to a formal (and time-bound) improvement plan, reporting on progress, and / or allowing for an independent audit or review of this process.

Future commitments are unlikely to be given equal weight compared with actions already taken and, in the absence of any actions, commitments alone should not usually be sufficient to self-clean.

(d) The time that has elapsed since the circumstances last occurred: the time that has elapsed since an incident without recurrence could be helpful, alongside other forms of self-cleaning evidence, in demonstrating that the circumstances are unlikely to recur. *However, as above, time elapsed alone is unlikely to be sufficient to self-clean.*

(e) Any other evidence, explanation or factor that the authority considers appropriate: this matter allows for full flexibility in what the supplier may provide and the contracting authority may consider as part of self-cleaning, particularly for an exclusion ground that is difficult to evidence. Other evidence, explanations or factors may be specific to the contracting authority and the procurement. They must be proportionate to the exclusion ground, the risk posed and the nature of the contract.

Types of Evidence

Evidence should be specific to the relevant exclusion ground. As an example, the types of evidence that could be used include (but are not limited to):

- From a court or official legal record or register
- Conducting or commissioning an investigation
- Direct evidence from reliable, trustworthy (and ideally independently verifiable) sources (particularly where this is provided by a supplier)
- Media or press information (to be verified)
- Evidence of cooperation with industry bodies or regulators, e.g. the environment agency or CMA.

- From independent regulated sources, such as law, audit or accountancy firms
- From other public bodies
- Evidence that could be reproduced in court, in the event of a dispute
- Evidence gathered through an investigation conducted or commissioned by the supplier or an independent third party

Contracting authorities should conduct due diligence on any evidence submitted by the supplier or obtained from a third party, and to validate evidence where it is possible to do so.

Scenario (for example purposes only)

A government body is procuring a contract for HR management services. Out of the five tenders received, two of the suppliers were each subject to one mandatory exclusion ground:

- Supplier A is subject to the exclusion ground for misconduct in relation to tax.
- Supplier B is subject to the exclusion ground for an offence under the Employment Agencies Act 1973.

Both suppliers were given the opportunity to make representations and provide self-cleaning evidence.

- Supplier A provided evidence that all associated monies had subsequently been paid, the personnel responsible had been removed and company-wide training established.
- Supplier B provided commitments that steps would be taken to prevent future recurrence, including timescales, and proposed to share details of progress with the contracting authority.

On the basis of the seriousness of the offence, its relevance to the subject matter of the contract, the evidence submitted for self-cleaning and the potential ongoing risks posed to the contracting authority and its employees, Supplier B may be more likely to be excluded from the procurement than Supplier A.

It is important to note that this is for example purposes only – every individual exclusion must be considered in detail on a case-by-case basis.

4) Overriding Public Interests

The Procurement Act 2023 limits the scope of PCR 2015 permitted “mandatory exclusions” that can be disregarded, on an exceptional basis, for reasons relating to public interest. The Act provides this provision but only for contracts made by direct award under s.41 (2) Direct award in special cases.

This decision should only be made in exceptional cases and for reasons where:

- a. it is necessary in order to construct, maintain or operate critical national infrastructure
- b. it is necessary in order to ensure the proper functioning of a sector on which national defence, security or economic stability relies.
- c. failure to do so could put military, security or intelligence services at risk.
- d. the justification for direct award is extreme and unavoidable urgency, and there are no other suppliers able to deliver the contract in the required timeframe.

5) Discretion

When a supplier is an excludable supplier (i.e. a discretionary ground applies), contracting authorities can use their discretion to decide not to exclude a supplier in this situation. Exercising discretion may include consideration of:

- Whether exclusion is proportionate, based on the circumstances being considered.
- The seriousness of the circumstances.
- The subject matter of the contract, and how it relates to the circumstances.
- Whether any national security interests apply.
- The risk to service delivery / whether other suppliers are available.

Economic reasons, e.g. the cost of the supplier's tender, should not be a consideration for applying discretion.

Due diligence should be undertaken prior to any decision on using discretion to not exclude. A record of the decision-making process – plus any residual risk – should be captured as part of the procurement record.

6) Outcome & Notifications

The evidence received and assessed by the contracting authority must be sufficient to satisfy themselves that an exclusion ground doesn't apply, or to demonstrate that the circumstances giving rise to the exclusion ground are not continuing or likely to occur again). Otherwise, the supplier must be considered as an excluded or excludable supplier.

Supplier notification: If a supplier is excluded they should be notified, in writing, as soon as reasonably possible.

Appropriate authority notification: As per section 59, where a supplier is excluded from a procurement, contracting authorities must notify the appropriate authority (e.g. the Minister, via the **Procurement Review Unit**) of the decision to exclude within 30 days of the exclusion.

Supplier appeals: A decision made by the contracting authority to exclude a supplier from a procurement process could give rise for a supplier to claim remedies under Part 9 of the Act. If a supplier was to raise a claim about a Ministerial decision to debar them then this would be dealt with by way of an appeal under section 65 of the Procurement Act 2023.

■ 4.3 Subcontractors, Associated Persons and Connected Persons

Grounds for exclusion (and self-cleaning evidence) must be considered not only in relation to the supplier who is submitting a tender or request to participate but also in relation to:

- A supplier's **associated persons** (consortium members or first tier sub-contractors that the supplier is relying on to satisfy one or more conditions of participation)
- A supplier's **connected persons** (persons and entities that are connected with a supplier, such as a director, subsidiary company or person with significant control).

Contracting authorities can also consider exclusions in relation to a broader category of sub-contractors if they wish.

Contracting authorities need to protect public contracts from high-risk suppliers. Suppliers are controlled or influenced by individuals/ entities, as well as having control or influence over other individuals and entities. They may also be submitting a tender jointly with other persons or entities and/or may be intending to sub-contract the performance of the contract. This means the risk to public contracts could also be found in other aspects of their supply chains or bidding structures.

Therefore, the exclusions regime provides for suppliers to be excluded / excludable not only where an exclusions ground applies to them but also where a ground applies to certain other persons or entities controlled or associated with the supplier or who are part of their supply chain for the contract.

Subcontractors

A supplier may be excluded or excludable based on whether one or more of the subcontractors is excluded or excludable.

Where the supplier intends to subcontract all or part of the performance of the contract, contracting authorities *must* obtain information about the intended sub-contractors (of all tiers) and check if they are on the debarment list. Contracting authorities *may* also consider whether all sub-contractors, or any category of sub-contractor, is excluded or excludable and *may* request information to determine this.

Associated Person

An associated person for the purpose of exclusions is either (a) another supplier that the supplier is submitted the tender with, i.e. a consortium member or (b) a first tier sub-contractor, in each case that the supplier is relying on to satisfy the conditions of participation for the procurement.

This is distinct from a subcontractor, who may be delivering some elements of the contract, but who may not be relied upon by the supplier to satisfy the conditions of participation.

A sub-contractor for these purposes is a supplier that the main supplier will enter into a legally binding contract with if the main supplier is awarded the contract. Therefore this only covers certain first tier sub-contractors.

Connected Person

A connected person is an individual or an entity with significant control or influence over the supplier, as set out in schedule 6(45):

- a. An individual or entity with significant control over the supplier, as defined under section 790C(2) of the Companies Act 2006.
- b. A director or shadow director of the supplier
- c. A parent or subsidiary undertaking of the supplier, as defined in section 1162 of the Companies Act 2006
- d. A predecessor company that has ceased trading due to insolvency which transferred all or substantially all of its assets to the supplier and carried on the same or substantially the same business as the supplier (where the supplier is sometimes known as a phoenix company)

Most of the exclusion grounds that must be considered in relation to a supplier must also be considered in relation to their connected persons, to address the types of risk that the exclusions regime is designed to mitigate.

Scenario: A supplier's Director has recently been liable to a penalty with respect to evasion of tax in connection with her personal business. Because a Director has significant influence over a company, there is a risk that this Director may not be appropriately handling the supplier's tax affairs. Subject to self-cleaning evidence demonstrating e.g. that the Director has paid the penalty, that the evasion was not deliberate and that the Director has undertaken training with regard to tax matters, the supplier would be an excludable supplier on the grounds of the Director's conduct.

Exclusions Based on Subcontractors & Associated Persons

If a contracting authority considers that a supplier's associated person or other sub-contractor that the contractor authority has assessed for exclusions meets a mandatory exclusion ground and there is a risk the circumstances giving rise to the ground are continuing or likely to occur again, then it must exclude the **supplier itself** from progressing in the procurement. If they believe that the associated person or subcontractor is excludable, then it may choose to exclude the supplier itself at its discretion.

However, prior to excluding the supplier on this basis, the contracting authority must first:

- Notify the supplier of its intention to exclude the supplier (including the reason why)
- Provide the supplier with reasonable opportunity to find an alternative subcontractor or associated person.

Where they can do so, and the new associated person or subcontractor is not an excluded or excludable supplier, then the supplier must not be excluded on this basis.

Where the sub-contractor is an associated person, the contracting authority must also be satisfied that the supplier is still able to meet any conditions of participation.

Where an exclusion ground applies to a connected person, the supplier must be given the opportunity to provide self-cleaning evidence. However, where self-cleaning is not sufficient, the supplier must (or, if discretionary, may) be excluded (as it is not possible to replace a connected person in the same way as an associated person or subcontractor).

5. Conditions of Participation

■ 5.1 Introduction

Under the Procurement Act, a condition of participation (section 22) is a condition that a supplier must demonstrate they are capable of satisfying in order to be awarded a public contract. These were previously known as part of the “selection criteria”, and were captured in Part 3 of the Standard Selection Questionnaire (SQ). When compared with award criteria (section 23), which assess the supplier's tender response, the conditions of participation assess the supplier itself.

The fundamental obligation, that conditions of participation must be proportionate to the procurement, replaces the requirement which existed under the Public Contracts Regulations 2015 that contracting authorities shall limit any requirements to those that are appropriate. In practice, this should not lead to

any significant changes. One of the key differences is the Procurement Act does not include any specific provisions on a Single Procurement Document (for example PCR regulation 59) which the Standard Selection Questionnaire (SSQ) complies with.

Whilst conditions of participation are not mandatory for above-threshold procurements, it is expected that most procurements will need to confirm certain aspects of a supplier's legal and financial capacity, or technical ability, to perform the contract. When planning a procurement, contracting authorities will need to decide whether or not to include conditions of participation, and which conditions of participation they wish to include.

Conditions of participation must be a proportionate means of assessing the supplier's legal and financial capacity, or technical ability, having regard to the nature, complexity and cost of the contract. By not adding unnecessary conditions, this should enable the widest range of suppliers with the required capacity and ability to perform the contract to participate in the procurement, particularly small and medium sized enterprises (SMEs).

■ 5.2 Changes from PCR 2015

Change: Selection criteria had to be assessed at stage one of a multi-stage process. Conditions of participation may be assessed at any point during a competitive flexible or open procedure (however, may only be used to formally shortlist suppliers in a competitive flexible procedure).

Benefit: Contracting authorities can choose for themselves the most appropriate point in the process to assess suppliers against conditions.

Change: The Act permits a wider range of evidence to be considered as means of proof. However, this must remain proportionate and must not:

- a. require suppliers to have been awarded a contract by a particular contracting authority,
- b. break the rules on technical specifications in section 56, or
- c. require particular qualifications without allowing for their equivalents.

Benefit: Greater flexibility on what may be requested from and submitted by suppliers. Beneficial to SMEs and other suppliers who may struggle to provide specific evidence; beneficial to contracting authorities as a wider range of information can be used for verification.

Change: The Act prohibits contracting authorities from requiring audited accounts from suppliers (who are not otherwise required by the Companies Act 2006 or an overseas equivalent), and from having in place insurance that relates to contract performance before contract award.

Benefit: These measures will encourage suppliers (particularly SMEs) to participate, and remove barriers that may typically have discouraged participation.

Contracting authorities must not set or assess a supplier's suitability to perform the contract (i.e. legal and financial capacity, or technical ability) for below-threshold procurements as a way of reducing the number of bidders they seek to invite to tender².

■ 5.3 Setting Conditions of Participation

Each contracting authority is responsible for drafting its own conditions of participation.

A) Do I Need to Set Conditions of Participation?

Conditions of participation are not mandatory for above-threshold procurements. However, it is expected that most above-threshold procurements will need to confirm certain aspects of a supplier's suitability to deliver a contract. When planning a procurement, contracting authorities will need to decide whether or not to include conditions of participation, and which conditions of participation they wish to include, having regard to the nature, complexity, and cost of the contract.

There are multiple factors that contracting authorities may wish to consider when deciding whether or not to set conditions of participation as part of a procurement. These may include:

Contract value	High-value contracts, non-standard payment terms etc.
Goods, services or works	Whether these are of a specialist or non-specialist nature, high or low risk, a one-off or continuing requirement etc.
Timescales	When the contract needs to be in place.
Associated risks	Levels of contract risk based on subject matter, delivery location, contracting authority, timescales or other factors.
Market factors	Market size, interest, capacity and capability.
Other factors	Related to the specific contract, organisational or stakeholder requirements, etc.

B) Setting Conditions

Where they are required, contracting authorities may set and assess the conditions of participation for a competitive tendering procedure based on the following two headline criteria:

² Except where the contract is a works contract and has an estimated value of— (a) in the case of a contract to be awarded by a central government authority, not less than £138,760, or (b) otherwise, not less than £213,477

- Legal and financial capacity to perform the contract
- Technical ability to perform the contract

Contracting authorities are only permitted to include conditions of participation that fall within one of the two headings above. There is no requirement to set conditions of participation under both headings if only one heading is relevant to the procurement.

Conditions of Participation Requirements

Whilst contracting authorities have the flexibility to determine what conditions of participation to include in their procurement (if any), it is worth considering how else to gain assurance of a supplier's financial and legal capacity and technical ability to be awarded a contract.

The Act does not set out specific questions that contracting authorities must include as part of assessing each heading, but does contain some restrictions on what is not permitted as part of the conditions:

Any Condition of Participation Must...	Any Condition of Participation Must Not...
• Be related to a supplier's legal and financial capacity, or technical ability, to perform the contract. • Be a proportionate means of ensuring a supplier's relevant capacity or ability, having regard to the <i>nature, complexity</i> and <i>cost</i> of the public contract. • Allow for equivalents (when requesting particular qualifications or memberships, for example). • Allow for international equivalents to UK standards. • Be distinct from award criteria: focus only on the supplier's capacity and ability, and not their tender submission.	• Require suppliers to submit audited annual accounts unless they're required to under the Companies Act 2006 or an overseas equivalent. • Require suppliers to have insurances needed to deliver the contract in place prior to contract award. • Break any rules on technical specifications (section 56) • Require particular qualifications without allowing for equivalents. • Require suppliers to have been awarded a contract by a specific contracting authority.

The Act is clear that every condition must be met for a supplier to be awarded a contract; therefore, it is important to be sure that all conditions are realistic and proportionate when setting them.

Contracting authorities will need to set out any conditions of participation in the tender notice and associated tender documents for each procurement.

Using Conditions of Participation

Conditions of participation can be used:

- To ensure that suppliers meet minimum financial, legal or technical requirements in relation to a public contract (via the objective criteria set). Contracting authorities must decide, and clearly set out in the tender notice and tender documents what the criteria are for each condition.
- To shortlist or reduce participants who progress to the next stage in a competitive flexible procedure, using objective criteria to score suppliers as set out in the tender notice, associated tender documents and assessment methodology.

Legal & Financial Capacity

Financial Tests

Suppliers may be asked to provide the following information about their 'economic and financial standing':

- A copy of their audited annual accounts, where the supplier has been required to obtain audited annual accounts in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent.
- Alternative forms of evidence that are equivalent to this (for suppliers not required to have audited accounts).

This is to ensure that certain suppliers such as SMEs, VCSEs or recent start-ups are not disadvantaged by the conditions of participation.

Tests to determine a supplier's financial status, stability and suitability to undertake a contract may be based on factors including, but not limited to, annual turnover, cash flow, debt-to-equity ratios and liquid or cash ratios, etc.

Insurance

- Contracting authorities may ask for insurance where they are proportionate to the delivery of the contract.
- However, they are not permitted to ask suppliers to have such insurances in place prior to contract award. This is to prevent suppliers from incurring unnecessary costs for insurance without the guarantee of winning the contract.
- Contracting authorities may request that suppliers demonstrate their capability to obtain the required insurance after contract award, such as a quotation or other proof of intention.
- Where there is a legal requirement for the insurance to be in place, outside of the contract, evidence of this may be required as part of the conditions of participation (i.e. employers' liability insurance).

Technical Ability

Conditions relating to technical ability may include, but are not limited to:

- Qualifications
- Experience & past performance
- Modern slavery statements
- Data protection
- Carbon reduction plans
- Project-specific questions relating to the supplier's ability to perform the contract to the appropriate technical standard, or to legal requirements that relate to service delivery (these must be proportionate to the contract), for example:
 - Professional accreditations or memberships
 - Location (where directly relevant to contract delivery)
 - Environmental accreditations
 - Staff qualifications and experience

Frameworks: contracting authorities are now able to set and assess conditions of participation (which are defined specifically for the purpose of frameworks (see section 46(2)) when awarding a contract using a competitive selection process under a framework. These are similar to conditions of participation under section 22 and are allowed as long as they are a proportionate way of assessing suppliers' legal and financial capacity or the technical ability to perform contracts to be awarded under the framework.

■ 5.4 Assessing Conditions of Participation

Where conditions of participation are used in a procurement, the stage at which they will be assessed and the process for assessment must be set out in the tender notice and tender documents.

Open procedures: conditions of participation are the minimum standards that a supplier must satisfy in order to be awarded a contract. They cannot be used to shortlist which suppliers can submit a tender.

Competitive flexible procedures: conditions of participation may be assessed:

- As the minimum standards that a supplier must satisfy in order to be awarded a contract
- As a separate conditions of participation stage at the start of the tendering procedure which is used to pre-select participants / limit the number of suppliers in an initial tendering round.
- As a separate stage at any stage in the tendering procedure to limit / reduce the number of participants who progress to the following stage (scoring and down-selection)

Conditions of participation are assessed:

	Open	Competitive Flexible
Conditions of Participation	At any stage from tender submission to award (but they may not be used to shortlist suppliers who can submit a tender).	At any stage prior to contract award: either at an early stage to limit participants that progress to the next stage, or to confirm the preferred supplier meets requirements before being awarded the contract

Relying on other suppliers

When a supplier alone cannot meet a condition of participation, a supplier may choose to submit a joint tender with, form a consortium with, or enter into a legally binding sub-contracting arrangement with a supplier who satisfies the condition. The supplier is to be considered as satisfying that condition to the extent that a supplier associated with the supplier satisfies the condition.

Where an intended subcontractor has been relied on to pass the conditions of participation, the contracting authority may direct the supplier to enter into a legally binding agreement with the proposed subcontractor in question (as set out in section 72 – sub-contracting directions). If the supplier fails to do so, the contracting authority may choose not to award them the contract.

Evidence & Exclusion

Under PCR 2015, the types of evidence – or means of proof – that a supplier could rely on to demonstrate that they met the selection criteria was limited. Under the Act, a wider range of verification options are available. The only requirements for evidence is that it must be:

- Linked directly to legal and financial capacity, or technical ability; and
- Proportionate for the purpose of assessing the supplier's relevant capacity or ability, having regard to the nature, complexity, and cost of the contract

Examples of evidence may include (where proportionate), but are not limited to: copies of evidence and certifications, site visits or audits. Contracting authorities may also use a (relevant) third party to verify compliance, if required.

If a supplier does not satisfy a condition of participation, it cannot be awarded the contract. In a multi-stage procedure, the contracting authority may choose the timing at which exclusion from the procedure takes place.

It will often be good practice, when excluding suppliers who are unable to meet the conditions of participation (and are therefore not capable of delivering the contract), to do so at the earliest point. This will avoid wasting both the contracting authority and supplier's time during the procurement process. However, in certain procurements, contracting authorities may decide that they will allow suppliers to progress through the procurement with a requirement that they will fulfil the conditions by a later stage and before the award of the contract. For example, a contracting authority may decide not to exclude a supplier, who does not possess a particular standard as part of their technical ability, if they are currently undergoing the process of obtaining the standard at the point when conditions are assessed. If the contracting authority decides to allow the supplier to progress in the procurement, they should be mindful of the equal treatment provisions in section 12. If a contracting authority thinks it is likely to exercise their discretion in this way, it is recommended that the discretion to do so is set out in the tender notice and any associated tender documents so suppliers are informed of this possibility when making their decision whether to tender.

Any supplier who:

- Does not meet the conditions of participation, and therefore had their tender disregarded from the award of a contract (in an open or competitive flexible procedure)

Or

- Does not progress to the next stage of a tendering procedure following the use of conditions of participation to shortlist suppliers (in a multi-stage competitive flexible procedure)

Should be notified in writing by the contracting authority at the earliest opportunity.

For open procedures, notification would usually be when tenderers are informed of the contract award outcome. For competitive flexible procedures, it should be as soon as possible after the decision is made to exclude the supplier, and before the next stage of the procedure commences.

When notifying suppliers of the decision to exclude them due to failure to satisfy a condition of participation and the supplier has not yet submitted an assessed tender, contracting authorities should consider the assessment summary transparency requirements and aim to provide the appropriate level of detail for where in the procurement process the supplier was excluded. However, this is not a legal obligation.

Where an assessment summary is required because the supplier has submitted an assessed tender, the contracting authority must set out the information specified by section 50 of the Act and as specified in the Procurement Regulations 2024. For information on assessment summaries, see Summary Document 7: Assessment and Award.



Exclusions and connected persons

Fact sheet

Connected persons

Schedule 6, paragraph 45) of the act sets out seven definitions of different individuals and entities who are classified as a connected person in relation to the supplier.

Procurement Act schedule 6 para 45: “connected persons”	Definitions and examples
(a) A person with “significant control” over the supplier within the meaning given by section 790C(2) of the Companies Act 2006.	An individual or entity has “significant control” over a supplier where one or more of the following conditions (set out in Part 1 of schedule 1A of the Companies Act 2006) are met: 1. they have more than 25% of shares in the supplier 2. they have more than 25% of voting rights in the supplier 3. they have the right to appoint or remove the majority of the board of directors 4. they have significant control or influence by other means 5. they are a trust or firm that controls the supplier Examples: shareholders, investors, trusts and firms and directors, in each case with significant control.

Procurement Act schedule 6 para 45: “connected persons”	Definitions and examples
(b) a director or shadow director of the supplier	A director is defined in the act by reference to the definition in section 250 of the Companies Act 2006. A director is a person who exercises real power within the company, particularly in relation to decision making. The names of directors should be registered for that company on Companies House. A shadow director is defined in the act by reference to the definition in section 251 of the Companies Act 2006. A shadow director is a person who is not a director, but whose directions and instructions are customarily acted on by the directors of the company. Examples: shareholders, investors, and individuals. Professional advisors to a company, e.g. lawyers or accountants, are not classified as shadow directors under the Companies Act.
(c) A parent or subsidiary undertaking of the supplier	“Parent undertaking” and “subsidiary undertaking” are defined in the act by reference to the definitions in section 1162 of the Companies Act 2006. A parent undertaking holds a majority of the voting rights in a subsidiary undertaking, is a member of the subsidiary undertaking with the right to appoint or remove a majority of its board of directors, has the right to exercise a dominant influence over the subsidiary undertaking, or is a member of the other undertaking and controls a majority of the voting rights in the subsidiary undertaking. Alternatively, a parent undertaking may have the power to exercise, or actually exercises, dominant influence or control over the subsidiary undertaking or may be managed on a unified basis with the subsidiary undertaking.

Procurement Act schedule 6 para 45: “connected persons”	Definitions and examples
(d) A predecessor company that has ceased trading due to insolvency	A “predecessor company” is defined in the act as meaning a company which— (a) became insolvent and ceased to trade, (b) before it ceased to trade, carried on the same or substantially the same business as the supplier, (c) has transferred all or substantially all of its assets to the supplier, and (d) had at least one director or shadow director who is or has been a director or shadow director of the supplier; “shadow director” has the meaning given in section 251 of the Companies Act 2006. Sometimes known as a “phoenix company”: organisations which have become insolvent and ceased to trade where the business has effectively been transferred to the supplier, which has been newly created to carry on a similar business, and where one or more of the directors of the supplier was a director of the predecessor company at the point at which it ceased to trade. This will primarily be relevant for the discretionary exclusion ground relating to bankruptcy and insolvency situations.
(e) any other person who could reasonably be considered as standing in an equivalent position in relation to the supplier as a person in (a) to (d)	Any person who is in an equivalent position. Examples include: persons in an equivalent position in relation to entities which are not covered by the Companies Act 2006.

Procurement Act schedule 6 para 45: “connected persons”	Definitions and examples
(f) any person with the right to exercise, or who actually exercises, significant influence or control over the supplier, and (g) any person over which the supplier has the right to exercise, or actually exercises, significant influence or control	Captures any individual or entity not covered under sections (a)-(e) but who has significant influence or control. Examples may include individuals or entities who: • direct the activities of the business • have the right to veto decisions related to the running of the business • are a company founder who no longer has significant shares in the business but still has influence or control • regularly direct or influence a considerable section of the board, despite not being a board member themselves • have the right to appoint or remove a chief executive



Exclusions

Flowcharts

This flowchart maps out the process for supplier exclusions, highlighting the points at which a supplier is identified as an excluded or excludable supplier, and therefore must or may be excluded from the procurement.

Assess exclusions as the first step on receiving tenders / requests to participate. First, complete the questions below, then follow each step in the flowchart.

■ Initial questions

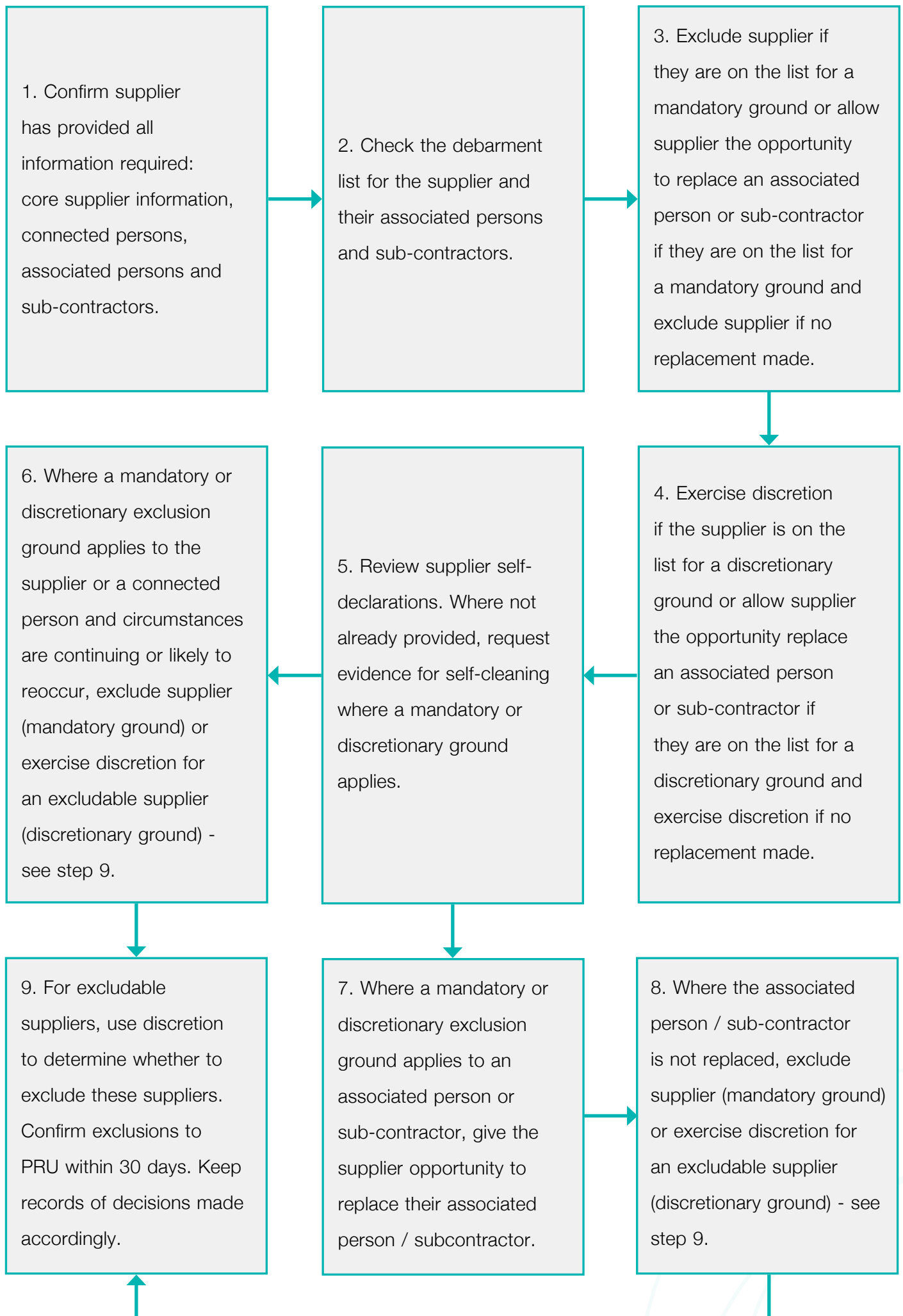
Has the supplier:

- unduly influenced the decision-making process, failed to provide information (or provided inaccurate, incomplete or misleading information) requested by the contracting authority or accessed confidential information that has put them at an unfair advantage that cannot otherwise be avoided?
- obtained an unfair advantage – either by participating in preliminary market engagement or through a conflict of interest – that cannot otherwise be avoided?
- failed to provide information (or provided information that is inaccurate, incomplete

or misleading) requested by the contracting authority about their connected persons, associated persons or sub-contractors

If the answer to the **first or second bullets above is yes**, then the supplier must be given reasonable opportunity to make representations and provide relevant evidence. If the answer remains **yes** after considering any representations and evidence, then the supplier **must be excluded** and their tender / request to participate disregarded.

If the answer to the **third bullet above is yes**, then the supplier **must be excluded** and their tender / request to participate disregarded.





Exclusions

Step by step guide

This step-by-step guide is designed to take you through the process of assessing a supplier against the mandatory and discretionary exclusions grounds set out in the act, to determine whether or not a ground applies, and whether the circumstances giving rise to the ground are continuing or are likely to reoccur when to exclude a supplier from a procurement.

Within any competitive tendering procedure (open or competitive flexible) suppliers must be assessed to see if they are an excluded or excludable supplier **as the first step** following receipt of tenders or requests to participate.

Where the procurement is a direct award, a public interest test applies, meaning that excluded suppliers (where a mandatory exclusion ground applies) may not be excluded. This can be confirmed at step 8.

Step 1 - Has the supplier done any of the following:

- unduly influenced the decision-making process, failed to provide information (or provided inaccurate incomplete or misleading information) where requested or accessed confidential information that has put them at an unfair advantage that cannot otherwise be avoided?
- obtained an unfair advantage, either by participating in pre-market engagement or through a conflict of interest, that cannot otherwise be avoided?

Having invited and considered representations and evidence from the supplier, does the supplier remain in this position?

If yes, the supplier must be excluded from the procurement. For private utilities, any reference to an excluded supplier, becomes reference to an excludable supplier. Go to **step 9**.

If no, continue to **step 2**.

Step 2 - Has the supplier failed to provide information (or provided information that is inaccurate, incomplete or misleading) requested by the contracting authority about their connected persons, associated persons or sub-contractors?

If yes, the supplier must be excluded from the procurement. For private utilities, any reference to an excluded supplier, becomes reference to an excludable supplier. Go to **step 9**.

If no, continue to **step 3**.

Step 3 - Debarment. Check the debarment list - is the supplier and/or their associated persons on the debarment list by virtue of a mandatory or discretionary exclusion ground?

If yes:

- a. A mandatory ground. The supplier must be excluded from the procurement, and no further assessment steps taken. Where the supplier (or an associated persons) is on the debarment list based on schedule 6 para 34A (national security only), then they are only excluded from contracts of the nature that are described in their entry on the list (e.g. they may only be debarred for providing certain products/services). Go to **step 9**.
- b. A discretionary ground. The supplier is excludable - you may exercise discretion not to exclude. Go to **step 4**.

If no, continue to **step 4**.

Step 4 - Check the supplier's self-declarations, including for any connected persons, associated persons and sub-contractors. Is any party subject to a mandatory or discretionary exclusion ground?

If yes, continue to **step 5**.

If no, go to **step 6**.

Step 5 - Allow the supplier to provide evidence for self-cleaning purposes. Review the self-cleaning evidence provided. Do you consider that the circumstances giving rise to the exclusion ground are continuing or likely to reoccur?

If yes:

- a. If a mandatory ground applies to the supplier or a connected person, the supplier must be excluded from the procurement. Go to **step 9**.
- b. If a discretionary ground applies to the supplier or a connected person, the supplier is excludable subject to your discretion on whether to exclude. Go to **step 7**.
- c. If a mandatory or discretionary ground applies to an associated person or a sub-contractor, continue to **step 6**.

If no, continue with your procurement.

Step 6 - The supplier has the opportunity to replace the relevant associated person or sub-contractor. Does the supplier replace the relevant party (as applicable)?

If yes, repeat **steps 3 to 5** (as appropriate) to ensure the supplier is no longer an excluded or excludable supplier (and, in the case of associated persons, still able to meet the relevant conditions of participation); if not, continue with your procurement.

If no:

- a. In the case of a mandatory ground applying to any associated person or sub-contractor, the supplier must be excluded from the procurement. Go to **step 9**.
- b. Where a discretionary ground applies, the supplier is excludable subject to your discretion on whether to exclude. Go to **step 7**.

Step 7 - Discretion. Based on factors that include, but are not limited to, the nature of the supplier's circumstances, the subject matter of the procurement and proportionality, you may exercise discretion as to whether or not to exclude an excludable supplier (where a discretionary exclusion ground applies). Do you exercise this discretion to exclude the supplier?

If yes, subject to ministerial approval, where required, the supplier is therefore excluded from the procurement. If the supplier is to be excluded on basis of the discretionary exclusion ground in paragraph 14 of schedule 7 (threat to national security), you must notify a minister of the crown of the intention to exclude the supplier, and gain confirmation to exclude. Go to **step 9**.

If no, continue with your procurement.

Step 8 - Overriding public interest test. Is the contract being procured by way of direct award and, if so, is there an overriding public interest in awarding the contract to an excluded supplier?

If yes, continue with your procurement.

If no, the supplier must be excluded from the procurement. Exclude the supplier, find an alternative supplier and complete **step 9**.

Step 9 - Notification. Where a supplier is excluded from a procurement, you must notify the Procurement Review Unit of the decision to do so within 30 days.

It is best practice to notify the supplier, in writing, of the decision to exclude, as soon as is reasonably possible, and to keep a record of the decision-making process.



Exclusions checklist

This checklist is designed to assist with the supplier exclusions process. For more detailed information on each stage, see the step-by-step guide.

1. Check and **exclude** any supplier who has:



- a. Failed to provide information (or provided information that is inaccurate, incomplete or misleading) requested by the contracting authority about their connected persons, associated persons or sub-contractors

2. Check any supplier who has:



- b. Unduly influenced the decision-making process,
- c. Failed to provide information / accurate information (or provided inaccurate, incomplete or misleading information) , where requested or accessed confidential information that has put them at an unfair advantage that cannot otherwise be avoided?
- d. Obtained an unfair advantage – either by participating in pre-market engagement or through a conflict of interest – that cannot be otherwise avoided

Having invited and considered representations and evidence from the supplier, exclude any supplier who remains in this position.

3. Check the debarment list (suppliers & associated persons) and **exclude** suppliers where a mandatory ground applies. [For private utilities, any reference to an excluded supplier, becomes reference to an excludable supplier.](#) Where the supplier (or associated persons) is on the debarment list based on schedule 6 para 34A (national security only), then the



supplier is only excluded from contracts of the nature that are described in their entry on the list (e.g. they may only be debarred for providing certain products /services). For **excludable** suppliers exercise discretion.

4. Check and review self-declarations for the supplier (including self-declarations on behalf of associated persons, connected persons and sub-contractors). ☐
5. If an exclusion ground applies, allow the supplier to provide evidence for “self-cleaning” purposes. ☐
6. Review the self-cleaning information provided. If you are satisfied that the circumstances are continuing or likely to reoccur, then the supplier must be **excluded** (mandatory ground) or is **excludable** (discretionary ground) and discretion must be exercised. Where the supplier is an excluded or excludable supplier by virtue of an associated person or sub-contractor, before excluding the supplier, invite and consider representations and evidence before excluding. ☐
7. For excludable suppliers, use discretion to determine whether to **exclude** these suppliers (subject to ministerial approval - if the supplier is to be excluded on the basis of the discretionary exclusion ground in paragraph 14 of schedule 7 threat to national security, you must notify a minister of the crown of the intention to exclude the supplier, and gain confirmation to exclude) or **continue with them as part of the procurement**. ☐
8. If the contract is being procured using the direct award procedure, and there is an overriding public interest in awarding the contract to an excluded supplier, you may proceed to award the contract. ☐
9. Where a supplier is excluded from a procurement or their tender disregarded (or action is taken in relation to an associated person or sub-contractor or exclusion from a dynamic market - other than exclusion for failure to co-operate with a debarment investigation under paragraph 43 of schedule 6), you must notify the Procurement Review Unit of the decision to do so within 30 days. ☐
10. Notify the supplier, in writing, of the decision to exclude, as soon as reasonably possible. ☐
11. Keep and store a record of the decision-making process. ☐



Conditions of participation

Fact sheet

■ What are conditions of participation?

Under the Procurement Act 2023, a condition of participation is a condition to ensure that suppliers have the legal and financial capacity or technical ability to perform the contract. The supplier must demonstrate they are capable of satisfying these conditions in order to be awarded a public contract. They are similar to selection criteria requirements, which existed under the Public Contracts Regulations 2015.

■ When can I set conditions of participation?

Conditions of participation are not mandatory for above-threshold procurements. However, it is expected that most procurements will need to confirm certain aspects of a supplier's suitability to deliver a contract.

There are multiple factors that contracting authorities may wish to consider when deciding whether or not to set conditions of participation as part of a procurement. These may include:

- **contract value** - high-value contracts, non-standard payment terms etc.
- **goods, services or works** - whether these are of a specialist or non-specialist nature, high or low risk, a one-off or continuing requirement etc.
- **timescales** - when the contract needs to be in place
- **associated risks** - levels of contract risk based on subject matter, delivery location, contracting authority, timescales or other factors
- **market factors** - market size, interest, capacity and capability
- **other factors** - related to the specific contract, organisational or stakeholder requirements etc.

Contracting authorities must not set or assess a supplier's suitability to perform the contract (i.e. legal and financial capacity, or technical ability) for below-threshold procurements as a way of reducing the number of bidders they

seek to invite to tender. Except where the contract is a works contract and has an estimated value of— (a) in the case of a contract to be awarded by a central government authority, not less than £138,760, or (b) otherwise, not less than £213,477.

■ How should questions be designed?

Each contracting authority is responsible for setting its own conditions of participation.

Conditions of participation must:

- be related to a supplier's legal and financial capacity, or technical ability, to perform the contract
- be a **proportionate** means of ensuring a supplier's relevant capacity or ability, having regard to the *nature, complexity* and *cost* of the public contract
- allow for equivalents (when requesting particular qualifications or memberships, for example)
- allow for international equivalents to UK standards
- be distinct from award criteria: focus only on the supplier's credentials, and not their tender submission

Conditions of participation must not:

- require suppliers to submit audited annual accounts unless they're required to under the Companies Act 2006 or an overseas equivalent
- require suppliers to have insurances needed to deliver the contract in place prior to contract award
- break any rules on technical specifications

(section 56)

- require particular qualifications without allowing for equivalents
- require suppliers to have been awarded a contract by a specific contracting authority

■ How will this information be collected?

The act does not include any specific provisions on the use of a Single Procurement Document or Standard Selection Questionnaire (SQ), and is therefore less prescriptive. However, some elements of conditions of participation are likely to be similar in practice to selection criteria.

Information about suppliers in an above threshold procurement process will no longer be captured using the [Standard Selection Questionnaire \(SQ\)](#) used under PCR 2015. Some of this information will be captured using the Supplier Information System on the central digital platform, and the remainder will be captured separately as part of each contracting authority's own electronic tendering system. Together, this information will be used to assess suppliers against exclusion grounds and, where applicable, conditions of participation.

Supplier information system (central digital platform)

- basic supplier information (e.g. name, address, contract details etc.)
- exclusion grounds
- some economic and financial standing information, such as audited accounts
- details of connected persons and beneficial ownership

Conditions of participation

This will include information relating to conditions on a supplier's legal and financial capacity, and technical ability, to perform the contract.

Development

The intention is for the central digital platform to be developed over time to include additional modules which will contain policy driven questions that are business and not procurement specific to further reduce duplication for contracting authorities and suppliers. These include additional modules on policy driven topics such as modern slavery, payment, carbon net zero and data protection.

■ When and how can conditions of participation be assessed?

Where conditions of participation are used in a procurement, the stage at which they will be assessed and the process for assessment must be set out in the tender notice and tender documents.

In an open procurement, conditions of participation are assessed at any stage from tender submission to award (but they may not be used to shortlist suppliers who can submit a tender).

In a competitive flexible procurement, conditions of participation are assessed at any stage prior to contract award. This can be either at an early stage to limit participants that progress to the next stage, or to confirm the preferred supplier meets requirements before being awarded the contract.

There is greater flexibility on what may be requested from suppliers in terms of evidence to demonstrate they satisfy the conditions, so long as

such requirements for evidence are:

- linked directly to legal and financial capacity, or technical ability and
- proportionate for the purpose of assessing the supplier's relevant capacity or ability, having regard to the nature, complexity, and cost of the contract

Examples of evidence may include (where proportionate), but are not limited to: copies of evidence and certifications, site visits or audits. Contracting authorities may also use a (relevant) third party to verify compliance, if required.

If a supplier does not satisfy a condition of participation, it cannot be awarded the contract.



Module 7: Assessment and award of contracts

Contents

1. Introduction
2. Award criteria
3. Assessing tenders
4. Awarding contracts
5. Entering into a Contract

1. Introduction

This document will provide an overview of changes relating to:

- Award criteria
- Tender assessment, including procurement termination and feeding back to suppliers
- Standstill requirements
- Awarding contracts

It will identify the key changes against the previous regime and set out what contracting authorities must do to be compliant with these changes.

2. Award criteria

A contract can only be awarded to the most advantageous tender (MAT), and the MAT is the tender that both satisfies the contracting authority's requirements and is the best tender in respect of the award criteria.

Under the PCR 2015, the award criteria were designed to assess the most economically advantageous tender (MEAT), however under the Procurement Act 2023 the tender should be assessed and the contract awarded based on the most advantageous tender (MAT) when undertaking a competitive tendering procedure.

Change: The award of the contract is to be made on the basis of the most advantageous tender ("MAT") instead of the most economically advantageous tender ("MEAT")

Benefit: The explicit removal of 'economic' in the change from MEAT to MAT makes it clear that the focus for awarding contracts does not have to be the lowest price or that price/cost must always be weighted higher than non-price factors. MAT allows for assessment of the lowest price only, but contracts awarded on the basis of MAT may also be determined on the basis of a wide range of factors – this may include price and quality criteria in addition to wider social and environmental issues where that is decided to be relevant for the best solution.

The change from MEAT to MAT is not in practice significantly changing the way award criteria are set, tenders are assessed or contracts are awarded. It has been changed to highlight and reinforce the message that contracts do not have to be awarded on the basis of the lowest price or that price must always be weighted higher than quality. When determining the best solution and format for award criteria, contracting authorities must have regard to the objectives in section 12 (including delivering value for money) and the priorities set out in the NPPS published under section 13.

MAT opportunities

Freedom to design value for money award criteria based on the optimal whole-life blend of economy, efficiency and effectiveness that achieve the intended outcomes

Lowest price still possible where it is value for money.

Example

When procuring off the shelf/catalogue goods

Quality or other relevant non-price criteria can be significant factors which can encourage innovation and open up the market

Example

When procuring innovation the contracting authority might consider giving weight to the technical ability of the supplier to modify or add value to their existing products where that is relevant to the subject-matter of the contract.

Flexibility to select the most appropriate award criteria to not only meet the specific requirements but deliver wider benefits based on the nature of the procurement as long as they are not discriminatory (including against international suppliers in certain countries, ("treaty state suppliers") where duties are owed under international agreements) and relevant to the subject matter of the procurement. Broader impacts, e.g. socio economic benefits is a key way of ensuring wide – reaching and long-term value for money and should be considered where relevant to the subject matter of the contract.

Example

When procuring a training provider contract, it may be relevant to set award criteria that relate to how suppliers will work with accredited training providers based within commuting distance of the delivery sites. The resulting positive impacts of access to training qualifications increases the sociological and welfare impacts of local communities through improvements in skills and education, employment and wealth for all ages of employees and subcontractors of the supplier. Subsequently, communities benefit in both the short and long term prospects of improved work conditions and opportunities.

The requirement for contracting authorities to have regard to the importance of maximising public benefit ensures they have a clearer focus on social value – which can play to the strengths of SMEs and VCSEs.

Example

While procuring services such as new community facilities, local events or marketing campaigns for public health services that require local knowledge, community engagement and impact assessments

■ Setting Award Criteria

Just like the previous regime, there are certain rules that must be followed when setting award criteria.

Under the Procurement Act 2023, award criteria must:

1. relate to the subject-matter of the contract,
2. be sufficiently clear, measurable and specific,
3. not break the rules on technical specification (for example, referring to specific trademarks, place of origin, producers where that is not necessary to making its requirements understood)
4. be a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract,
5. be accompanied by the “assessment methodology” describing how tenders are to be assessed by reference to the award criteria and, in particular, specify whether failure to meet one or more criteria would disqualify a tender, and
6. if there is more than one criterion, detail their relative importance by (i) weighting each as representing a percentage of the total importance, (ii) ranking them in order of importance, or (iii) describing it in another way.

When developing award criteria, contract authorities must consider the following:

- **Procurement objectives:** Award criteria must be designed bearing in mind the obligation to have regard to the procurement objectives set out in section 12(1), treat suppliers the same and have regard to SMEs..
- **Non-discrimination:** award criteria must not discriminate against treaty state suppliers as part of the general non-discrimination obligation (treaty state suppliers are those suppliers from a home country with whom the UK has a trade agreement with and is therefore entitled to the benefits of an international agreement specified in Schedule 9 of the Procurement Act 2023)
- Regard must be given to the National Procurement Policy Statement (NPPS) and, where appropriate, the Wales Procurement Policy Statement (WPPS). For example, what national priorities are relevant to the requirement and how can they be delivered through the contract
- Can the award criteria be finalised now? If not, **design the ability to refine the award criteria** into the competitive flexible procedure noting the limitations in the Act on what can be refined and when.
- The award criteria should be sufficiently described in the **tender notice** and/or associated tender documents to allow suppliers to prepare their tenders.

■ Amending Award Criteria

Change: There is now further clarity around the flexibility for contracting authorities to refine award criteria as part of a competitive flexible procedure, particularly where refining criteria during the process can aid a multi-stage process.

Benefit: The existing uncertainty around amending award criteria has been addressed, to allow contracting authorities to design a competitive flexible procedure which includes the refinement of the award criteria to ensure the best possible outcome.

Award criteria may be refined during the course of a competitive flexible procedure (not an open procedure) if:

1. The tender notice and/or associated tender documents sets out the intention to do so during the procurement process, and
2. The invitation for final tenders has not yet been issued, and
3. The refinement would not have changed which suppliers progressed through an earlier stage or supplementary process if the refinement had been made earlier.

Refinements include:

- adding additional detail to existing criteria,
- adding sub-criteria,
- amending criteria weightings within a pre-existing range.

These refinements allow contracting authorities to deal with changes in circumstances during the procurement process or because, in a multi-stage competitive flexible procedure, the full details of the award criteria which is to be applied at later stages are not fully known at the outset.

To take full advantage of this flexibility, forward planning to ensure the flexibility to refine the award criteria is built into the competitive flexible procedure is essential.

How to build the ability to refine award criteria into a competitive flexible procedure

1. Set out the right/ability or intent to refine the award criteria in the tender notice and/or the associated tender documents
2. Clearly demonstrate the relative importance of each criteria in the tender notice and/or the associated tender documents, even if, for example, the precise weightings are to be finalised later in the procedure
3. Allow time in the competitive flexible procedure timeline to make refinements including any republishing requirements

4. Make sure any refinement would not alter the outcome of any earlier rounds or supplementary processes.

Precisely how you build the ability to refine award criteria will depend on whether or not you know in advance which refinements you will want to make:

■ Award Criteria weightings

How can the relative importance of each criteria be demonstrated even if the precise weightings are yet to be finalised in the tender notice?

In instances where award criteria will be refined, criteria weightings can be expressed in the form of a range, with an appropriate minimum and maximum values. In setting a range, contracting authorities are still required to indicate the relative importance of each criteria. If contracting authorities are unable to apply weightings to the award criteria, then they must indicate their relative importance by ranking them in order of importance or another way.

Examples

- Express the weightings in the form of a range provided it also indicates the relative importance of the different criterion, for example:

Criteria	%
Technical solution	40% to 60%
Maintenance	26% to 38%
Programme	16% to 25%
Social Value	10% to 15%
Innovation	5% to 8%

- Ranking the criteria in order of importance, for example:

Criteria	Criteria importance
Technical solution	1st
Maintenance	2nd
Programme	3rd
Social Value	4th
Innovation	5th

- describe each criterion's importance in another way, for example:

Criteria	Criteria importance
Technical solution	High
Maintenance	Medium-High
Programme	Medium
Social Value	Medium-Low
Innovation	Low

The original award criteria must be sufficiently described in the tender notice and/or tender documents to allow suppliers to prepare their tenders, the refinement must not breach any of the other more general requirements in the Procurement Act 2023 or the specific requirements relating to refining award criteria. For example, refining award criteria must not be used to introduce new award criteria (although new sub-criteria may be added provided the other obligations are met).

The tender notice and any associated tender documents affected by award criteria refinement must be amended and republished.

The details should also be provided to all suppliers that are participating in the procurement at the same time.

3. Assessing tenders

This part of the document covers the assessment of tenders in accordance with the assessment methodology and the options available if no suitable tenders are submitted. For information specific to the assessment of Conditions of Participation and the Exclusions process please see **Summary Document 6**.

Change: The Procurement Act 2023 makes specific references to the assessment methodology, highlighting its role in procurements

Benefit: Having an assessment methodology provides a transparent foundation for the assessment and award process. This ensures suppliers have a clear understanding of the award criteria and how tenders will be assessed by reference to them.

Change: The requirement for the assessment of tenders to be made from the point of view only of the contracting authority has been removed.

Benefit: This encourages contracting authorities to take into account benefits wider than just those affecting the authority (and helps support national priorities).

What is the assessment methodology?

The assessment methodology will describe how tenders are to be assessed in accordance with the award criteria (i.e., how each criterion is assessed by reference to scores and what scores are available to each criterion); it will detail any minimum thresholds that need to be met, and where failure to meet one or more of the award criteria would disqualify a tender.

The assessment methodology is key to the execution of the whole assessment and award process including how any intermediate assessments and supplementary processes will be managed. Ensuring a robust assessment methodology is developed (including stress testing award criteria and weightings) and the process is properly documented, including the justification of the award decision, will ensure an audit trail of the evidence required to stand up to internal and external scrutiny.

In addition to the award criteria, there are four key requirements set out in section 19(3) of the Procurement Act that must be followed when assessing tenders:

1. If a supplier does not satisfy the conditions of participation you **must** disregard their tender (Refer to summary document 6 for further details of conditions of participation)
2. If a supplier submits a tender which breaches a procedural requirement set out in the tender notice or associated tender documents then you **may** disregard their tender (Refer to summary document 3 for further details of procedural requirements)

3. If a supplier submits what you consider to be an abnormally low priced tender for the performance requirements of the contract you **may** disregard their tender (after completing certain steps as described below)
4. If a supplier is not a United Kingdom supplier or treaty state supplier, or intends 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 you **may** disregard their tender (Refer to summary document 1 for further details of treaty state suppliers)

Before a contracting authority disregards what it considers to be an abnormally low tender, the supplier must be notified that their price is considered to be abnormally low and they must be given the opportunity to demonstrate that they will be able to perform the contract for the price offered. If the supplier demonstrates to the contracting authority's satisfaction that they will be able to perform the contract for the price offered, the tender may not be disregarded as abnormally low. If the supplier doesn't satisfy the contracting authority, the tender may be disregarded by notifying the supplier of the decision. All documentation and correspondence with the supplier that details how the decision was reached must be kept with the other procurement records as part of the record keeping duties.

- Contracting authorities are permitted, but not required, to disregard tenders from suppliers that are not from a country with which the UK has signed a relevant international agreement on procurement or where the supplier intends to subcontract the performance of all or a part of the contract to a subcontractor that is not from such a country. In making a decision to exclude non-UK and non-Treaty State suppliers the contracting authority must consider its other general duties under the Act including the objectives in section 12.

■ Switching to Direct Award

Change: The Procurement Act 2023 provides clarity on when you may 'switch' to direct award following an unsuccessful competitive tendering procedure

Benefit: This will improve understanding and confidence when making difficult decisions following an unsuccessful competitive tendering procedure

Section 43(1) (Switching to direct award) allows contracting authorities to switch to direct award where:

- a. the authority has invited suppliers to submit tenders or requests to participate in a competitive tendering procedure, and
- b. it has not received any suitable tenders or requests in response (which would include where it had received no tenders or requests at all, or where it had received no suitable tenders or requests), and
- c. it considers that award under section 19 is not possible in the circumstances.

Contracting authorities should note that all three limbs of section 43(1) must be met.

What options are available following an unsuccessful competitive tendering procedure?

Firstly, contracting authorities should seek to understand why the competitive tendering procedure was not successful. This will not only help decide how to take forward this particular requirement but could also help inform future procurement strategies.

If no tenders or requests to participate were submitted was this due to:

- a. Lack of market interest

Was the procurement in your published pipeline notice? Was any pre-market engagement carried out to gauge interest and prepare the market? What could have been done differently to warm up the market?

- b. Lack of market resources

Was the procurement in your published pipeline notice? Was consideration given to the timing of the procurement in regards to other opportunities in that market? Was any pre-market engagement carried out to gauge interest and ready the market? Were the procurement timescales reasonable? What could have been done differently to warm up the market?

- c. Lack of clarity of the requirement in the tender notice and/or associated tender documents

Was any pre-market engagement carried out to gauge interest and ready the market? Was the published information as comprehensive as possible? Could the requirement have been simplified and more focused on outcomes?

If tenders or requests to participate were submitted but none of them were suitable, was this because:

- a. Tenders were disregarded under section 19 due to:
 - (i) Suppliers failing to satisfy the conditions of participation;
 - (ii) Tenders being submitted by non United Kingdom or treaty state suppliers or suppliers intending to subcontract with non United Kingdom or treaty state suppliers;
 - (iii) Tender prices being abnormally low (and the supplier being unable to demonstrate to the contracting authority's satisfaction that it will be able to deliver the contract for the price tendered (see section 19(4) and (5));
- b. Tenders not satisfying the requirement or the award criteria (this would include, for example, if prices were above any published budget);
- c. There being evidence of corruption or collusion;
- d. Tenders materially breaching a procedural requirement;
- e. A mix of a to d.

Options available following an unsuccessful competitive tendering procedure:

1. Terminate the procedure and start another competitive tendering procedure

Understanding why no suitable tenders or requests to participate were received is important in order to understand the options available to deliver the requirements. There may be fundamental issues, such as the requirement is simply not deliverable or the award criteria were not appropriate. Understanding this may allow contracting authorities to address those areas and undertake a new competitive tendering procedure. It could have been that there was:

- Lack of market interest
- Lack of market resources
- Lack of clarity of the requirement in the tender notice and/or associated tender documents.

If a new competitive tendering procedure is to be commenced, the contracting authority must terminate the unsuccessful procedure and publish a procurement termination notice (see below for more information).

2. Switch to direct award

Provided the conditions in section 43(1) are met, the contracting authority may directly award the contract to a chosen supplier that is not an excluded supplier. Before awarding the contract, the contracting authority must consider whether the supplier is an excludable supplier or whether it submitted an unsuitable tender or request to participate (section 43(6)). A transparency notice must be published before a contract is awarded after switching to a direct award (see summary document 3 for further details on the direct award process).

What is a tender or request that is not suitable?

Section 43 (2) states that a tender or request is not suitable if the contracting authority considers that:

- a. it would be disregarded in an assessment of tenders under section 19(3)(a), (b) or (c) ;
- b. it does not satisfy the contracting authority's requirements or the award criteria when assessed by reference to the assessment methodology and the relative importance of the criteria indicated under section 23(3) (for example it fails to meet any defined quality threshold);
- c. there is evidence of corruption or collusion between suppliers or between suppliers and contracting authorities;
- d. it materially breaches a procedural requirement in the tender notice or associated tender documents.

■ Terminating a procurement

Change: The Procurement Act 2023 has a new requirement to give notice if a procurement is discontinued prior to contract award by publishing a procurement termination notice on the central digital platform

Benefit: This ensures public information on live procurements is up to date and may reduce unnecessary questions from suppliers

Contracting authorities have the same broad discretion to terminate a procurement before the award of a contract as they did under PCR 2015. However, if a decision is made to terminate the procurement following publication of a tender notice or a transparency notice and before awarding the contract, a procurement termination notice¹ must be published. This includes terminating a procurement procedure that was intending to set up a new framework or to award a contract under a dynamic market.

Contracting authorities may also voluntarily decide to issue a procurement termination notice after earlier notices in the procurement process have been published but before publication of the tender or transparency notice, such as after the planned procurement notice or pipeline notice.

The aim of the procurement termination notice is for transparency and accurate data collection and analysis. It will inform the market that a procurement has been terminated and may reduce questions from suppliers. The procurement termination notice must be published **as soon as reasonably practicable** after the decision to terminate the procurement has been made. However, any suppliers participating or tendering in the process should be notified **as soon as possible** after the decision has been made to terminate the procurement in order to stop them incurring any unnecessary costs.

■ Procurement Termination Notice

What information needs to be in the procurement termination notice?

The procurement termination notice must set out:

- the procurement details (i.e., the title of the procurement and the unique identifier for the procurement)
- a statement that the contract authority has decided not to award the contract
- the date the contracting authority decided not to award the contract

¹ Exemptions apply

Part terminations

When terminating a procurement in part during the tender period, for example, deciding not to proceed with one or more lots but not to cancel the entire procurement, a procurement termination notice would not be required. Whether or not you will be permitted to partially terminate in this way will depend on whether the proposed partial termination is classed as a permitted modification of the terms of a procurement under section 31 of the Act. If it is permitted, the tender notice and any associated tender documents affected by the modification must be updated and republished. If it is not a permitted modification, the whole tender would need to be terminated.

If a decision compliant with the Act is made not to proceed with one or more lots after the tender period (i.e. after tenders have been submitted) a procurement termination notice would also not be required. In this situation the contract award notice would be used to inform the market that those specific lots are not going to be awarded to any supplier. However, any suppliers tendering for the particular lot(s) that are no longer being proceeded with should be directly informed **as soon as possible** after the decision has been made. This will stop suppliers incurring any unnecessary costs and helps to manage the relationship with the market better.

4. Awarding contracts

This part of the document covers the obligations that follow tender assessment and reaching the award decision, but before entering into a contract. It includes the issuing of assessment summaries, publishing the contract award notice and the standstill requirements.

Assessment summaries

Change: The Procurement Act 2023 requires contracting authorities to issue an assessment summary, which is similar to a 'standstill letter', however, the requirements of the assessment summary are less open to interpretation. Before publishing the contract award notice, an assessment summary must be issued to all suppliers that submitted an assessed tender.

Benefit: Assessment summaries will improve the consistency of feedback to suppliers and provide them with sufficient explanation to enable them to understand why they have been awarded particular scores and therefore why they did or did not win the contract.

Change: An assessment summary does not require direct comparisons between the successful and an unsuccessful supplier's assessed tender in order to indicate the characteristics and relative advantages of the successful tender. This means the justification for the scores awarded as against the award criteria, and recorded as part of the assessment process, should be able to be used directly in the assessment summary.

Benefit: The removal of the direct comparison means the drafting of assessment summaries should be less burdensome for contracting authorities than standstill letters, which will reduce workload. The assessment summary to unsuccessful suppliers will still include a copy of the information provided to the successful supplier. An unsuccessful supplier reading the two sets of information alongside each other, will be able to ascertain the relative advantages.

What is an assessment summary?

An assessment summary sets out the results of the contracting authority's tender assessment in accordance with the assessment methodology. It sets out how the tender was assessed against the award criteria by reference to scores (including, where an award criterion includes sub-criteria, an explanation of how the tender was assessed by reference to each sub-criterion). Unsuccessful tenderers who have submitted an assessed tender will also receive information about the most advantageous tender submitted in respect of the contract. It is provided, not publicly published, to each supplier that submitted an assessed tender. Assessment summaries must be provided before the contract award notice can be published (and the standstill period commenced). In practice, it is expected that the contract award notice will be published on the same day as the assessment summaries are provided, assuming they are provided electronically.

What is an assessed tender?

An assessed tender is a tender which, has not been disregarded during the procurement process (for example because it did not meet a procedural requirement) and has been assessed for the purposes of determining the most advantageous tender (that is to say, where a multi-stage competitive flexible procedure has been used, the last tender that is assessed to determine to the most advantageous tender).

The assessment summary will provide sufficient detail to suppliers who had their only or final tender assessed for them to understand why they won or did not win the contract. An unsuccessful supplier who has submitted an assessed tender will receive information relating to their own assessed tender as well as information in relation to the most advantageous tender (redacted to remove any commercially sensitive information where appropriate), which will allow them to see the relative advantages of the winning tender by comparing the two.

What information needs to be in an assessment Summary?

Assessment summaries must set out:

- The award criteria and assessment methodology in full or a summary, with an indication of the location of where the full award criteria can be found. If a summary is provided, this should include at least the:
 - Title of each award criterion;
 - The relative importance of each criterion;
- The scores given for each award criterion (including sub-criteria where an award criterion includes sub-criteria for assessment)
- The reasons the score was awarded for that criteria by references to relevant information in the tender
- Where the tender was unsuccessful, a further explanation of why the tender was unsuccessful including, where the tender was disqualified under the assessment methodology under section 23(3) of the PA 2023, the reasons for that disqualification
- Any unsuccessful supplier must also be provided with the scores and reasons in respect of the successful (MAT) tender

In addition to the information that must be set out in an assessment summary, contracting authorities may also wish to consider providing more general feedback to an unsuccessful supplier as part of the assessment summary in order to encourage them to participate in future procurement opportunities. For example, generic feedback around how they approached their tender. This is likely to be particularly useful to SMEs or new entrants to the market.

Assessment summaries must be provided to all suppliers due to receive one at the same time.

Assessment summaries are NOT required for²:

- Intermediate tender assessments
- Contracts awarded under Frameworks (unless the framework terms set out a specific requirement to provide an equivalent)
- Below threshold contracts
- Establishing dynamic markets

Although assessment summaries are not legally required in these cases, it is recommended that you consider using the assessment summary structure when providing notification and feedback to suppliers in these cases (and aim to provide the appropriate level of detail for where in the procurement process

² Further exemptions apply

the supplier was excluded), to ensure you are compliant with the duty to have regard to the procurement objective of sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions.

How can contracting authorities prepare for issuing assessment summaries throughout the procurement process?

1. Set clear and measurable award criteria.
2. Develop a detailed assessment methodology.
3. Consider holding assessor training to step through the assessment methodology, assessment process and expectations regarding best practice, including using language consistent with the award criteria and assessment methodology.
4. Consider providing the assessors with template scoring and rationale forms and explain how they can reduce the need for redacting commercially sensitive information when explaining the scores given.
5. Ensure good record keeping processes are in place.
6. Produce an assessment report at the end of the assessment process to demonstrate that the assessment has been performed properly and to have in one place the supporting evidence to explain the scores given is documented.

Following the steps above will help you have what you need to complete the assessment summaries

■ Standstill period

Change: The standstill period is now a minimum of eight working days beginning with the day on which the contract award notice is published.

Benefit: Simpler and more straightforward to apply

Change: Where the standstill period applies (whether mandatory or voluntary), the publication of the contract award notice – not the provision of the assessment summaries – starts the clock.

Benefit: Provides transparency to all interested parties as to when the contract can be entered into.

The standstill period is when the automatic suspension remedy is available (i.e the date by which they must issue and notify the contracting authority about a claim if they want to protect their chance at gaining the contract – rather than just go after damages).

Just as before, the standstill period is the period between announcing which supplier is to be awarded the contract and actually entering into that contract. It provides unsuccessful suppliers the opportunity to raise any potential claims before the new public contract is entered into.

A contracting authority may not enter into a public contract before the end of any standstill period that has been set out in the contract award notice (required by Regulation 27(2)(s)). The standstill period begins on the day the contract award notice is published. It is prudent to check that the contract award notice has actually been published when calculating the date on which you can enter into the contract to ensure the full standstill period is provided for.

Do I need to observe a standstill period for my contract?

Contracting authorities should plan for a standstill period when finalising procurement timelines. Only a small number of contracts are exempt from requiring a mandatory standstill period and even where these exemptions apply, consideration should be given to observing a voluntary standstill period where time allows as it helps manage the risk of costly and disruptive legal challenges that might be brought following contract award.

Contracts exempt from mandatory standstill requirements are³:

- Direct award under the ground of extreme and unavoidable urgency
- Direct award under the ground to protect life, etc.
- Direct award and switching to direct award by private utilities
- Those awarded under a framework (call off contracts)
- Those awarded under a dynamic market
- Light touch contracts

What are the consequences for failing to observe the standstill period?

If contracting authorities fail to observe the mandatory standstill period or any voluntary standstill period set out in the contract award notice by entering into the contract before the end of the standstill period, they will have breached their statutory duty and would be at risk of a supplier raising a legal claim under Part 9 of the Procurement Act 2023 (remedies). A voluntary standstill period gives contracting authorities a route to manage the risk of set aside and other post contractual remedies, for procurements and contract modifications that do not attract the mandatory standstill period. Further details on remedies can be found in Summary document 8

Contracting authorities should be aware that applying and adhering to a voluntary standstill period can help protect against post contractual set aside remedies, as it gives the ability for suppliers to raise any concerns prior to the signing and commencement of a contract. This avoids contracting authorities 'paying twice' for the goods and services themselves as well as compensation for the lost value of the contract to successful challengers. On the assumption that any breach that led to an incorrect award decision would nearly always

³ Further exemptions apply

be identified prior to the contract being signed, if the standstill concludes without challenge, the supplier cannot later assert that the contract should be set aside because it was denied the opportunity for a pre-contractual remedy.

■ Contract Award Notice

Change: A new additional notice called the contract award notice must be published before entering into a contract⁴

Benefit: The contract award notice is part of the transparency agenda and provides information of the outcome of the procurement and starts the standstill period

The contract award notice advises the market and the public of the outcome of the procurement process and that a contracting authority intends to enter into a contract.

It sets out which supplier(s) is to be awarded the contract and commences the mandatory (or voluntary) 8 **working day standstill** period or confirms the end date of a longer standstill period which allows a window for challenges before the contract commences.

A contract award notice is not required for below-threshold contracts or below threshold contracts that are awarded under a framework (regardless of whether the framework itself is above or below threshold).

What information needs to be in the contract award notice?

The contract award notice must set out (amongst other things):

- the contract subject-matter
- the successful supplier(s) details including which lots they have been awarded where applicable
- tendering details as follows:
 - if the contract has a value of £5 million or less, the total number of tenders submitted, the total number of tenders assessed and the total number of tenders submitted by SMEs or VCSEs;
 - if the contract has a value of £5 million or more, the total number of tenders submitted, the name of each unsuccessful supplier and whether any of those suppliers are SMEs or VCSEs.
- the estimated value of the contract and the estimated value of each lot where applicable
- standstill end date
- confirmation that assessment summaries have been provided to each supplier that submitted an assessed tender and the date those were provided

⁴ Exemptions apply

The contract award notice is also how the market and public are notified that specific lot(s) originally identified in the tender notice will not be awarded, (whilst other lots continue to be awarded where the entire procurement has not been cancelled) if this decision has been made after tenders have been submitted. If the contracting authority decides during the tendering period to end the procurement for one or more lots (but not the whole procurement) it must use the tender notice as set out in Section 31 [Modifying a section 19 procurement]. If the **entire** procurement was to be cancelled then a procurement termination notice must be published.

The contract award notice is published after the assessment summaries are issued to all suppliers who submitted an assessed tender.

5. Entering into a Contract

This part of the document covers the requirements when entering into a contract including publishing the contract details notice⁵, publishing a copy of the contract (redacted where appropriate), finalising procurement records and contract handover.

Once the standstill period has ended and there have been no formal challenges contracting authorities can enter into the contract. If no mandatory standstill is required and no voluntary standstill period has been applied then contracts can be entered into immediately after publication of the contract award notice.

Contract Details Notice

Change: The previous contract award notice is now called the contract details notice and must be published within 30 days of the contract being entered into (or 120 days in the case of a light touch contract).

Benefit: Confirms the contract has been entered into and, if the contract is valued at £5 million or more (subject to exceptions), includes a copy of the contract (redacted where appropriate) and the agreed key performance indicators

The contract details notice informs all interested parties that the contract has been entered into. It also includes, if the contract is valued at £5 million or more (subject to exceptions), a copy of the contract

⁵ Exemptions apply

(redacted where appropriate) and the agreed key performance indicators (if the contracting authority cannot appropriately assess contract performance using KPIs, this must be explained in the contract details notice). See summary document 9 for further details on KPIs.

The contract details notice must be published within 30 days⁶ of the contract being entered into (or 120 days in the case of a light touch contract).

The 30 days publication requirement does not apply to below-threshold procurement as set out in section 87 'Regulated below-threshold contract: notices' which sets out that the publication should be made 'as soon as reasonably practicable'.

Where the estimated value of the contract is above £5m then a copy of that contract (redacted as appropriate) must be published⁷ within 90 days of the contract being entered into (or 180 days in the case of a light touch contract).

What information needs to be in the contract details notice?

The contract details notice must set out (amongst other things):

- the contract subject-matter
- the successful supplier(s) details
- a description of any option in the contract.
- the estimated value of the contract and the estimated value of the lot where applicable.

■ Publication of contracts

Change: A copy of the contract, redacted as appropriate, where its total value is £5m or more must be published within 90 days⁸ of the contract being entered into (or 180 days in the case of a light touch contract).

Benefit: Improved transparency around contract clauses and intended implementation.

Where you are required to publish a copy of the contract you should be aware of Section 94 (General exemptions from duties to publish or disclose information) and applying appropriate redactions before publishing.

⁶ Exemptions apply

⁷ Exemptions apply

⁸ Exemptions apply

■ Redacting Documents

Redaction is where information which is being withheld from publication is separated from disclosable information by removing individual words, sentences, paragraphs, whole parts and / or pages, before a document is published or issued to other parties.

As well as copies of contracts, contracting authorities are required to publish notices and certain additional documents that may be openly accessible to the public (such as contract amendments), and to provide (but not publish) other information to suppliers (including issuing assessment summaries) throughout the procurement and contract lifecycle.

Section 94, 'general exemptions from duties to publish or disclose information', of the Act sets out the conditions under which contracting authorities are permitted to not publish or disclose certain data.

Contracting authorities are permitted to withhold information, for example by redacting, where the following circumstances apply to that information:

1. **National Security**
2. **Sensitive Commercial information**

National Security

A contracting authority may withhold information where it is satisfied that this is necessary for the purpose of safeguarding national security. Examples may include, but are not limited to:

- Classified information that requires protection from unauthorised access or distribution.
- Details relating to sensitive sites, such as military or intelligence services operations.
- Information relating to critical national infrastructure, where loss or compromise could result in serious economic damage to the UK.

Sensitive Commercial information

Commercially sensitive information is information that is:

- A trade secret (e.g. a formula, device or set of data that is used within a business and gives that business the opportunity to gain advantage over its competitors) or
- Information that would likely prejudice the commercial interests of any person if it were published or disclosed.

Information may only be withheld on commercial sensitivity grounds if the public interest in doing so outweighs the public interest in disclosing it.

These exceptions are modelled on the equivalent exemptions outlined in the Freedom of Information Act (FOI Act) and are designed to be interpreted in the same way. They have been detailed separately because the FOI Act relates to *responding* to requests for information, whereas the Procurement Act 2023 is about *proactive publication*.

The type of information that could be reasonably withheld on the ground of commercial sensitivity, if there is an overriding public interest in doing so, include:

- Pricing and how the supplier has determined the price to charge (not the value of the contract itself).
- Intellectual property.
- Profit forecasting and investment plans.

If contracting authorities rely on either of the above grounds to withhold information from being published, they must notify anyone who the information would have been provided to that this is the case, and why. This obligation does not apply if it would be contrary to the interests of national security to make such a notification. This would typically be done through one of the notices: for example, when publishing a contract details notice and associated contract, if one or more of the contract schedules were not included, an explanation of the reasons would be set out in the notice (unless it would be contrary to the interests of national security to do so).

It is important that contracting authorities review any document before it is published, to identify whether it contains any information that needs to be redacted. It is also important that redaction is done in such a way that the redacted information remains confidential and secure:

Redaction “Dos”	Redaction “Don’ts”
Make a duplicate electronic copy of the document, prior to redacting it.	Overwrite an original document without saving a back-up version.
Delete the information to be redacted and insert a statement indicating that the text has been redacted under section 94.	Use the “highlight” function in word processing software to hide the text in black.
Check prior to publication that no redacted text is visible.	Keep multiple unmarked versions of the document, as this may result in error.
Label the redacted version so that the correct document is uploaded to the platform.	

■ Contract handover

The obligations in the Procurement Act 2023 do not end once the contract is signed and published. There are obligations that continue until the contract has been completed or terminated. The contract manager will need to be aware of these ongoing obligations (this might be someone from another team/department). The following is the highlevel list that should be provided to the contract manager to include in their contract management plan, further information can be found in summary document 9: Contract Governance

- The grounds for lawful contract amendments.
- The transparency requirements relating to contract amendments, including the publication of contract change notices and updated contract documents.
- The transparency requirements relating to the publication of supplier performance against the contract's set key performance indicators.
- The transparency requirements relating to publishing details of individual payments above £30k made under the contract.
- The transparency requirements relating to contract termination and publishing a contract termination notice.
- The transparency requirements relating to publishing the contracting authority's performance with 30-day payment terms.

■ Procurement records

As with the requirements of PCR 2015, contracting authorities must keep certain records for each procurement they undertake. These obligations are set out in section 98 and cover:

- any communications with suppliers in relation to the award of or entry into a contract, made before the contract is entered into; and
- documentation that is sufficient to explain a material decision made during the award of or entry into a contract.

A decision is material if the contracting authority is required to publish or provide a notice, document or any other information relating to it, or if the contracting authority is required, by the Act, to make the decision.

These records must be kept for a minimum period of three years following entry into the contract. If a decision is made to award a contract, but it is not entered into, the three years runs from the date of award.

When the decision is made to terminate a procurement without awarding a contract, records are only required to be kept until the day that a procurement termination notice is published.

Documents should be filled/stored carefully to ensure they are retrievable by others if and when required.

These records may be required for any contract disputes, audits or procurement investigations.



Award criteria checklist

The award criteria are:

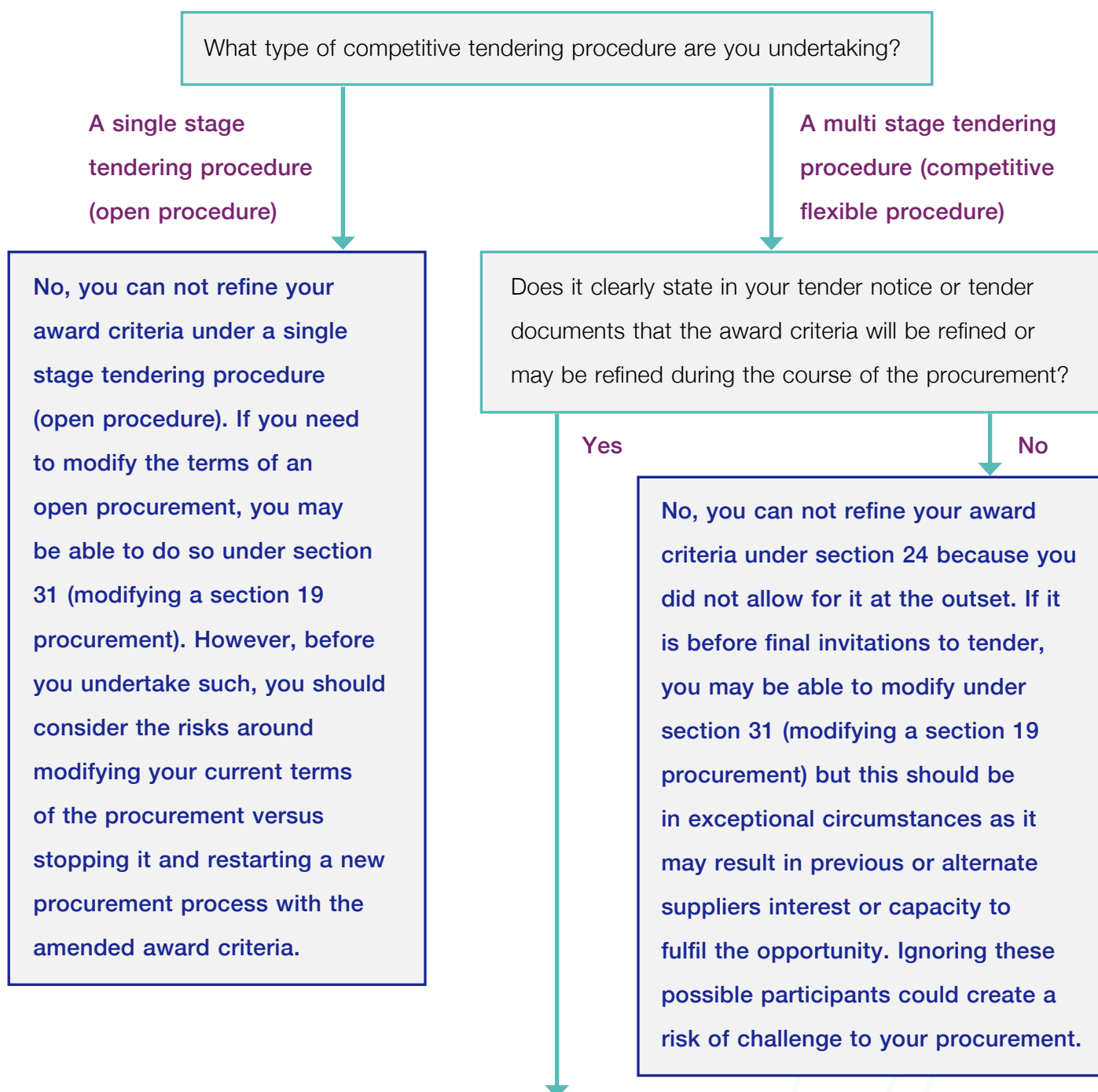
- clear
- measurable
- specific
- not discriminatory (comply with the rules on technical specifications)
- proportionate to the contract
- linked to the subject matter of the contract
- related to the aspects of the specification or required outcomes
- headline detail published in the tender notice with further detail in associated tender documents
- accompanied by details of their relative importance
- accompanied by the assessment methodology
- accompanied by a statement setting out the intent to refine the award criteria (where applicable)

☐
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Can I refine my award criteria?

Decision tree



Yes

Would the refinement have changed the outcome for any supplier that did not progress beyond an earlier stage or selection process?

Yes

No, you can not refine your award criteria as it would put the already removed suppliers at a disadvantage and your procurement would be open to challenge.

No

Yes, you may refine your award criteria but only within the parameters of what you had advised in the previous tender notice or associated documentation and the contracting authority is yet to invite suppliers to submit tenders to be assessed. Any amendments must be published or provided in a tender notice and their associated tender documents.



Refining award criteria

Examples

To be able to make any refinements to the award criteria during a competitive flexible procedure, under section 24 of the act, you:

- must provide for this possibility in the tender notice or associated tender documents and may in any case only refine award criteria before inviting tenders to be assessed under section 19 of the act i.e. before final tenders are invited
- must modify and republish or provide again the tender notice and any associated tender documents affected by the refinements (including the assessment methodology)
- may not make a refinement that would, had the refinement been made earlier, have allowed one or more suppliers that did not progress beyond an earlier round or selection process to have done so
- should consider the specific facts before you decide whether or not refinement will be possible in a particular scenario

Example of refinement	Can this refinement be made? The answer will depend on the specific circumstances, in this table are some possible examples
Can you add new criteria not in the original tender notice or associated tender documents?	No , this may change the suppliers who were interested in the opportunity or change the outcome for any suppliers that did not progress beyond an earlier round or the selection process. You can only refine what has already been provided for.

Example of refinement	Can this refinement be made? The answer will depend on the specific circumstances, in this table are some possible examples
Can you add additional detail to the criteria set out in the original tender notice or associated tender documents?	Yes , as long as this does not change the original intent of the main criteria.
Can you add new sub criteria to those set out in the original tender notice or associated tender documents if it relates to the main criteria?	Yes , as long as they directly relate to the main criteria.
Can you add new sub criteria not mentioned or associated with the main criteria in the tender notice or associated tender documents?	No , this may change the suppliers who were interested in the opportunity or change the suppliers to progress beyond an earlier round or selection process. You can only refine what has already been provided for.
Can you add additional detail to the sub criteria set out in the original tender notice or associated tender documents?	Yes , as long as this does not change the original intent of the sub criteria.
Can you delete one of the main criteria or sub criteria?	No , this may change the suppliers who were interested in the opportunity or change the suppliers to progress beyond an earlier round or selection process.
Can you delete one of the sub criteria?	Yes , if this would not change the suppliers who were interested in the opportunity or change the suppliers to progress beyond an earlier round or selection process.
Can you change/reverse pass fail tests expressed in tender notice or associated tender documents or add a new pass fail tests?	No , this may change the suppliers who were interested in the opportunity or change the suppliers to progress beyond an earlier round or selection process.

Example of refinement	Can this refinement be made? The answer will depend on the specific circumstances, in this table are some possible examples
Can you change weightings within a pre existing range that was set out in the original tender notice or associated tender documents?	Yes , as long as you stay within the original range (e.g. if a range was set out at 10-30%, an early stage could start at 30% and the final stage could be 10%).
Can you change weightings where there was no pre-existing range set out in the original tender notice or associated tender documents?	Yes , you can refine weightings during the procedure.
Can I refine the main award criteria or sub-criteria if I am using the open procedure?	No , the open procedure is a single-stage tendering procedure therefore you have already invited final tenders.



Unsuitable tenders or requests checklist

Each tender or request should be checked before awarding a contract. One or more ticks indicates that the tender or request you have received is an unsuitable tender or request.

Action

1. The supplier has been excluded due to a mandatory or discretionary ground ☐
2. You have concluded that the supplier does not satisfy the conditions of participation ☐
3. You have decided to disregard the tender as it is from a supplier that is not a United Kingdom supplier or treaty state supplier ☐
4. You have decided to disregard the tender as it is from a supplier that intends 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 ☐
5. You consider the tendered price to be abnormally low for the performance of the contract even after you have notified the supplier and given them a reasonable opportunity to demonstrate that it will be able to perform the contract for the price offered ☐
6. You have concluded that the tender does not satisfy the requirements when assessed by reference to the assessment methodology e.g. do not meet the requirements of the specification, T&Cs, tender deadlines etc ☐
7. You have concluded that the tender does not satisfy the award criteria when assessed by reference to the assessment methodology e.g. where specified failure to meet one or more criteria would disqualify a tender ☐

- 8. You have concluded that there is evidence of corruption or collusion between one or more suppliers tendering, or between one or more suppliers and the contracting authority ☐
- 9. You have concluded that the tender **materially** breaches a procedural requirement set out in the tender notice or associated tender documents (a breach is material if the contracting authority considers that ignoring it would put the tender at an unfair advantage). ☐

If you have invited tenders or requests to participate and have confirmed you have not received any suitable tenders then you may switch to a direct award procedure.



Standstill requirement summary table

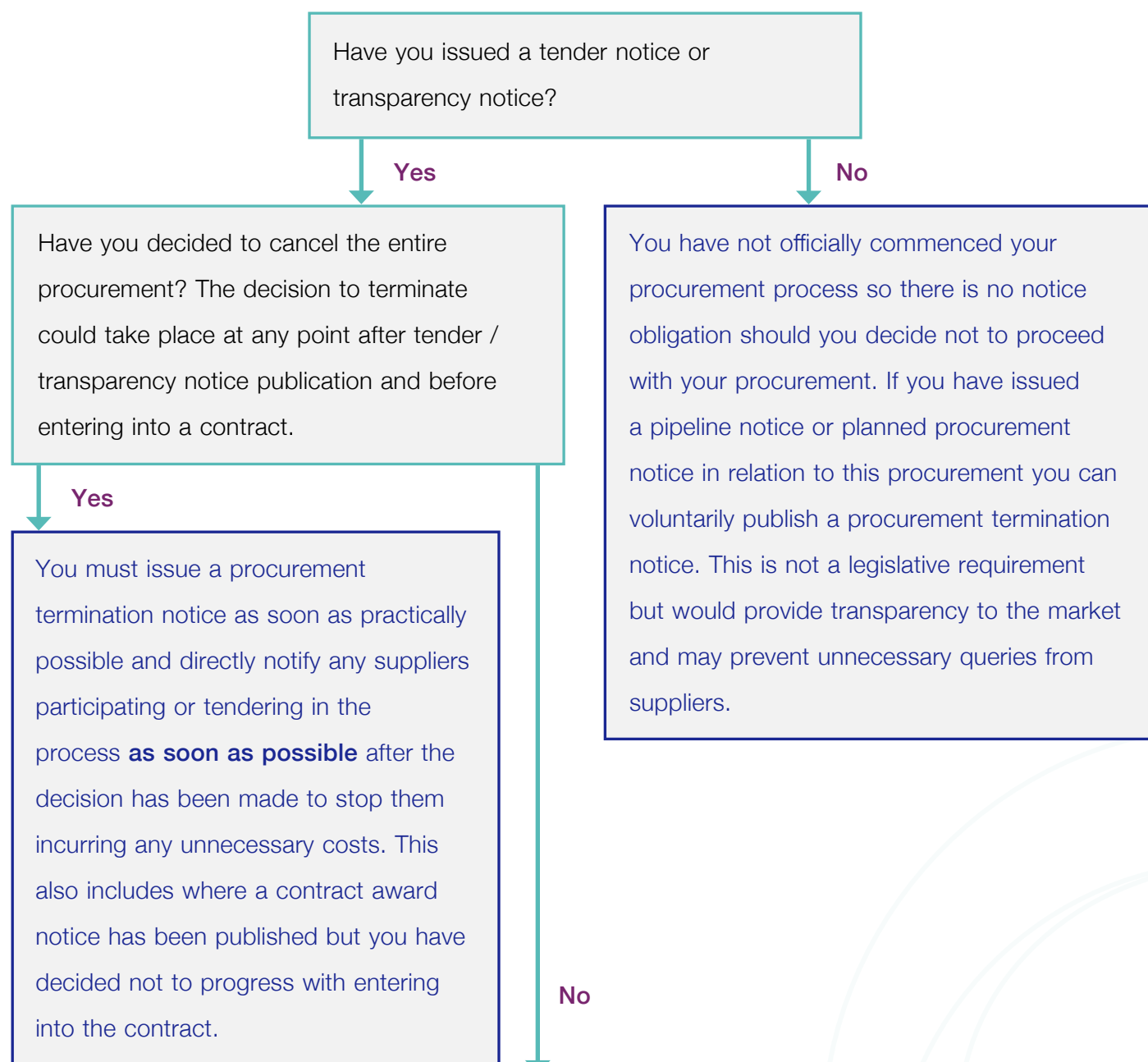
Procurement type	Mandatory minimum 8 working days standstill period required?	Option for voluntary minimum 8 working days standstill period?
Open and competitive flexible procedure	Yes	N/A
Direct award • in extreme and unavoidable urgency • to protect life • user choice contract	No	Yes
Direct award (other than extreme and unavoidable urgency, to protect life and user choice) (not including private utilities)	Yes	N/A
Switching to a direct award (not including private utilities)	Yes	N/A
Light touch contract	No	Yes
Establishing a new framework (or reopening an open framework)	Yes	N/A
Call off contracts awarded under a framework	No	Yes

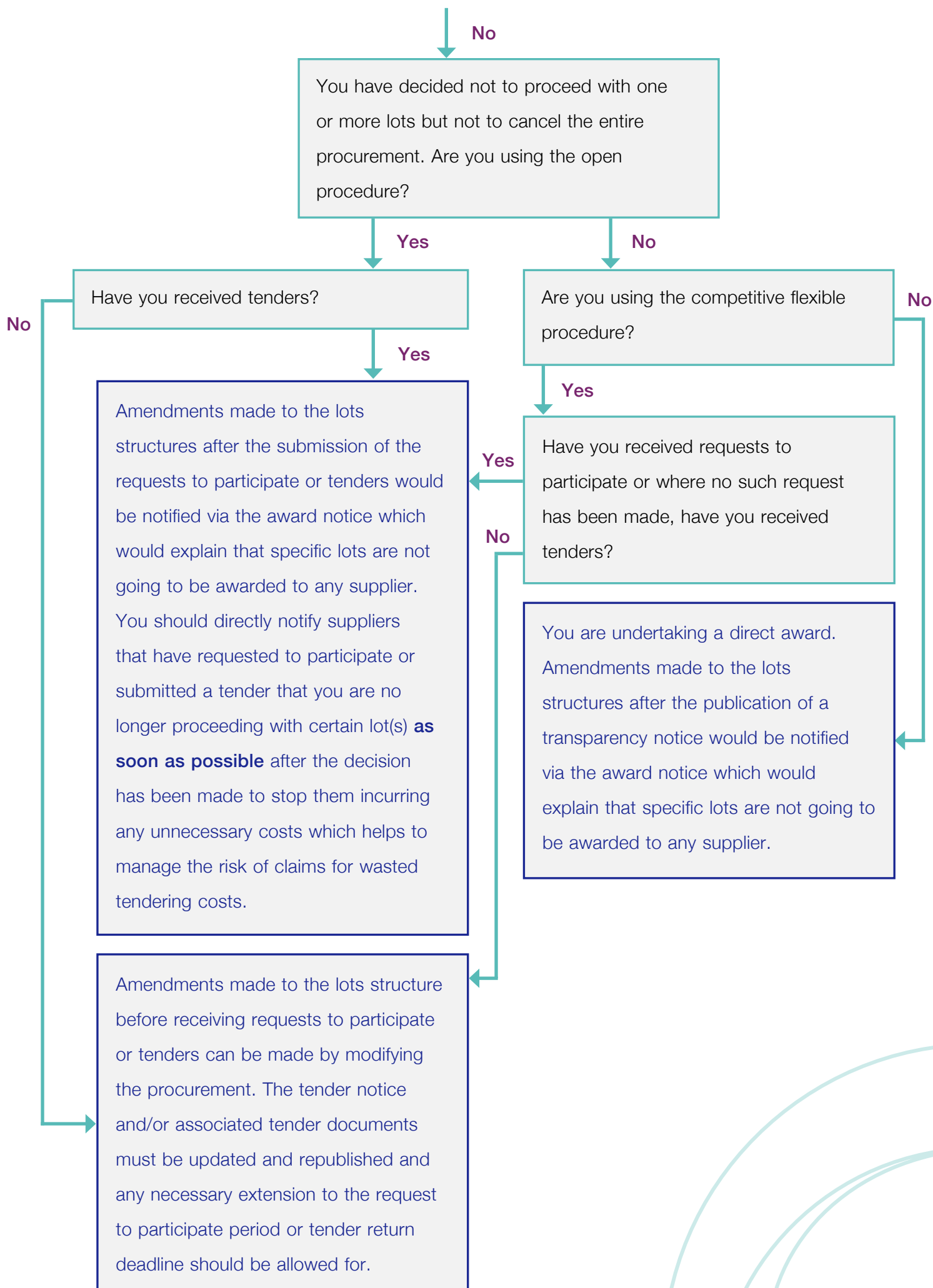
Procurement type	Mandatory minimum 8 working days standstill period required?	Option for voluntary minimum 8 working days standstill period?
Establishing a dynamic market	N/A (no contract to sign)	N/A (no contract to sign)
Contracts awarded under a dynamic market	No	Yes
Below threshold contracts	No	Yes
Exempt contracts	No	Yes
Private utility direct award and private utility switching to direct award	No	Yes
Contract modifications	No	Yes



Procurement termination or part termination notice requirements

Decision tree

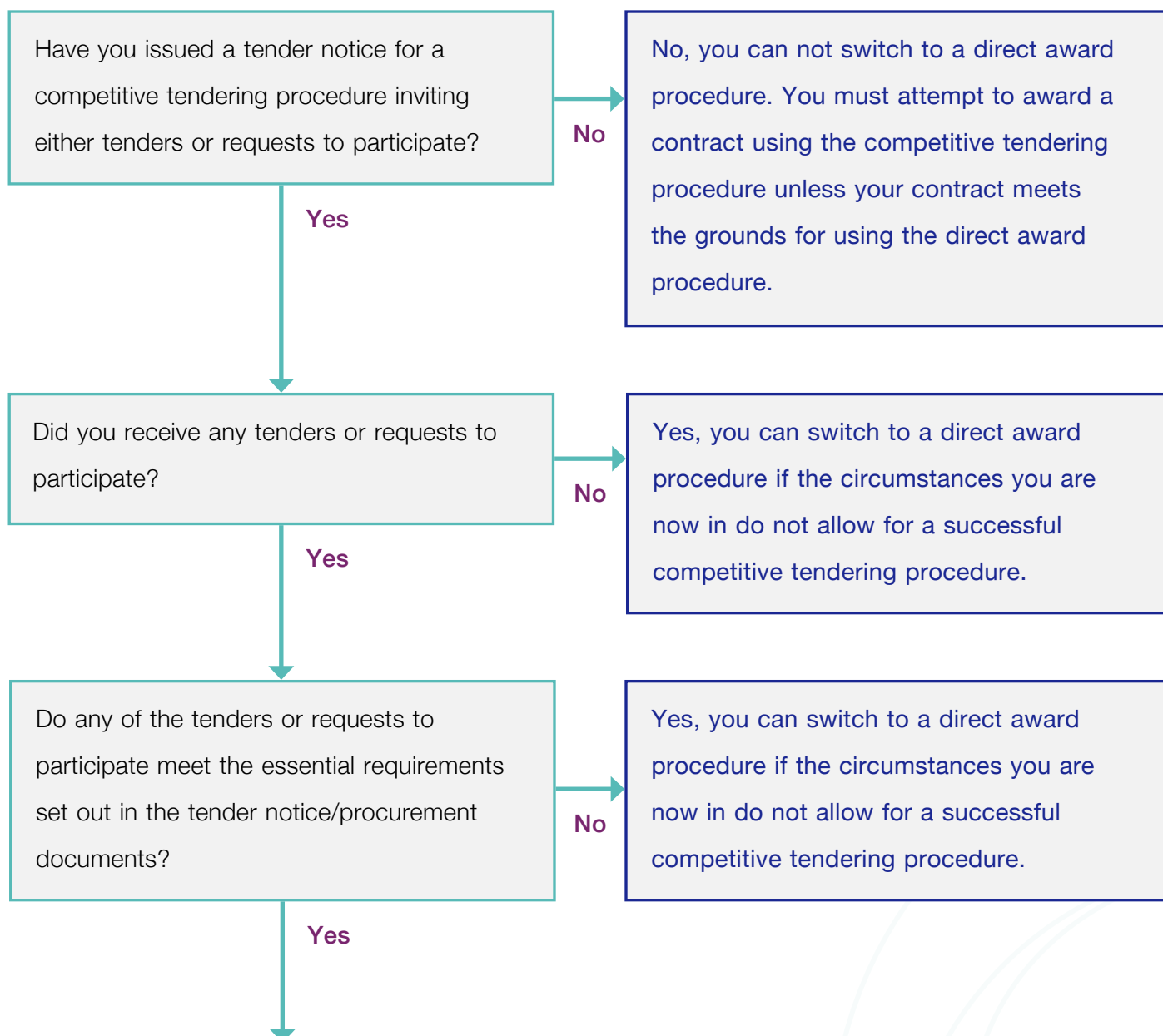


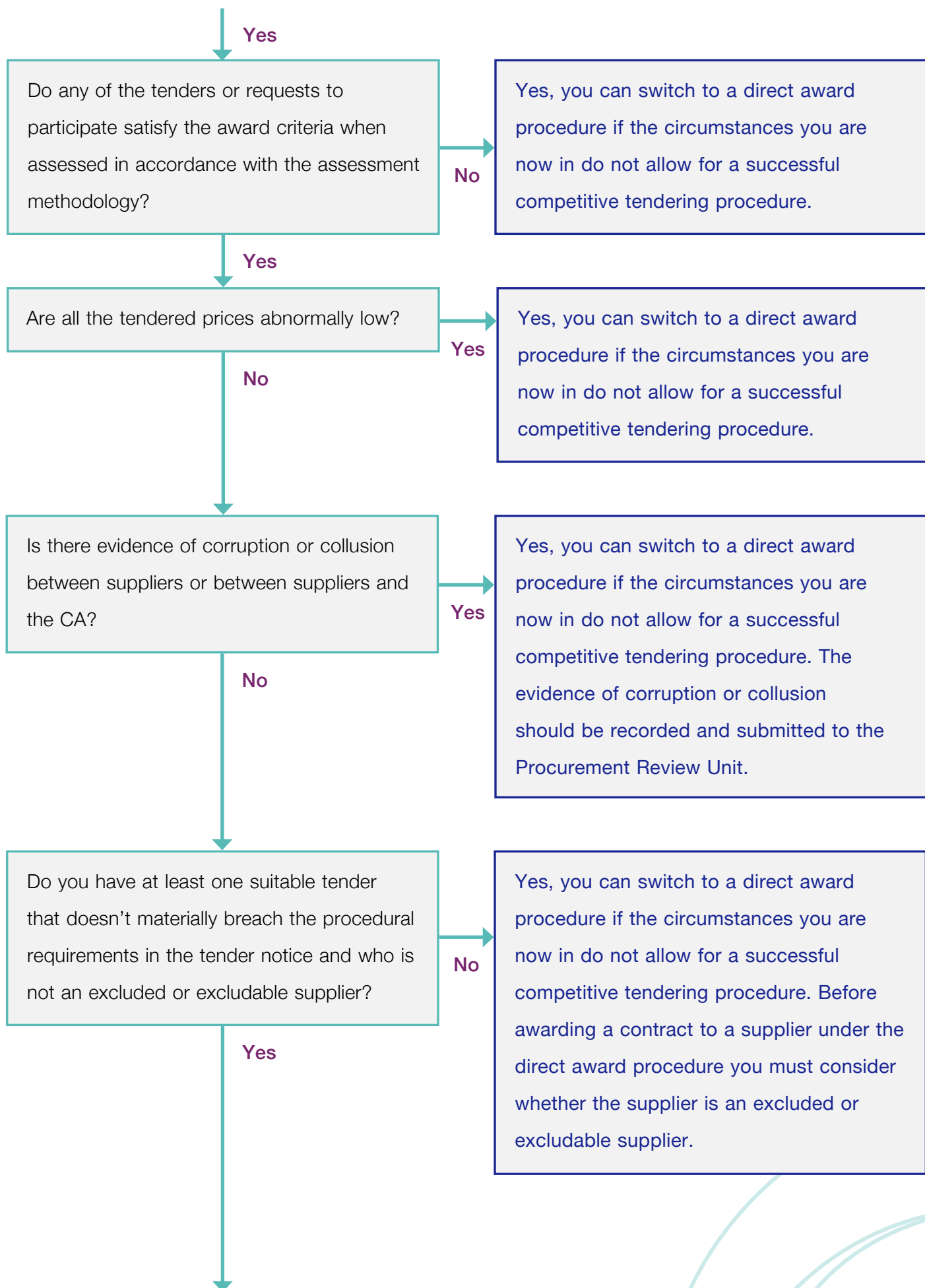




Can I switch to a direct award

Decision tree







Yes

No, you can not switch to a direct award procedure. You must attempt to award a contract using the competitive tendering procedure unless your contract meets the grounds for using the direct award procedure (link to guidance document or module section?). You have the right to terminate your competitive tendering procedure and start the process again, it might be worth considering undertaking further market engagement, reassessing your contract requirements and your procurement process.



Switching to direct award

Process flow

If you have invited tenders or requests to participate and have confirmed you have not received any suitable tenders then you may switch to a direct award procedure.

1. Confirm that you have not received any suitable tenders and an award under section 19 is not possible
2. Identify supplier(s) (consider undertaking some form of competition where it is appropriate)
3. Determine whether the supplier is an excluded or an excludable supplier
4. Publish a transparency notice
5. Publish contract award notice

```
graph TD; A[ ] --> B[6. Consider a voluntary standstill period - 8 working days]; B --> C[7. Publish contract details notice and contract where applicable (over £5m)]; C --> D[8. Manage the contract as normal:  
a. Publish contract payment notice (where applicable - payments over £30k)  
b. Publish contract performance notice (where applicable)  
c. Publish payments compliance notice  
d. Publish contract change notice (if / when modifications are made) and observe voluntary standstill period (8 working days) if chosen to do so  
e. Publish a copy of the modification (where applicable - contracts over £5m)]; D --> E[9. Publish contract termination notice];
```

6. Consider a voluntary standstill period - 8 working days

7. Publish contract details notice and contract where applicable (over £5m)

8. Manage the contract as normal:

- a. Publish contract payment notice (where applicable - payments over £30k)
- b. Publish contract performance notice (where applicable)
- c. Publish payments compliance notice
- d. Publish contract change notice (if / when modifications are made) and observe voluntary standstill period (8 working days) if chosen to do so
- e. Publish a copy of the modification (where applicable - contracts over £5m)

9. Publish contract termination notice



Module 8: Remedies, procurement oversight and the debarment list

Contents

1. Introduction
2. Remedies
 - 2a. Types of remedies
 - 2b. Legal challenges.
3. Procurement Oversight
4. Debarment List

1. Introduction

This document intends to provide a summary of the remedies system available to suppliers following a contracting authority's breach of their statutory duties under the Procurement Act 2023, as well as procurement oversight functions and an overview of the debarment list. It will identify the key changes against the previous regime (Public Contracts Regulations 2015).

2. Remedies

Remedies are an enforcement by the courts to compensate a supplier that has suffered, or is at risk of suffering, loss or damage due to a contracting authority breaching a duty under the Procurement Act 2023. The remedies system is broadly unchanged from the previous system under the Public Contracts Regulations 2015. However, the enhanced transparency requirements throughout the Act (that apply at all stages of the procurement process) are likely to reveal any potential breaches earlier in the process. This should result in greater potential to resolve disputes before the contract is awarded (and outside formal legal proceedings) as much as possible.

The remedies system is there to provide the appropriate redress for suppliers if a contracting authority breaches its obligations under Parts 1 to 5, 7 and 8 of the Procurement Act when carrying out a covered procurement. This includes frameworks, contracts made under frameworks (call-off contracts) and contracts made under dynamic markets, as well as managing public contracts.

PART 1 – KEY DEFINITIONS

PART 2 – PRINCIPLES AND OBJECTIVES (except the duty to comply with section 12(4) (requirement to have regard to barriers facing SMEs), and section 13(9) or 14(8) (requirement to have regard to procurement policy statements))

PART 3 – AWARD OF PUBLIC CONTRACTS AND PROCEDURES

PART 4 – MANAGEMENT OF PUBLIC CONTRACTS

PART 5 – CONFLICTS OF INTEREST

PART 7 – IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS (except the duty to comply with section 90 (treaty state suppliers: non-discrimination) if the procurement is not a covered procurement)

PART 8 – INFORMATION AND NOTICES: GENERAL PROVISION

Remedies are available where:

- a. the supplier is a United Kingdom supplier or treaty state supplier (provided the goods and/or services are covered by Schedule 9 Treaty State Suppliers (Specified International Agreements)); and
- b. the supplier “has suffered, or is at risk of suffering loss or damage” as a result of the breach; and
- c. the claim is raised within the time periods detailed in Section 106 (time limits on claims). If the claim is not raised within the appropriate time limit, the supplier effectively waives its right to a remedy.

Exemptions to the remedies regime are:

- Below-threshold contracts
- Debarment decisions made by a Minister of the Crown
- Non-United Kingdom, non-treaty state suppliers.

What are the main changes and benefits of the remedies system under the Procurement Act 2023?

Change: Clearer drafting of the legislation relating to remedies.

Benefit: Aligns to the enhanced transparency requirements and steers suppliers with a valid claim to raise it earlier whilst within the clear time limits (limitation periods), to minimise disruption and costs for all parties which occur with later challenges.

Change: Automatic suspension only applies during the standstill period.

Benefit: Clear parameters of when a contract or contract modification award **must** be automatically suspended (not entered into).

Change: The standstill period is now eight working days beginning with the day on which a contract award notice is published.

Benefit: Simpler and more straightforward to apply and eases pressure on procurements awarded close to weekends or bank holidays.

Change: A new automatic suspension test has been introduced to replace the commonly used test that was introduced in case law in 1975 (*American Cyanamid Co (No 1) v Ethicon Ltd [1975] UKHL 1*). The case related to a patent dispute but considered the principles that should apply when the Court considers granting an interim injunction. The test is known as the ‘American Cyanamid’ test¹.

Benefit: The new test has been designed specifically for procurement cases. It sets out the factors the court should take into consideration when determining if the automatic suspension should be lifted. It ensures suppliers’ interests are considered alongside the public interest in continuing with the award of the contract as proposed.

Change: Remedies for contract modifications are now specifically referred to in the remedies regime.

¹ The conventional test applied in England and Wales for interim injunctions. It involves 3 stages; 1. Whether the claim raises a serious issue to be tried 2. Whether damages are an adequate remedy (a) for the claimant and (b) for the defendant 3. Whether the balance of convenience, which includes the interests of both parties and the public interest, favours an injunction or not.

Benefit: Complements the new contract modification provisions in the Act, to ensure new procurements are run whenever possible and appropriate.

■ 2a. Types of remedies

The different types of remedies include:

3. **Automatic suspension of the entry into or modification of the contract** – as an interim remedy , automatic suspension protects an unsuccessful supplier’s potential to be awarded the contract (pending determination of the final remedies). If court proceedings have been commenced during the standstill period (and the contracting authority has been notified) then the new public contract or contract modification will be automatically suspended. It must not be entered into until the suspension has been lifted or the claim has been resolved.
4. **(Other) Interim measures** – these are orders that the Court can make for any claim while it is on-going, whether requested pre or post contract award. It could include things such as lifting or extending the terms of an automatic suspension or reversing a contracting authority’s previous decisions – for example on ‘exclusion’ or ‘down-selection’ – so that the supplier can continue to participate in the procurement. The same principles also extend to contract modifications.
5. **Pre-contractual remedies** – where the court has judged that there was a breach of statutory duty causing actual or potential loss or damage before the contract or modification has been entered into. Judgement may provide for the contracting authority to **amend** any procurement documents and/or **set aside** a procurement action or award decision, which could force a ‘re-run’ of the procurement. **Damages** may also be payable.
6. **Post-contractual** – If a breach of statutory duty is established after the contract or modification has been entered into, judgement will likely be the award of **damages** and/or an order **setting aside** the contract or modification (making it void). If there is an overriding public interest, the court can reduce the duration or the scope of the contract instead of rendering it entirely ineffective.

■ 2b. Legal challenges.

Who can bring a procurement challenge?

A United Kingdom or treaty state supplier (where a treaty state supplier is given a right to participate in that particular procurement under an international agreement) can start civil proceedings in court if they have suffered, or are at risk of suffering, loss or damage as a consequence of a contracting authority failing to comply with their obligations under Parts 1 to 5, 7 and 8 of the Procurement Act 2023.

A supplier may evidence loss or damage by: .

- a. demonstrating that they would or could have won the contract if the breach had not occurred (i.e. loss of profit from the future contract), being able to show they have lost the chance to compete as a result of the breach (i.e. loss of opportunity)
- b. providing proof that they have wasted money participating in a non-compliant process (wasted costs).

To note: Like with any government decision, decisions made in the context of public procurement are also subject to Judicial Review (a type of court proceeding where a judge reviews the lawfulness of a decision or action made by a public body) where a breach of public law can be demonstrated. Judicial Review is a separate process that sits outside the scope of Part 9 of the Procurement Act 2023.

How are legal challenges brought?

A challenger must lodge a claim form with the courts within the time limits under the Act for starting proceedings set out in Section 106 (and also notify the contracting authority during the standstill period for the automatic suspension to apply).

What are the time limits for challenges to start proceedings?

Under Section 106 of the Procurement Act 2023, a supplier must start claims during the procurement process within 30 days of the date when the supplier first knew, or ought to have known, about the circumstances giving rise to the claim. For example, this would be the 30 days following the issuing of information that would have identified the breach of statutory duty, which puts the onus on the supplier to review the information in a timely manner.

If the claim is to set aside the contract or contract modification after it has been entered into, a supplier must start the set-aside proceeding:

- a. within 30 days of the date when the supplier first knew, or ought to have known, about the circumstances giving rise to the claim and
- b. within 6 months of the contract being entered into or modified (meaning in some cases the supplier will have less than 30 days).

The Court has the discretion to extend time limits where it considers there is 'good reason' for doing so. The extension can not be for more than 3 months after the supplier knew (or ought to have known) about the circumstances giving rise to the claim (or 6 months from the day the contract was entered into for set aside claims).

Just as under the Public Contracts Regulations 2015, the standstill period is there to enable unsuccessful suppliers to consider whether they have a potential claim before a new public contract is entered into. This is to prevent a contract being entered into following a non-compliant procurement process, and also to ensure a supplier has access to pre-contractual remedies.

“In-flight” complaints and informal challenges

Not all issues raised by suppliers during the procurement process are valid issues that require action to be taken. However, any issues raised are a key opportunity to check that the procurement is compliant with the Procurement Act 2023. The best way to reduce the risk of formal legal challenge is to give due consideration to the issue raised and take a quick stock check.

For example:

- Have all the required notices for the chosen procurement procedure been published?
- Has the process set out in the tender notice and associated tender documents been followed?.
- Have suppliers been informed in the correct way of any changes made to the procurement documents during the process and have any notices affected by such changes been amended and republished?
Was the information shared to all tenderers at the same time and reasonable time to respond to any change given?
- Have the conflicts of interest assessment been completed and any identified mitigations put in place?
Are there plans to review it at the next appropriate stage?
- Has the appropriate information been given to suppliers to ensure they understand key decisions, for example when removing a supplier following an interim stage of a competitive flexible procedure?
- Are appropriate records (section 98 Record Keeping) of any procurement decisions being kept in one place so they are easily accessible if required?.
- Consider how, and to what extent, you may be willing to engage with suppliers to understand and resolve any issues or concerns they may voice before legal remedies are pursued.
- In such an event, should a voluntary standstill period be adopted when a mandatory one isn't required by the Procurement Act 2023, to mitigate against the risk of the contract or modification being set aside?

Contracting authorities should be aware that applying and adhering to a voluntary standstill can help protect against post-contractual set aside remedies, as it gives the ability for the appropriate suppliers to raise any concerns prior to the signing and commencement of a contract. This avoids contracting authorities 'paying twice' after the contract has been entered into for the goods and services themselves, as well as compensation for the lost value of the contract to successful challengers. On the assumption that any breach that led to an incorrect award decision would nearly always be identified prior to the contract being signed; if the standstill concludes without challenge, the supplier cannot later assert that the contract

should be set aside because it was denied the opportunity for a pre-contractual remedy. Once a contracting authority decides to enter into a voluntary standstill, it operates the same as a mandatory one (i.e. the contracting authority cannot elect to end it before the 8 working days have expired).

There are many tools in the new regime you can use to reduce the risk of legal challenges

Word	Narrative
Transparency requirements	Publishing the correct notices at the right time on the central digital platform gives suppliers greater visibility of your process proposals, actions and decisions which will provide them with greater confidence that you are complying with the Procurement Act 2023. If any breaches are alleged during the procurement process the 30-day time limit for challenges will apply (meaning a supplier must raise any issues within the 30 days as they can't challenge later).
"in-flight" complaints and informal challenges	Proper consideration of any supplier issues or concerns raised during the procurement will allow contracting authorities to identify and act upon any potential challenge risks. Where an issue or concern is accepted by the contracting authority, acknowledging transparently and making the appropriate changes mid procurement will mitigate the risk of the supplier submitting a formal challenge, avoiding additional time, cost and adverse publicity.
Standstill	Sets a small window of time (8 working days) for suppliers to formally register a challenge which reduces the likelihood of post-contractual challenges and protects the contract from set-aside orders.
Voluntary standstill	Electing to set a small window of time (a minimum of 8 working days) for suppliers to challenge, which significantly reduces likelihood of post-contractual challenges and protects the contract from set aside orders.
Following your published procurement procedure	Clearly describing your procurement process in your tender notice and associated tender documents and checking that you are administering the procurement in accordance with the procedure you have advised will mitigate against the risk of challenges in this area.
Following your published assessment methodology	Clearly setting out how your assessment methodology will be administered in your associated tender documents and then faithfully adhering to the process will mitigate against challenges in this area.

Word	Narrative
Conflict of Interest assessment	Identifying and mitigating any conflicts of interest will help remove the risk of bias, reputational damage, fraud, bribery, corruption, collusion, unfair advantages, all of which will reduce the risk of supplier challenges.
Assessment summaries	Adequate, clear, and consistent feedback for suppliers will help them understand the rationale behind the outcome of the procurement process and mitigate the risk challenges in this area.
Procurement Review Unit (PRU)	The PRU will help improve the capability and practices of contracting authorities and monitor compliance with the new procurement rules. Acting on any recommendations or guidance produced by the PRU will help reduce supplier challenges including the continued work of the Public Procurement Review Service for individual contracts.
National Security Unit for Procurement (NSUP)	NSUP will coordinate investigations of companies that may pose a national security risk. NSUP will also issue guidance on what to do when national security risk is suspected in a supplier or public sector supply chain. As with the PRU, following NSUP guidance will reduce supplier challenge in national security-related exclusion and debarment cases.
Time limits on claims	Claims for breach of statutory duty must be brought within 30 days from when the challenger knew or ought to have known about the breach. Making information available to suppliers at the earlier opportunity will commence the 30 days.
Debarment list	Identifies suppliers that must be excluded from a procurement process. As the exclusion of these suppliers is mandated by a Minister of the Crown, contracting authorities cannot be challenged for breach of statutory duty for wrongful exclusion. Note that this is not the case for excludable suppliers.
Minimum Timescales	Adhering to at least the minimum timescales specified at each stage of your procedure and ensuring that any timescales set are proportionate to the proposed procurement including the nature and complexity of the requirement.
Preliminary market engagement Notice	If you discover that some pre-market engagement has already been undertaken before the procurement team were aware of the requirement then you must a) publish this notice setting out the necessary details before you publish a tender notice, to ensure all interested parties are aware of the engagement, or b) provide reasons why you have not done so in the tender notice

Word	Narrative
Transparency Notice	Using this notice early on will inform the market that you intend to directly award a contract under sections 41 to 43 of the Procurement Act 2023 (direct award). If they have grounds, interested suppliers must raise a challenge to the award within the 30 days time limit (from when they first knew, or ought to have known, about the circumstances giving rise to the claim). The published Transparency Notice is the point they ought to have known and thus helps avoid receiving a claim, and the associated delay, at the point of contract signature including claims to set aside after the contract has been entered into.

3. Procurement Oversight

Procurement oversight is about monitoring contracting authorities' compliance with the requirements of the Procurement Act 2023 and improving poor behaviours which affect delivery of outcomes. To enable such oversight to be extended to certain contracting authorities, statutory powers have been provided in Part 10 of the Procurement Act 2023. This is in addition to existing non-statutory powers.

Change: Expanded procurement oversight powers enabling procurement investigations to be undertaken, progress reports to be requested and recommendations made following the investigations.

Benefit: Monitoring contracting authorities' compliance with the requirements of the Procurement Act 2023 and addressing non-compliant behaviours, as well as providing guidance for all relevant contracting authorities, will ensure the objectives of the Procurement Act 2023 are achieved to best effect by driving up standards, clarifying best practice and encouraging consistency of performance.

The **Procurement Review Unit** (PRU) will have non-statutory oversight of government departments and under Part 10 will now have statutory oversight of the procurement activities of relevant contracting authorities (as defined in s.108(5)) – other than devolved Welsh authorities and transferred Northern Ireland authorities which will determine how they will undertake procurement oversight. As the Minister for the Cabinet Office does not exercise non-statutory authority over contracting authorities outside of central government, it is necessary to provide specific powers in the Act to allow the Minister to investigate these contracting authorities. Conversely, Government departments are specifically excluded from the investigatory powers in the Act since Ministers already have non-statutory powers allowing them to oversee the contracting activities of government departments, and additional powers are not required. The PRU will

oversee the procurement activities of relevant contracting authorities that are subject to the requirements of the Act on behalf of the Minister; all relevant contracting authorities are required to cooperate with the PRU when requested to do so.

What is the Procurement Review Unit (PRU)?

The PRU is a new team established in the Cabinet Office to exercise procurement oversight.

All contracting authorities which carry out procurement activities that are subject to the Procurement Act 2023 fall within the scope of the PRU's purview, except:

- private utilities;
- devolved Welsh authorities;
- transferred Northern Ireland authorities.

The PRU is a new internal service and not an approvals body or a regulatory body, and it will not consider legal challenges raised under Part 9 of the Procurement Act 2023.

The aims of the PRU are to:

- ensure compliance with the new procurement legislation, including managing investigations into non-compliance by relevant contracting authorities;
- improve the capability and practices of contracting authorities for the benefit of everyone involved in public procurement;
- ensure that the outcomes intended from the transformation of public procurement are realised;
- manage non-national security related debarment investigations and maintain the debarment list .

The powers in the Procurement Act 2023, along with existing non-statutory powers in respect of central government, allow the PRU to deliver three key services on behalf of the Minister for the Cabinet Office:

1. The **Compliance Service** will monitor contracting authorities' compliance with the Act, using various sources of information, including data generated by the new central platform. Main duties include:
 - Reviewing the procurement landscape to identify potential breaches of the Act by contracting authorities.
 - Identifying systemic and institutional breaches (to be investigated) ("systemic"² and "institutional"³ performance of contracting authorities under the Act).
 - Managing and conducting investigations into relevant contracting authorities.

² breaches common across numerous contracting authorities

³ breaches that are regularly being made (or are anticipated to be made) by one particular contracting authority due to their policy, practice, or beliefs (e.g. about what the procurement law entails) that has been established throughout the contracting authority

- Making recommendations to the Minister following compliance investigations and issuing recommendations following the Minister's approval.
- Publishing investigation findings.
- Issuing guidance.

2. The **Debarment Service** will investigate whether suppliers are fit to supply the government.

Main duties include:

- Managing and conducting debarment investigations that are not related to national security.
- Delivering recommendations to the Minister to support decision-making.
- Managing supplier self cleaning oversight (as appropriate).
- Liaising with key stakeholders regarding debarment investigation outcomes and their impact / consequences.
- Managing the debarment list.

3. The existing **Public Procurement Review Service** will become part of the PRU and continue to investigate supplier complaints about poor practice regarding individual procurements and late payments.

Who is within Scope of the compliance service of PRU?

The PRU will oversee compliance across all contracting authorities as defined in section 2 of the Procurement Act 2023, as well as central government departments via non-statutory powers with the following exemptions

- Sections 108 to 109 only applies to “relevant contracting authorities” as defined in section 108(5).
- Section 110 allows the PRU to issue guidance to all contracting authorities but doesn't contain any statutory enforcement powers in relation to such guidance.

When can the PRU's compliance service investigatory powers be exercised?

The PRU can investigate a relevant contracting authority, as defined in section 108(5) of the Procurement Act 2023 at its discretion. In practice, it is expected that the PRU will act on the basis of its own analysis from data collated under the new procurement central digital platform. This will enable easier identification of systemic and institutional issues and allow attention to be focused on breaches of the Act. Data analysis and, in time, automated ‘red flags’ on the central digital platform will alert the PRU to trends – for example late or no publication of required notices from individual or multiple authorities. Alternatively, the PRU may act following referrals from stakeholders (e.g. other government departments or suppliers) or other publicly available information such as media reports.

What are the obligations upon contracting authorities being investigated by the Compliance Service?

Contracting authorities given notice must provide any relevant documents or other information the PRU may reasonably require for the purposes of an investigation. The relevant contracting authority will have to provide the requested information or documentation before the end of the period specified in the notice (which must be at least 30 days beginning with the day on which notice is given), or a longer period if that is agreed with the PRU. The relevant contracting authority must also give the PRU any other assistance that is reasonable in the circumstances and specified in the notice, for example, making contracting authority personnel available for meetings.

What happens following the PRU Compliance Service investigation?

Following an investigation the PRU may make recommendations to relevant contracting authorities which will specify: the action that it should take to ensure it complies with the requirements of the Act that are specified in the notice and the timing of such action. It is expected that this should lead to changes or improvements in the general behaviours, policies or practices of the contracting authority. For example, a revision to local guidance on the creation of award criteria, that the relevant authority undertake additional training, or implement a peer review process or better approval processes.

The PRU may request progress reports. A progress report will set out:

- what action (if any) the relevant contracting authority has taken as a result of the recommendation, or
- if no action or different action (to that recommended) has been taken, a statement to that effect including the reasons for this.

A relevant contracting authority receiving a section 109 recommendation is under a statutory duty to have regard to such recommendations when considering how to comply with the requirements of the Procurement Act 2023

Whilst government departments do not fall within the PRU's investigatory remit under Part 10 of the Procurement Act 2023, where the PRU investigates and issues recommendations to a department utilising non-statutory Ministerial powers, those recommendations should be considered just as seriously as section 109 recommendations and departments will be expected to respond in the same way.

The PRU may issue statutory guidance following an investigation which all contracting authorities must have regard to when considering how to comply with the requirements of the Procurement Act 2023. This may be in addition to the targeted recommendations to a particular contracting authority or used instead, where targeted recommendations are not considered necessary.

The Public Procurement Review Service which will become part of the PRU in due course can continue to make non-binding recommendations to contracting authorities regarding a particular procurement, for example, during a “live” procurement exercise, as to how those shortcomings might be resolved immediately. These recommendations are not made under powers provided by the Procurement Act 2023 and are both non-statutory and non-binding in nature, so there is no duty to have regard to them.

How should contracting authorities plan to ensure any requests received from the PRU can be dealt with swiftly and smoothly?

- Ensure colleagues understand the obligations and requirements set out in the Procurement Act 2023 and comply with those when undertaking procurement and contract management activities.
- Keep all procurement records up to date and stored so they are easily retrievable by the team managing the procurement and the wider organisation.

How does the Debarment Service part of the PRU work?

Debarment is a new mechanism aimed at identifying suppliers who are, or may be, unsuitable to bid for public contracts. Individual contracting authorities must decide in relation to each covered procurement whether a supplier should be excluded, including by reference to the debarment list. Only a Minister of the Crown can put a supplier on the debarment list.

The PRU may seek information and assistance from other departments and stakeholders during debarment investigations where they hold relevant information or expertise. The National Security Unit for Procurement (NSUP) will undertake debarment investigations in relation to the national security exclusion grounds. Following an investigation, the PRU (or the NSUP where the investigation relates to a national security exclusion ground) will submit advice to support a Ministerial decision on whether or not to add a supplier to the debarment list.

What is the NSUP?

- As a result of the new national security-related provisions within the Act, the Government has established the NSUP, which will coordinate the investigation of suppliers who potentially pose a national security threat to the public sector. Ministers will have the power to exclude suppliers from bidding for public contracts (or identify them as being excludable by contracting authorities) by placing them on a debarment list on national security grounds.
- The National Security Unit for Procurement (NSUP) will coordinate the assessment of companies for debarment. The Unit will receive referrals, but will also be taking a proactive approach to identifying suppliers where national security risk could arise in public contracts, and these cases will also be put to the relevant minister. The Unit will support ministers in their debarment decisions by providing advice on each case.

What are the objectives of the NSUP?

- The NSUP will serve as a hub to bring together national security and procurement expertise and will coordinate the investigation of suppliers who may pose a national security risk. This will enable the Government to deliver on its national security agenda by acting on national security risks emanating from public sector suppliers.
- This will ensure that the UK remains secure and prosperous, protecting the public sector, and critical services.
- As the global threat landscape evolves, the NSUP will enhance the resilience of our public services by anticipating and mitigating against emergent risk.

Who is within scope of the NSUP?

- The debarment regime has a broad scope and allows Ministers to investigate any supplier to determine whether they are an excluded or excludable supplier and should be added to the debarment list. NSUP will be responsible for the investigation of suppliers who may be excluded or excludable for national security reasons. It will also deal with referrals from contracting authorities who are considering excluding a contracting authority on the discretionary national security exclusion ground
- The NSUP's activities will be focused on cases where the national security risk is most acute, across all relevant sectors.

How will the NSUP support contracting authorities? What will be the referral process?

- The NSUP will be publishing advice and guidance for contracting authorities, which will detail where national security concerns may arise. This will include when and how to refer cases to the NSUP under Section 29 of the Act and how to notify NSUP of suppliers that may warrant investigation for debarment.

National Security debarments

- Under the Procurement Act 2023, contracting authorities have to exclude suppliers which are on the debarment list under the mandatory national security exclusion ground and will be encouraged to consider excluding suppliers which are on the debarment list under the discretionary national security ground.

4. Debarment List

What is the Debarment list?

The debarment list is a published list of excluded (where a mandatory exclusion ground applies) or excludable (where a discretionary exclusion ground applies) suppliers. They will be added to the list if a Minister of the Crown makes such a decision following an investigation.

The decision to add a supplier to the list would be because the investigation found them to be unfit or potentially unfit to tender and be awarded public contracts, because a mandatory or discretionary ground for exclusion applies and the circumstances giving rise to that ground are continuing or likely to occur again (taking account of self-cleaning undertaken by the supplier and other relevant factors).

Change: A new single, accessible, public debarment list, containing suppliers who must be excluded from competing for future covered procurements or who contracting authorities have a discretion to exclude. The debarment list will list both “excluded suppliers” (where a mandatory exclusion ground applies) and “excludable suppliers” (where a discretionary exclusion ground applies).

Benefit: Investigations using the right expertise and experience on the worst cases of supplier misconduct will reduce the burden on contracting authorities and the possibility that unsuitable suppliers will be awarded public contracts.

Debarment investigations can be carried out by a Minister of the Crown, Welsh Ministers or a Northern Ireland department. Where the investigation is carried out by a Minister of the Crown then this will be conducted, in most cases, by the debarment service of the PRU. The PRU will also manage the debarment list. Only a Minister of the Crown can add a supplier to the debarment list, following an investigation.

Contracting authorities must⁴ exclude suppliers which are on the debarment list from all covered procurements where the exclusion ground is mandatory (or for the particular type of procurement listed where the mandatory national security ground applies) . They will have discretion on whether or not to exclude a supplier if the exclusion ground is discretionary.

The debarment list will not replace the supplier exclusion regime, but will sit alongside it as an additional protection against unfit suppliers. Contracting authorities will retain responsibility for assessing all suppliers against the mandatory and discretionary grounds for exclusion on a contract-by-contract basis. Exclusions will continue to be possible where the supplier is not on the debarment list, provided the contracting authority is satisfied that the supplier meets a ground for exclusion and the circumstances giving rise to the

⁴ Exemptions apply

ground are continuing or likely to occur again. If a supplier is excluded they should be notified, in writing, as soon as reasonably possible. In certain cases, suppliers must also be notified of an intention to exclude, for example if an exclusion ground applies to a sub-contractor.

Who is In Scope to be on the debarment list?

Any supplier can be investigated and added to the debarment list, including:

- Public and private limited companies
- Small and medium sized enterprises (SMEs)
- Individuals acting as sole traders
- Suppliers from outside the United Kingdom
- Sub-contractors
- Suppliers which are themselves contracting authorities
- Suppliers which are not currently delivering or have never delivered a public contract

The grounds for suppliers being added to the debarment list are the same as the mandatory and discretionary exclusion grounds as apply for contracting authorities when considering exclusion as part of the procurement processes. See summary document 6 for further details.

How will suppliers be added to the debarment list?

The PRU or NSUP may initiate an investigation based on its own knowledge about potential supplier misconduct or from referrals by third parties. Routes for consideration include:

The CO's own knowledge of and / or research into a supplier, e.g. Data analysis from contract performance notices on the central digital platform or through information obtained from national and international partners about convictions, regulatory rulings or security risk.

Referrals by third parties bringing cases to the PRU's attention. Referrals may come from:

- Contracting authorities – as per their duty to notify the PRU within 30 days of any supplier exclusion and seek ministerial approval before excluding a supplier on the grounds of national security.
- Contracting authorities – may choose to refer any supplier to the PRU where they suspect an exclusion ground may apply (including where no contract exists)
- Members of the public, non-government organisations, other suppliers and the media may take steps to bring a supplier to the attention of the PRU.

The PRU will have the powers to:

- Ask questions and request information and assistance from suppliers

- Require, after giving notice, information and assistance from contracting authorities
- Review supplier self-cleaning evidence and representations
- Add and / or remove suppliers from the debarment list following a decision from the Minister of the Crown

Before a supplier's name is added to the list, a standstill period of eight working days must be observed. This starts the day a notice is sent to the supplier setting out the decision to add them to the list, the justification for the decision and an explanation of the supplier's right to appeal.

Reports relating to debarment investigations must be published unless it is necessary to withhold publication to safeguard national security and/or prevent the publication of sensitive commercial information (where there is an overriding public interest in it being withheld from publication or other disclosed).

Format and Maintenance of the Debarment List

The debarment list will be published and updated, information on the list will include:

In relation to debarred suppliers

- Supplier name
- The relevant mandatory or discretionary ground(s)
- The date that the supplier is expected to be removed from the list

The PRU will be responsible for maintaining the list, including removal of suppliers on expiry of the five-year period (from when the event occurred), if the exclusion ground no longer applies or if self-cleaning is considered to be adequate, or if the supplier is successful following an application for removal or an appeal.

Length of debarment

Suppliers who have been put on the debarment list will remain on the debarment list for the length of time for which the exclusion ground applies and there is a risk of recurrence or five years⁵ from either:

- For mandatory grounds:
 - The date on which the supplier was convicted of the misconduct / offence (if applicable), or
 - The date on which a regulatory ruling was handed down (if applicable), or
 - The date on which misconduct occurred (if debarment relates to specific events), or
- For discretionary grounds, the date on which the Minister became aware of, or ought to have become aware of, the event

⁵ Shorter time periods apply in certain cases.

For example, this means that if a debarment decision in respect of a conviction is made three years after the supplier was convicted, the supplier will remain on the debarment list for a maximum of two years.

How will contracting authorities use the debarment list?

For any covered procurement, contracting authorities will:

- Check the debarment list and exclude a supplier from participating in a competitive flexible procedure / disregard their tender in all competitive tendering procedures where they are on the debarment list for a mandatory exclusion (excluded supplier)
- Check the debarment list and decide whether to exclude a supplier from participating in a competitive flexible procedure / disregard their tender in all competitive tendering procedures where they are on the debarment list for a discretionary exclusion (excludable supplier).
- Check the debarment list for a supplier's associated persons and act accordingly. This does not replace the contracting authorities' responsibility to assess exclusion grounds.
- Notify the Minister of the Cabinet office (via the PRU) – or the Welsh Ministers or Northern Ireland department for devolved authorities – in the event that a supplier is excluded from a procurement (except where the supplier was excluded by virtue of being on the debarment list on a ground – other than the mandatory national security ground).

What does this mean for existing contracts?

There is no requirement to terminate an existing contract if a supplier is added to the debarment list after a contract is awarded.

For existing contracts that were awarded under previous regulations, contracting authorities may have contractual rights to terminate the contract if the supplier has committed misconduct.

If a supplier is added to the debarment list after a contract is awarded under the new rules, that contract will contain implied rights to terminate the contract. If the supplier is put on the debarment list for the mandatory national security ground, contracting authorities must follow the process for Ministerial approval as set out by the National Security Unit for Procurement before terminating the contract. Further guidance will be provided by the National Security Unit for Procurement.

What does this mean for suppliers who are not put on the debarment list following an investigation?

The Minister of the Crown's decision to not put a supplier on the debarment list will be final. This means that contracting authorities must accept the decision made and should not exclude the supplier for the

specific circumstances that have been investigated. They can only exclude a supplier for a different set of circumstances or if the original situation has changed since the decision not to put a supplier on the debarment list.

Supplier Appeals and Applications for removal

A supplier may appeal the decision to add them to the debarment list and the decision will be overturned if they are successful in appeal. Suppliers can also apply to a Minister of the Crown for removal from the list.

Appeal

Suppliers are entitled to appeal debarment decisions, whether that's the decision to enter their name onto the list following a debarment investigation or the decision not to remove their name from the list following an application for removal.

If a Minister of the Crown decides a supplier's name should be added to the list, the supplier will be notified and an eight day standstill period will commence. The supplier may apply to the courts for suspension of the decision in which case a court can suspend the supplier's name being added to the list until:

1. The 30 day period to appeal has passed if the supplier has not initiated formal proceedings;
2. Appeal proceedings are complete.

If a supplier does not apply for the decision to be suspended within the eight day standstill period, they may still apply to the Court to appeal the decision within 30 days of being notified of the decision. If, following proceedings, the supplier is successful, the court may make an order to set aside the decision and/or may award lost bid costs if the supplier has been excluded from a procurement as a result of the debarment decision.

Application for removal

Suppliers who are on the debarment list are entitled to apply to have their name removed from the list at any time. Their request would be submitted to the Minister of the Crown, who must only consider the request if there has been a material change of circumstance or there is significant new information, for example they can demonstrate new self-cleaning evidence, e.g. where a conviction or ruling has been overturned, a Director or beneficial owner has left their position, or where new processes have been put in place.

What will suppliers need to do?

Cooperation with the PRU and NSUP: There is no statutory legal obligation for suppliers to cooperate with a PRU or NSUP investigation but, given the importance of the debarment list in managing risk to public contracts, a new mandatory exclusion ground has been introduced that will mean suppliers can be added

to the debarment list and must be excluded from all procurement processes if they fail to cooperate without reasonable grounds/justification and the Minister considers the failure was sufficiently serious to warrant mandatory exclusion.

Tender for new contracts: Suppliers under investigation may still participate in procurements and be awarded contracts.

Understand their right to appeal a debarment decision if they think it is incorrect, or **apply for removal** from the debarment list if they have a change in circumstances.



Remedies

Fact sheet

In the context of public procurement, remedies are available to United Kingdom or treaty state suppliers (where a treaty state supplier is given a right to participate in that particular procurement under an international agreement) that suffer, or are at risk of suffering, loss or damage as a consequence of a contracting authority failing to comply with their obligations under parts 1 to 5, 7 and 8 of the Procurement Act.

■ Automatic suspension

Automatic suspension is:

- only applicable during the mandatory or any voluntary standstill period
- triggered if court proceedings are commenced and the contracting authority has been notified of that fact during the standstill period

Automatic suspension principles apply to any mandatory or voluntary standstill periods (which must always be no less than 8 working days) regardless of procedure e.g. tender,

modification, contract change notices, or converting contracts.

The automatic suspension will remain in place until the court terminates the suspension (if the contracting authority applies for it to be lifted), or the proceedings come to an end.

■ Interim remedies

Interim remedies:

- can be applicable to any claim pre or post contract or contract modification
- are applied by the court before the outcome of the claim has been decided

More than one interim remedy can be applied in each case.

Remedy orders include:

- lifting or modifying the award of a contract
- extending or adding similar restrictions
- suspension of any decision or action of the contracting authority in carrying out the procurement

- suspension of entry into or performance of a contract
- suspension in the making of a modification of, or the performance of that contract

■ Pre-contractual remedies

Pre-contractual remedies are applicable to a claim that is resolved prior to a contract, contract modification or convertible contract being entered into.

If successful the judgement could be:

- a set aside decision (a decision made during the procurement process)
- a take action decision
- award of damages
- any other order the court considers appropriate

■ Post-contract remedies

Post-contract remedies are applicable to a claim following the award of a contract, modification or convertible contract, that has been entered into.

If a claim is successful the judgement could be:

- a set aside decision
- the award of damages

■ Time limits

A supplier has 30 days from when it first knew or should have known, about the breach to raise a claim for breach of statutory duty.

The set aside post contract or modification remedy has the same 30 days time limit. However, in cases where a contract details notice has not been published, a 6 month window is available to make a

remedies claim. This 6 month window also applies to contract modifications where a contract change notice has not been published.

■ Useful terms to know

Automatic suspension test

A procurement specific test where the court consider all the merits of the case, including the public interest in upholding the duties in the Procurement Act. Amongst other things the court will consider, preventing unnecessary delay to delivering the public service, the contract and if damages is an appropriate remedy for the claimant (if their claim is successful). The court will use the same test to decide whether to make any interim injunctions.

Breach of statutory duty

When a contracting authority does not comply with an obligation set out in the Procurement Act.

Civil/court proceedings

The process which must be initiated by the claimant for court to review the evidence and decide whether a contracting authority has breached its statutory duty.

Claimant

The supplier/person that has submitted a claim to the courts.

Damages

A monetary award to a successful claimant to compensate for loss/damage. For example, to recover expected profits lost as a result

of the contract being wrongly awarded to another supplier. The court will determine the appropriate value to award having considered the circumstances of the breach and actions the claimant could have reasonably taken to mitigate their loss.

Set aside

An order the court makes to reverse and void a decision or action that has already been taken by the contracting authority, for example where the court has determined that a supplier has been unlawfully excluded from a procurement and sets aside the exclusion decision, it will require the contracting authority to proceed with the supplier included as one of the tenderers. It could also be an order to cancel the contract or contract modification with effect from the date of the order and to re-run the whole competitive process again.

Take action decision

An order the court makes that requires the contracting authority to do something. For example, where the contracting authority has wrongfully applied the award criteria the court may require the contracting authority to re-evaluate tenders.



Mitigating potential challenges

Checklist

The remedies system is there to provide the appropriate redress if a contracting authority breaches its obligations to comply with parts 1 to 5, 7 and 8 of the Procurement Act 2023:

- part 1 - key definitions
- part 2 - principles and objectives
- part 3 - award of public contracts and procedures
- part 4 - management of public contracts
- part 5 - conflicts of interest
- part 7 - implementation of international obligations
- part 8 - information and notices: general provision

If you receive a concern, issue or threat of challenge from a supplier here are a few things to check to help you mitigate the risk of a challenge from a potential breach before taking your next procurement procedure step.

Please note not all will be applicable to your procurement.

Issues raised during the procurement process (including standstill period)

1. Did you classify your procurement correctly and are adhering to the correct obligations (contract type, contract value, above or below-threshold, applicable exemptions)? ☐
2. Did you set appropriate time limits which are equal to or exceed the minimum periods set out in the regulations? ☐

3. Did you consider whether a supplier is an excluded or excludable supplier and removed any excluded suppliers from the procedure? ☐
4. Did you carry out conflicts of interest obligations? ☐
5. Is your award criteria clear and measurable and well defined in a way that the broadest range of suppliers could understand the methodology adopted? ☐
6. Did you clearly set out your procedure in the tender notice / associated tender documents and are carrying it out in accordance with the stated proposal? ☐
7. If required, did you make all information available to all suppliers, including the outcome of any pre-market engagement at the same time? ☐
8. Have you been treating all suppliers the same unless a difference between the suppliers justifies different treatment? ☐
9. Have you dealt with all clarifications promptly and clearly and was the appropriate response(s) published to all participants at the same time? ☐
10. Have you published all of the required notices on the central digital platform? ☐
11. Have the assessment panel been fully briefed and understand their duties when assessing tenders (i.e. feedback, justification for scores, no contact with suppliers etc)? ☐
12. If you have modified or refined your award criteria during the process, did you follow the correct procedure? ☐
13. If you are awarding a contract from an existing framework or dynamic market, are you following the applicable framework or dynamic market requirements? ☐
14. Have you issued your assessment summaries to suppliers before publishing the contract award notice and starting the standstill period? ☐
15. Have you calculated the correct period of standstill 'working days' for inclusion in the published contract award notice? ☐
16. Are you keeping the appropriate records sufficient enough to explain any material decision made for the purpose of awarding or entering into a public contract? ☐
17. Have you shared the content of any potential challenge with the correct internal stakeholders as legal advice may be required? ☐

18. Have you considered contingencies e.g. what will be the service repercussions as a result of delays? What are the options available if the procurement stalls or isn't completed within a given time? Can extensions, if required during a rerun of the procurement, be accommodated by the existing supplier?





Module 9: Contract governance

Contents

1. Introduction
2. Contract Modifications
3. Contract Performance & Administration
4. Contract Termination

1. Introduction

This document intends to provide a summary of

- The changes to contract modification procedures,
- The new procedures introduced for contract termination, and
- The new requirements for actions and publications to take place during the contract management phase of the procurement lifecycle.

It will identify the key changes against the previous regulations, the Public Contracts Regulations 2015 (PCR 2015) and set out what contracting authorities must do to be compliant with these changes. It will also highlight the opportunities in the Procurement Act and how contracting authorities can use these to their advantage.

2. Contract Modifications

During the life of a public contract the PCR 2015 allowed for certain modifications to be made to that contract without triggering the need for a new procurement process.

The Act aims to provide a clear and comprehensive set of grounds under which contracts may be modified post-award, to help understand when a contract may be modified, how to make a compliant contract modification, and how to decide whether a new procurement process needs to be carried out instead.

These modification grounds apply to contracts, frameworks and to contracts awarded under a framework or dynamic market (often known as 'call off' contracts).

Summary - Changes to Modification Grounds

During the life of a contract or framework, the previous regulations (PCR 2015) permitted certain contract modifications to be made without triggering a new procurement. These grounds, and the associated procedures for making contract modifications, have been updated by the Procurement Act.

There are **ten** grounds under which contract modifications are permitted, as set out in section 74 (modifying a contract) and Schedule 8 of the Act, including:

- **Four** new grounds (two of which are specific to defence)
- **Six** existing grounds, as set out in the PCR 2015, which are broadly retained but with some notable amendments.

Table of Modification Grounds under the Procurement Act¹

Modification Ground	Procurement Act 2023
New Grounds	
Urgency and the protection of life, etc.	Section 74(1)(a) and Schedule 8 paras (2)-(3)
Materialisation of a known risk	Section 74(1)(a) and Schedule 8 paras (5)-(7)
For defence authority contracts on developments in technology	Section 74(1)(a) and Schedule 8 para (10)
For defence authority contracts to ensure continuous supply	Section 74(1)(a) and Schedule 8 para (11)
Existing Grounds (with amendments)	
Provided for in the contract	Section 74(1)(a) and Schedule 8 para (1)
Unforeseeable circumstances	Section 74(1)(a) and Schedule 8 para (4)
Additional goods, services or works	Section 74(1)(a) and Schedule 8 para (8)
Transfer on corporate restructuring	Section 74(1)(a) and Schedule 8 para (9)
Non-substantial modifications	Section 74(1)(b) and (3)
Below-threshold modifications	Section 74(1)(c) and (4)

Changes:

- The way in which the value of below-threshold modifications are calculated¹.
- Introducing new publication requirements when making a contract modification, to enhance transparency.
- Introducing the idea of a “convertible contract” (a below-threshold contract that is modified in such a way it becomes a public contract).

The new rules are designed to provide greater flexibility to make modifications to contracts in response to changes, challenges and opportunities that may arise during the lifetime of the contract, and help to keep it fit for purpose.

¹ Exemptions apply.

Benefits:

- Enabling a swifter response to changes, challenges and opportunities that arise within the “manage” phase of the procurement lifecycle.
- Ensuring that contracts remain fit for purpose and able to deliver their intended objectives.
- Giving contracting authorities greater clarity and confidence when deciding whether to amend a contract.
- Improving transparency surrounding contract modifications and, more widely, how contracts evolve through the delivery stage following procurement and award.
- Encouraging better forward planning and proactive contract management.
- Permitting greater flexibility in how the value of contract modifications can be calculated.

■ 2.1 Grounds for Modification

Section 74(1) of the Procurement Act sets out the three headline grounds under which contracting authorities may modify a contract:

- a. where the change is a permitted modification under one of the circumstances listed in Schedule 8,
- b. where the change is not a substantial modification, or
- c. where the change is a below-threshold modification.

The three provisions above are separate grounds for modification. Contracting authorities only need to satisfy one of these grounds (or, more specifically in the case of (a), one of the circumstances listed under Schedule 8) to make a compliant contract modification. If it is not possible to make a modification under any of these grounds then it would be necessary to undertake a new procurement process.

■ A. Amended Existing Modification Grounds

The grounds under which contracts may be modified, and the key differences under the Procurement Act, are as follows:

1. Provided for in the Contract (Schedule 8 para(1))

Ground: A contract modification is permitted where:

- a. the possibility of the modification is unambiguously provided for in—
 - (i) the contract as awarded, and
 - (ii) the tender or transparency notice for the award of that contract, and
- b. the modification would not change the overall nature of the contract.

Change: The wording provided in the Procurement Act 2023 is less prescriptive than that of Regulation 72(1)(a) of the PCR2015, allowing contracting authorities to unambiguously provide for the modification in the contract documentation and tender or transparency notice, but without requiring such provision to be as precise and unequivocal as the wording in the PCRs suggested. However, it is important that as much detail as possible is provided about the potential modification in both the contract as awarded and the original tender or transparency notice, to ensure that it can be described as unambiguous, and relied upon without legal challenge.

2. Unforeseeable Circumstances (Schedule 8 para(4))

Ground: A contract modification is permitted where:

- The circumstances giving rise to the modification could not reasonably have been foreseen by the contracting authority before the award of the contract,
- The modification would not change the overall nature of the contract, and
- The modification would not increase the estimated value of the contract by more than 50%.

Change: The detailed grounds under which a modification may be made are unchanged, however there are changes to how the 50% amendment value cap² is calculated.

Under the Act, the “estimated value of the contract” is considered to be its **estimated value at the point in time immediately preceding the modification being made**. This means that the 50% value cap must now be assessed against the estimated value of the contract immediately preceding the modification, rather than the original contract value, or any other estimate.

² Exemptions apply for utilities contracts.

Estimated Contract Value: Calculation Change Scenario

Unforeseeable Circumstances (Schedule 8(4))

A multi-academy trust needs to modify its contract for catering equipment following an accident in which multiple assets were damaged. The contract is currently in year 4 of a total 8-year period, and the original contract value was £1m. Since the beginning of the contract, its value has increased by £120,000 due to inflation (under Schedule 8(1)). It was also modified in year 3 to cover two new additional schools (under Schedule 8(8)), increasing the value again by an additional £300,000. The current value of the contract is £1.42m. The total value of this latest proposed modification is £650,000. The amendment meets all other requirements set out in the Procurement Act Schedule 8(4).

Under the PCR 2015 this modification would not have been permitted, as the value of the amendment (£650,000) is greater than 50% of the original contract value (£1m). Under the Procurement Act it would be permitted, as the value is not greater than 50% of the contract value immediately preceding the amendment (£1.42m).

Modifications under the Act may now be made successively, allowing for multiple separate modifications of increasing value – each individually up to 50% of the immediately preceding value of the contract – to be made during a contract's lifetime.

Successive Amendments

Scenario 1: Two Modifications under the same ground

(Unforeseeable circumstances (Schedule 8(4)))

An NHS trust contract for portering services, with a total original value of £1m, is increased by £200,000 (20%) in year 2, due to unforeseeable circumstances. In year 3 a further modification of £400,000 (33.33%) is again required due to unforeseeable circumstances.

Assuming all other conditions of the ground are met, this modification is permissible because:

- a. the value of the first modification is less than 50% of the value of the contract immediately preceding the amendment, and
- b. the 50% modification value cap is reset for each new amendment, meaning that the second amendment in year 3 represents approx. 33% $((400,000/1,200,000) \times 100)$ of the estimated contract value prior to the amendment being made.

Other modification grounds: Successive amendments are also permitted for other modifications where a % value cap applies, e.g. 'unforeseeable circumstances' or 'additional goods etc.' However, Section 74(7) and (8) is an anti-avoidance provision that prohibits contracting authorities from making successive and/or separate modifications if they could reasonably be made together.

Scenario 2: Two Modifications under different grounds

(Additional goods, services or works (Schedule 8(8)) and unforeseeable circumstances (Schedule 8(4))

A local authority contract for building repairs services, with a total original value of £3m, is increased by £900,000 (30%) in year 3 under the additional goods etc. ground when the size of the estates portfolio is expanded. In year 4 a further modification of £1.5m is required under the unforeseeable circumstances ground to manage unplanned repairs.

Assuming all other conditions of the ground are met, this modification is permissible because:

- a. the 50% modification value cap is reset for each new amendment, so the value of each subsequent new amendment can be up to 50% (where the ground permits) and
- b. the second modification is calculated based on the estimated value of the contract in year 4, following the first modification, meaning that it is below 50% of the total estimated contract value.

Changes to how the estimated contract and modification values are calculated, and the ability to make successive amendments, also both apply to **materialisation of a known risk (Schedule 8(5-7))**, **additional goods, services or works (Schedule 8(8))** and **below-threshold modifications (section 74(4))** (with some differences for below-threshold modifications that are detailed below).

3. Additional Goods, Services or Works (Schedule 8(8))

Ground: A contract modification is permitted if:

- The modification is for the supply of goods, services or works in addition to those already provided for in the contract
- Using a different supplier would result in the goods, services or works being different from, or incompatible with those already provided for in the contract,
- The contracting authority considers that the difference or incompatibility would cause disproportionate technical difficulties (e.g. in operation or maintenance) or other significant inconvenience, and substantial duplication of costs, and
- The modification would not increase the contract value by more than 50%.

Change: The detailed grounds under which a modification may be made are unchanged, however there are changes to how the 50% amendment value cap³ is calculated, as per **unforeseeable circumstances (Schedule 8(4))**.

4. Transfer on Corporate Restructuring (Schedule 8(9))

Ground: A contract may be novated or reassigned to another supplier only where this is needed following a corporate restructuring or “similar circumstance”, such as a takeover, merger, acquisition or insolvency.

Change:

- Providing for modification in the event of “corporate restructuring or similar circumstance” offers greater flexibility to allow novation or assignment of a contract to a successor entity without needing to ensure that entity could be said to have fulfilled the original criteria for qualitative selection. The inclusion of “assignment” expressly recognises that, in certain insolvency scenarios, novation of the contract simply will not be possible.
- Section 74(9) of the Procurement Act 2023 **prohibits a change of supplier** other than when made under this specific ground. This is a change from the previous regime, where a supplier may be replaced if an “unequivocal review section or option” exists within the contract.

5. Non-Substantial Modifications (Section 74(3))

Ground: A contract modification is permissible where the modification is not “substantial”. A substantial modification is where any of the following apply:

- The contract term is increased or decreased by more than 10% of the original contract as awarded,
- The amendment **materially changes** the **scope** of a contract, or
- The amendment **materially changes** the **economic balance** of the contract in favour of the supplier.

Change: The Procurement Act 2023 replaces a fixed list of what “substantial” means, compared with the PCR 2015, making the rules more simple to understand and apply. Concepts such as “material change” and “economic balance” must be assessed by authorities on a case-by-case basis, in the context of the economic balance of the contract in question, and from the perspective of proportionality. For guidance purposes only:

A **Material Change** in the context of modification is, for example, a change to something that was significant to a contracting authority when it decided how to award a contract, or alternatively something significant enough to have changed whether a supplier would have decided to submit a tender for it.

A material change may be where:

³ Exemptions apply for utilities contracts.

New conditions are introduced that may have influenced the outcome of the original procurement, or attracted other suppliers to participate in the procurement.

A modification which changes the **Scope** of a contract includes introducing new deliverables (goods, services and works) that were not already provided for in the contract. For example:

Modifying a contract for office chairs to include the purchase of desks or adding a new building location to a contract for cleaning services.

A modification which changes the **Economic Balance** of a contract is, for example:

Where a supplier receives an additional financial, economic or other similar benefit, for doing the same amount of work under a contract. Or, being paid the same under a contract for providing a reduced scope of work. Some examples may include where:

A contract is modified to reduce the number of sites that a supplier is responsible for servicing, but the cost is not reduced accordingly.

- *An amendment results in a supplier's profit margin increasing.*
- *A supplier is given an increase in pay or other commercial benefits, while the scope of works is unchanged from the original contract.*
- *Where ownership of intellectual property rights not previously assigned is granted, with no additional benefit to the contracting authority.*
- *Where the original contract terms are otherwise modified in the supplier's favour.*

Examples of potential substantial and non-substantial modifications may include:

Substantial	Non-Substantial
Substituting the lead contract supplier with a new supplier <i>Substantial: other suppliers may have been able to submit a tender.</i>	A price increase for service delivery in which the profit margin stays the same. <i>Non-substantial: Although prices are changing, the economic balance remains the same.</i>
Expanding the delivery of catering services from one site, as contracted, to four others. <i>Substantial: this may have allowed for other suppliers to submit a tender for the original contract, or attracted more advantageous tenders.</i>	Extending a 3-year contract for school classroom supplies for an additional 1 month to allow for the mobilisation of the replacement contract. <i>Non-substantial: The contract term is increased by less than 10%.</i>

Substantial	Non-Substantial
Using a contract for site security to deliver cleaning services <i>Substantial: this represents a change in scope to the original contract, as it is for a different service that wasn't originally included.</i>	

Note on amending contract term: If a contracting authority needs to make an unplanned amendment that increases or reduces the contract term by more or less than 10%, and this is not an amendment provided for in the contract, then one of the other modification grounds must be used. Contracting authorities would identify this ground by determining which circumstances are most relevant to them, e.g. unforeseeable circumstances, additional goods etc.

6. Below-Threshold Modifications (Section 74(4))

Note: 74(4) deals with making a below-threshold modification to an above-threshold contract. This is different from modifying a regulated below-threshold contract, which is covered in Section 2.2 below.

Ground: “Below-threshold” amendments are permitted when all of the following apply:

- The estimated contract value would not be increased or decreased by more than 10% for goods and services or 15% for works;
- The amendment would not materially change the scope of the contract;
- The aggregated value of amendments made to that contract under this ground are less than the relevant threshold (see Summary document 1) for the contract in question.

Change: As with the changes to grounds on ‘unforeseeable circumstances’ and ‘additional goods, services or works.’, the 10% value cap on modifications to contracts for goods and services, and 15% for works, is now assessed against the estimated value of the contract immediately preceding the modification, not on the original contract value or any other estimate.

In addition, below-threshold amendments may also now be made **successively**, allowing for multiple separate modifications - each individually up to the 10/15% value cap - to be made during a contract’s lifetime, but the aggregated value of all below-threshold modifications must not exceed the relevant contract threshold value. For example:

Successive Amendments (continued)

Scenario 3: 'below-threshold' modification ground

A central government contract for staff uniforms, with a total original value of £500,000, is uplifted in year 2 of the contract by £45,000 (9% of the total contract value), using the 'below threshold modification' ground, to increase the volume of uniforms ordered. In year 3 of the contract, a further modification is required under the same ground for the same purpose, which increases the contract value by £43,600 (8% of the total contract value as immediately precedes the amendment being made).

Assuming all other conditions of the ground are met, this modification is permissible because: the 10% modification value cap is reset for each new amendment, and

- a. the total cumulative value of both amendments does not exceed the relative threshold value of the contract (the relative threshold value for a central government contract being £138,760, correct as of 2023), and
- b. the modification is not substantial and does not materially change the scope of the contract (as the increase covers the same goods as the original contract).

Other modification grounds & below-threshold modifications: Below-threshold modifications can also be made on top of amendments made under other grounds. For example:

Scenario 4: Schedule 8 grounds + 'below-threshold' ground

A local authority contract for translation services, with a total original value of £800,000, is increased by £360,000 (45%) in year 2, due to unforeseeable circumstances. In year 3 a further modification of £69,600 (6% of the value of the contract immediately preceding the amendment) is made using the 'below threshold' modification ground.

Assuming all other conditions of the ground are met, this modification is permissible because:

- a. the below-threshold modification can be made in addition to other amendments.
- b. the value of modifications made under any of the Schedule 8 grounds does not count towards the 10 or 15% below-threshold modification value cap or cumulative total threshold value limit.
- c. The contract term is not extended, and the scope is not materially changed, as the service provided is the same as the original contract.

B. New Grounds for Contract Modification

1. Urgency and the Protection of Life (Schedule 8 (2-3))

Ground: Contracting authorities are permitted to modify a contract where the following conditions are met:

- Paragraph 2(a): If the purpose of the modification (e.g. to respond to an emergency event) could otherwise be met by a direct award under section 41.

And, if either of the following justifications for a direct award apply.

- Paragraph 2(b)(i): Extreme and unavoidable urgency (referencing schedule 5(13))
- Paragraph 2(b)(ii): Direct award to protect life, etc (referencing section 42)

New provisions to better manage a direct award in the event of extreme and unavoidable urgency (schedule 5(13)) and to protect life etc (section 42) were introduced in **Summary Document 3 - Procedures**.

This new modification ground recognises that amending an existing contract - where one is available, can meet requirements, and would not be breached by doing so - could represent a more agile and better value route to market than completing a new direct award.

The new modification ground in schedule 8(2-3) permits a contracting authority to modify an existing contract in the same circumstances that would apply to making a new directly awarded contract for the modification:

For extreme and unavoidable urgency (as per schedule 5(13))	For the protection of life (section 42) applies:
Provided that: • The goods, services or works are strictly necessary, due to extreme and unavoidable urgency, and - as a result - a competitive procurement is not possible. • The urgency is not attributable to, and could not have been foreseen by the contracting authority.	Provided that: • The contract could have been directly awarded under section 42. • The contract is of the type specified by the Minister of the Crown (e.g. in terms of the goods, works or services or conditions).

Any contract modification under this ground must:

- Under section 41, be necessary as a direct consequence of the urgency. Be a genuine reflection of the circumstances, in terms of changes to costs, volumes etc.

- For modifications made in reference to section 42 (the protection of life, etc), be made only to those contracts or types of contracts specified, and be in accordance with the regulations made under section 42 by a Minister of the Crown.

The direct award procedure, and grounds for urgency and the protection of life etc are covered in **Summary Document 3 - Procedures**.

2. Materialisation of a Known Risk (Schedule 8 (5-7))

Ground: Contracting authorities now have the ability to modify a contract based on the materialisation of a known risk, where the impact of that risk is unknown (often referred to as a “known unknown” risk), These types of risks, and how to correctly address them in a tender or transparency notice, are covered in **Summary Document 3 - Procedures**.

Known unknown risks are when it is possible to identify a potential risk prior to commencing a new procurement - a risk that could potentially jeopardise performance of the contract - but are unable to calculate the impact of that risk until it actually materialises during the contract.

In order to rely on this modification ground, certain information must be provided in the original tender or transparency notice for the contract (outlined in Schedule 8 (6)(b)):

- The risk(s) must be identified as a risk which could jeopardise the satisfactory performance of the contract, but because of its nature, could not be addressed in the contract at the point it is awarded, and
- It must be referenced that the possibility of a modification under the ‘Materialisation of a Known Risk’ ground may be required.

Assuming that the risk had been correctly provided for in the contract’s original tender or transparency notice, contracting authorities can make a modification to deal with the materialisation of a known risk if all of the following grounds are met:

- A known risk has materialised (at no fault of the contracting authority or supplier).
- Because of this, the contract cannot be performed to the contracting authority’s satisfaction.
- Awarding a new contract to deal with the risk would not be in the public interest (e.g. it would not provide better value for money and/or could cause technical / operational issues)
- The modification does not increase the estimated contract value by more than 50% (based on its estimated value immediately preceding the modification).⁴
- The modification goes no further than is needed to remedy the materialised risk.

⁴ Exemptions apply for utilities contracts.

Scenario

Summary Document 3 - Procedures introduced the scenario of the Hospital. Prior to commencing a procurement for a programme of building upgrade works, they conducted a site survey that flagged the potential risk of finding asbestos in the existing estate, which could not be confirmed or quantified until work commenced. The hospital identified this risk, and the possibility that a future modification may be required, as part of their tender notice.

The contract was awarded at a value of £7m. Three weeks after the works commenced, the supplier notified the hospital that they had discovered asbestos contamination in part of the building, and halted their works. The supplier estimated the additional cost to resolve the issue would be £300,000. The hospital obtained three other quotations, with the lowest cost being £285,000. However, arranging for a new supplier to come on site would cause significant operational issues and add further delay to the project.

The hospital considers that to award a new contract is not in the public interest in the circumstances and proceeds to modify the contract under the materialisation of a known risk ground (Schedule 8 (5-7))

The benefits of this new modification ground include:

- Providing clarity on how to plan for and manage known/unknown risks.
- Enabling the continued delivery of a contract that could otherwise be terminated.
- Reducing the time, cost and operational impact of re-procuring the contract.
- Avoiding situations where the contracting authority is stuck with a sub-optimal service.

3. Defence Authority Contracts (Schedule 8 (10-11)) - Two Grounds:

The Procurement Act 2023 introduces two new modification grounds that apply only to **defence authority contracts**, as set out in Schedule 8(10) and (11). These contracts are often complex and are required to allow flexibility to respond to threats or support the armed forces, so that the UK maintains operational advantage and reduces risk. The grounds permit contract modifications:

- When necessary to take advantage of developments in technology, or to mitigate against any adverse effects of these developments,
- To ensure the continuous supply of goods, works or services to maintain the operational capabilities, effectiveness, readiness for action, safety, security or logistical capabilities of the armed forces.

There are additional differences between the Procurement Act and DSPCR 2011.

See **Summary Document: Defence & Security Contracts** for information.

■ 2.2 Regulated Below-Threshold Modifications

The Procurement Act 2023 introduces new rules that enable contracting authorities to modify regulated below-threshold contracts where the modification would take the value of the contract above the relevant threshold. These are known as “**convertible contracts**”.

Note: Making a modification to a below-threshold contract is different from making a below-threshold modification.

A “**Convertible contract**” is a new term used to describe a contract that:

- (Prior to modification) is below threshold (i.e. below the relevant threshold detailed in Schedule 1, e.g. below £139,688 for central government authority goods).
- Was established in accordance with the rules surrounding regulated below-threshold contracts, as detailed in Part 6.
- Will be above threshold (e.g. above £139,688 for central government authority goods) once a modification has taken place.

A modification to a convertible contract is only permitted using the same grounds that apply to above-threshold contracts, as detailed in the previous section. Once the modification has taken place, the modified contract will be a public contract and the full scope of the Act will apply to it (aside from the need to set key performance indicators), including the duty to:

- Follow the contract modifications regime (section 74/ schedule 8).
- Publish information about payments made under contracts (section 69).
- Publish a contract termination notice, when the contract is ended (section 80).

Convertible Contract Scenario

A housing association procured a contract for a new security alarm system, at a total value of £200,000 over 4 years. The contract was procured as a regulated below-threshold contract.

In year 2 of the contract, additional equipment was required which, to ensure interoperability, had to be from the same supplier.

A modification is made to the contract under the 'additional goods etc.' ground, which increases the contract value by £75,000. This means that the contract value now exceeds the relevant threshold for service contracts, as outlined in Schedule 1 (being £214,904, correct as of January 2024) and as a result is now subject to the full scope of the Act.

Following this modification being made, the housing association redesigned the contract's contract management strategy to take account of the additional duties that apply to contracts, including publication during the Manage phase of the procurement lifecycle, and requirements around contract termination.

This new provision adds flexibility for contracting authorities. It should not be used as a way to avoid the Act by procuring below-threshold contracts that contracting authorities reasonably expect will increase in value to above the relevant threshold.

■ 2.3 Transparency & Publication Requirements

There are three main changes to the publication requirements for contract modifications.

1. A **contract change notice** must be published before most modifications are made (with certain exemptions).
2. It is possible to observe a **voluntary standstill period** following the publication of a contract change notice before the modification is confirmed.
3. Where a contract change notice has been published and the modified contract is over £5m in value, a **copy of the modified contract or a copy of the modification itself** must also be published (with certain exemptions).

Contract Change Notices (Section 75 of the Act, and Regulation 40 of the Procurement Regulations 2024)⁵

The contract change notice is designed to improve the availability and quality of information about how contracts evolve during their lifetimes.

A contract change notice sets out a contracting authority's intention to modify a contract. It must be published:

- **Before** the modification can take effect (section 75(1)).
- Whenever a contract, framework or “convertible contract” is modified, subject to certain exemptions: see Summary Document 1 - Scope, Definitions and Principles.
- For all modifications (regardless of value) under the ground ‘transfer on corporate restructuring’ (Schedule 8(9)).

The contract change notice must set out the details required in **Regulation 40 of the Procurement Regulations 2024** :

- Details of the contracting authority, the contract, and supplier(s)
- The modification ground being relied on
- An explanation of why the modification meets that ground
- Details of any change to the estimated contract value or contract term
- Where the change is due to “transfer on corporate restructuring”, details of the new supplier(s)
- The estimated dates when the contract will be modified and when that modification will take effect
- Any other information you think is relevant
- Whether a voluntary standstill period applies and, if so, the duration.

In addition to the organisations and special regime contracts that are exempt from publishing a contract change notice, additional exemptions from publication (that apply to all contracts and contracting authorities) include:

- Modifications that increase or decrease the estimated contract value by 10% or less for goods and services, or by 15% or less for works.
- Modifications that increase or decrease the term of a contract by 10% or less of the original maximum contract term provided for on award.

⁵ Exemptions apply.

Contracting authorities do not have to publish a contract change notice when taking up an option that was already provided for in the contract as awarded (modification ground Schedule 8(1)), provided that the modification was built in to the contract value and/or term (as applicable) listed in the respective contract detail notice⁶.

Voluntary Standstill (Section 76)

When making a contract modification contracting authorities may wish to apply a voluntary standstill period. Applying a voluntary standstill period can reduce the risk, cost and disruption of the contract modification being set aside upon legal challenge.

If a voluntary standstill period is followed, then for this to be valid it must:

- Be no less than **8 working days** beginning with the day that the contract change notice is published.
- Be included in the contract change notice (the intention to observe a standstill period, its duration and earliest date on which the modified contract will take effect).

If contracting authorities opt for a voluntary standstill, then **a contract change notice must be published**, because it is the contract change notice that formally triggers the start of the voluntary standstill period.

However, if a claim is notified to the contracting authority during the standstill period, automatic suspension will apply and contracting authorities will be unable to modify the contract until the claim has been resolved (or the suspension lifted by the court). Publishing a contract change notice as early as possible enables the voluntary standstill to pass in good time before the modification needs to be made.

The nature of the amendment (e.g. if the modification is urgent) may justify accepting the risk of the contract being set aside. Therefore, whilst a voluntary standstill period in the majority of cases is best practice, there may be other factors to consider; it is up to individual contracting authorities to make a **risk-based decision** when applying it or not.

Scenario 1:

A local authority is making an urgent modification to increase the value of a contract that supports frontline social services, as a result of unforeseeable circumstances. They are confident that the modification ground applies, and the risk of the contract being undeliverable outweighs the risk of challenge.

No standstill period is applied, and the modified contract is entered into after the contract change notice is published.

⁶ However, it should be noted that this is not a specific exemption under the Act.

Scenario 2:

A central government department is modifying a high-value construction contract on the “materialisation of a known risk” ground. Although they are confident that the modification is compliant, they wish to avoid post-contractual remedies and proceed with the project with confidence.

An 8 working day standstill period is applied following publication of the contract change notice.

Publication of Modifications (Section 77)⁷

Where a contract change notice is published, and the estimated value of the modified contract - including the value of the modification - is over £5m, this is known as a ‘qualifying modification’ a contracting authority need to publish either:

- A copy of the contract as modified, or
- The modification itself (e.g. where the contract has been modified by an addendum, or where the contract documents have already been published at an earlier stage (to avoid unnecessary duplication).

This must be published within 90 days of the modification being made.

Refer to the learning aids which include a flowchart, checklist and step-by-step guide to the contract modification process

3. Contract Performance & Administration

Requirements to publish contract performance, contract payment and payments compliance notices will not come into effect at the same time as other transparency requirements – they will follow in later phases of the central digital platform development.

Poor performance in contracts is costly both for contracting authorities and taxpayers. The Procurement Act 2023 aims to improve the way that contract performance is managed and reported across the public sector, to improve transparency and help contracting authorities to be better equipped to address underperforming contracts.

⁷ Exemptions apply.

What are the Main Changes?

The Procurement Act 2023 introduces requirements for contracting authorities to acquire, record and publish contract information throughout the “Manage” phase of the procurement lifecycle, including:

- Contract performance data, in the form of key performance indicators (KPIs),
- Information on poor supplier performance and breach of public contract, and
- Information about payments made under public contracts.

What are the Benefits?

The objectives of introducing these changes include:

Short Term	Longer Term
• Improved in-house visibility of contract spend and supplier performance. • Better data to inform procurement and contract management strategies. • Earlier indicators of supplier or contract risk. • Strengthened supplier relationships that encourage collaboration and innovation. • More detailed supply chain visibility. • Encouraging best-practice contract management across the public sector. • Increased understanding of how to design and measure Key Performance Indicators (KPIs).	• Improved quality, availability and consistency of public sector spend and performance data. • Increased opportunity for benchmarking and collaboration between contracting authorities. • Swifter identification of suppliers who may present a risk to contract performance. • Improved visibility of market performance to inform procurement strategies. • Increased public confidence in the capability and integrity of public sector procurement.

■ 3.1 Contract Performance Reporting

The Procurement Act 2023 introduces new requirements surrounding contract and supplier performance. There are two different ways in which contracting authorities may need to share information about a supplier’s contract performance:

1. By providing data on a supplier’s **KPI** scores (for most contracts with a total value of £5m or more)⁸; and
2. By reporting certain serious incidents of **poor supplier performance**, or breach of contract, as and when they occur (applicable to all contracts).

⁸ Exemptions apply.

■ A. Key Performance Indicators

Setting KPIs (Section 52)⁹

Before entering into a public contract with an estimated value of more than £5m, contracting authorities must set (in agreement with the supplier) **at least** three KPIs. These must be published as part of the contract details notice.

In the contract details notice, contracting authorities must provide details of:

- The description of contract KPIs, and
- The frequency with which these KPIs will be measured (with the minimum being once every 12 months).

Where the contract has an estimated value of more than £5m and KPIs were not set, the contract details notice must include an explanation as to why KPIs cannot be appropriately used to measure the performance of the contract.

Publishing KPI Data (Section 71(2))¹⁰

At least once every 12 months (and more frequently, if provided for in the contract and contract details notice), the contracting authority must assess and then publish details of supplier performance against the set KPIs to the central digital platform using a contract performance notice.

For the purposes of collecting data for publication, this only needs to be data from the contracted supplier, and not for sub-contractors (even where suppliers have identified specific named sub-contractors in their tenders).

To enable consistency and ensure that data is comparable across contracts, the central digital platform will require KPI data to be published using the same standardised rating system:

- **Good:** Performance is meeting or exceeding the key performance indicators
- **Approaching target:** Performance is close to meeting the key performance indicators
- **Requires improvement:** Performance is below the key performance indicators
- **Inadequate:** Performance is significantly below the key performance indicators
- **Other:** Where performance cannot be described as good, approaching target, requires improvement or inadequate.

“Other” may apply to a reporting period, for example, where an element of the contract cannot be reported on, or no KPI data is available, or where relevant service delivery has not taken place.

⁹ Exemptions apply.

¹⁰ Exemptions apply.

Where an alternative scoring methodology is used for assessing a contract's KPIs, then it is important to think about how this methodology will align with this standardised rating system. Contracting authorities should consider including this within their contracts, allowing scores to be converted more easily for publication to the central digital platform.

Central Government Departments, their Executive Agencies and Non-Departmental Public Bodies must continue to adhere to the Cabinet Office's Commercial Playbooks and associated guidance, publishing KPI data for bronze, silver and gold contracts as set out by the Cabinet Office.

Amending KPIs

Changing one or more KPIs for reporting purposes: As contracts mature and are modified, one or more KPIs - for which performance data is published - may become obsolete and no longer scored. Where the contract allows it, it is best practice to nominate a new KPI (in agreement with the supplier), and to include details of this in the next contract performance notice published. However, you will still be obliged to report on the original KPIs with an "other" grading.

Modifying one or more contract KPIs: Where there are any changes to what is measured by an existing KPI, or to the scoring criteria for measurement, then details must be provided as part of the next contract performance notice.

Changing contract KPIs does not necessarily constitute a contract modification in its own right. Contracting authorities would also need to consider if the change results in other changes to the contract - such as price, contract duration or the economic balance. Contracting authorities must consult section 74 of the Procurement Act 2023 (modifying a public contract) to determine whether the amendment is permitted, and what actions are required.

Circumstances Where KPIs are Not Required

Certain organisations and contracts are exempt from the requirements to set, assess and publish KPI information, as detailed in the guidance for special regimes. Frameworks are also exempt, however contracts awarded under frameworks and dynamic markets are **not** exempt.

In addition, requirements do not apply if, in accordance with section 52(2), a contracting authority considers that the supplier's performance under the contract could not appropriately be assessed by reference to KPIs. **This is not designed to provide a blanket exemption for publication**, but may be applicable in situations such as:

- Contracts for a one-off purchase, where ongoing measurement is not applicable, and short-term performance should be based on delivery within the contract terms.

- Contracts where the complexity of the deliverables cannot be clearly expressed in a specific, measurable, achievable, realistic and time-bound (SMART) target.
- Where the data collected and / or published could have implications for national security - for example, by revealing sensitive information.

■ B. Poor Performance & Breach of Contract

In certain situations where a supplier breaches a public contract, or fails to satisfactorily perform a public contract, the contracting authority must report this by publishing details in a contract performance notice¹¹. These provisions are intended to capture the **most serious and persistent** performance failures.

As detailed in **section 71** of the Procurement Act 2023 (assessment of contract performance), the following incidents are a trigger for contracting authorities to publish a contract performance notice:

71 (3)

- a. a supplier has breached a public contract, and
- b. the breach results in
 - (i) termination (or partial termination) of the contract,
 - (ii) the award of damages, or
 - (iii) a settlement agreement between the supplier and the contracting authority.

71 (4) A contracting authority considers that a supplier

- a. is not performing a public contract to the authority's satisfaction,
- b. has been given proper opportunity to improve performance, and
- c. has failed to do so.

Where a breach or failure to perform leads to full termination and this event is the first to occur, a contract termination notice is published instead.

¹¹ Exemptions apply.

Poor Performance & Exclusion Grounds

In the Procurement Act, the same definitions of breach and poor performance are given in section 71(3) and (4) (assessment of contract performance) and in the discretionary exclusion grounds set out in schedule 7, paragraph 12 (breach of contract and poor performance).

It is therefore important that the contracting authority reports poor performance by publishing a contract performance notice (or contract termination notice where relevant), within 30 days of the first trigger event outlined above occurring, as it provides other contracting authorities with an objective piece of evidence that may be used when assessing if any of the exclusion grounds in schedule 7, paragraph 12 apply to a supplier. The details provided in the contract performance notice (or contract termination notice where relevant) may also assist that contracting authority in exercising their discretion when deciding whether to exclude the supplier.

Because publishing a contract performance notice (or contract termination notice where relevant) could result in a supplier being excluded from a future procurement, contracting authorities must ensure that they provide accurate information.

More information on exclusions can be found in **Summary Document 6**.

Breach of Contract and Poor Performance

From a contracting authority's perspective, breach of contract is where the supplier fails to meet the terms and conditions of the contract agreed between both parties. Examples may include:

- Failure to deliver the goods, services or works to the required specification or on time.
- Failure to adhere to a condition of the contract, such as mismanaging sensitive authority information.

However, for the breach to be sufficiently serious to trigger publication of a contract performance notice (or contract termination notice where relevant), the breach must result in one or more of the following:

- partial contract termination,
- the award of damages, or
- a settlement agreement between the supplier and the contracting authority.

Where a breach or failure to perform leads to full termination and this event is the first to occur, a contract termination notice is published instead.

Poor contract performance is where the supplier fails to meet the obligations set out in the contract to the authority's satisfaction, has been given a proper opportunity to improve performance and has failed to do so.

Examples of failing to meet the obligations set out in the contract may include:

- Repeated failure to meet one or more KPIs over a period as set out in the contract (e.g. where a KPI is measured monthly, this may be 3 consecutive months, or 3 out of 6 months, etc.)
- Failure to adhere to a core contract term, such as the requirement to hold insurance.
- Failure to deliver goods, services or works to the required standard.

KPIs provide an objective way of measuring a supplier's performance against their contractual obligations, and a clear indication of where these obligations are not being met. Low KPI scores can be used as a mechanism to "trigger" contractual improvement measures.

For poor performance to trigger publication of a contract performance notice, the supplier must have been given **proper opportunity** to improve performance (but subsequently failed to do so). This would typically be by exercising a contractual measure designed to manage poor performance, such as a rectification, improvement, or performance management plan, or similar. This would usually set out:

- Details of performance issues / areas for improvement, with corresponding evidence.
- The improvements required and associated timescales.
- Actions the supplier must take, and required targets or outputs.
- Clear deadlines for meeting these requirements.
- Consequences for failing to do so.

Alongside KPIs, it is important to agree and document the definition(s) of poor performance, the escalation process for managing poor performance, and the contractual measures that can be put in place to rectify poor performance. It is important to document incidents of supplier poor performance, agreed remedial actions, and adherence to these action plans, so that details of any poor performance and failures to improve performance can be published in the contract performance notice.

It is essential that the information included in a contract performance notice (or contract termination notice where relevant) is accurate and provides the fullest possible picture of the breach / poor performance and surrounding context. Contracting authorities could be liable for breach of statutory duty should a supplier suffer (or is at risk of suffering) loss or damage due to false or inaccurate information being published in a contract performance notice, if this leads to them being excluded from a procurement.

C. Contract Performance Notices & the Contract Performance Register

Contract Performance Notices

As previously mentioned, the requirement to publish contract performance information will apply at a later phase. From this point onwards, data on contract KPIs and poor supplier performance must both be published to the central digital platform using a **contract performance notice**. The contract performance notice has two separate parts, to cover the following two separate purposes:

Part 1 - KPIs: Details of supplier performance against a minimum of **three KPIs**. Mandatory for **public contracts over £5m**, unless an exemption applies. Must be published at least once every 12 months, but can be published more frequently if KPIs are measured more often.

Part 2 - Poor Performance / Breach of Contract: To report serious incidents of poor supplier performance or breach of public contracts. Mandatory for almost all contracts. Must be published **within 30 days** of a poor performance / breach event.

To note:

- Where poor performance / breach of contract leads to the partial termination of a contract, a **contract performance notice** should be published.
- Where poor performance / breach of contract leads to full termination of the contract, a **contract termination notice** should be published instead.

For publication either to report KPI scores or breach/poor performance, contract performance notices must include, as a minimum (amongst other things):

- **Contracting authority** name(s), procurement information and unique identification reference(s) for all buying organisations involved in the contract.
- **Supplier** name(s), contact information and unique identification reference(s) for all suppliers involved in committing the breach or poor performance.
- **Contract details:** name(s) and unique contract identification reference(s) for the contract being reported on.

Contract Performance Notices for KPI Publication

In addition to the above, contract performance notices reporting KPI scores must include, as a minimum (amongst other things):

- The time period for which the assessment applies.
- The **KPI scores** (using the rating scheme, detailed above) for each of the KPIs being assessed.

For KPI purposes, one single contract performance notice may be used to cover one single contract that has multiple suppliers and/or lots.

Contract Performance Notices for Breach or Poor Performance

In addition to the above (excluding the previous two bullet points on KPI publication), contract performance notices reporting poor performance or a breach of contract must include, as a minimum (amongst other things):

- **Confirmation that section 71(5) applies.**
- Indication of whether the notice is being issued due to **contract breach** or **poor performance**.
Contracting authorities must specify whether the notice results from:
 - One (or more) of the three scenarios **Contract Performance Notices for Breach or Poor Performance Occurring** as a result of contract breach, as set out in 71(3), or
 - From poor performance, as set out in 71(4).
- A **narrative description** of the nature of the breach or performance failure, including:
 - The contract requirement / obligation breached or not being performed.
 - Any steps taken by the supplier to mitigate the impact of the breach or failure to perform.
 - The steps taken by the contracting authority to notify the supplier that they are in breach or failing to perform, demonstrating that proper opportunity was given for the supplier to improve (where applicable).
 - Where partial termination has occurred, a description of what parts of the contract have been terminated.
- Where there has been an **award of damages**:
 - Details of the damages awarded and the basis on which they were awarded.
 - A link to any related court judgement(s).

The date of publication must be **no more than 30 days** from the date that the first trigger event takes place. This means that the clock starts from whichever of the following events is the first to occur as a result of the breach of failure to perform:

- Partial termination;
- Award of damages;
- Settlement agreement agreed between the CA and the supplier; or
- Supplier failure to improve performance.

Contract Performance Register

The contract performance register will be introduced in a later phase of the central digital platform development. The ambition is to create a single location in which contracting authorities can view data relating to the performance of public sector contracts. The register should be freely available to all contracting authorities and other interested parties within the general public.

The objectives of the contract performance register include:

- Providing data in a single, uniform format.
- Increasing the availability and visibility of contract performance data.
- Improving accountability for contract performance.
- Helping to identify key risks and issues within a particular marketplace.
- Influencing the design of a procurement process.

■ 3.2 Contract Payment Reporting (Information about payments under public contracts: Section 70)

The Procurement Act 2023 aims to better leverage the power of public-sector spending and to increase transparency by making it easier for contracting authorities, suppliers and the general public to track contract expenditure, improve efficiency and reduce waste. To achieve this, the Act will require contracting authorities to publish information about individual payments of more than £30,000 made by the authority under a public contract, on a quarterly basis¹².

As previously mentioned, the requirement to publish this information will not come into effect at the same time as other transparency requirements - they will follow in later phases of the central digital platform development once further secondary legislation has been made.

Existing arrangements for the publication of spend data, such as those that apply under the Local Government Transparency Code, remain in place until otherwise stated.

What Can I do to Prepare?

The exact provisions for publication of payment information will be subject to further consultation, however, the following principles are expected to apply:

- Data is not required to be published where information relating to the award of the contract has been withheld from publication for a legitimate reason, as identified in section 94 of the Act (safeguarding sensitive commercial data or national security).

¹² Exemptions apply.

- Care must be taken, in the publication of data, not to disclose information that contravenes data protection legislation.
- It is good practice to include, within tender or contract documentation, details of the responsibilities a contracting authority has to publish such information, to ensure suppliers are fully apprised of these obligations.
- Contracting authorities are responsible for ensuring that data is accurate, and published in a timely manner.
- Contracting authorities may wish to put in place a robust review process to safeguard against the publication of inaccurate or sensitive data.

■ 3.3 Contract Administration & Prompt Payment

The Procurement Act 2023 contains a number of implied terms relating to the administration of contracts.

An **“implied term”** is a legally-binding contract term that hasn’t been expressly agreed by any parties to a contract, but which is implied into the contract by, for example, legislation. The terms implied into contracts by the Procurement Act that relate to payment and termination, subject to certain exemptions, are:

Electronic invoicing: Section 67 of the Act requires contracting authorities to accept (non-disputed) electronic invoices, which is a feature of the previous regime.

Implied payment terms in contracts¹³:

Change: The PCR 2015 regulation 113(2)(a) requires invoices to be paid within 30 days of it being “regarded as” valid and undisputed, which is implied into public contracts under regulation 113(6)(a). Section 68 of the Act implies 30-day payment terms into most public contracts. Contracting authorities must pay valid, non-disputed invoices within 30 days of receipt.

Benefit: This change means that the default timescale in which the invoice must be paid is 30 days from **receipt**, rather than from **validation** (provided the invoice is not disputed on receipt). This should ensure swifter payments for suppliers.

Implied payment terms in sub-contracts¹⁴:

Change: Section 73 of the Act extends implied 30-day payment terms into public sub-contracts that mean suppliers must pay valid, non-disputed invoices from members of their contract supply chain within 30 days of receipt.

¹³ Exemptions apply.

¹⁴ Exemptions apply.

Benefit: The extension of implied terms to include sub-contractor payments by default, rather than contracting authorities only being able to require an express provision in the sub-contracts to stipulate it, ensures that 30-day supply chain payment terms are now implied directly into all public sub-contracts.

Implied right to terminate a contract

See Contract Termination, below

Change: The PCR 2015 included implied terms for terminating a contract due to a contract being subject to a substantial modification which would have required a new procurement procedure, or a supplier being subject to an exclusion ground. Section 78 of the Act builds on the right to terminate in the PCR 2015, including an implied right to terminate a public contract where the contract has been awarded or modified in material breach of the provisions in the Act. It also includes the implied right to terminate a contract where the supplier or sub-contractor is an excluded or excludable supplier.

Benefit: The extension of implied terms to include sub-contractor terminations by default will reduce the burden on contracting authorities to have an express provision in their contracts. The wording and process that must be followed in terminating a contract under section 78 is clearer, giving contracting authorities more certainty.

Regulated below-threshold contracts: Implied payment terms

Change: Section 88 Implies 30-day payment terms into regulated below-threshold contracts, which is a new provision that did not exist in the previous regime.

Benefit. This new provision means that a requirement to pay invoices within 30 days is implied into all regulated below-threshold contracts, reducing the burden on contracting authorities and increasing prompt payment to a greater number of suppliers.

Prompt Payment

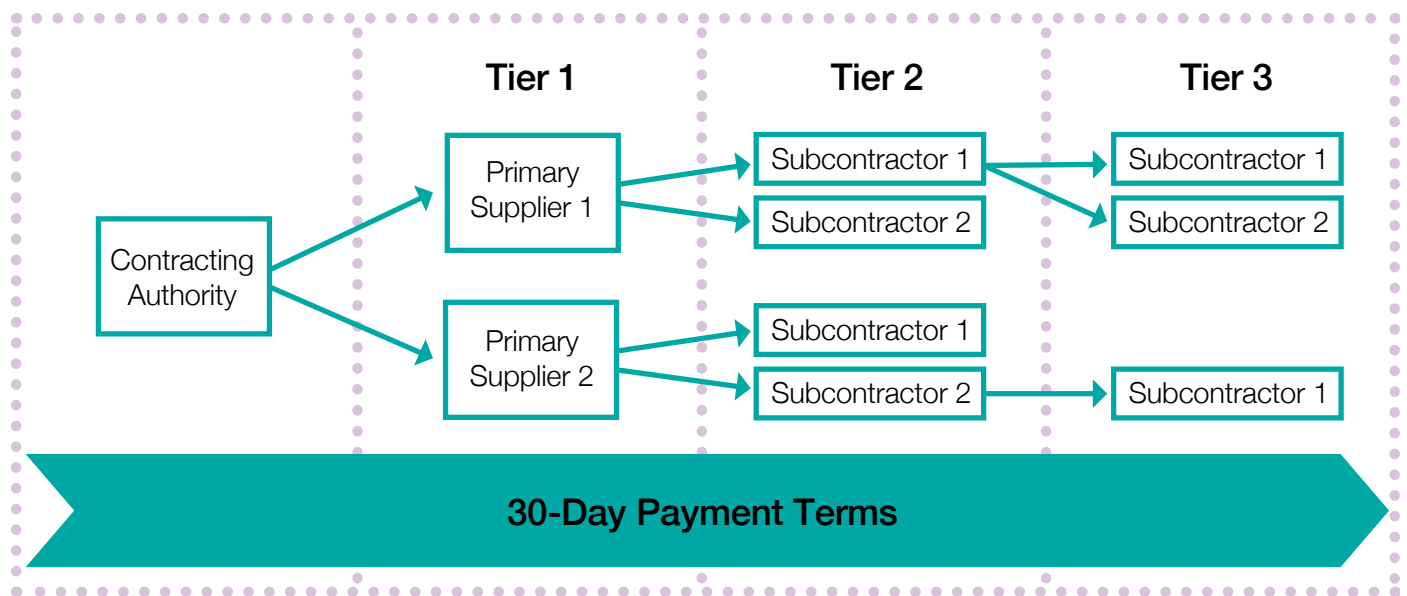
The late payment of invoices has historically been an issue for many UK businesses, particularly for SMEs and VCSEs. It can have a damaging impact on suppliers and supply chains, affect cash flow management, sub-contractor and staff payments, and plans for business growth.

The Act aims to strengthen the rules surrounding late and unfair payment practice in public sector contracts by:

- Implying, by default, 30-day payment terms for valid and undisputed invoices into public and regulated below-threshold contracts, with some exemptions.
- Extending this provision to cover payments made under contracts by suppliers to all sub-contractors in the public supply chain, ensuring that 30-day payment terms flow through supply chains by default.

- Increasing the scope of these payment provisions to public utilities and defence.

This diagram shows the intended flowthrough of 30-day payment terms within supply chains:



Suppliers and sub-contractors within the supply chain are entitled to receive late payment interest wherever they are not paid within 30 days, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

Publication of Payment Performance Data (Section 69)

Under the previous regulations (PCR 2015 113(7)), contracting authorities were required to publish information online, annually, about their compliance with 30-day payment terms.

Under the Procurement Act, this is done by publishing a **payments compliance notice**¹⁵ to the central digital platform. Its purpose is to enhance transparency surrounding how quickly the public sector pays its suppliers, incentivise faster payments taking place, and align the public sector with current private sector reporting standards.

As previously mentioned, the transparency provision will have a separate commencement date - until then implemented, contracting authorities can continue to publish this information online as they do currently.

The key differences between PCR 2015 and the Act are:

- Data must be published every six months (within 30 days of the reporting period ending), rather than annually.

¹⁵ Exemptions apply.

- Additional data is required, including average number of days taken to make payments and percentage of payments not made in the reporting period. Late payment interest liability statistics have been removed.
- Data must be formally approved by a finance director (or equivalent).

Contracting authorities should work closely with the organisation's Finance team to manage any change from current practices.

4. Contract Termination

The Procurement Act sets out three key provisions on contract termination.

- **Implied right to terminate public contracts (section 78):** which implies a termination clause into every contract which was required to be included (or was implied) in most contracts under the previous regime.
- **Terminating public contracts: National security (section 79):** a specific requirement for terminating contracts on grounds of national security.
- **Contract termination notices (section 80):** A second new provision that requires contracting authorities to publish a contract termination notice on termination of a contract (subject to exemptions).

These provisions apply to the termination of public contracts procured under the Procurement Act 2023 only.

The Act does not intend to prescribe all circumstances under which contracting authorities can terminate a contract, but the changes are designed to improve clarity, certainty and transparency for contracting authorities, suppliers and the public on the subject of contract termination.

■ 4.1 Terminating a Contract

Implied Terms for Contract Termination

Section 78 implies a term into every public contract allowing for the contracting authority to terminate the public contract in the event that one of the following grounds applies:

- 78(2) a)** where the contracting authority considers that the contract was awarded or modified in breach of the Act or the SIs;
- 78(2) (b)** where a supplier (or associated person) has, since the award of the contract, become excluded or excludable;

78(2) (c) where a sub-contractor has become excluded or excludable.

Definitions for associated suppliers and excluded/excludable suppliers can be found in

Summary Document 6.

Termination for Excluded or Excludable Suppliers

As part of the contract management strategy it is good practice to regularly review whether suppliers are stated as excluded or excludable suppliers.

If a supplier appears on the debarment list for a mandatory exclusion ground or a discretionary exclusion ground, or a contracting authority finds that - following a review of the supplier's circumstances - they should now be classified as an excluded supplier, then the contract can be terminated under the term implied by section 78.

If this same review process shows that the supplier should now be classified as an excludable supplier and a discretionary ground applies, then the contract can be terminated under the term implied by section 78.

Terminating a Contract

If one of grounds 78(2)(a)-(c) apply, then certain steps must be taken prior to terminating the contract:

- Give the supplier notice of the intention to terminate the contract.
- Specify the relevant ground (78(2)(a)-(c)) that applies and why the authority has decided to terminate the contract.
- Give the supplier a reasonable opportunity to respond to the decision to terminate, and make representations about whether they believe the termination ground applies.
- Where termination is on the grounds of a sub-contractor being excluded or excludable, give the lead supplier reasonable opportunity to cease their arrangements and, if necessary, replace them with an alternative provider.
- The terms of the relevant contract will also need to be followed in order to terminate the contract.

Sub-contractors

To terminate a contract on the ground that a sub-contractor is an excluded or excludable supplier (78(2)(c)), contracting authorities must have requested information about the lead supplier's sub-contractors as part of the original procurement process (as detailed under section 28 of the Act), and either:

1. Have not been made aware of the supplier's intention to sub-contract some or all of the contract performance, **or**

2. Sought to determine whether the sub-contractor in question was excluded or excludable (including where the sub-contractor is on the debarment list) prior to contract award and did not know this was the case.

If the requirements for termination are met, the contracting authority should consider the supplier's representations in its decision whether to terminate the contract. Subject to these representations or if the supplier is unable to replace an excluded or excludable sub-contractor, the contracting authority can proceed with the implied right to terminate the contract under section 78, subject to any other terms of the contract..

Termination on the Grounds of National Security

In addition to the steps listed above, if a contracting authority intends to use section 78 to terminate a contract on the grounds of national security (on the basis that the **discretionary exclusion ground** applies listed in paragraph 14 of Schedule 7), they must first obtain approval from the relevant Minister of the Crown under the process set out by the National Security Unit for Procurement in the Cabinet Office.

If a contracting authority intends to use section 78 to terminate a contract on the grounds of national security (on the basis that the **mandatory exclusion ground** applies listed in paragraph 35 of Schedule 6), they must first notify the relevant Minister of the Crown of their intention under the process set out by the National Security Unit for Procurement in the Cabinet Office.

Other Types of Termination

Other types of contract termination include, but are not limited to:

Expiry	Where the contract has reached its end date (including any extensions).
Discharge by Performance	Where the contract obligations / deliverables are fulfilled, payments made and any disputes settled.
Early Termination for Breach	Where one or more parties are found to be in breach of contract.
Termination by a Party	Where either party exercises a contractual or implied legal right to end the contract.
Termination by Mutual Consent	Where both parties agree to end the contract.
Rescission	Where the contract is reversed and its parties restored to the position they were in before the contract was signed.

Set Aside by Court Order	Where the contract is declared to be invalid by a legal judgement.
Breach of the Act / Regulations	Where the contracting authority considers that the contract was awarded or modified in material breach of the Act or regulations.
Contract Frustrated	Where unforeseeable circumstances make performance of the contract impossible.

Termination: Express Conditions of Contract

It is not possible to include an express contract clause in a public contract that overrides or restricts the provisions of these implied terms, as set out above. However, as the Act states, a contract may contain provision about restitution and other matters alongside the terms implied by the Procurement Act 2023.

It is good practice to include clear and unambiguous terms within the contracts that outline:

- The steps to be taken in the event of a breach of contract or poor supplier performance (to avoid dispute should the event arise during contract delivery).
- Additional terms under which the contracting authority or supplier may exercise a contractual right to terminate the contract early, and any associated notice period(s).
- Any compensation that may be associated with early termination (to protect the supplier's position).

Contracting authorities should consider having a clear contractual term that covers what sums are payable on termination, either for goods or services provided or by way of compensation in the event of termination by any means - including by the terms implied by the Procurement Act 2023.

Termination in Accordance with the Act

Whilst it is important to have flexibility when considering the termination of a contract, it is also important to ensure that contracting authorities act in good faith with respect to their contracted suppliers.

Contracting authorities should not terminate a contract, in whole or in part, in a way that seeks to circumvent the Procurement Act 2023 or Regulations, to avoid compliance with any other relevant law, or to avoid international obligations. Terminations must be fully compliant with the Procurement Act 2023 and the objectives set out therein.

When terminating a contract, contracting authorities should keep records around the decisions made and actions taken.

■ 4.2 Contract Termination Notices

Contract termination notices¹⁶ are a new provision aimed at improving transparency surrounding when and why contracts are terminated.

A contract termination notice communicates to the marketplace that a **contract has ended** - including the **reasons why it has ended**. The contract termination notice must be published **within 30 days** of the contract ending, and is published on the central digital platform (using an eSender where relevant).

Where multiple contracts have been awarded through one procurement process (e.g. multiple lots to different suppliers), a single contract termination notice may be used to confirm termination, where applicable. Where KPIs are measured and published, a final assessment should be completed and a contract performance notice published in addition to the termination notice.

Alongside standard information about the contracting authority, supplier and contract, contract termination notices must include:

- The reasons for termination
- The date of termination
- Whether the termination is a result of a breach of contract
- The estimated value of the public contract, at the time of expiry

Termination on the Basis of Supplier Performance

As discussed earlier, a contract may contain termination rights for poor performance etc. If the contract is terminated in full, for either reason, then a contract termination notice must be published (rather than a contract performance notice) including details of the reasons for termination. For partial termination, a contract performance notice should be published, and a contract termination notice is not required.

This is to ensure that there is a clear public record of where contracts are being terminated due to breach of contract and poor performance. Using a contract termination notice instead of a contract performance notice means that contracting authorities can avoid having to publish two separate notices that are essentially telling the market the same information.

A contract termination notice must be published within 30 days of termination taking place.

Remedies

Failure to comply with the requirements set out in Parts 3, 4, 6 and 8 may be a breach of statutory duty, leading to contracting authorities being challenged under Part 9 (Remedies for breach of statutory duty).

¹⁶ Exemptions apply.



Key performance indicators

Fact sheet

This fact sheet provides an overview of key performance indicators (KPIs) as they apply under the Procurement Act 2023, including your responsibilities to set, assess and publish data.

■ What are KPIs?

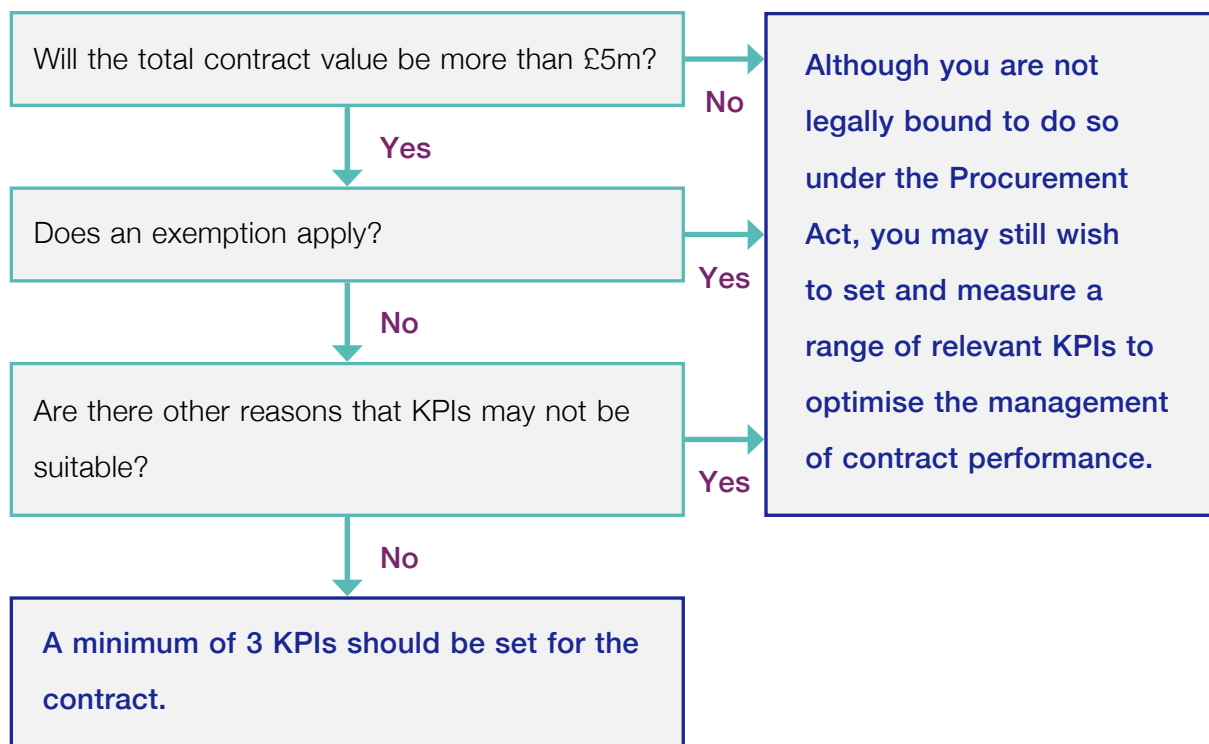
Key performance indicators are contractual targets against which a supplier's contract delivery can be measured. They should be designed around the most important contract deliverables. They must clearly link to the wider contract objectives and should also include minimum satisfactory standards and performance escalation protocols, should these not be met.

In some cases, a KPI could be something that you are already monitoring by default - e.g. through internal service audits or quality assessments - or something that your supplier is already providing you with data for, e.g. through management information.

KPIs can be a useful and objective tool for measuring a supplier's performance against contractual obligations. Low scores can be used as a mechanism to trigger contract improvement measures, and to signpost you towards the performance areas that are in need of change.

■ Do I need to set KPIs?

Prior to the Procurement Act 2023, central government departments, their executive agencies and non-departmental public bodies had to adhere to requirements to publish KPIs as indicated by the Cabinet Office 'Commercial Playbooks' (Sourcing, Consultancy, Construction and Digital Playbooks). Under section 52 of the act this requirement is extended to include most public sector contracting authorities:



Before entering into a contract with a **total estimated value of more than £5m**, you must set (in agreement with the supplier) **at least three** key performance indicators. You then need to publish the three most appropriate KPIs as part of the **contract details notice**.

Once set, you must assess and publish information about the supplier's performance against these three KPIs on at least an annual basis for the remainder of the contract. See **appendix 1: KPI flowchart** for the end-to-end process.

■ Exemptions to KPI publication

Certain contracts are exempt from the requirements to set, assess and publish KPI information:

- utilities contracts awarded by a private utility
- concession contracts
- light touch contracts
- establishing a framework (however, contracts awarded under a framework are not exempt)
- dynamic markets (however, contracts awarded under a dynamic market are not exempt)

Even if you are not obligated to publish KPIs you may still wish to set these in your contract as a means of monitoring supplier performance and as part of performance improvement planning. See **fact sheet: supplier breach and poor performance**.

In addition, you are not required to set KPIs if, in accordance with section 52(2), you consider that the supplier's performance could not appropriately be assessed by them. For example:

- contracts for a one-off purchase
- contracts where the complexity of the deliverables cannot be clearly expressed in a specific, measurable, achievable, realistic and time-bound (SMART) target.
- where the data collected and / or published could represent a risk to national security.

■ What KPIs might be suitable for my contract?

KPIs should be designed based on what aspects of contract performance are the most important to its success. They should be specific, measurable, achievable, realistic and timebound, including:

1. a clear and realistic target linked to one or more contract objectives
2. a scoring mechanism to determine the supplier's performance under that KPI, and
3. a "minimum score" that, if not met, could trigger performance improvement measures.

Examples:

Contract objective	KPI	Target score	Frequency measured	Minimum score
Maintain buildings so that no safety risk is presented	% critical health and safety repairs completed monthly	100%	Monthly	95%
On-time delivery of business-critical goods	% deliveries made on time and in full	95%	Weekly	90%
Swift response to security issues at a sensitive site	% urgent call-outs attended within 30 minutes	98%	Quarterly	95%
Delivery of services that meet the needs of service users	% of users rating the service as "good" or "outstanding"	90%	Monthly	80%

Equally, there are KPIs that may add little value to your contract and actually cause additional cost instead. Suppliers may raise their tender prices to "price in the risk" of failing to meet KPIs, or to cover the additional work needed to gather and present performance data. Increased internal costs may also be incurred.

■ Assessing KPIs

To enable consistency and ensure that data is comparable across contracts, the central digital platform will require KPI data to be published using the following standardised rating system:

- **Good:** Performance is meeting or exceeding the key performance indicators
- **Approaching target:** Performance is close to meeting the key performance indicators
- **Requires improvement:** Performance is below the key performance indicators
- **Inadequate:** Performance is significantly below the key performance indicators
- **Other:** Where performance cannot be described as good, approaching target, requires improvement or inadequate (e.g. where no data is available or where relevant service delivery has not taken place).

Where an alternative scoring methodology is used for assessing KPIs, then it is important to think about how you can align your methodology with this standard system. See **appendix 2** for an example of how this could look.

You must ensure that suppliers understand what is being measured, when, how and against what scoring system.

■ Publishing KPI data (section 71(2))

At least **once every 12 months** (but more frequently, if provided for in the contract), you must assess and publish details of supplier performance against your contract's three main KPIs. You do this by publishing a **contract performance notice** to the central digital platform. Only the lead supplier should be assessed and reported on, not their subcontractor(s).

It is good practice to discuss and agree scores with your supplier(s) before publication, but no supplier has the ability to block publication or amend an assessment.

The contract performance notice has two functions. The first is to publish KPI assessment data to the central platform; the second, separate function is to report on breach of contract or supplier poor performance (as detailed in **fact sheet: supplier breach and poor performance**).

■ Amending KPIs

Changing one or more KPIs for reporting: If one or more contract KPIs become obsolete and no longer measured, then - where the contract allows it - it is best practice to nominate a different KPI to be published (in agreement with the supplier) and to include details of this in the next contract performance notice published.

However, you will still be obliged to report on the original KPIs, even if this means just submitting a nil return.

Modifying one or more contract KPIs: Where there are any changes to what is measured by an existing KPI, or to the scoring criteria used for measurement, then details must be provided as part of the next contract performance notice.

Changing contract KPIs would not usually constitute a contract modification in its own right, but if it results in other changes to the contract - such as price, contract duration or the economic balance - then contracting authorities must consult section 74 of the act (modifying a contract) to determine whether the amendment is permitted, and what actions are required.

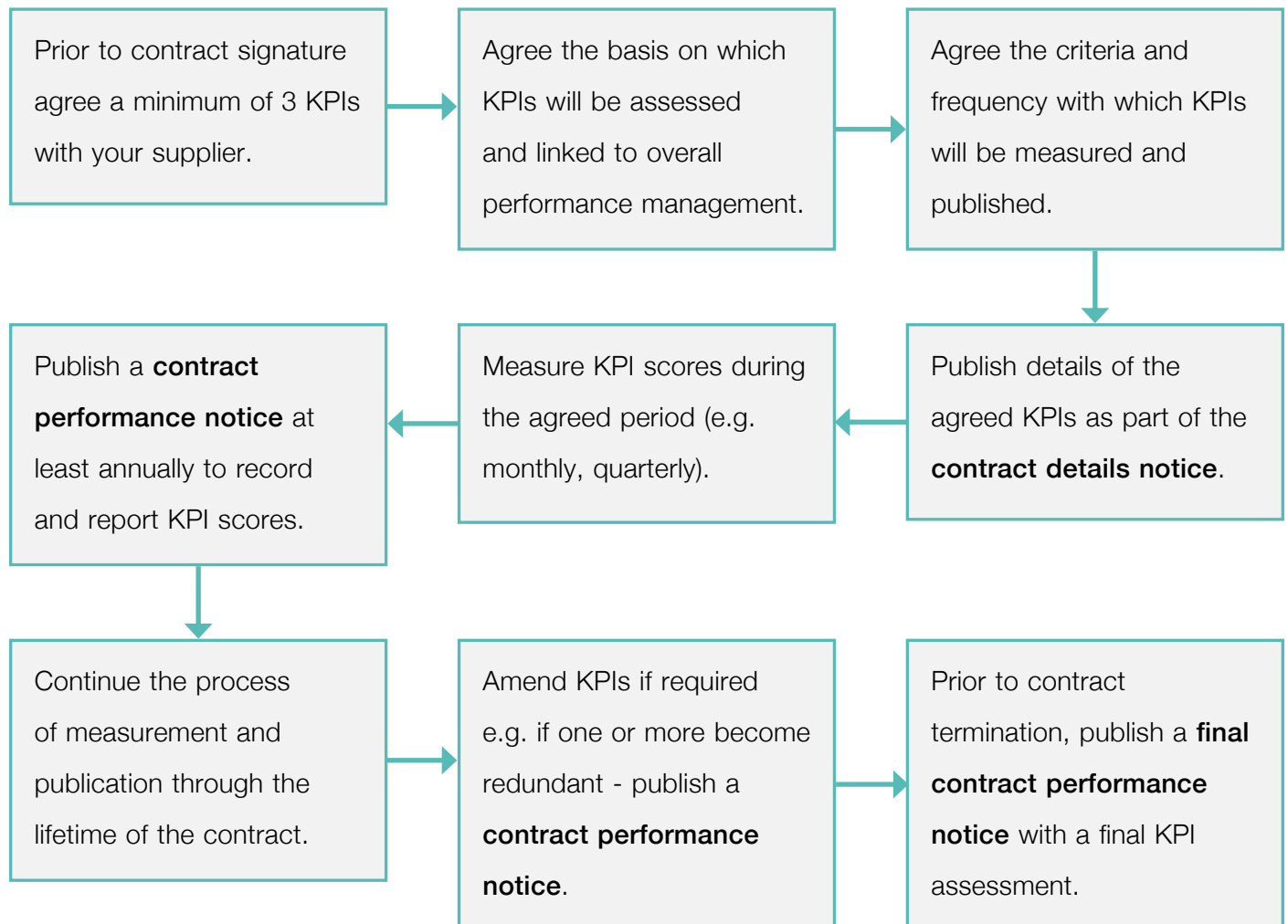
Appendix 1: mapping standardised scores to KPIs

Mapping the % scores awarded to a supplier against the standardised Cabinet Office rating system for reporting KPI performance (example):

KPI	Good	Approaching target	Requires Improvement	Inadequate
% critical health and safety repairs completed monthly	100%	98 to 99%	96 to 97%	95%
% deliveries made on time and in full	95%	93 to 94%	91 to 92%	90%
% urgent call-outs attended within 30 mins	98%	97%	96%	95%
% of users rating the service as “good” or “outstanding”	90%	88 to 89%	81 to 87%	80%

Note that **‘inadequate’** would typically be the minimum % score that you would accept, and the trigger point for performance improvement mechanisms.

Appendix 2: process flowchart for setting, monitoring and measuring KPIs





Implied terms

Fact sheet

■ What are implied terms?

An implied term is a contract term that has not been expressly agreed by any of the contracting parties, but which is implied into the contract by virtue of its existence in law.

This is different from terms that are expressly agreed into contracts by all parties. The Procurement Act contains a number of implied terms designed to set out the rights and obligations of contracting authorities and/or suppliers in their delivery of public contracts.

■ How do they work?

An implied term **can be** legally relied on by parties to the contract. They **cannot be** removed from a contract, restricted or overwritten by an express term. Therefore, it is important for you (and your suppliers) to understand that these terms will be a feature of the public contracts you award under the Procurement Act.

The Public Contracts Regulations (PCR 2015) and their counterparts already implied several terms into the contracts that were made under them. The Procurement Act retains these terms, but also extends their scope into several new areas.

Section	Implied terms in the Procurement Act	Exemption(s)
Section 48	Frameworks Gives contracting authorities the right to exclude a supplier that is, or has become, an excluded or excludable supplier since the award of the framework, from participating in any further competitions.	N/A
Section 67	E-invoicing Requires contracting authorities to accept and process for payment any valid, non-disputed electronic invoices.	N/A
Section 68	Implied payment terms in public contracts Implies 30-day payment terms into most public contracts. Contracting authorities must pay valid, non-disputed invoices within 30 days of receipt.	Concession contracts. Contracts awarded by a private utility or by a school.
Sections 73	Implied payment terms in sub-contracts Extends implied 30-day payment terms into public sub-contracts: suppliers must pay valid, non-disputed invoices from members of their contract supply chain within 30 days of receipt.	Concession contracts. Contracts awarded by a private utility or by a school.
Section 78	Implied right to terminate a public contract Gives the contracting authorities the right to terminate the contract if one of the following termination grounds apply: • the contract was awarded or modified in breach of the act • a supplier has become excluded or excludable • a subcontractor has become excluded or excludable	N/A
Section 88	Regulated below-threshold contracts: implied payment terms New provision that implies 30-day payment terms into regulated below-threshold contracts. Contracting authorities must pay valid, non-disputed invoices within 30 days of receipt.	N/A



Supplier poor performance and breach of contract

Fact sheet

This fact sheet is designed to provide an overview of how poor supplier performance and breach of contract are managed under the Procurement Act 2023, steps you may take if a supplier is not performing against its contractual terms, and the associated transparency requirements.

■ What are breach and poor performance?

The act has introduced performance measures that are intended to capture - and protect contracting authorities from - the **most serious and persistent failures** in contract delivery.

Breach of contract

This is where a supplier fails to meet one or more key terms agreed on contract award, which is generally serious enough (or 'material') so that the contract cannot be delivered as agreed. The act requires a breach to be

"sufficiently serious" for performance measures to apply, which it outlines in section 71(3) as being a breach that results in:

- full or partial contract termination
- the award of damages
- a settlement agreement

Poor performance

This is a failure to deliver aspects of the contract to the contracting authority's satisfaction, taking into account the frequency, duration and impact on contract delivery. Serious and persistent failings are those that are repeated, or cause the most disruption to the contract. Section 71(4) of the act states that performance measures apply where:

- the supplier is not performing the contract to the contracting authority's satisfaction
- has been given proper opportunity to improve performance and
- has failed to do so

Poor performance examples:

- failure to meet one or more KPIs over a period exceeding 3 months
- poor feedback from service users (where this is integral to contract performance)
- poor account management service, meaning a frequent need to escalate issues

Breach of contract examples:

- refusing to deliver contractual obligations
- non-compliance with a key contract term, such as the renewal of an insurance policy
- failure to adhere to a joint investment agreement linked to contract delivery

■ How does the act help to manage poor performance?

Contract performance notice (Section 71(5))

Section 71 sets out that you must publish a **contract performance notice** in the event of breach of contract and / or poor performance in a contract (private utilities and light touch contracts are exempt from this publication requirement). This is alongside the need to set, assess and report on KPI scores (see fact sheet: KPIs for more details). In addition to increasing transparency around contract performance, the notice should also increase accountability and visibility, which should act as a deterrent towards poor performance.

Poor performance and KPIs

KPIs are mandatory under the act for certain contracts over £5m. They can be a useful and objective tool *in any contract* for measuring a supplier's performance, identifying any gaps

between contractual obligations and actual delivery. Low scores can also be used as a mechanism to trigger contract improvement measures, and can signpost you towards the performance areas that are in need of change. *It is important to note poor performance or breach of contract can relate to any contractual requirement, not just the KPIs agreed for publication.*

■ Actions in the event of poor performance

Section 71(5) of the Procurement Act instructs that a contract performance notice must be published in the event of supplier breach or poor performance.

In the event of poor performance, however, you must first provide the supplier with “**proper opportunity**” to improve their performance.

These must be **contractual measures** that may take the form of an improvement or performance management plan, or similar, and set out:

- details of performance issues / areas for improvement, with corresponding evidence
- the improvements required and associated timescales
- actions the supplier must take, and required targets or outputs
- clear deadlines for meeting these requirements
- consequences for failing to do so (e.g. part termination of certain services, and the publication of a contract performance notice)
- the supplier's express agreement to these terms

To ensure this ground can be easily relied

upon, contracting authorities should ensure that they include, within their contracts, clear “trigger events” (i.e. the circumstances that would constitute poor performance or breach of contract) and set contractual measures that will be applied in the event of poor performance.

■ Transparency requirements

In the event of supplier breach of contract or poor performance, a contract performance notice must be published within 30 days of the event taking place.

Contract termination

If the breach / poor performance results in the termination of the contract **in full**, then a contract termination notice should be completed instead of a contract performance notice.

Partial termination of a contract

If the breach / poor performance results partial termination of a contract e.g. service elements and their proportionate costs being withdrawn from the contract and where the contract term and / or value of the whole contract decreases (or increases) information about the amendment should be included in the contract performance notice.

■ Breach / poor performance and the exclusion grounds

The same definitions of breach and poor performance are given in section 71(3) and (4) as they are for the discretionary exclusion ground set out in schedule 7(12) (breach of contract and poor performance). It is therefore important that you complete a contract performance notice to report when breach or poor performance has occurred, and ensure the information provided is accurate and provides the fullest picture possible of the issue(s).

■ How can I improve performance management?

Agree KPIs with your supplier regardless of the contract value and measure these regularly to help identify potential issues at an early stage.

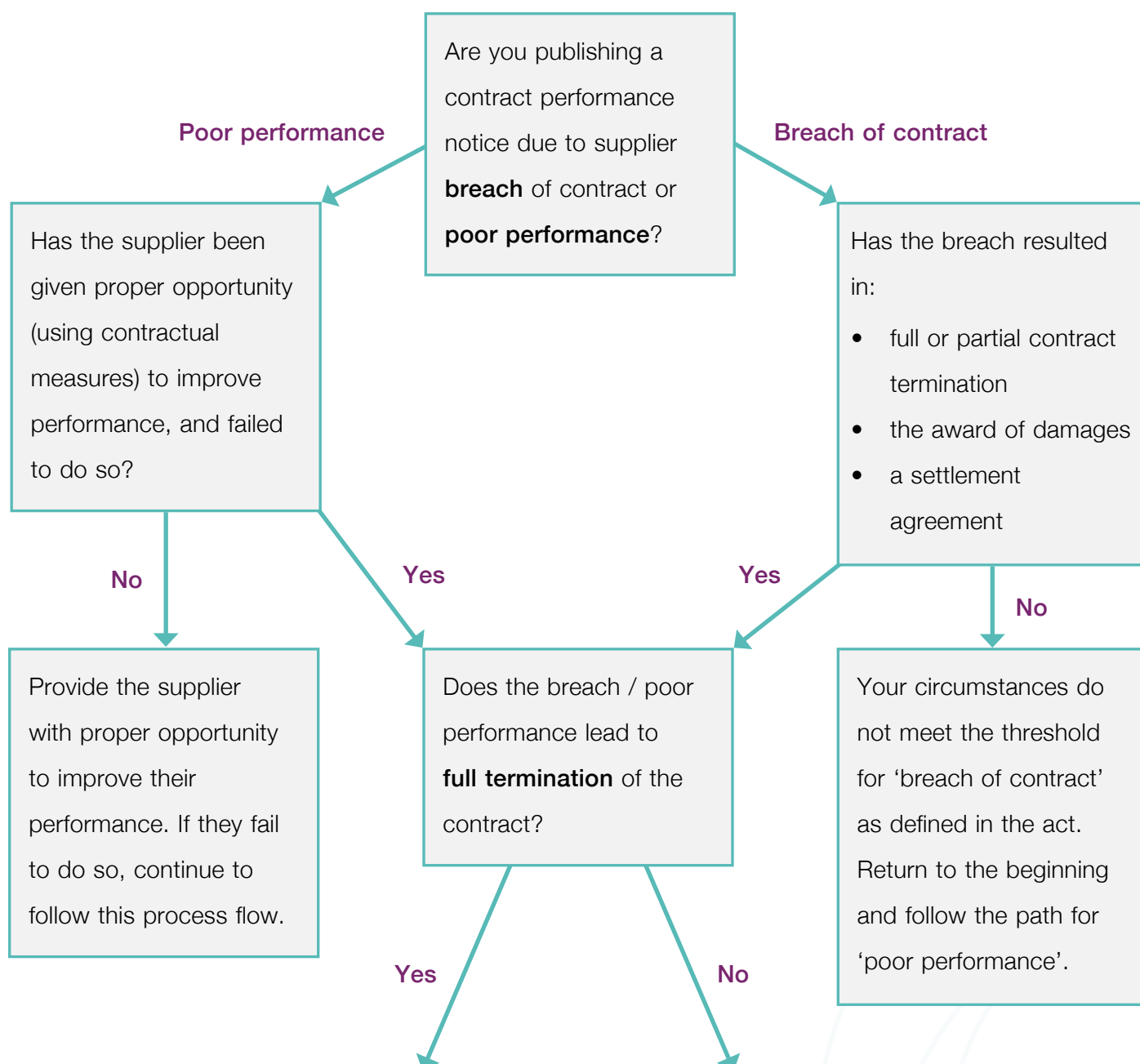
Set clear performance expectations through the tender notice, documents and contract.

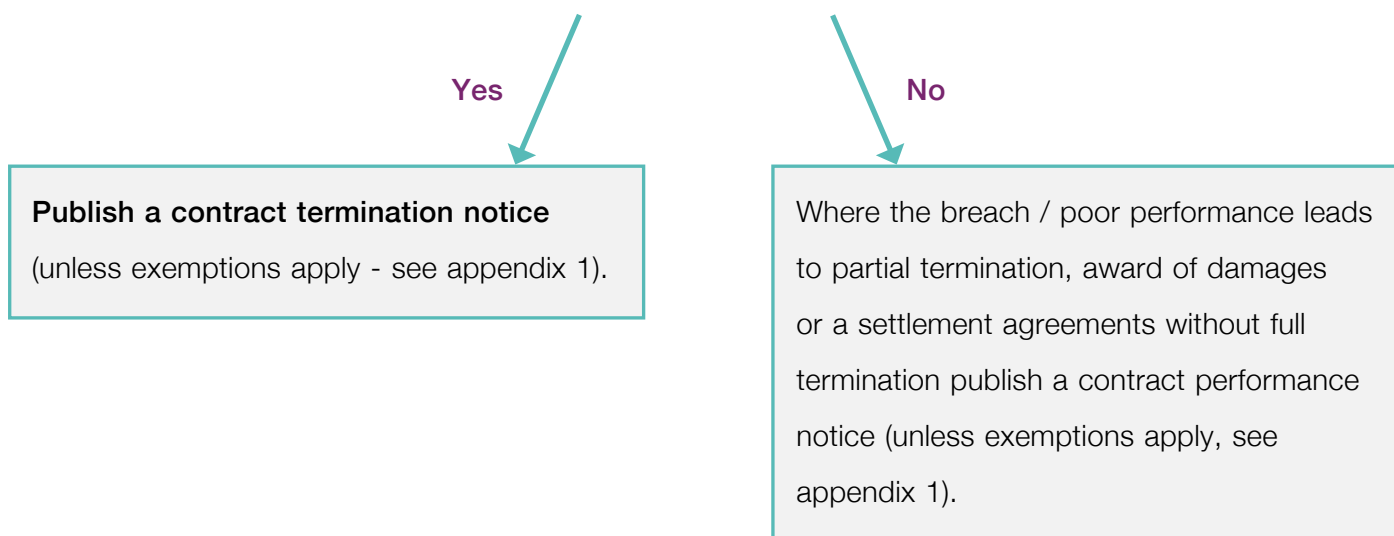
Agree in the contract escalation, performance improvement or similar measures in the event of poor performance. Define in the contract what the “trigger point” is for poor performance.



Supplier poor performance and breach of contract

Flowchart





Appendix 1: exemptions from publication

This table lists the organisations and contracts that are exempt from publishing one or more of the notices as listed in the flowchart above. If your organisation, contract type and/or modification ground does not appear in the table below, then publication is required.

Type of notice	Exemption
Contract performance notice (for breach / poor performance reports)	• Private utilities • Light touch contracts
Contract termination notice	• Private utilities • Direct award - user choice contracts



Modifying an above-threshold or convertible contract

Step by step guide

This guide takes you through the steps typically followed when modifying a public contract or 'convertible contract'. A regulated below-threshold contract that, following modification, exceeds the relevant threshold set out in schedule 1 of the act and is now a public contract. **See appendix 1 for exemptions to the publication requirements.**

Step 1 - assess the requirement

Identify the potential impact of the modification (e.g. increase / decrease to contract value, increase / decrease to contract duration, etc.). Continue to step 2.

Step 2 - grounds for modification

Identify the appropriate ground for modification and ensure that you meet **all applicable conditions in full**.

Reason for modification	Associated modification ground
To exercise an optional contract clause	Schedule 8 (1): provided for in the contract
Extreme urgency or for the protection of life	Schedule 8 (2 and 3): urgency and the protection of life, etc

Step 2 - grounds for modification (continued)

Reason for modification	Associated modification ground
Due to unforeseen circumstances arising	Schedule 8 (4): unforeseeable circumstances
Because a known risk has materialised	Schedule 8 (5 to 7): materialisation of a known risk
To make additional purchases	Schedule 8 (8): additional goods, services or works
To novate the contract to a new supplier - it is not permitted to change a supplier under any circumstances other than schedule 8(9)	Schedule 8 (9): transfer on corporate restructuring
In response to changes in technology	Schedule 8 (10): for defence authority contracts only
Continuity of supplies to the armed forces	Schedule 8 (11): for defence authority contracts only

Or, where none of the above grounds apply, modification is permitted where:

Reason for modification	Associated modification ground
The modification is not substantial	Section 74 (3): not substantial
The modification itself is below-threshold	Section 74 (4): below-threshold

Does your modification meet the criteria of one of the above grounds?

If **yes**, continue to step 3.

If **no**, modification is not possible and a new procurement is required.

Note, it is not permitted under the act to artificially separate one single modification that would not be permitted under the above grounds, into multiple smaller ones.

Step 3 - below-threshold modifications

Is the modification a “below threshold” modification (section 74(4))?

If **yes**, confirm that the total aggregated value of modifications made under this ground during the life of the contract will remain below the relevant threshold amount that applies to your contract, as detailed in schedule 1. If so, continue to step 4.

Note, modifications under the “below threshold” ground (74(4)): the value of any single modification, and the total cumulative value of modifications made under this ground during the life of the contract, must be below the relevant threshold amount that applies to your contract, as detailed in schedule 1. This does not include the value of modifications made under other grounds, i.e. the grounds detailed in schedule 8.

If making this modification would result in the aggregated value of modifications made under this ground exceeding that threshold, then modification under this ground is not permitted.

If **no**, continue to step 4.

Step 4 - agree terms

Agree the terms of the modification with the contracted supplier(s), adhering to any internal governance processes that may apply. Continue to step 5.

Step 5 - publish a contract change notice (where applicable)

Many modifications require you to publish a contract change notice, **unless an exemption applies** - see **appendix 1** for a list of exemptions.

Are you exempt from publishing a contract change notice for this modification?

If **yes**, you do not need to publish a contract change notice unless you want to observe a voluntary standstill, continue to step 7.

If **no**, you must publish a contract change notice, then continue to step 6.

Step 6 - voluntary standstill period (optional)

Prior to publishing a contract change notice, decide if you wish to observe a voluntary standstill period of no less than 8 working days. Note, it is not possible to observe a voluntary standstill period unless you publish a contract change notice. Are you observing a voluntary standstill period?

If **yes**, observe the voluntary standstill period (min. 8 working days) then continue to step 7.

If **no**, continue to step 7.

Step 7 - contract signature

Sign the modified contract, and arrange for the supplier to sign it also. Continue to step 8.

Step 8 - publish the modification (where applicable)

Where a contract change notice is published and the value of the modified contract is over £5m (including the value of the modification), this is a 'qualifying modification' and you must publish a copy of the contract as modified / the modification itself - within 90 days of modifying the contract, unless exempt from doing so.

a. Were you exempt from publishing a contract change notice, **and/or** are you otherwise exempt from publishing contract documents for this modification? (See appendix 1)

If **yes**, continue to step 9.

If **no**, continue to step 8b.

b. Was the total value of the contract over £5m **before** this modification was made?

If **yes**, you may publish a copy of the modification itself only (e.g. as an addendum).

If **no**, you must publish a full copy of the contract documents, as modified. Then continue to step 9.

Step 9

Keep a full record of the contract modification for audit trail purposes.

Appendix 1: exemptions from publication

This table lists the organisations and contracts that are exempt from publishing a contract change notice and/or modified contract documents. It also lists the modification grounds where publication of a contract change notice and contract documents is not required. If your organisation, contract type and/or modification ground does not appear in the table below, then publication is required.

Exempt from publishing a contract change notice	Exempt from publication of modifications
Specific contracts / contracting authorities: - defence and security contracts - light touch contracts - contracts awarded by a private utility - contracts awarded by a transferred Northern Ireland authority - unless it was awarded as part of a procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement Applicable to all contracting authorities: - provided for in the contract (schedule 8(1)) - contracting authorities do not have to publish a contract change notice when taking up an option that was already provided for in the contract as awarded (modification ground schedule 8(1)), provided that the modification was built in to the contract value and/or term (as applicable) listed in the respective contract detail notice - where the modification increases or decreases the contract term by less than 10% - where the modification increases or decreases the contract value by less than 10% (goods & services) or 15% (works) - unless they are a convertible contract, then a contract change notice must be published	- defence and security contracts - light touch contracts - contracts awarded by a private utility - contracts awarded by a transferred Northern Ireland authority - contracting authorities do not have to publish a contract change notice when taking up an option that was already provided for in the contract as awarded (modification ground schedule 8(1)), provided that the modification was built in to the contract value and/or term (as applicable) listed in the respective contract detail notice - contracts awarded by a devolved Welsh authority - unless it was awarded as part of a procurement under a reserved procurement arrangement - contracts that are below £5m in value (including the value of the modification)



Making a contract modification

Checklist

This checklist is designed to help you comply with the Procurement Act with respect to contract modifications. It covers the steps you may typically follow when modifying a public contract or 'convertible contract' (a regulated below-threshold contract that, following modification, exceeds the relevant threshold set out in schedule 1 of the act and is now a public contract). For more detailed information on the modification process, please see the step-by-step guide to modification.

Contract modification checklist

1. **Where applicable**, if the modification is the result of poor supplier performance or breach of contract, then follow the guidance on *managing poor performance and breach of contract* alongside this checklist. ☐
2. Identify the need for contract modification and determine impact (e.g. change in contract cost, duration, etc.) ☐
3. Identify the **appropriate modification ground** (see schedule 8 and section 74 of the Procurement Act) and ensure that you meet **all** applicable conditions in full. ☐
4. Agree the terms of the modification in principle with your supplier(s). ☐
5. **Where applicable, publish a contract change notice** (unless an exemption applies - see appendix 1) ☐
6. **Optional** - if you have published a contract change notice: observe a voluntary standstill period (minimum 8 working days) ☐

7. Arrange for you and your supplier to sign the modification / modified contract (following the conclusion of any standstill period)



8. **Where applicable, publish the modification** within **90 days** of it being made, where applicable (unless an exemption applies - see appendix 1), as follows:

a. Publication is not applicable because an exemption applies (see appendix 1). No action required.



b. Where the value of the contract was over £5m before the modification. You may publish a copy of the modification itself only (e.g. as an addendum).



c. Where the value of the contract is now over £5m as a result of the modification. You must publish a full copy of the contract documents, as modified.



9. Keep a full record of the contract modification for audit trail purposes.



Appendix 1: exemptions from publication

This appendix lists the organisations and contracts that are exempt from publishing a contract change notice and/or modified contract documents. It also lists the modification grounds where publication of a contract change notice and contract documents is not required. If your organisation, contract type and/or modification ground does not appear in the lists below, then publication is required.

Exempt from publishing a contract change notice

Specific contracts / contracting authorities:

- Defence and security contracts
- Light touch contracts
- Contracts awarded by a private utility
- Contracts awarded by a transferred Northern Ireland authority - [unless it was awarded as part of a procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement](#)

Applicable to all contracting authorities:

- Provided for in the contract (schedule 8(1)) - [contracting authorities do not have to publish a contract change notice when taking up an option that was already provided for in the contract as awarded](#)

(modification ground schedule 8(1)), provided that the modification was built in to the contract value and/or term (as applicable) listed in the respective contract detail notice

- Where the modification increases or decreases the contract term by less than 10%
- Where the modification increases or decreases the contract value by less than 10% (goods & services) or 15% (works)
- Unless they are a **convertible contract** - then a contract change notice **must** be published

Exempt from publication of modifications

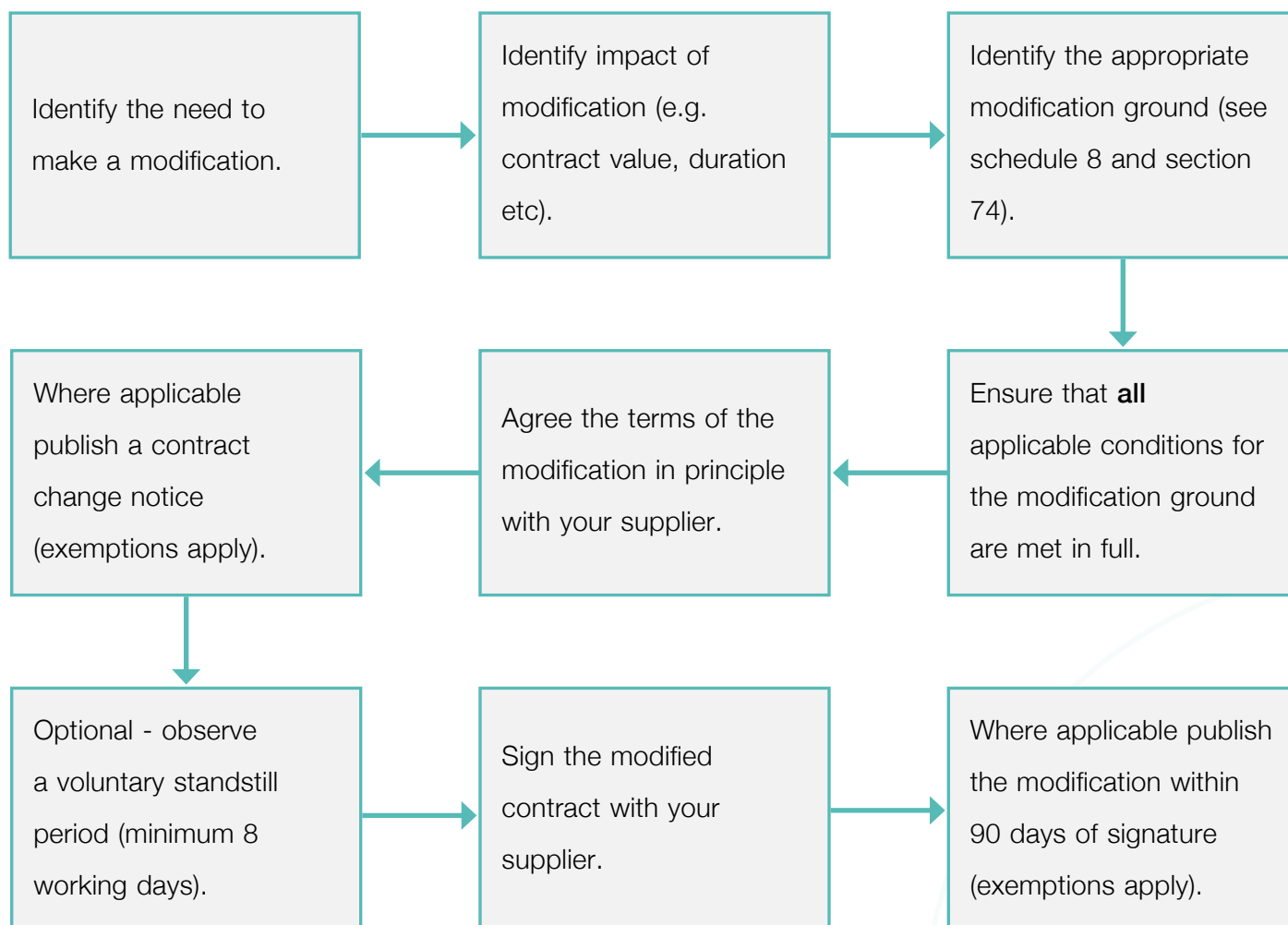
- Defence and security contracts
- Light touch contracts
- Contracts awarded by a private utility
- Contracts awarded by a transferred Northern Ireland authority - contracting authorities do not have to publish a contract change notice when taking up an option that was already provided for in the contract as awarded (modification ground schedule 8(1)), provided that the modification was built in to the contract value and/or term (as applicable) listed in the respective contract detail notice
- Contracts awarded by a devolved Welsh authority - unless it was awarded as part of a procurement under a reserved procurement arrangement
- Contracts that are below £5m in value (including the value of the modification)



Modifying a contract

Flowchart

This flowchart is designed to help you comply with the Procurement Act with respect to contract modifications. For more detailed information, please see the step-by-step guide to contract modification. A checklist is also available.



Annex 1: Exemptions

Exempt from publishing contract change notice

Specific contracts / contracting authorities:

- defence and security contracts
- light touch contracts
- contracts awarded by a private utility
- contracts awarded by a transferred Northern Ireland authority (unless it was awarded as part of a procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement)

Applicable to all contracting authorities:

- provided for in the contract (schedule 8(1))
- where the modification increases or decreases the contract term by less than 10%
- where the modification increases or decreases the contract value by less than 10% (goods & services) or 15% (works) *unless they are a convertible contract - then a contract change notice must be published*

Exempt from publication of modifications

Specific contracts / contracting authorities:

- defence and security contracts
- light touch contracts
- contracts awarded by a private utility
- contracts awarded by a transferred Northern Ireland authority (unless it was awarded as part of a procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement)
- contracts awarded by a devolved Welsh authority (unless it was awarded as part of a procurement under a reserved procurement arrangement or as part of a procurement under a transferred Northern Ireland procurement arrangement)

Applicable to all contracting authorities:

- all contracts who were exempt from publishing a contract change notice, plus
- contracts where a contract change notice was published, but the total contract value (following the modification) is over £5m



Managing risk

Fact sheet

This fact sheet is designed to provide a quick and practical reference to dealing with different types of risk through different grounds for contract modification. For more information on identifying types of risk prior to undertaking a procurement, see Module 3: Identifying Risk.

■ What is a “known unknown” risk?

A **“known unknown”** risk is where it’s possible to identify the potential risk in advance of undertaking a procurement process, but where the impact of that risk, should it materialise, is unknown. It is possible to identify the risk before awarding a contract, but not possible to include contractual provisions to deal with the impact. A modification ground has been introduced in the Procurement Act that allows contracts to be modified to deal with the materialisation of this type of risk.

■ What are some examples of known unknown risks?

Examples of known unknown risks may include (but are not limited to):

- construction / infrastructure works
- legislative changes
- IT systems
- changes to standard

Construction / infrastructure works

The possibility of hazardous substances, structural issues, ground conditions or other problems may increase contract costs, but the severity of the risk may be unknown until works get underway / surveys are completed, so impact can’t be determined.

Legislative changes

New laws governing e.g. health and safety standards, data protection etc. are due to be introduced, but the changes needed to comply are not known until the laws are fully defined.

IT systems

New cyber threats may emerge that require existing systems to be adapted.

A cyber attack itself could cause damage to systems or data, with the cost will depend on the extent of the damage.

Changes to standard

If changes to standards (e.g. BSI, ISO, etc) are anticipated during the contract, but not clear enough to provide for prior to award.

■ What would likely not qualify as a known unknown risk?

Risks that would likely **not** qualify as a known unknown include:

- risks where the impact can be identified and mitigated against prior to contract award (a “known known” risk)
- risks that materialise due to the supplier’s solution (e.g. the availability of specific technology, equipment or staff that mean the contract cannot be delivered)
- problems with the suppliers’ subcontractors (this would be a supplier performance issue)

■ How does the “materialisation of a known risk” modification ground work?

This new ground (Schedule 8(5-7)) enables you to modify a public contract in the event of a known unknown risk materialising, providing that a number of conditions are met. If one or more of these conditions are **not** met, then you will not be able to rely on this ground.

In order to rely on this modification ground, certain information must be provided in the original tender or transparency notice for the contract (outlined in

Schedule 8 (6)(b)):

1. the risk(s) in question must be identified
 - alongside confirmation that they could jeopardise the satisfactory performance of the contract - in the tender or transparency notice
2. the change is required to manage a known risk that has materialised (through no fault of the contracting authority or supplier)
3. the contract can’t be delivered to the contracting authority’s satisfaction because of this
4. it’s in the **public interest** to amend the contract, rather than award a new one, considering:
 - a. **value for money** (e.g. whether a lower cost or better value solution could be sourced by running a new procurement)
 - b. **technical considerations** (e.g. the compatibility of materials)
 - c. **operational considerations** (e.g. delivery timescales)
5. the modification doesn’t increase the contract value by more than 50% (the 50% cap does not apply to utilities contracts)

It is important to note that inclusion of a known risk in the tender or transparency notice does not imply any liability on either party for any cost changes as a result of the risk materialising.

■ What’s the difference between the “materialisation of a known risk” and “unforeseeable

circumstances” modification grounds?

A separate modification ground, unforeseeable circumstances (schedule 8(4)), is designed to address “unknown unknown” risks: these are risks where you are aware of neither the risk itself or the impact, should it materialise, prior to awarding a contract.

Example: materialisation of a known risk

The contracting authority is aware of the potential risk, but not of the impact.

New legislation is planned during the life of the contract, which means product specifications may need to be redesigned in some way.

Adverse ground conditions may cause issues with a construction project, but the works need to begin before a survey can assess the impact.

Example: unforeseeable circumstances

The contracting authority is aware of neither the potential risk nor the impact.

New legislation is introduced without warning, which requires product specifications to be redesigned in a specific way.

A global shortage of key construction materials means that an alternative must be sourced (at a higher cost) to enable the project to continue.

Awareness of a potential risk

If you are aware of a potential risk (but not the impact) then you must address this in the tender/ transparency notice: it is not possible to use the

ground for materialisation of a known risk where this information is not provided.

What about contract modifications for “known known” risks?

A “known known” risk is one where the risk and impact, should it materialise, can both be identified. In this case, the risk should be managed prior to contract award with appropriate mitigations and provisions for allocating risks. Neither of the above modification grounds are likely to apply for this type of risk. Alternative modification grounds could include:

Modification ground	Conditions
Provided for in the contract (schedule 8(1))	The impact (e.g. change to cost, duration or other) impact is unambiguously provided for in the tender/transparency notice and in the contract as awarded.
Additional goods etc (schedule 8(8))	Only permitted where the modification is for additional goods, services or works already provided for. Tests around technical compatibility and cost duplication apply.
Below-threshold or non-substantial modifications (74(3-4))	Where the contract value increases or decreases by less than 10% (goods and services) or 15% works, or the contract term changes by less than 10%.



Terminating a public contract

Step by step guide

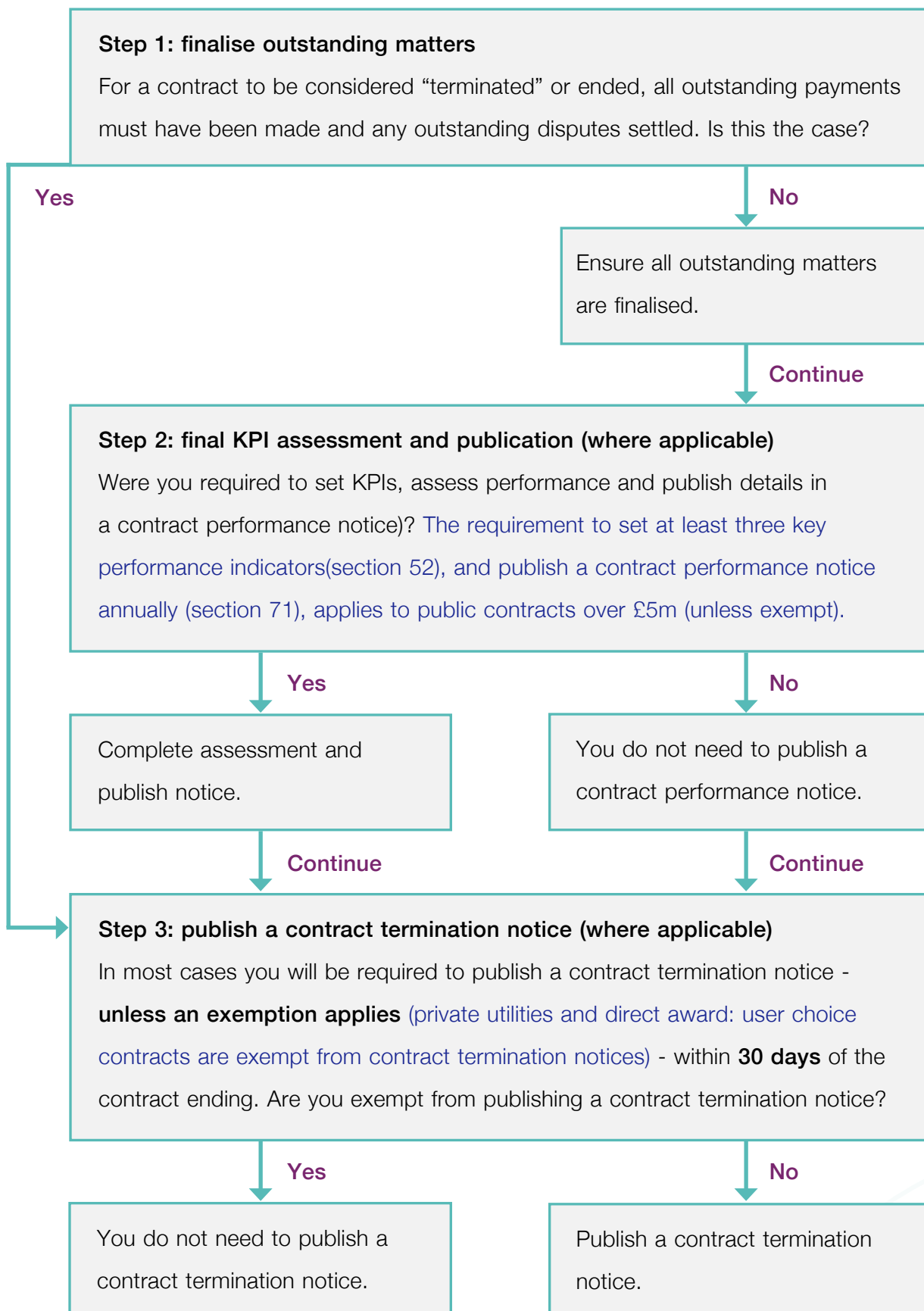
This guide is designed to help you comply with the Procurement Act with respect to contract terminations. It covers the steps you may typically follow when terminating a public contract, depending on the reasons for termination.

Reason for termination

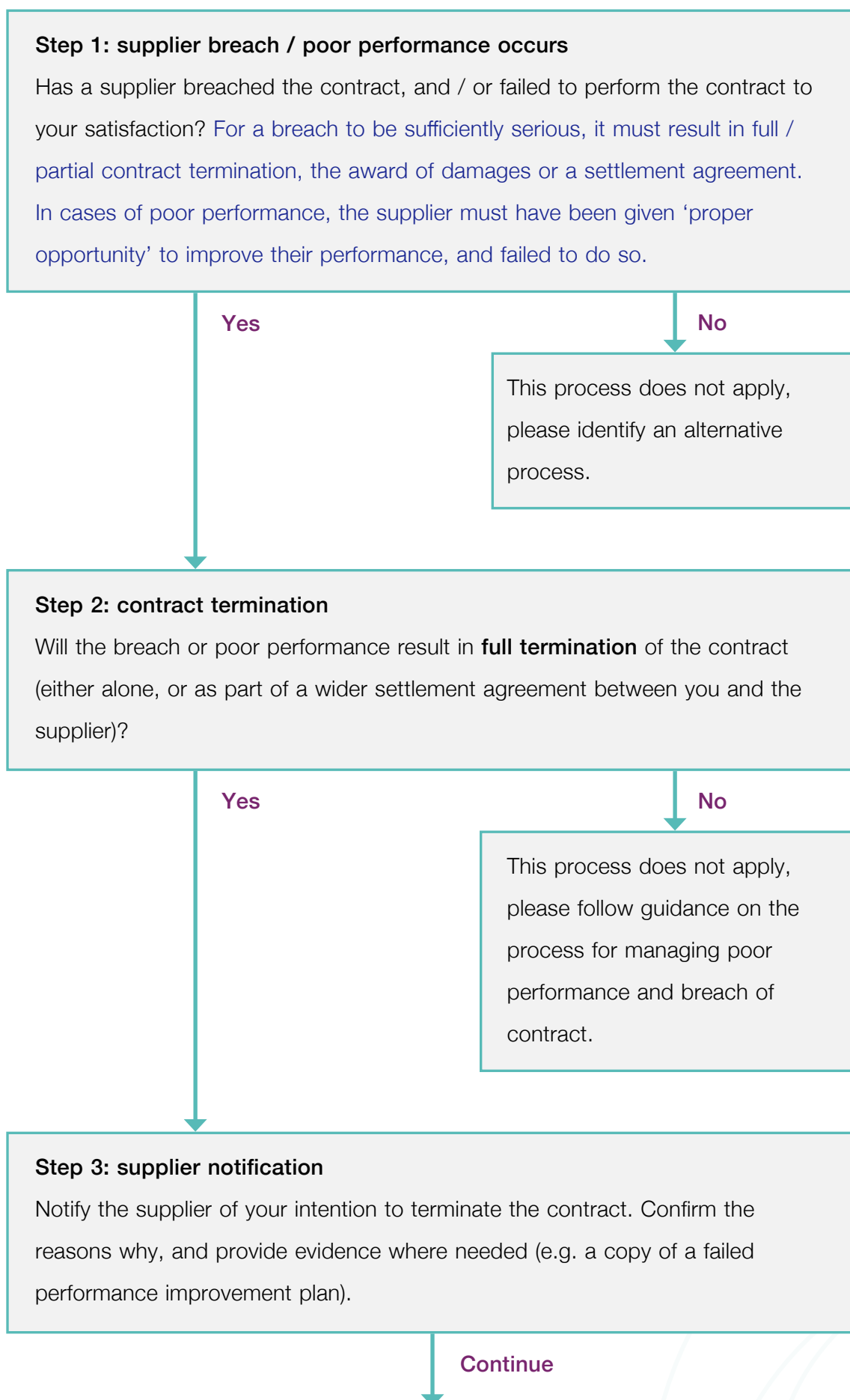
The termination process you follow will vary based on the reason for termination. The following represent the main changes to contract terminations under the Procurement Act.

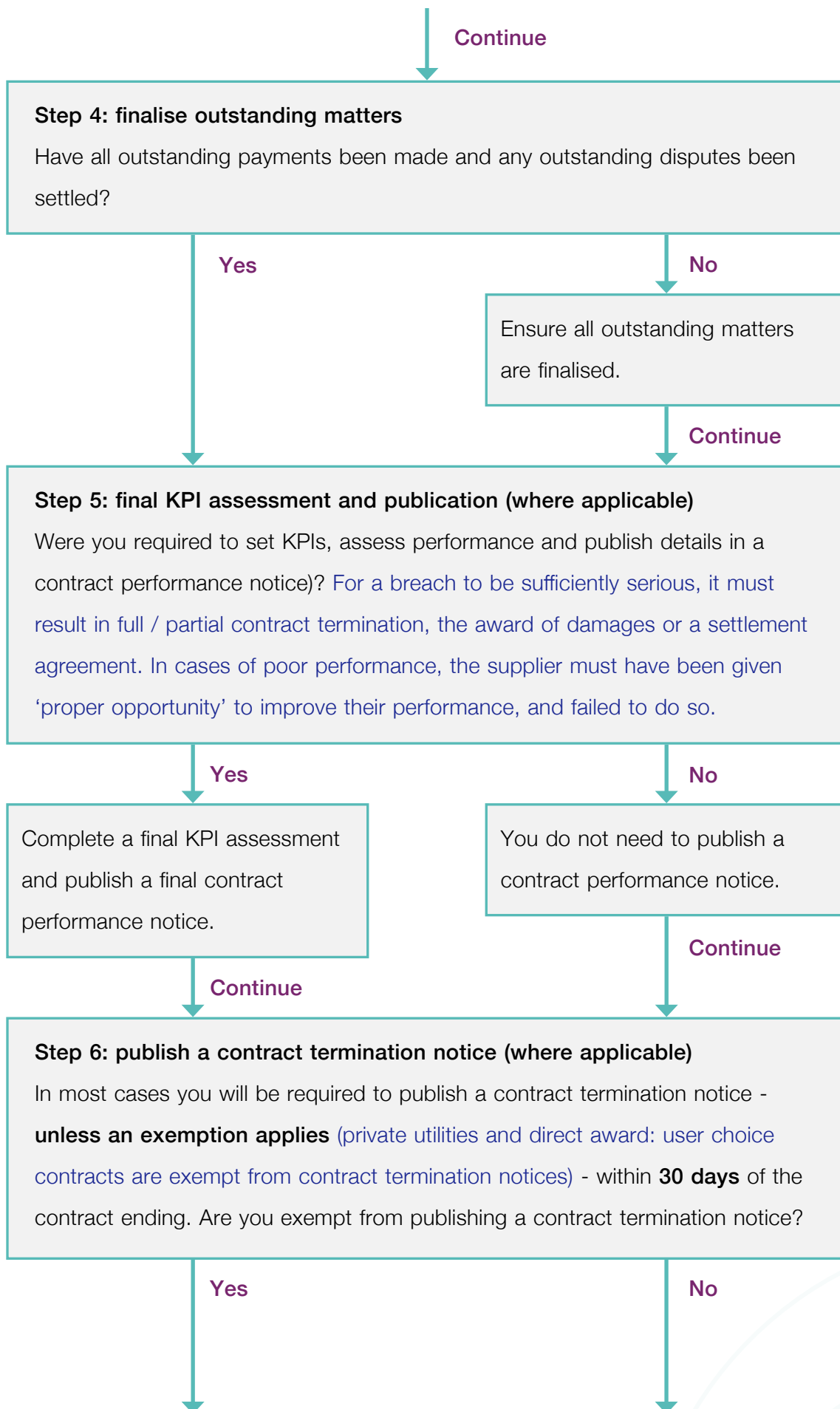
Process	Reason for termination	Definition
A	Termination on contract expiry / completion of deliverables	Where the contract has reached its end date (including any extensions), or all deliverables have been fulfilled
B	Early termination for breach or poor performance	Where the supplier is found to be in breach of contract, or has failed to deliver the contract to your satisfaction
C	Supplier / subcontractor exclusion (implied term) - an implied term is a clause that is included in all public contracts by virtue of the Procurement Act (without being expressly agreed). For more information see <i>Fact sheet: implied terms</i> .	The supplier, their subcontractor or a connected person has become subject to a mandatory exclusion ground

Process A: termination on expiry or completion of deliverables



Process B: early termination due to supplier breach or poor performance



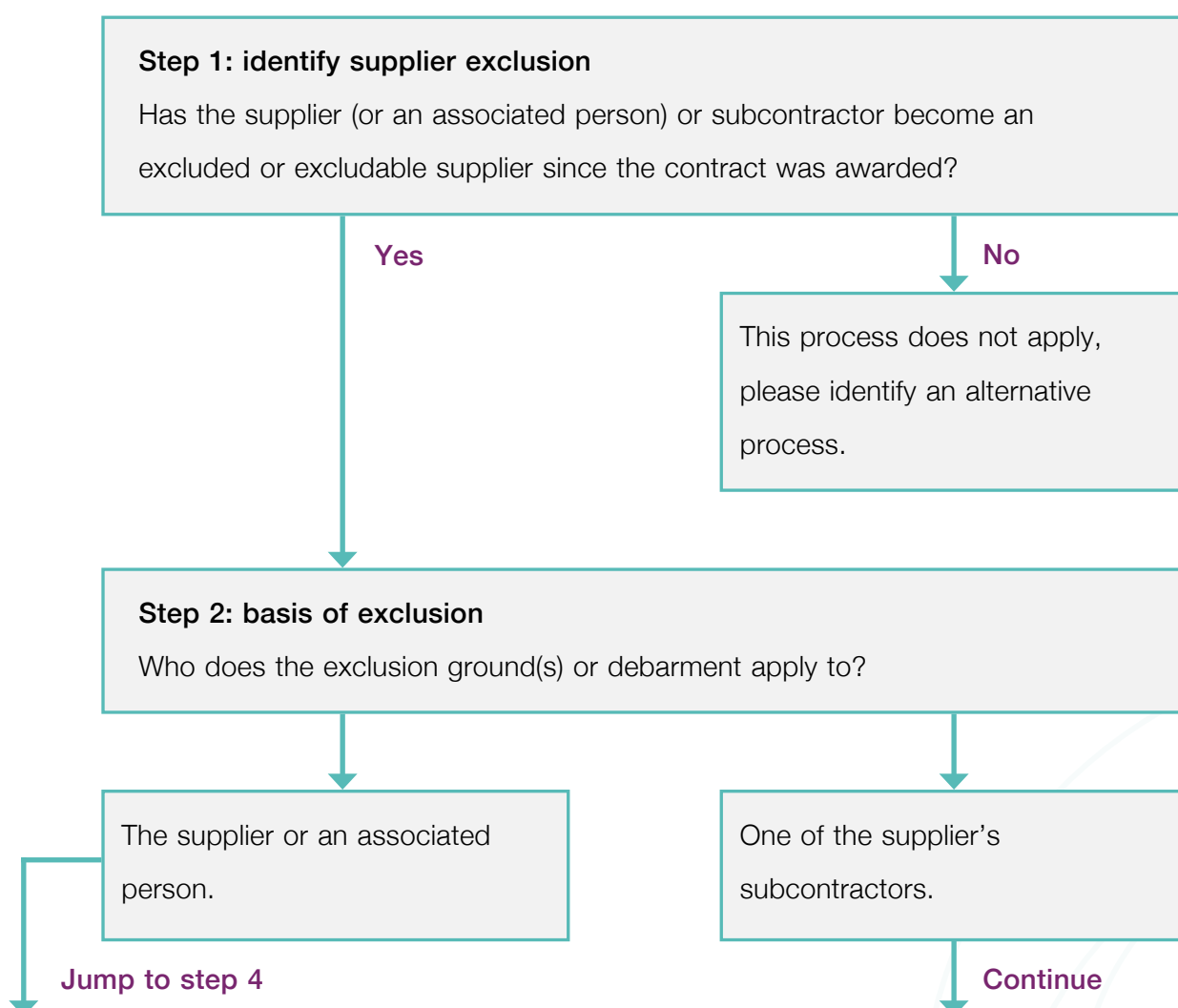


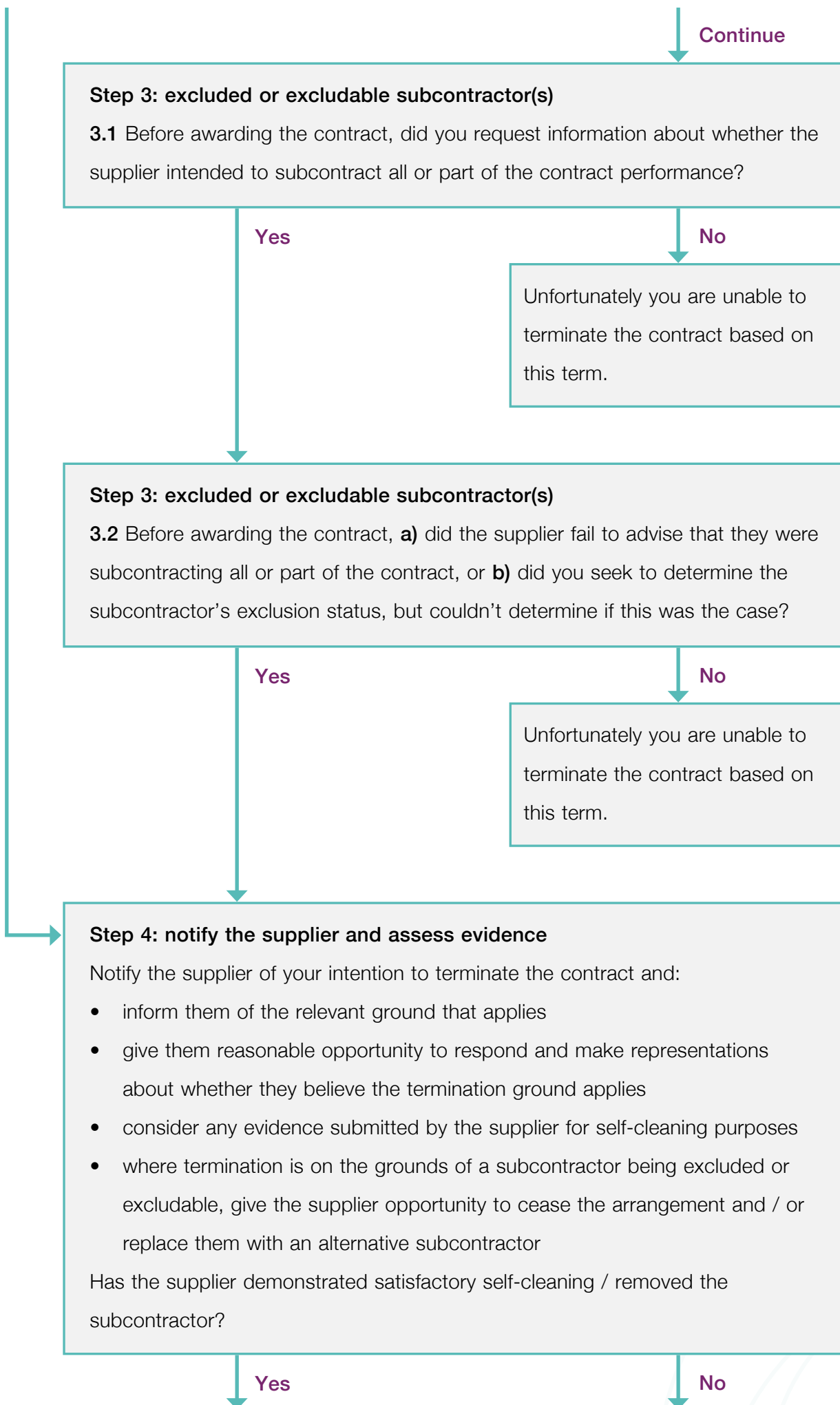


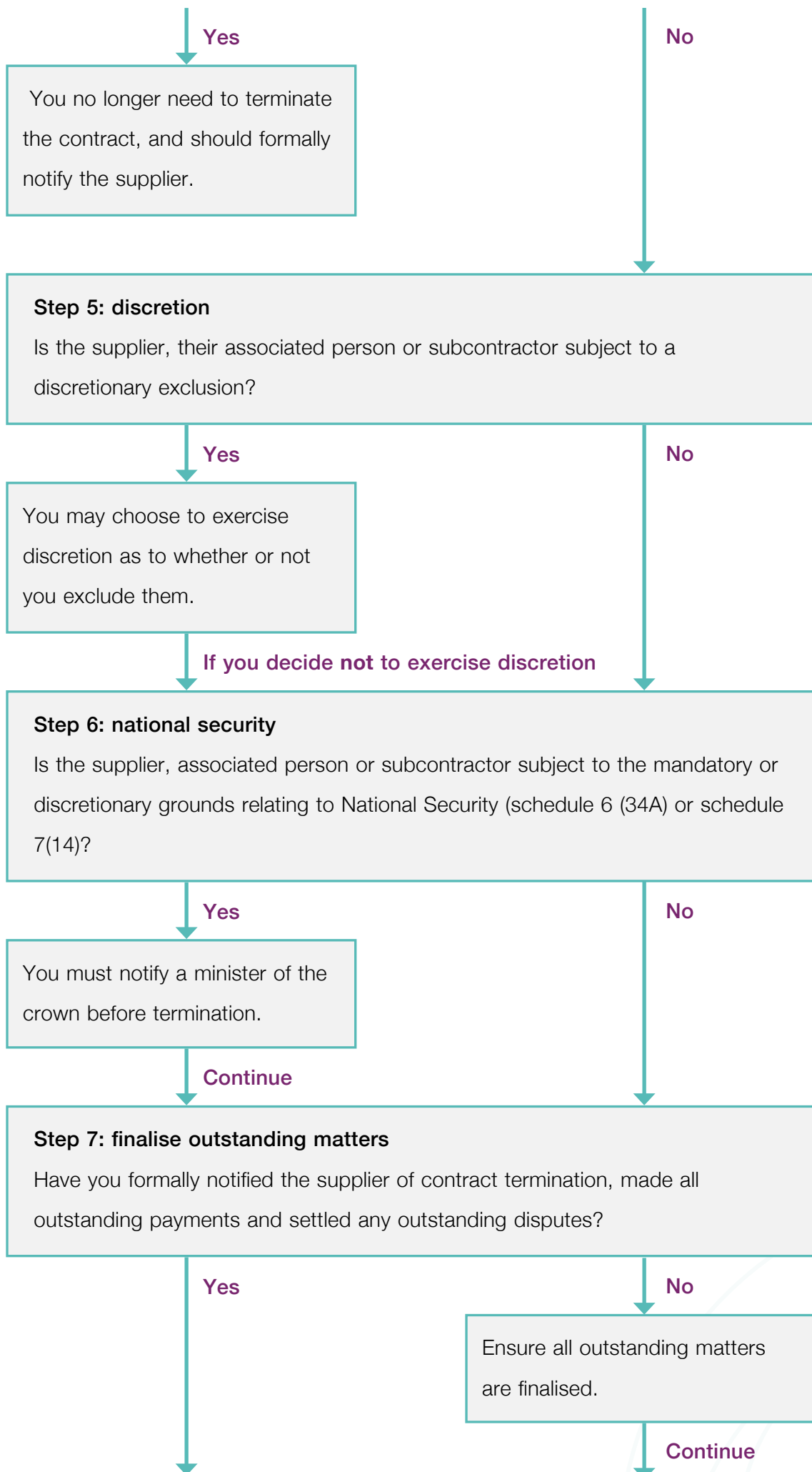
Keep a record of the contract termination and associated correspondence for audit trail purposes.

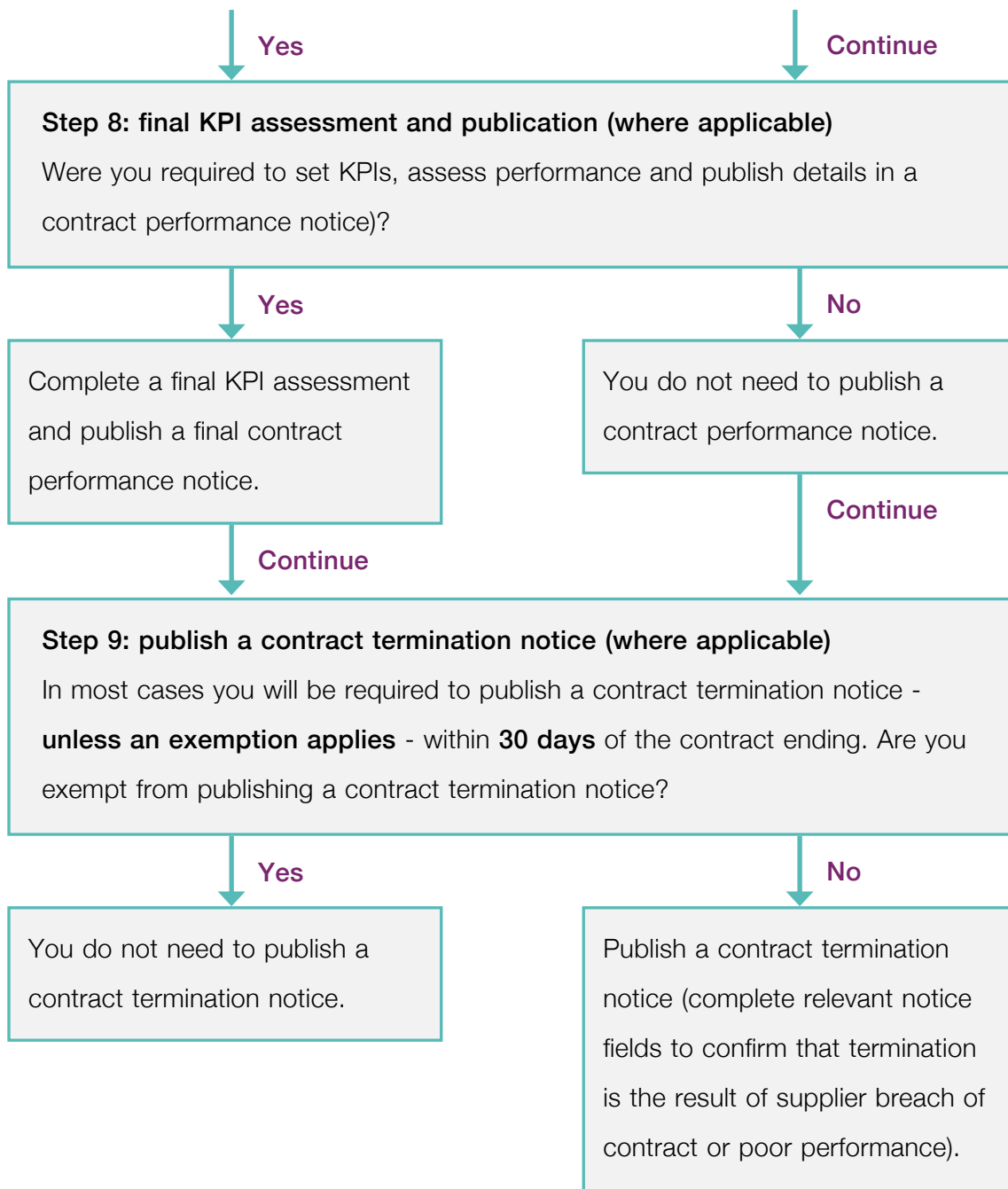
Process C: termination due to supplier exclusion

The act implies two terms into every public contract that allow for termination in the event of a supplier or their subcontractor becoming excluded or excludable, subject to certain conditions.









Keep a record of the contract termination and associated correspondence for audit trail purposes.



Terminating a contract

Checklist

This flowchart is designed to help you comply with the Procurement Act with respect to contract modifications. For more detailed information, please see the step-by-step guide to contract modification. A checklist is also available.

Identify the reason for termination: the termination process you follow will vary based on the reason for termination. The following are examples only and not exhaustive:

Process	Reason for termination	Definition
A	Termination on contract expiry / completion of deliverables	Where the contract has reached its end date (including any extensions), or all deliverables have been fulfilled.
B	Early termination for breach or poor performance	Where the supplier is found to be in breach of contract, or has failed to deliver the contract to your satisfaction.
C	Supplier / subcontractor exclusion (implied term) - an implied term is a clause that is included in all public contracts by virtue of the Procurement Act (without being expressly agreed). For more information see <i>Fact sheet: implied terms</i> .	The supplier (including an associated person) or their subcontractor has become subject to a mandatory or discretionary exclusion ground.

Process A: termination on expiry or completion of deliverables

Termination on expiry or completion:

- ☐ Confirm contract expiry / completion with the supplier.
- ☐ Finalise any outstanding disputes and make final payments.
- ☐ **Where applicable** complete a final KPI scoring assessment and publish a contract performance notice.
- ☐ **Publish a contract termination notice** (unless an exemption applies) - [private utilities and direct award: user choice contracts are exempt from contract termination notices.](#)
- ☐ Keep a full record of the contract termination for audit trail purposes.

Process B: early termination due to supplier breach or poor performance

Termination due to supplier breach of contract / poor performance:

- ☐ Ensure that the breach and / or poor performance will result in **full termination** of the contract. *If this is not the case, see guidance on managing poor performance and breach of contract.*
- ☐ For breach of contract: ensure the breach is 'sufficiently serious', as per the act. For poor performance, ensure you have given the supplier 'proper opportunity' to improve.
- ☐ Give the supplier reasonable notice of your intention to terminate the contract, the ground for termination, and opportunity to respond.
- ☐ Finalise any outstanding disputes and make final payments.
- ☐ **Where applicable** complete a final KPI scoring assessment and publish a contract performance notice.

Publish a contract termination notice (unless an exemption applies) - private utilities and direct award: user choice contracts are exempt from contract termination notices.

Keep a full record of the contract termination for audit trail purposes.

Process C: termination due to supplier exclusion

Termination due to supplier exclusion:

Identify whether it is the supplier (including an associated person) or a subcontractor who is excluded or excludable.

For subcontractors only - check the following conditions were met prior to contract award:

- A. You requested information from the supplier about their intention to subcontract. *If this is not the case, you cannot terminate the contract under this ground.*
- B. Either the supplier did not advise that they were subcontracting the contract, or
- C. You sought to determine if the subcontractor was excluded or excludable, but were not able to do so. *If neither of options B or C apply, you cannot terminate the contract under this ground.*

Give the supplier notice of your intention to terminate the contract, and the relevant exclusion grounds that apply. Allow them reasonable opportunity to respond and make representations about whether they believe the exclusion ground applies.

For suppliers - assess any evidence submitted by the supplier for self-cleaning purposes. *If satisfied, discontinue the termination and notify the supplier.*

For subcontractors - assess any evidence for self-cleaning purposes; give the lead supplier opportunity to end their arrangement with the subcontractor and/or find an alternative subcontractor. *If satisfied, discontinue the termination and notify the supplier.*

- ☐ Where the supplier / subcontractor is subject to a discretionary exclusion, you may exercise discretion over whether or not to exclude them.
- ☐ Where the supplier / subcontractor is subject to a mandatory or discretionary exclusion ground relating to national security, notify a minister of the crown prior to termination.
- ☐ If continuing with the termination confirm intention to terminate with supplier
- ☐ Finalise any outstanding disputes and make final payments.
- ☐ **Where applicable** complete a final KPI scoring assessment and publish a contract performance notice.
- ☐ **Publish a contract termination notice** (unless an exemption applies) - [private utilities and direct award: user choice contracts are exempt from contract termination notices.](#)
- ☐ Keep a full record of the contract termination for audit trail purposes.



Terminating a contract

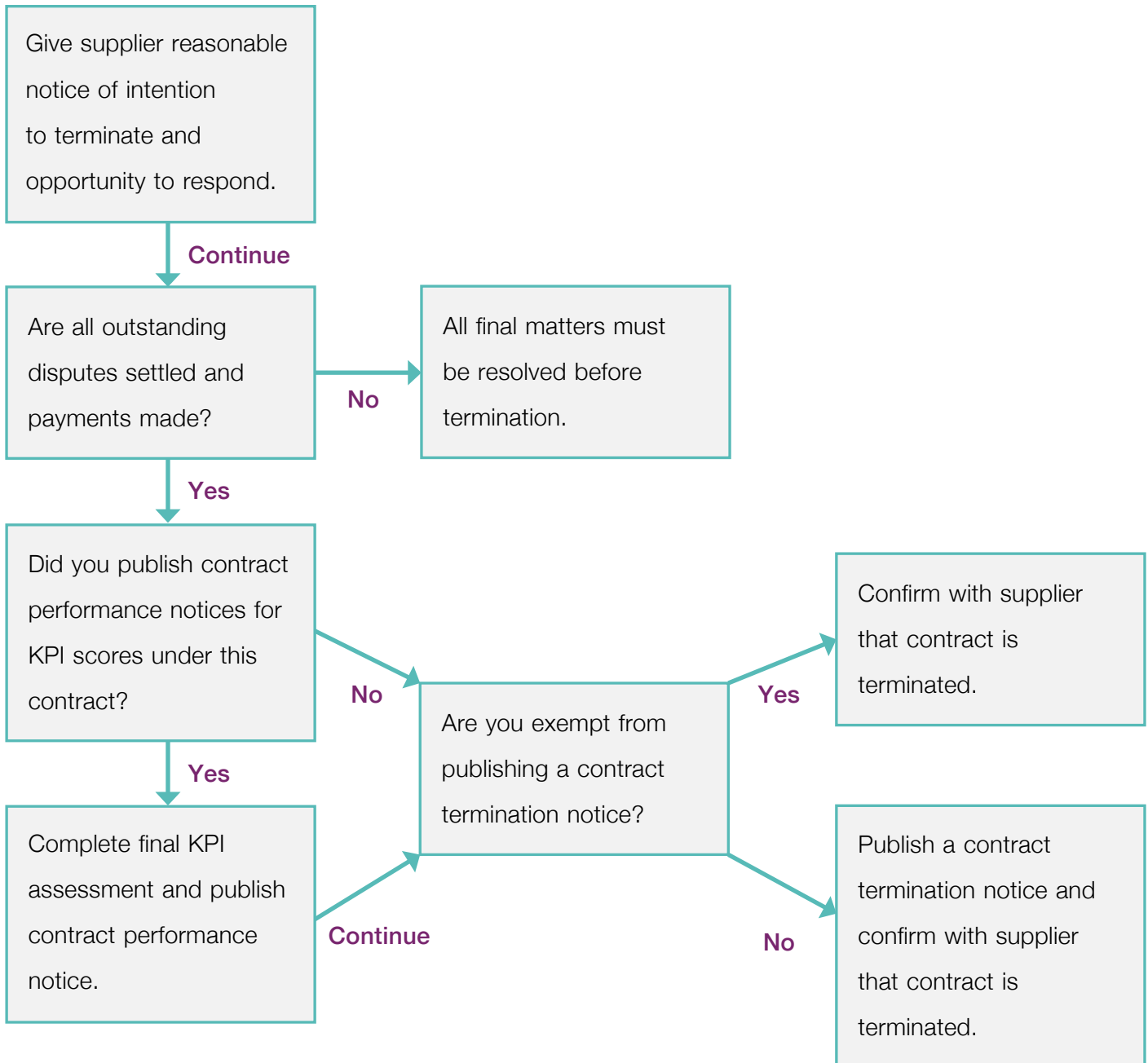
Flowcharts

This flowchart is designed to help you comply with the Procurement Act with respect to contract terminations. For more detailed information, please see the step-by-step guide to contract modification. A checklist is also available.

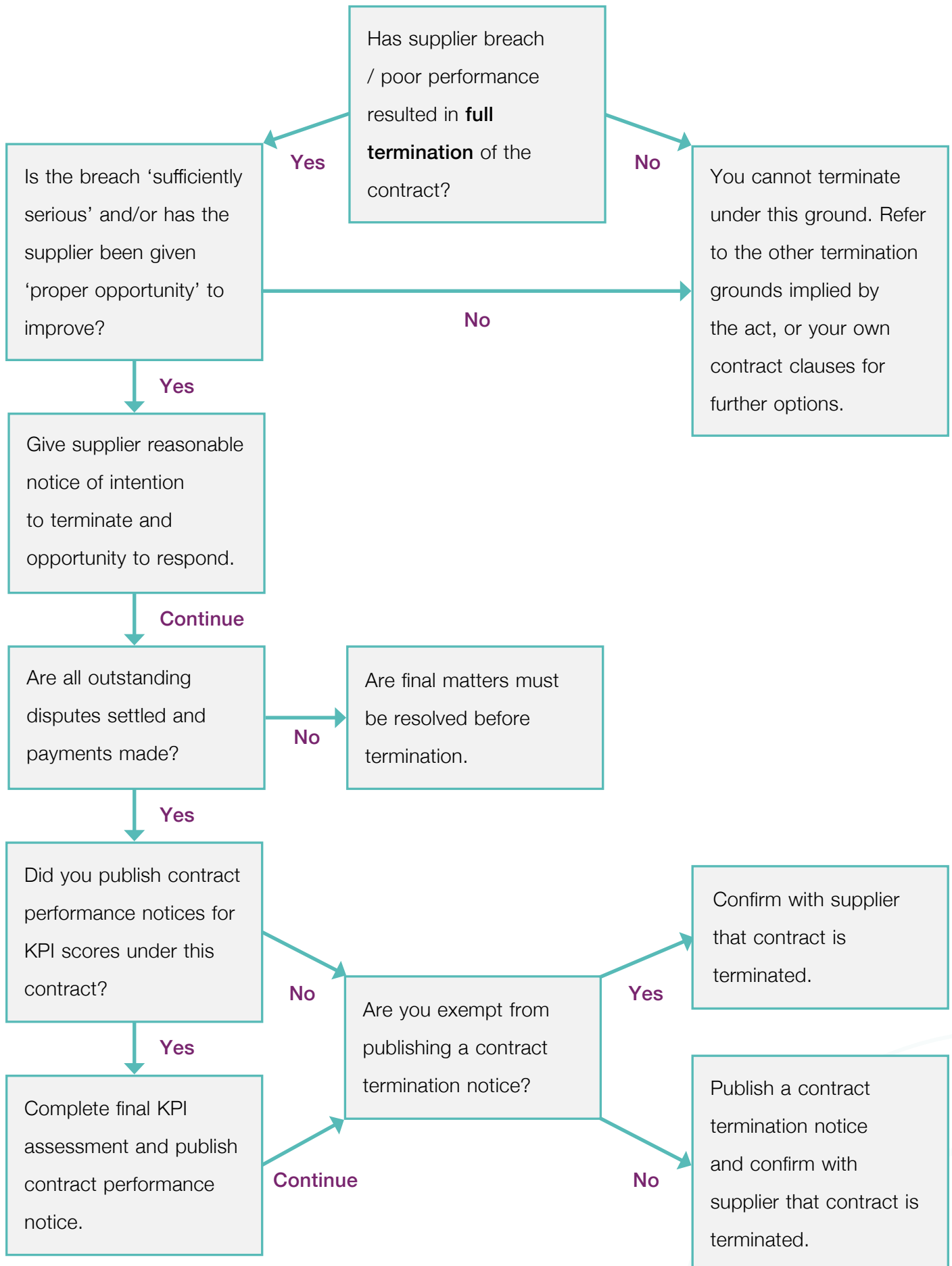
First, identify the reason for termination - this will identify the process to follow. The examples below are examples and not exhaustive.

Process	Reason for termination	Definition
A	Termination on contract expiry / completion of deliverables	Where the contract has reached its end date (including any extensions), or all deliverables have been fulfilled
B	Early termination for breach or poor performance	Where the supplier is found to be in breach of contract, or has failed to deliver the contract to your satisfaction
C	Supplier / subcontractor exclusion (<i>implied term</i>)	The supplier (including an associated person) or their subcontractor has become subject to a mandatory or discretionary exclusion ground

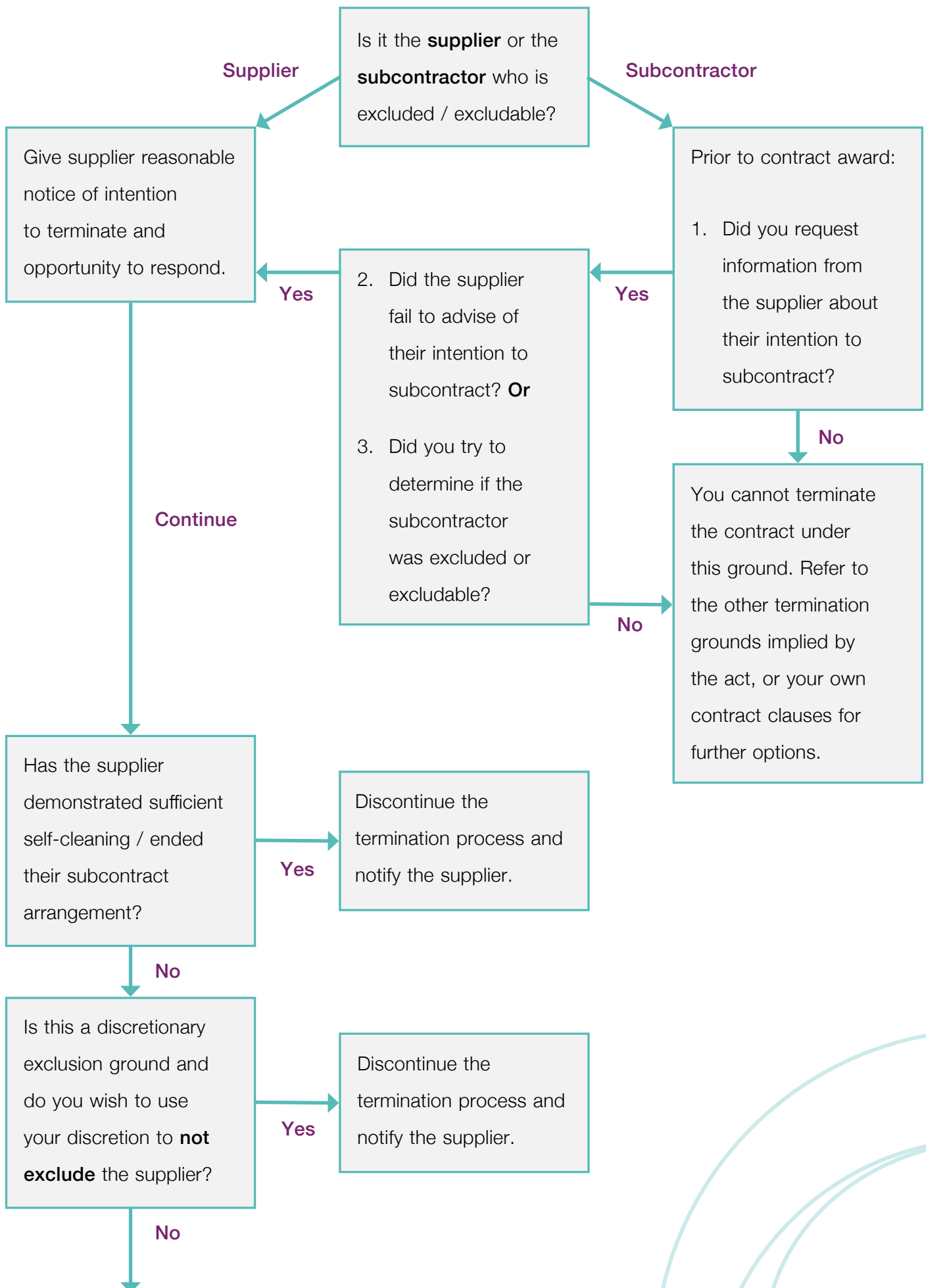
Process A: termination on expiry or completion of deliverables

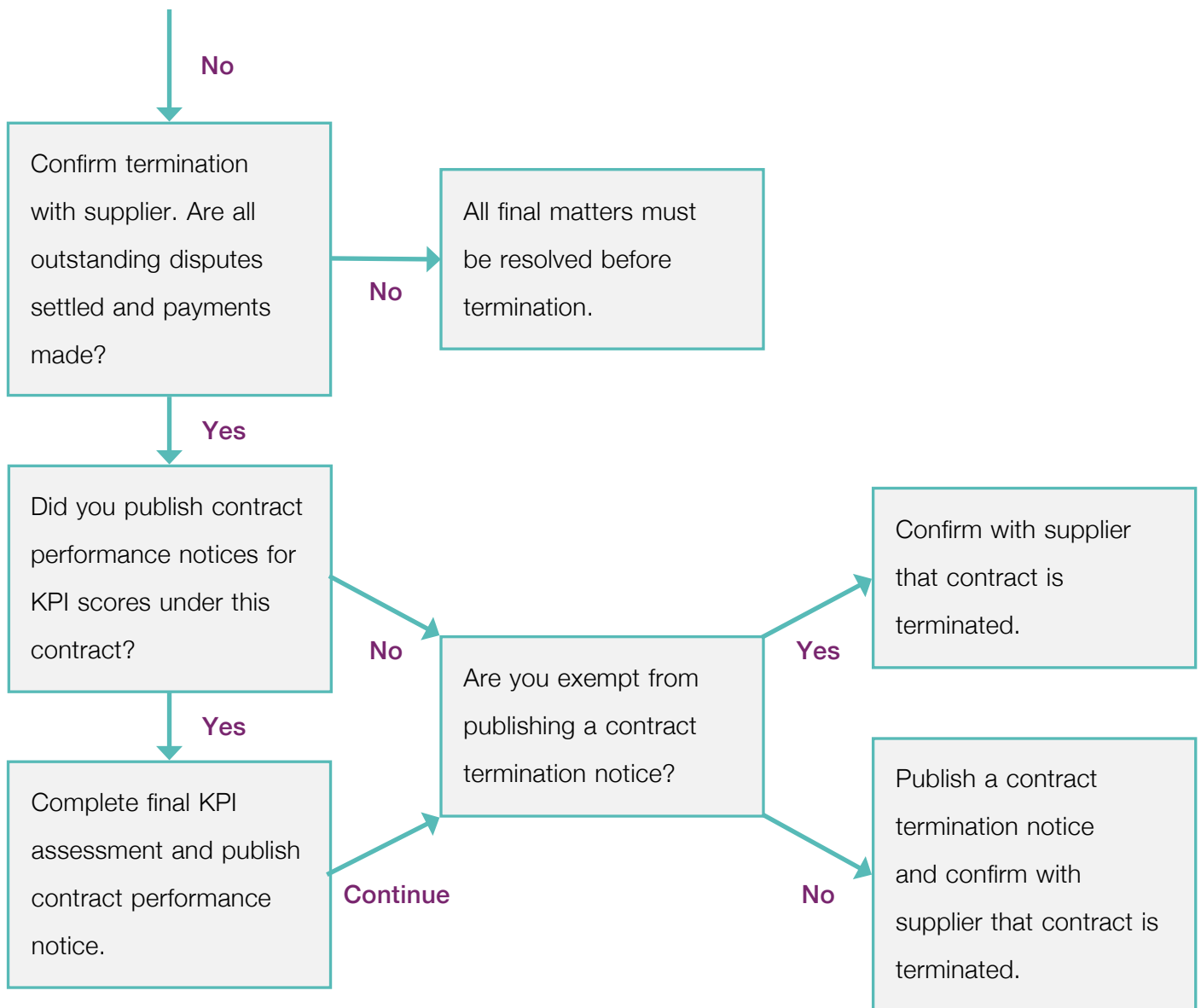


Process B: early termination due to supplier breach or poor performance



Process C: termination due to supplier exclusion







Defence and Security Summary Document

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A. Introduction

Scope of Summary Document

This document provides an overview of the changes in the Procurement Act as they apply to defence and security contracts and contracting authorities. While the majority of defence and security procurements will follow the general regime (as set out in Summary Documents 1-9), some exemptions and additional provisions apply specifically for defence and security contracts. This document provides details of:

- The key changes between the Defence and Security Public Contracts Regulations 2011 (DSPCR 2011) and the Procurement Act.
- The exemptions in the Procurement Act for contracting authorities procuring defence and security contracts.
- Additional provisions in the Act for defence and security contracts and contracting authorities.
- An overview of the changes to the Single Source Contract Regulations (SSCRs).

Where no change, exemption or additional provision is listed, it should be presumed that the general regime applies, as detailed in Summary Documents 1-9. This document is designed to supplement those Summary Documents.

Defence and Security Procurement

Prior to the new regime being introduced, the majority of public contracts for defence and sensitive security equipment, services and works were procured and managed using DSPCR 2011. Procurements by the Secretary of State for Defence for defence purposes are also governed by the Single Source Contract Regulations (SSCRs) 2014 if they have a value of over £5 million, have been awarded without being competed, and are not specifically excluded from the SSCRs.

Sensitive utility contracts also fell under DSPCR 2011. All other types of contracts were procured using the Public Contracts Regulations 2015, Utilities Contracts Regulations 2016 or the Concessions Contract Regulations 2016, unless completely exempt.

The main change under the Procurement Act is each of the above regimes is combined into one single set of rules, which has the benefits of:

- Making compliance with the regulations easier for contracting authorities.
- Making the rules less complex for suppliers.
- Creating a more uniform approach to public procurement.

Definitions

Key definitions in the Act, including any changes from existing regulations, are as follows:

Definition	Procurement Act	DSPCR 2011 - Change
Defence and Security Contract a. military equipment b. sensitive equipment c. goods, services or works necessary for the development, production, maintenance or decommissioning of military equipment or sensitive equipment d. logistics services relating to military equipment or sensitive equipment e. goods, services or works for wholly military purposes¹ f. sensitive services or sensitive works; g. goods, services or works that are otherwise relevant to the operational capability, effectiveness, readiness for action, safety or security of the armed forces. This definition also applies to frameworks for the future award of contracts for the supply of goods, services or works as described in points (a) to (g) above. <i>For more information on the scope of defence and security contracts, see the definitions of key terms (section 7(7)) in Appendix 1.</i>	Section 7(1)	Reg. 6(a) - broadly unchanged save for the addition of section 7(1)(g).

¹ "Wholly military purposes" is defined under the Act as meaning

- a. the transportation of military personnel or military equipment;
- b. the training of military personnel;
- c. the training of other personnel to use military equipment;
- d. the construction of military facilities, including military airfields, military storage facilities or facilities for the maintenance of military equipment.

Definition	Procurement Act	DSPCR 2011 - Change
Defence Authority A “defence authority” is a contracting authority specified in regulations made by a Minister of the Crown. Its functions must be wholly or mainly for the purposes of defence or national security. <i>Currently, the Secretary of State for Defence, the Atomic Weapons Establishment (AWE PLC), the Oil and Pipelines Agency and the National Crime Agency are classed as “defence authorities”.</i>	Section 7 (5)-(6)	NA - New definition
Defence Authority Contract A defence and security contract awarded by a defence authority (as above).	Section 7(4)	NA - New definition
Defence and Security Framework A framework that only allows for the award of defence and security contracts (as defined in section 7(1)).	Section 47 (4)(a)	NA – new definition (although “frameworks” themselves existed under DSPCR 2011).

B. Overview of Exemptions

Procurement for defence and security contracts is unique in many respects. For that reason, the Act sets out various exemptions applicable to certain procurement activities. They are designed to allow:

- The UK to take measures for the protection of its security interests.
- Safeguards and protections for sensitive, classified security information.
- Longer-term contracts to be let for complex purchases and security of supply.
- Actions to be taken to avoid gaps in essential capabilities.
- Contractual flexibility to deal with rapidly changing requirements, and take advantage of new and emerging technologies.
- The development of strategic capability within the defence marketplace, to meet national security needs and respond in an agile way to new opportunities and threats.

- For meaningful competition to take place wherever possible, addressing barriers to entry and facilitating better access to the subcontracting market for more SMEs.

Types of Exemptions

For defence and security, full or partial exemptions from the general rules can apply based on:

1. The **contract**: due to either a) other party(ies) with whom you're contracting (e.g. certain government-to-government contracts, joint procurements etc.), or b) the subject matter of the contract (i.e. what is being procured).
2. The **contracting authority** (the organisation undertaking the procurement).

Contracts and contracting authorities may be exempt from:

- The **entire Procurement Act**.
- **Particular sections of the Act** (which set out certain actions within the commercial lifecycle), such as the publication of particular notices.

Fully Exempted Contracts and Contracting Authorities

Some contracts and contracting authorities are fully exempt from the Procurement Act. This means that the Act does not need to be followed (although commercial best practices may be applied where it is appropriate to do so). The SSCR may apply to contracts exempted from the Act - the criteria for it doing so are unchanged.

The following contracts and contracting authorities are exempt from the Procurement Act:

Contract / Contracting Authority	Procurement Act Section	DSPCR 2011 / Change
Fully Exempted Contracting Authorities		
Intelligence Services including the Security Service, the Secret Intelligence Service and the Government Communications Headquarters.	Section 2(5)(b)	NA - New specific exemption for named intelligence agencies.

Contract / Contracting Authority	Procurement Act Section	DSPCR 2011 / Change
Exempted Contracts		
Contracts awarded under a procedure specified in an international agreement (of which the United Kingdom is a signatory) relating to: - The stationing of military personnel, or - The implementation of a joint project between agreement signatories (e.g. for works and services with a host country under a Status of Forces Agreement.)	Schedule 2(23)	Reg. 7(1)(e)(ii) - no change. Reg 7(1)(c) – Act does not contain limitation on a cooperative programme being based on research and development
Intelligence Activities. A contract for the purposes of carrying out, facilitating or supporting intelligence activities.	Schedule 2(26)	Reg. 7(1)(b) - limited change but further clarifies intelligence activities covered.
Defence and Security Contracts where: - The supplier is located outside the UK in an area where the armed forces are deployed, and operational needs require the contract be awarded to that supplier. - The supplier is located outside the UK in a state/territory where the armed forces maintain a military presence, and that state/territory requires the contract be awarded to that supplier. - Contract is awarded under a procedure adopted by an international organisation of which the UK is a member. - Contract is awarded under an arrangement between the UK and other states/territories, for the joint development and/or exploitation of a new product.	Schedule 2(27) Schedule 2(28) Schedule 2(29) Schedule 2(30)	Reg. 7(1) - broadly no change

Contract / Contracting Authority	Procurement Act Section	DSPCR 2011 / Change
Defence and Security Contracts where the supplier is the government of another state / territory (e.g. purchases under the US Foreign Military Sales program.)	Schedule 2(4)	Reg. 7(1) - no change

Misapplication of an exemption could be challenged and some contracts listed under Schedule 2 of the Act are only exempt where certain conditions apply. Contracting authorities should ensure that they meet all conditions relevant to an exemption before they apply it to a procurement.

Exemptions that apply to certain sections of the Act, and additional provisions that apply to defence and security contracts under the Act, are set out in Part C.

C. Changes and Exemptions

This section contains details of the exemptions and additional provisions applicable to defence and security contracts and contracting authorities under the Procurement Act. It also provides more detail on some of the key changes that are unique to DSPCR 2011, and are in addition to those outlined in Summary Documents 1-9.

A quick reference guide to the exemptions can be found in this Defence and Security Fact Sheet.

The information in this section is organised on a module-by-module basis, following the procurement lifecycle, and mirroring the structure of the eLearning and accompanying Summary Documents.

Unless otherwise stated here, the Procurement Act will apply in full to defence and security contracts.

1. Scope, Definitions and Principles

1.1 Exempted Organisations

Some organisations and contracts are fully exempt from the Procurement Act (see Section B above for defence and security details) and some contracts qualify for partial exemptions (as detailed throughout this document). See Section B above for details.

1.2 Thresholds

Defence and security contracts have their own thresholds, as set out in Schedule 1 of the Act (the amounts set out in Schedule 1 will be updated when the Act comes into force to reflect the thresholds that came into force on 1 January 2024):

Type of contract	Threshold amount (including VAT) as of January 2024
Defence and security works contracts or concession contracts	£5,372,609
Defence and security goods and service contracts	£429,809
Light touch contracts (including defence and security light touch contracts)	£663,540

Defence and security contracts are not subject to the World Trade Organisation's Government Procurement Agreement (WTO GPA), but their financial thresholds will track against the GPA's (revised every two years to allow for currency fluctuations).

1.3 Light Touch Contracts (Section 9).

The Procurement Act contains additional light touch services for certain defence and security contracts" that apply specifically to defence and security contracts only.

PCR 2015 and the light touch regime include specific rules for certain service contracts where cross-border interests are lower and flexibility in procurement is required. You may have applied this regime if procuring under the PCRs. Light touch contracts are subject to higher thresholds and reduced publication requirements.

DSPCR 2011 does not include any provision for light touch contracts. Instead, it set out a list of "Part B" services at Schedule 2 (Part B services are the predecessor for the light touch regime).

Change: Schedule 1 of the Procurement Regulations 2024 sets out a single light touch regime that simplifies their application by special regime contracts.

- **Table 1:** lists CPV codes for light touch services that may be used by any contract or contracting authority, including defence and security contracts, where relevant to the procurement in question.
- **Table 2:** lists CPV codes for additional light touch services that apply to certain defence and security contracts only (where relevant to the procurement in question). These mostly replicate the Part B CPV codes found in DSPCR 2011.

For ease of reference, a list of defence and security light touch CPV codes can be found in **Fact Sheet: Defence & Security Light Touch CPV Codes**

1.4 The national procurement policy statement (Section 13)

Neither DSPCR 2011 nor PCR 2015 contain reference to the national procurement policy statement, which is new in the Procurement Act.

Change: Ministers may publish a national procurement policy statement setting out the Government's strategic priorities in relation to procurement. Contracting authorities must have regard to the national procurement policy statement. The scope of the statement will be set out within the statement itself. The statement, or parts of it, may apply to all procurement, covered procurement, or only specific types of procurement including defence and security contracts.

1.5 Below-Threshold Procurements (Part 6 - Sections 84 to 88)

DSPCR 2011 does not contain regulations that govern procurements below the thresholds set out in Regulation 9. Under PCR 2015, a separate set of rules applied to procurements that were below the thresholds to which the full regime applied. These were known as “below-threshold procurements”.

Change: procurements below the relevant threshold (set out in schedule 1 of the Act) must now follow the rules detailed in Part 6 of the Act (sections 84 - 88), covering “regulated below-threshold contracts”. This includes requirements to:

- Where the contract is valued above £12,000 (central government authorities) or £30,000 (other contracting authorities), publish a below-threshold tender notice in respect of advertised opportunities and a contract details notice at the appropriate stages of the procurement.
- Identify and (where possible) reduce barriers to participation faced by SMEs.
- Procure using a single-stage procedure - you may not include a separate participation stage that restricts tender submissions based on supplier's suitability, other than for works contracts valued above £138,760 (central government authorities) or £213,477 (other contracting authorities).

In addition, 30-day payment terms are implied into every regulated below-threshold contract.

See **Summary Document 9 - Contract Governance** and the **Fact Sheet on Implied Terms** for more information.

Below-threshold requirements do not apply to exempted contracts.

1.6 Trade agreements and Treaty State Suppliers (Schedule 9)

Exemption: Because the defence and security contracts (other than those under section 7(1)(g)) are not included in the scope of any international agreements (as set out in Schedule 9 of the Act), contracts under this definition (Section 7(1)) do not have to comply with the corresponding sections of the Act that guarantees equal treatment for treaty state suppliers. Contracting authorities therefore have the discretion to exclude suppliers from outside the UK, Crown Dependencies and British Overseas Territories from a procurement process.

More information on the below-threshold procedure can be found in **Summary Document 1: Scope, Definitions and Principles**.

■ 2. Transparency

2.1 Notices and Documents

Changes:

1. Defence and security contracts must publish different notices and associated documents under the Procurement Act than they did under DSPCR 2011. These can be found in the **Defence & Security Transparency Cheat Sheet**.
2. Where procuring a defence and security contract, contracting authorities must indicate that this is the case by completing the relevant field(s) in any tender or transparency notice.

Exemptions: Defence and security contracts are exempt from some transparency requirements:

- **Contract award notice:** the exemption from publishing this notice applies *only for the award of defence and security contracts under a defence framework*.
- **Contract change notice and publication of the modified contract:** the exemption from publishing this notice and any modification applies to all defence and security contracts.

Please see the **Defence & Security Process Flows** which maps the various procurement processes that are broadly applicable to defence and security contracts, alongside their transparency requirements.

2.2 General Exemptions from Duties to Publish (Section 94(1))

Exemption: Contracting authorities are not required to publish or disclose information in notices or other documentation where withholding information is necessary in order to safeguard national security. There is no requirement to notify any party in relation to the withholding of information where this could prejudice the interests of national security. This exemption can be used by any contracting authority.

2.3 Electronic Communications (Section 96(4))

Exemption: the requirement to communicate electronically - or to use an electronic communication system that meets the specification outlined in section 94(2) - does not apply where the contracting authority believes that it may pose a security risk. This exemption applies to all contracting authorities, but may be particularly relevant to those with defence and security interests.

2.4 Record Keeping (Section 98)

Exemption: The requirement to keep records of material decisions made during a procurement, including supplier correspondence, does not apply to defence and security contracts.

See Summary Document 2: Transparency for further information.

■ 3. Procedures

3.1 Competitive Tendering Procedures (Section 20)

Changes: Under the Procurement Act, defence and security procurements may follow a single-stage “open procedure”, which was not previously available under DSPCR 2011. This should offer a new, more simplified route to market, where it is appropriate. Information on the open procedure can be found in **Summary Document 3: Procedures.**

3.2 Duty to Consider Lots (Section 18)

Change: Defence and security contracts are now subject to the duty to consider - prior to publishing a tender notice - whether or not a contract could be divided into “lots”: these are smaller packages of work that may be performed by different suppliers. Benefits include opening the procurement up to greater SME participation.

3.3 Direct Award (Section 41)

Change: The direct award procedure (section 41) replaces the negotiated procedure without prior publication, and adds new mandatory transparency requirements. The justifications for following this procedure are broadly the same as those set out in reg. 16 of DSPCR 2011, with the addition (for all contracting authorities) of a new ground to “protect life, etc.”. Many of the grounds for direct award set out in schedule 5 may apply to defence and security contracts or contracting authorities depending on the circumstances in question, but grounds 18-20 apply specifically to defence and security contracts.

Specific Defence and Security Provisions (Schedule 5 (18-20)):

Direct award may be permitted:

- In contracts for the supply of air or maritime transport to the armed forces / security services (either whilst deployed or to enable deployment) where the nature of the services means it would not be possible for suppliers to hold tenders for 10 days following submission.
- Where in certain circumstances it would be more appropriate to directly award a new contract rather than amend an existing one (this justification can only be used where the new contract would be a qualifying defence contract under section 14(2) of the Defence Reform Act 2014).
- Applicable to defence authority contracts only (and excluding contracts described in section 7(1)(g)), where it is needed to enhance or maintain the operational capability, effectiveness, readiness for action, safety or security of the armed forces.

3.4 Mixed Procurements: Special Regime Contracts (Section 10)

Where the subject matter of a procurement is mixed and covers more than one special regime - such as defence and security plus light touch, or defence and security plus utilities, etc. or a defence and security contract and a non-special regime contract - and the contracting authority has chosen not to split the different elements into individual contracts (even though the different elements could reasonably be supplied under separate contracts), then that contract will be subject to the full scope of the Act (without any of the exemptions that are applicable to any of the specialist regimes involved).

However, an exemption to this is provided for defence and security contracts in section 10(4): where a mixed special regime procurement contains elements of defence and security then the mixed procurement may be treated as a defence and security contract where there are good reasons for not awarding separate contracts (section 10(4)).

3.5 Tender Notices and Associated Tender Documents (Section 21)

Change: Contracting authorities must provide associated tender documents in accordance with the tender notice for each new procurement. Associated tender documents should supplement the tender notice, and together the notice and documents must provide sufficient information for suppliers to submit a tender or request to participate.

If you are conducting an open procedure, then the associated tender documents must be published or provided in full with the tender notice to any supplier wishing to tender.

However, if you are conducting a competitive flexible procedure, then - as long as sufficient information is provided in the tender notice and associated tender documents to enable suppliers to submit a request to participate - further, more detailed information, including sensitive information, can be shared with shortlisted suppliers at the next stage of the procurement. For relevant defence and security procurements,

contracting authorities could include safeguards at the participation stage - such as the requirement to sign a nondisclosure agreement - or conditions of participation relating to the access of sensitive information, to safeguard procurements accordingly.

See Summary Document 3: Procedures, for further information.

■ 4. Competitive Flexible Procedure

The competitive flexible procedure replaces the three multistage procedures provided for in the DSPCRs (regs 17-19).

There are no exemptions or additional provisions for defence and security. Section 3.5 above explains how this procedure may be used effectively when undertaking a defence and security, or otherwise sensitive, procurement.

See Summary Document 4: Competitive Flexible Procedure, for further information.

■ 5. Frameworks and Dynamic Markets

5.1 Frameworks: maximum term (section 47)

A defence and security framework is a framework that provides for the future award of defence and security contracts only.

Change and Exemption: The maximum standard term of a defence and security framework is 8 years. This extends the 7 years previously provided for in DSPCR 2011, and is longer than the standard 4-year period provided for under the Act. This takes into account the complexity of defence and security markets, where contracts may need a longer-term service stability, or lead times are extended.

Other Exemptions:

- Section 47(2) of the Act permits defence and security frameworks to exceed the maximum 8-year limit where a contracting authority considers a longer duration is required due to the nature of the goods, services or works to be supplied under contracts to be awarded under the framework. The contracting authority must publish the rationale for needing a longer framework term as part of their tender or transparency notice.

Examples may include: securing a return on investment for the development of new / innovative defence and security technology, or for the operation of specialist defence and security systems that are expected to exceed 8 years.

- Publication of a contract award notice is not required under section 50(1) (see section 50(6)(b)) for defence and security contracts awarded under a defence and security framework.

See Summary Document 5: Frameworks and Dynamic Markets for further information.

■ 6. Supplier Selection and Exclusions

6.1 Excluding suppliers (Sections 26-27 & 57-58)

Change: The exclusions regime set out in the Procurement Act is different from that which is applied under DSPCR 2011.

DSPCR 2011 addressed exclusion grounds in regulations 23(1) and 23(4) as the “criteria for the rejection of economic operators”. Where an exclusion ground applied to a particular supplier, contracting authorities had to treat that supplier as “ineligible” and to not select a supplier where they or a person who has powers of representation, decision or control of the supplier had been convicted of certain offences or certain other grounds apply.

Under the Procurement Act, all contracting authorities must follow the updated exclusion regime, which:

- Expands the range of mandatory and discretionary exclusion grounds that apply to suppliers (in schedules 6 and 7)
- Introduces and explains the terms “excluded” and “excludable” supplier
- Provides a process for assessing supplier self-cleaning
- Gives contracting authorities a discretion to exclude a supplier for discretionary exclusion grounds.
- Introduces rules that cover a supplier’s connected persons, associated persons and sub-contractors.
- Introduces a debarment list, which is a list of suppliers that a Minister of the Crown considers (following an investigation) are excluded or excludable and may be unfit to bid for public contracts.

More information can be found in **Summary Document 6 - Supplier Selection**.

6.2 National Security

There are two new exclusion grounds based on national security (one mandatory, meaning that a supplier ‘must’ be excluded, and the other discretionary, meaning they ‘may’ be excluded). All contracting authorities must assess their suppliers against these grounds, including for defence and security contracts. Full details can be found in **Summary Document 6**.

Mandatory Ground (Schedule 6 para 35)

Following an investigation by the newly established **National Security Unit for Procurement** (or by the Welsh Ministers or Northern Ireland department) a Minister of the Crown can decide to put a supplier on the debarment list under the national security mandatory exclusion ground. This ground allows for suppliers to be put on the debarment list in respect of contracts of a particular description, rather than all contracts, where the supplier or a connected person:

- a. pose a threat to UK national security and
- b. would pose a threat to UK national security in the delivery of a particular description of public contracts, by reference to, for example:
 - The goods, works or services being supplied.
 - The location of the supply.
 - The contracting authority in question.

Suppliers will be added to the debarment list with a clear reference to the **description of contracts (for example by reference to goods, works or services, location of supplier or contracting authority)** that the debarment applies to. Contracting authorities **must** treat the supplier as an excluded supplier for a procurement process that relates to the relevant description of contract. However, where the procurement does not relate to a contract of the relevant description, the supplier is not an excluded supplier on this basis. This applies to all above-threshold contracts, not just defence and security.

Contracting authorities must notify a Minister of the Crown of their intention to exclude a supplier on this ground.

Discretionary Ground (Schedule 7(14) & Section 29)

Following an investigation by NSUP, a supplier may be placed on the debarment list on the discretionary NS exclusion ground. Alternatively, if the contracting authority determines that the supplier or a connected person poses a threat to UK national security, they may exclude the supplier from the procurement without the supplier being on the debarment list. This applies to all public contracts, not just defence and security. Because this is a discretionary exclusion ground, whether or not the supplier is on the debarment list on this ground, contracting authorities must exercise discretion over whether or not to exclude the supplier.

Relevant contracting authorities (which for this purpose excludes Ministers, government departments and the Corporate Officers of the House of Lords and the House of Commons) must notify a Minister of the Crown of their intention to exclude a supplier on this ground and seek the Minister's agreement to exclude.

6.3 Direct Award (section 41)

Under the Procurement Act it is not generally permitted to award a contract to an excluded supplier.

Exemption: under section 41 ((Direct award in special cases), a contract may be awarded to an excluded supplier where there is “overriding public interest” in doing so. This is defined as:

- Where it is necessary in order to construct, maintain or operate critical national infrastructure (for example water or electricity supply).
- Where it is necessary to ensure the proper functioning of a sector on which the defence, security or economic stability of the UK relies (for example, where the continued manufacture of essential specialist defence equipment would be at risk if the contract is not awarded to the supplier).
- Where failure to do so would put the conduct of military or security operations, or the effective operation of the armed forces or intelligence services at risk.
- Where the direct award is being made on the grounds of extreme and unavoidable urgency and cannot be awarded to, or performed by, a non-excluded supplier within the necessary time frame.

Contracting authorities must be satisfied that the grounds for awarding a contract to an excluded supplier are robust and the overriding public interest test in the Act is met.

See Summary Document 6: Supplier Selection, for further information.

■ 7. Assessment and Award

Change: Contracts are assessed under the Act based on “Most Advantageous Tender”, rather than “Most Economically Advantageous Tender”, sending a clear message to contracting authorities that tenders do not have to be awarded on the basis of lowest price, or that price must always be weighted higher than non-price criteria. This applies to, and is a change for, *all* contracts and contracting authorities.

In practice, it will enable contracting authorities working on defence and security contracts to better take into account the specific needs and objectives of those contracts - in their award, and in their operation over the contract lifetime - when awarding them.

Exemption: A contract award notice is not required for the award of defence and security contracts under a defence and security framework.

See Summary Document 7: Assessment and Award, for further information

■ 8. Remedies, Procurement Oversight and the Debarment List

8.1 Remedies

Change: Defence and security contracts will now follow the same remedies regime as all other contracting authorities under the Act.

Exemptions:

Interim Remedies - Section 102(2) sets out a test that must be applied by the courts when they determine whether to make an interim order under 102(1) (including the lifting of the automatic suspension). This includes a public interest test, which specifically includes “avoiding delay in the supply of the goods, services or works provided [...] in respect of defence or security interests”.

Post-Contractual Remedies - Section 103 confirms that even where one of the legal conditions to set-aside a contract is met, then - as with interim remedies - there is a need for the courts to consider public interest, including with respect to defence and security.

8.2 Debarment

Investigations under Section 60: Reports (Section 61)

Exemption: If a Minister of the Crown considers it necessary to safeguard national security, then a report produced following a debarment investigation by the Minister may:

- remove information before publication / sharing with the supplier concerned.
- not be published at all.
- not be given to the supplier in question.
- disclosed only to people that the Minister considers appropriate.

Debarment Proceedings and Closed Protocol Material (Section 66)

Exemption: Provisions set out in Part 2 of the Justice and Security Act 2013 (disclosure of sensitive material) can be applied for by the parties to the proceedings or the Minister of the Cabinet Office in debarment proceedings (specifically proceedings for interim relief and appeals) to protect sensitive material and safeguard national security.

This also applies to remedies proceedings in Section 106.

See Summary Document 8: Remedies, Procurement Oversight and the Debarment List, for further information.

■ 9. Contract Governance

9.1 Contract Modifications (Section 74 & Schedule 8)

Change: The Act contains a list of ten grounds under which it is permitted for contracting authorities to make contract modifications. A similar provision existed in PCR 2015. Under DSPCR 2011, however, contract modifications were only subject to the principles established in EU case law². Under the Act, defence and security contracts must now meet the conditions of one or more grounds for modification, should the contracting authority wish to modify that contract within its lifetime.

The new permitted grounds for modification, and details of how this process works, are set out in **Summary Document 9: Contract Governance** (which also includes a number of learning aids to support implementing this new practice).

Additional Provision: Two of the ten specific grounds for modification exist exclusively for **defence authority contracts**, as set out in Schedule 8(10) and (11):

- Modification is permitted when necessary to take advantage of developments in technology, or to prevent or mitigate against their adverse effects.
- Modification is permitted to ensure the continuous supply of goods, works or services to maintain the operational capabilities, effectiveness, readiness for action, safety, security or logistical capabilities of the armed forces.

Examples of how these grounds may be used (depending on the exact circumstances of the contract) are:

- Modifying a contract for surveillance at sensitive sites, where upgraded equipment is required to protect against developments in counter-surveillance technologies.

This applies to any type of technology, providing it is a defence and security contract procured by a defence authority.

- Modifying a contract for the provision of medical packs to the armed forces overseas, while a new contract is being procured.

This applies to any goods, services or works for the armed forces, for the purpose as described in Schedule 8(11), where the modification is required to ensure continuous supply.

Exemption: Defence and security contracts do not need to publish a contract change notice, or publish a copy of the modified contract.

² European Court of Justice case C-454/06, 2008 - *Presstext*

9.2 Electronic Invoicing: Implied Term (Section 67)

The Act implies a term into every public contract, which requires contracting authorities to accept and process payments for any undisputed invoice in the required electronic form. This requirement already exists within DSPCR 2011.

Exemption: The implied term does not prevent a defence authority from requiring the use of a particular system that involves the payment of fees by a supplier. This provision recognises the specific security needs that may apply to defence authorities, as well as providing for contracts operating in countries where the local market is unable to use a specific platform.

9.3 Implied Payment Terms in Public Contracts (Sections 68 & 73)

Change: these are new provisions that do not exist in DSPCR 2011. The Act implies 30-day payment terms (for valid, undisputed invoices) into every public contract. These terms are also extended to cover payments made under a public contract by a supplier to their own subcontractor, ensuring that 30-day payment terms flow through supply chains.

For more information on implied terms, see the Fact Sheet: Implied terms

9.4 Contract Termination (Sections 78 & 79)

Change: The Act introduces a number of other implied terms that allow for contracts to be terminated in the event of a supplier, its associated person or one of its sub-contractors becoming an excluded or excludable supplier since contract award. This includes the mandatory and discretionary grounds for national security. In doing so, the Act introduces a new provision to address national security risks that may arise during a contract's lifetime. Contracting authorities (other than Ministers of the Crown, government departments, the House of Commons or the House of Lords) are required to obtain approval from a Minister of the Crown prior to termination.

See Summary Document 9: Contract Governance, for further information on modifications and termination etc.

D. Single Source Defence Contracts

Note: This section is applicable to single source contracts for “defence purposes” only, as defined under Part 2 of the Defence Reform Act 2014.

Schedule 10 of the Procurement Act makes amendments to Part 2 of the Defence Reform Act (DRA) 2014. The purpose of most of these amendments is to provide the power to make changes to the Single Source Contract Regulations (SSCRs) 2014 (as made under the DRA).

The SSCRs provide the framework for pricing non-competed qualifying defence contracts (and defence sub-contracts) to deliver value for money and fair prices.

Delivering the Defence and Security Industrial Strategy and building on experience since 2014 mean that reforms are needed to ensure the regulations continue to function for traditional defence contracts and can be applied across the full breadth of single-source defence work in the future. The reforms will introduce more choice and flexibility to the regulations, whilst speeding up and simplifying the acquisition process.

An overview of key amendments is as follows:

Amendment	Defence Reform Act 2014	Summary of Key Amendment(s)
Definition of qualifying defence contract (QDC)	Section 14	- Expands the definition of a QDC to include contracts partially for defence purposes, where appropriate. - Provides for the SSCRs to specify circumstances where a contract is and is not to be treated as an existing contract amendment. - Clarifies that amendments to existing contracts not within scope of the DRA will be brought into scope where appropriate.
Pricing of qualifying defence contracts	Section 15	Permits the use of alternative method(s) to calculate contract prices and price amendments, in addition to the formula set out in the DRA.
Contract profit rate	Section 17	Changes and simplifies the calculation used to determine contract profit rate.
Reports	Section 25	Enables flexibility to be introduced into some reporting requirements, where this is appropriate.
Single Source Regulations Office (SSRO)	Section 35	Broadens the scope and strengthens the powers of the SSRO (who regulate single-source contracts) referrals and guidance.

Appendix 1

Defence Definitions

Definitions of key terms in relation to defence and security contracts under the Procurement Act (section 7(7))

“classified information” means information or other material which—

- a. in the interests of national security, requires protection from unauthorised access, distribution, or destruction, or from other compromise, and
- b. on the basis of those interests, has that protection under the law of any part of the United Kingdom;

“decommissioning”, in relation to equipment, includes—

- a. withdrawal of equipment from use;
- b. disposal or destruction of equipment;

“development”, in relation to equipment, includes—

- a. research allowing for the development of equipment, and
- b. development of industrial processes allowing for the production of equipment;

“equipment” includes any part, component or subassembly of equipment;

“maintenance”, in relation to equipment, includes—

- a. repair of equipment;
- b. modernisation of equipment;
- c. modifications to equipment;
- d. installing equipment, including after its transport to a new location;
- e. testing equipment;

“military equipment” means equipment specifically designed or adapted for military purposes, including—

- a. arms, munitions or war material, and
- b. any of the military goods, software and technology the export or transfer of which is controlled by virtue of Schedule 2 to the Export Control Order 2008 (S.I. 2008/3231), as amended from time to time;

“sensitive equipment” means equipment for use for security purposes where—

- a. the use or supply of the equipment may involve dealing with classified information,
- b. the supply of the equipment requires access to a physical site or to other equipment as a result of which classified information is likely to be accessible to the supplier, or
- c. the equipment contains classified information;

“sensitive services” means services performed for security purposes where performing the services—

- a. involves dealing with classified information, or
- b. requires access to a physical site or to equipment as a result of which sensitive equipment or classified information is likely to be accessible to the supplier, and includes the training of personnel to use sensitive equipment;

“sensitive works” means works undertaken for security purposes, where undertaking the works—

- a. involves dealing with classified information, or
- b. requires access to a physical site or to equipment as a result of which sensitive equipment or classified information is likely to be accessible to the supplier;

“supply”, in relation to equipment, other goods, services or works, includes the development of the equipment, other goods, services or works for the purposes of their supply to the contracting authority;

“wholly military purposes” include—

- a. the transportation of military personnel or military equipment;
- b. the training of military personnel;
- c. the training of other personnel to use military equipment;
- d. the construction of military facilities, including military airfields, military storage facilities or facilities for the maintenance of military equipment.



Defence and security

Process flows

Note, these process flows apply to contracts that meet the definition of a 'defence and security contract' as outlined in section 7(7) of the Procurement Act.

Open procedure

1. Publish planned procurement notice (optional) or qualifying planned procurement notice (min 40 days before tender notice if using to reduce timescales).



2. Publish preliminary market engagement notice and undertake preliminary market engagement. You must publish a preliminary market engagement notice if undertaking pre-market engagement, but pre-market engagement is optional.



3. Publish tender notice for open procedure.



4. Observe minimum tender timescales.



5. Determine whether the supplier is an excluded or an excludable supplier.



```
graph TD; A[6. Assess whether the tender is suitable, including:  
a. assessing the conditions of participation  
b. whether the supplier is not a UK or treaty state supplier and whether you wish to exclude them  
c. whether any nominated subcontractor is not a UK or treaty state supplier and whether you wish to exclude them  
d. whether the tendered price is abnormally low  
e. whether there is evidence of corruption or collusion  
f. whether the tender meets all of the requirements  
g. whether the tender has breached any procedural requirements] --> B[7. Assess award criteria.]; B --> C[8. Issue assessment summaries.]; C --> D[9. Publish contract award notice.]; D --> E[10. Standstill period - 8 working days.]; E --> F[11. Enter into contract (providing no issues were raised during standstill).]; F --> G[12. Publish contract details notice (Inc. contract if over £5m).];
```

6. Assess whether the tender is suitable, including:

- a. assessing the conditions of participation
- b. whether the supplier is not a UK or treaty state supplier and whether you wish to exclude them
- c. whether any nominated subcontractor is not a UK or treaty state supplier and whether you wish to exclude them
- d. whether the tendered price is abnormally low
- e. whether there is evidence of corruption or collusion
- f. whether the tender meets all of the requirements
- g. whether the tender has breached any procedural requirements

7. Assess award criteria.

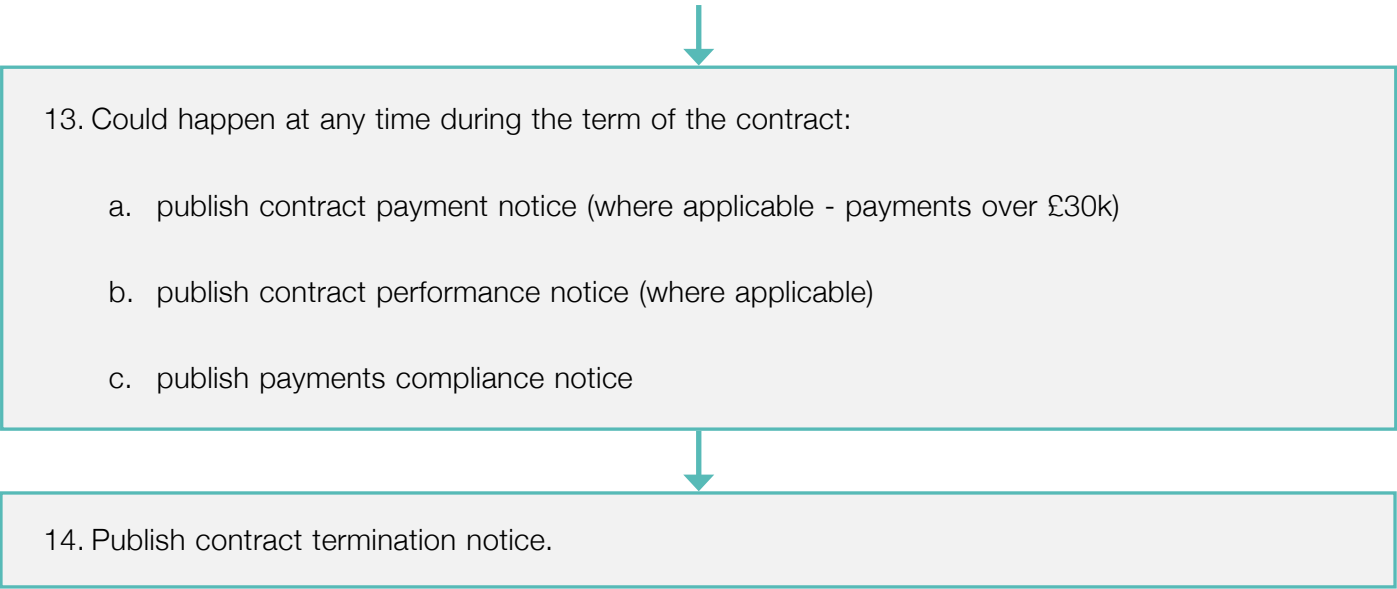
8. Issue assessment summaries.

9. Publish contract award notice.

10. Standstill period - 8 working days.

11. Enter into contract (providing no issues were raised during standstill).

12. Publish contract details notice (Inc. contract if over £5m).



13. Could happen at any time during the term of the contract:

- a. publish contract payment notice (where applicable - payments over £30k)
- b. publish contract performance notice (where applicable)
- c. publish payments compliance notice

14. Publish contract termination notice.

Direct award

1. Identify requirement.

2. Ensure direct award ground is met (additional grounds are available for defence and security).

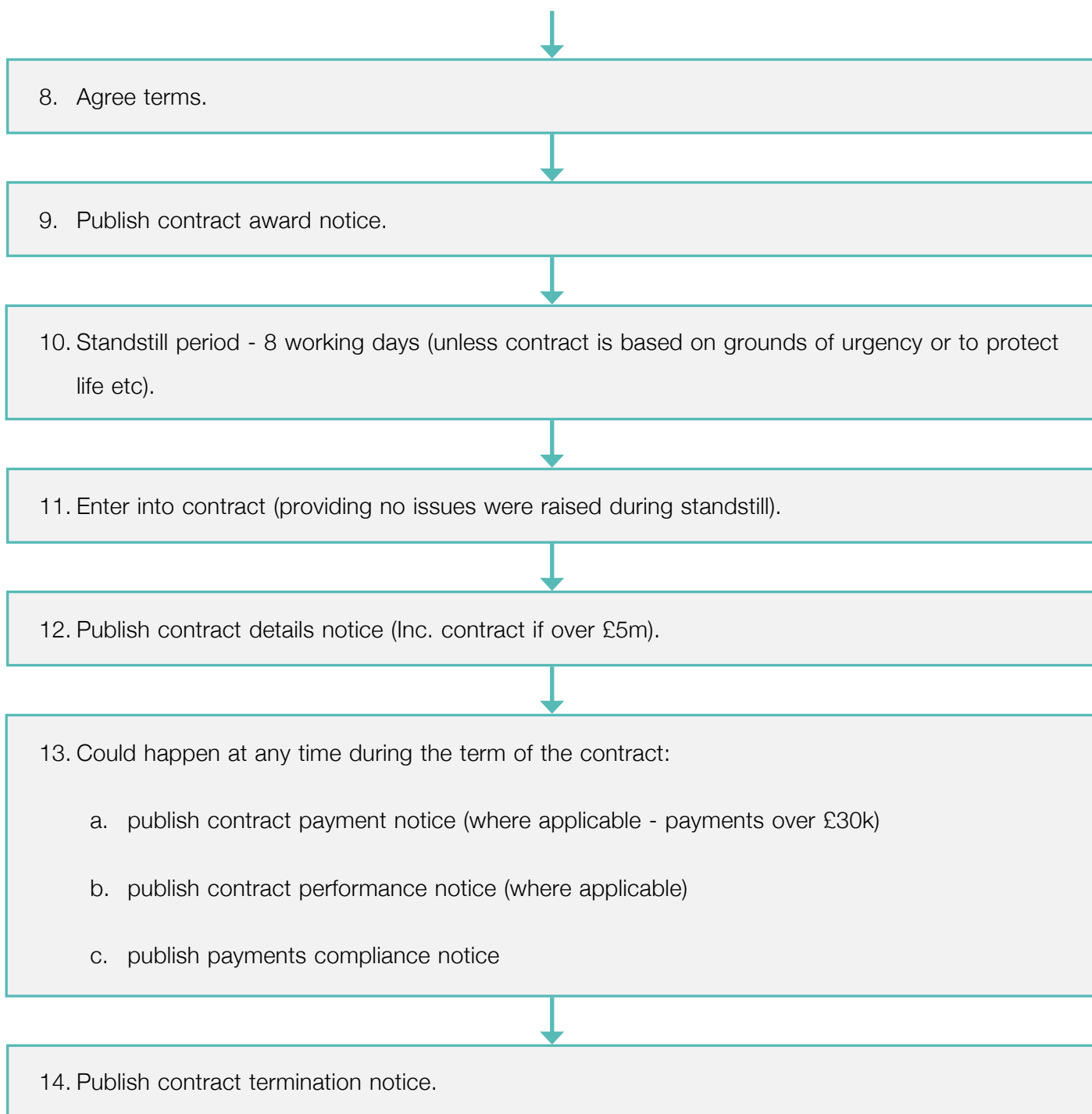
3. Option to publish a transparency notice now.

4. Identify supplier(s).

5. Assess best value (informal competition where appropriate).

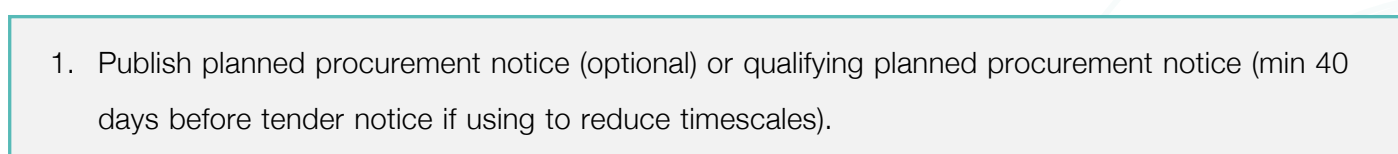
6. Determine whether the supplier is an excluded or an excludable supplier.

7. Publish transparency notice if not already done so.



Establishing a defence and security framework

A defence and security framework is a framework which provides for the future award of defence and security contracts (see section 7).



```
graph TD; A[ ] --> B[2. Publish preliminary market engagement notice and undertake preliminary market engagement. You must publish a preliminary market engagement notice if undertaking pre-market engagement, but pre-market engagement is optional.]; B --> C[3. Publish tender notice and associated tender documents for frameworks based on competitive procedure (open or competitive flexible procedure).]; C --> D[4. Observe minimum participation or tender timescales.]; D --> E[5. Determine whether the supplier is an excluded or an excludable supplier.]; E --> F[6. Assess whether the tender is suitable, including: a. assessing the conditions of participation b. whether the supplier is not a UK or treaty state supplier and whether you wish to exclude them c. whether any nominated subcontractor is not a UK or treaty state supplier and whether you wish to exclude them d. whether the tendered price is abnormally low e. whether there is evidence of corruption or collusion f. whether the tender meets all of the requirements g. whether the tender has breached any procedural requirements]; F --> G[7. Assess award criteria.]; G --> H[8. Issue assessment summaries.]; H --> I[ ]; style A fill:none,stroke:none; style I fill:none,stroke:none;
```

2. Publish preliminary market engagement notice and undertake preliminary market engagement. You must publish a preliminary market engagement notice if undertaking pre-market engagement, but pre-market engagement is optional.

3. Publish tender notice and associated tender documents for frameworks based on competitive procedure (open or competitive flexible procedure).

4. Observe minimum participation or tender timescales.

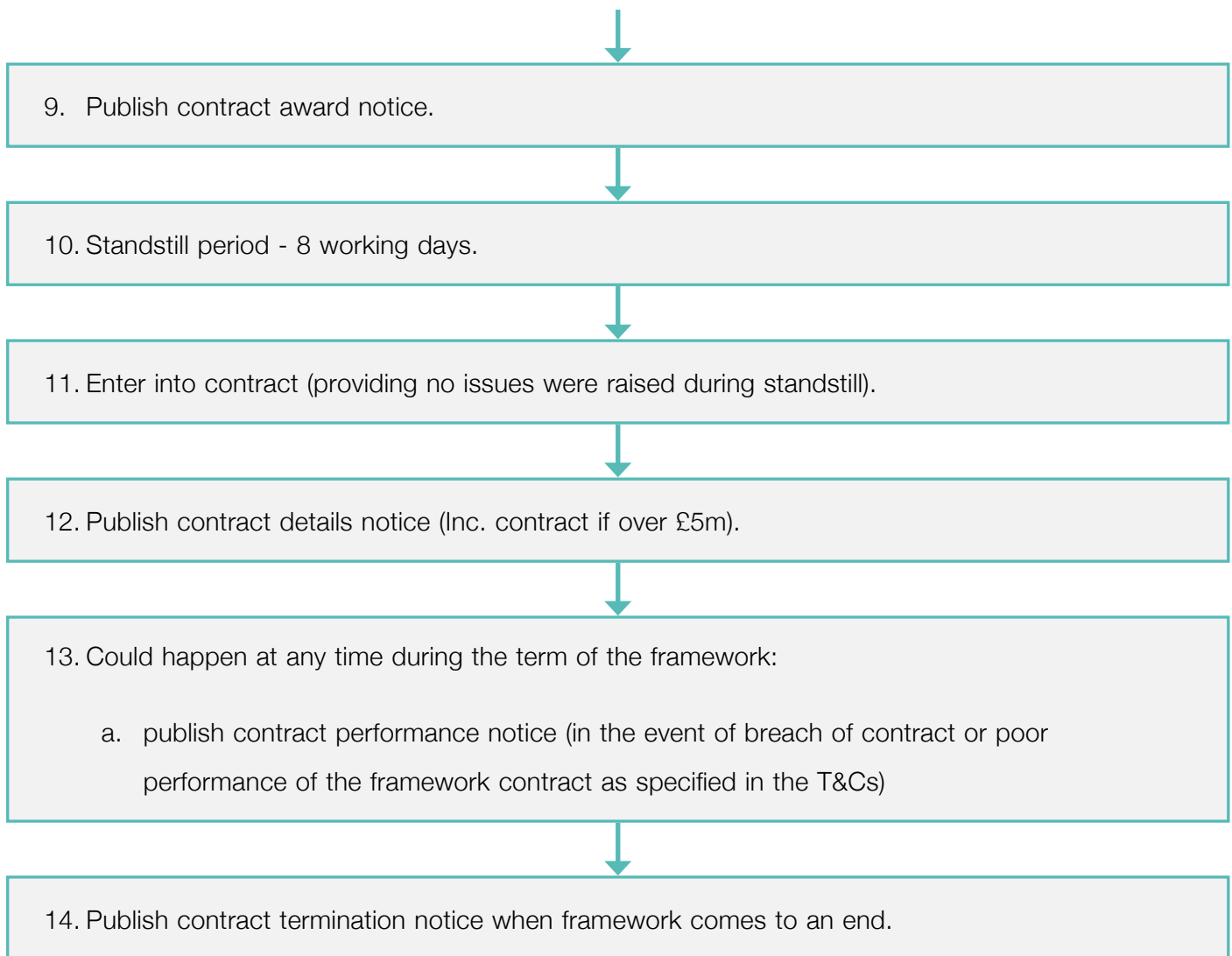
5. Determine whether the supplier is an excluded or an excludable supplier.

6. Assess whether the tender is suitable, including:

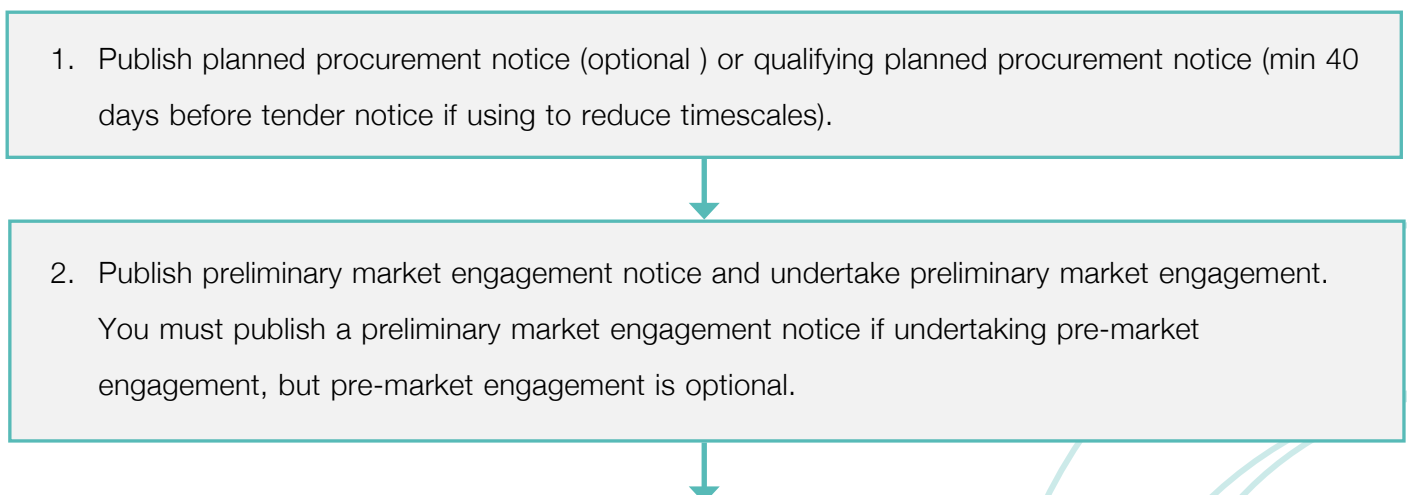
- a. assessing the conditions of participation
- b. whether the supplier is not a UK or treaty state supplier and whether you wish to exclude them
- c. whether any nominated subcontractor is not a UK or treaty state supplier and whether you wish to exclude them
- d. whether the tendered price is abnormally low
- e. whether there is evidence of corruption or collusion
- f. whether the tender meets all of the requirements
- g. whether the tender has breached any procedural requirements

7. Assess award criteria.

8. Issue assessment summaries.



Establishing an open framework (initial and every framework in the scheme)



```
graph TD; A[3. Publish tender notice and associated tender documents for frameworks based on competitive procedure (open or competitive flexible procedure).] --> B[4. Observe minimum participation or tender timescales.]; B --> C[5. Determine whether the supplier is an excluded or an excludable supplier.]; C --> D[6. Assess whether the tender is suitable, including:  
a. assessing the conditions of participation  
b. whether the supplier is not a UK or treaty state supplier and whether you wish to exclude them  
c. whether any nominated subcontractor is not a UK or treaty state supplier and whether you wish to exclude them  
d. whether the tendered price is abnormally low  
e. whether there is evidence of corruption or collusion  
f. whether the tender meets all of the requirements  
g. whether the tender has breached any procedural requirements]; D --> E[7. Assess award criteria.]; E --> F[8. Issue assessment summaries.]; F --> G[9. Publish contract award notice.];
```

3. Publish tender notice and associated tender documents for frameworks based on competitive procedure (open or competitive flexible procedure).

4. Observe minimum participation or tender timescales.

5. Determine whether the supplier is an excluded or an excludable supplier.

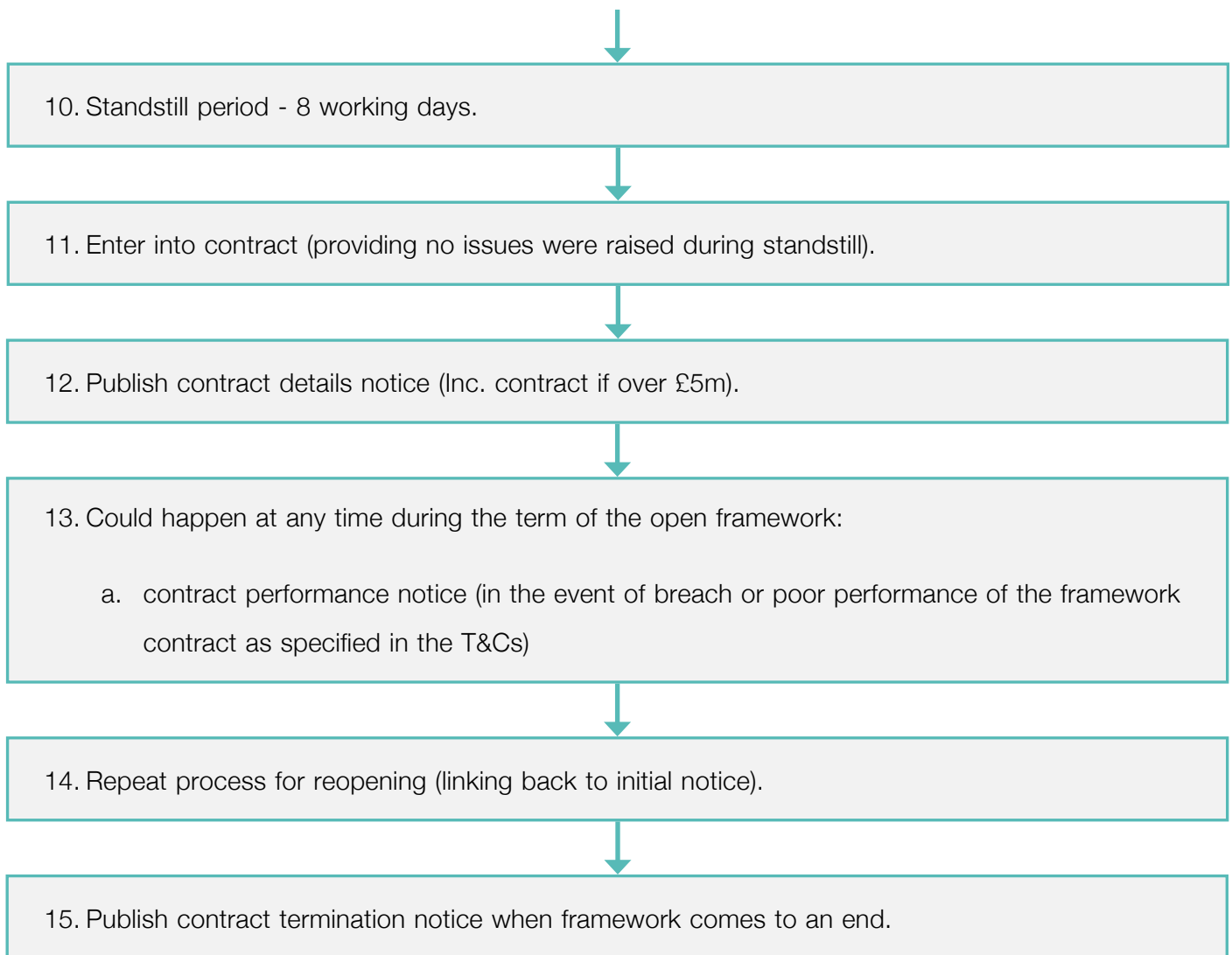
6. Assess whether the tender is suitable, including:

- a. assessing the conditions of participation
- b. whether the supplier is not a UK or treaty state supplier and whether you wish to exclude them
- c. whether any nominated subcontractor is not a UK or treaty state supplier and whether you wish to exclude them
- d. whether the tendered price is abnormally low
- e. whether there is evidence of corruption or collusion
- f. whether the tender meets all of the requirements
- g. whether the tender has breached any procedural requirements

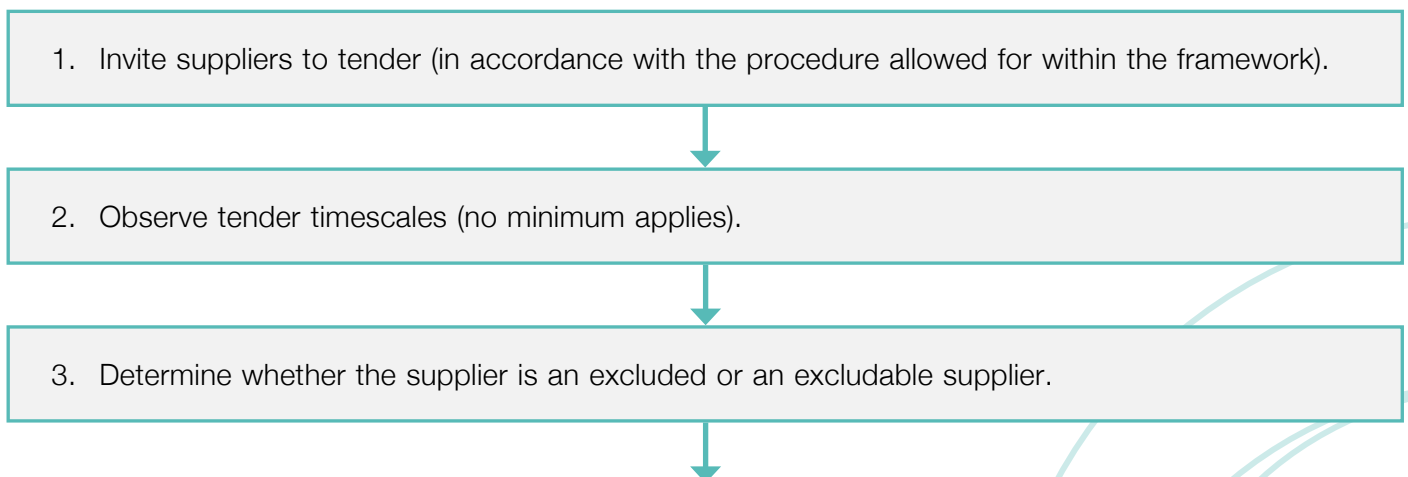
7. Assess award criteria.

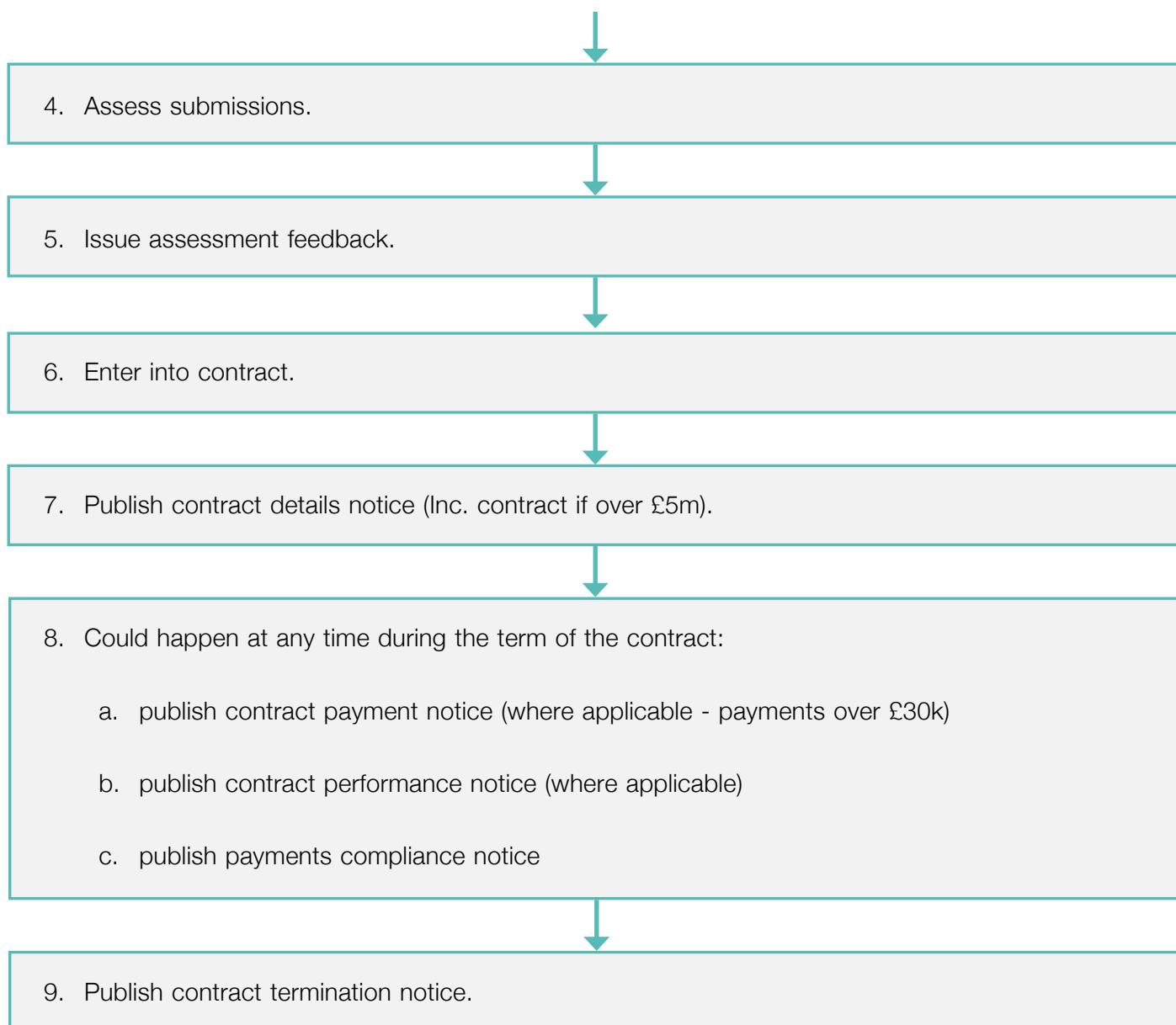
8. Issue assessment summaries.

9. Publish contract award notice.



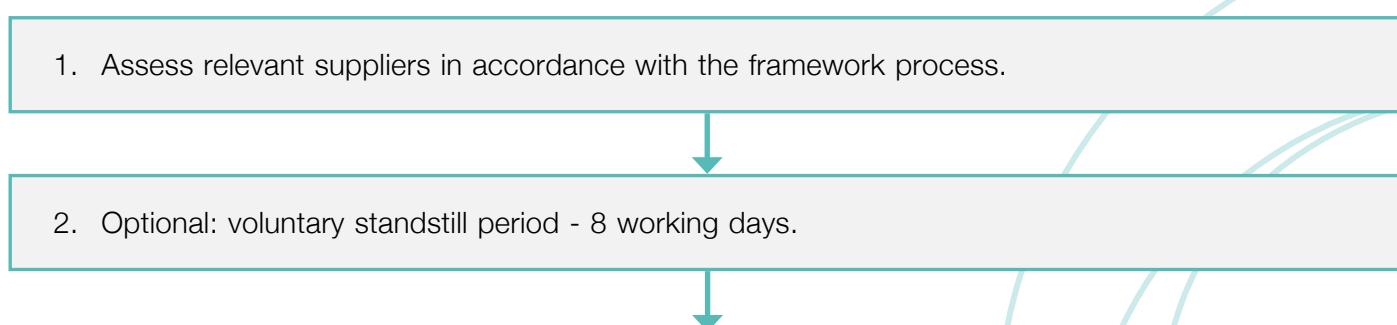
Awarding a defence and security contract under defence and security framework - with competition

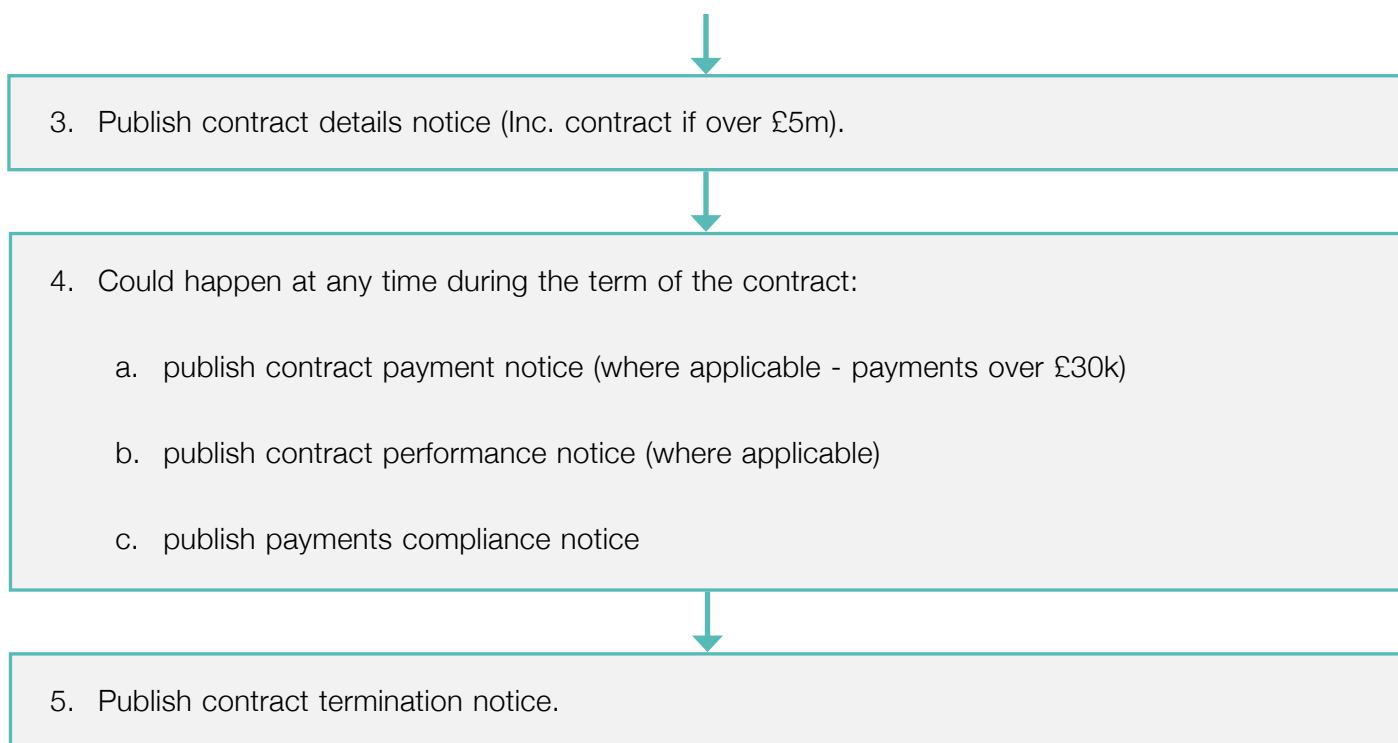




Note, contract award notice and associated documents are not required for a defence and security contract awarded under a defence and security framework.

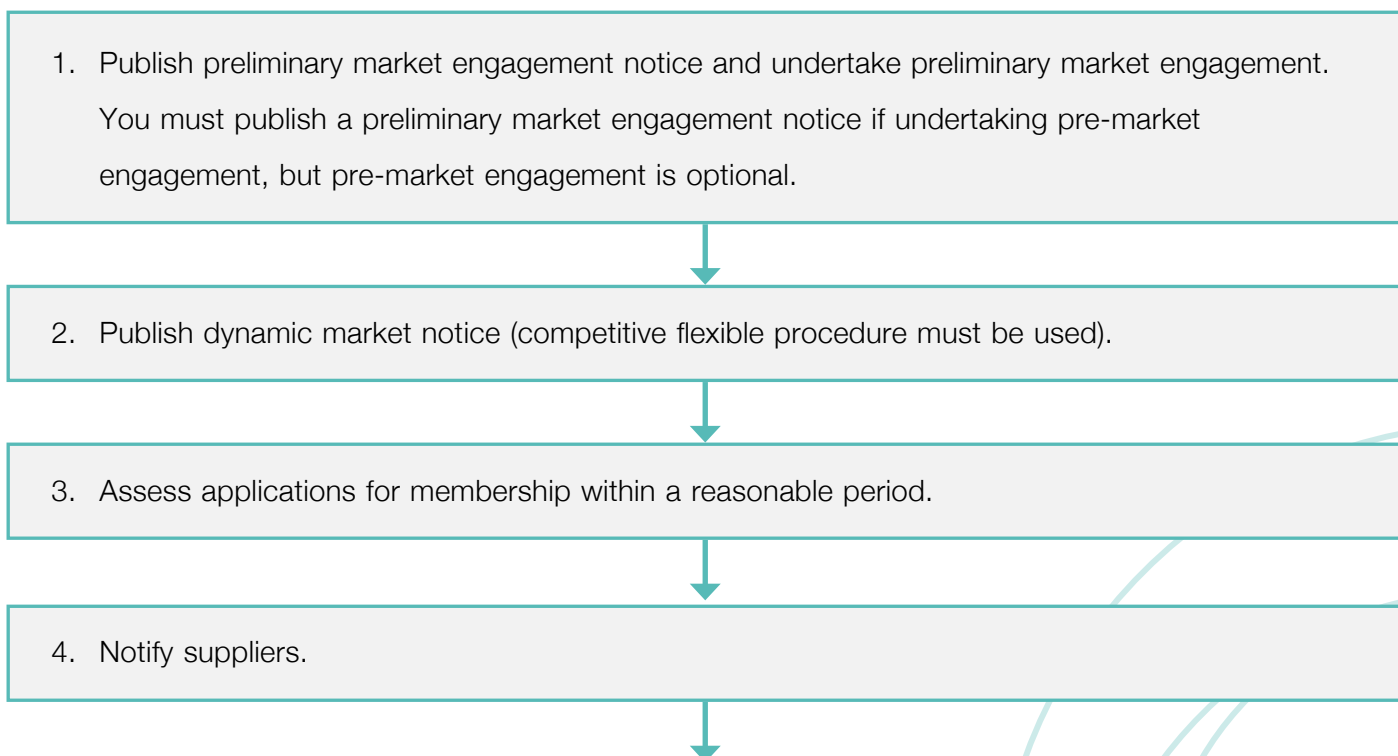
Awarding a defence and security contract under defence and security framework - without competition

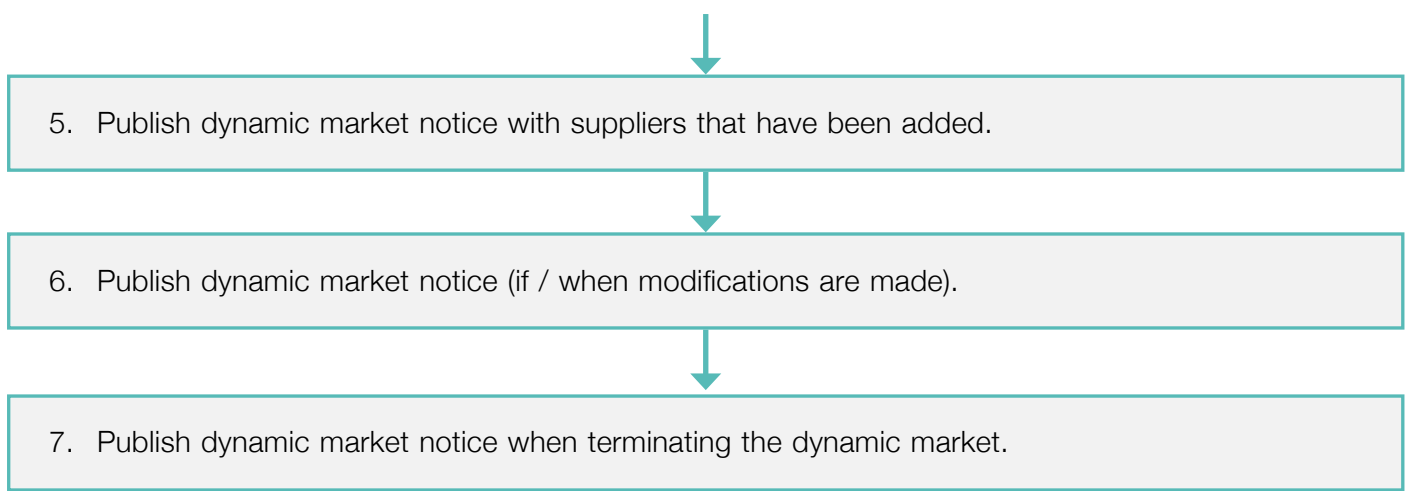




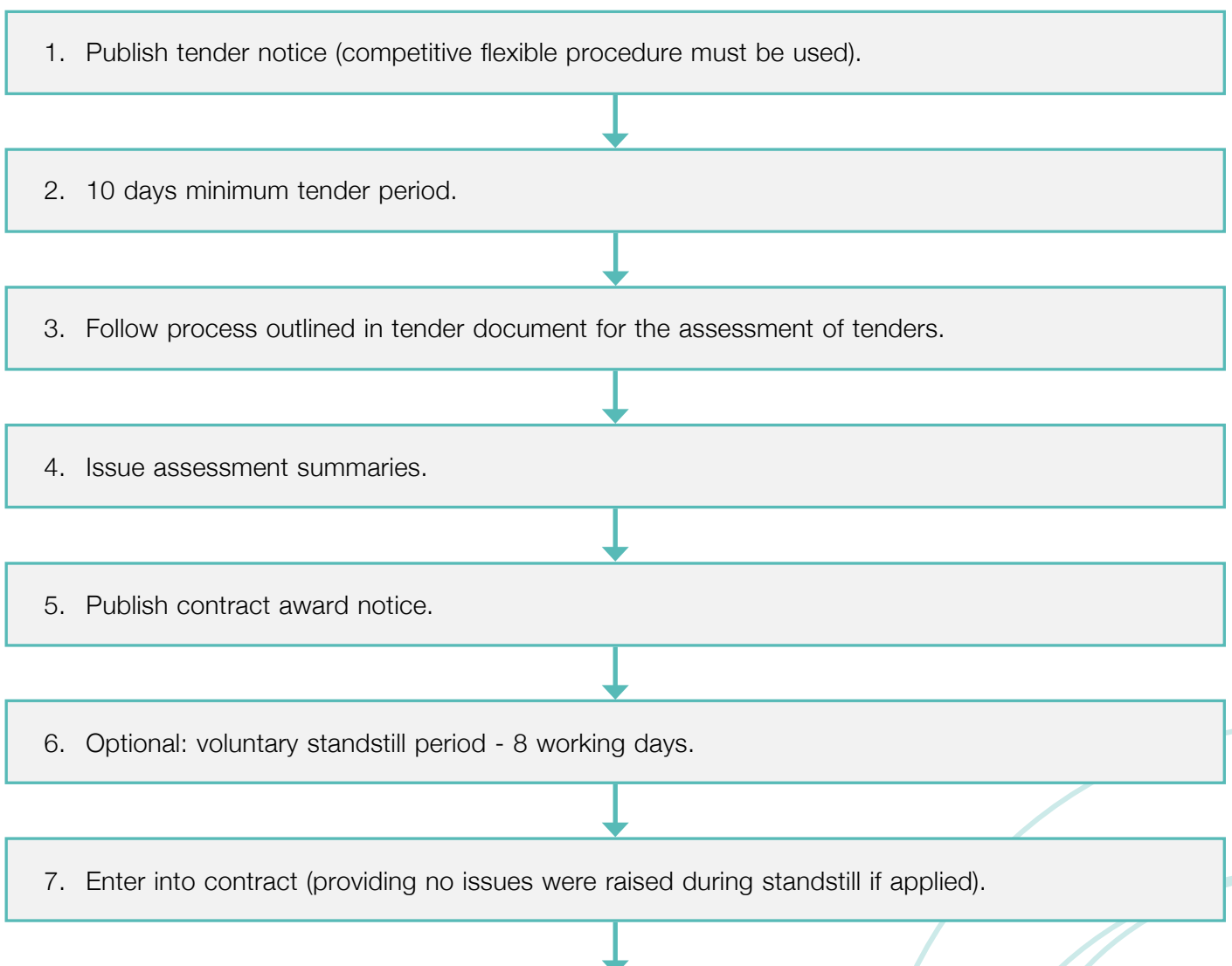
Note, contract award notice and associated documents are not required for a defence and security contract awarded under a defence and security framework.

Establishing a dynamic market





Awarding a defence and security contract under a dynamic market





8. Publish contract details notice (Inc. contract if over £5m).



9. Could happen at any time during the term of the contract:
- a. publish contract performance notice (where applicable)
 - b. publish payments compliance notice



10. Publish contract termination notice.



Defence and security light touch CPV codes

Fact sheet

Light touch CPV codes are set out under schedule 1 of the Procurement Act 2023 Regulations.

Codes in schedule 1 table 1 may be utilised (where applicable to the subject matter of the contract) by **all contracting authorities**, including defence and security contracts.

CPV codes in schedule 1 table 2 are 'additional light touch services for certain defence and security contracts' and **apply specifically to defence and security contracts only**.

The tables have been set out below to show a direct comparison between light-touch CPV codes relevant to defence and security under PCR 2015, the light-touch (known as Part B) CPV codes listed in DSPCR 2011, and the new regulations.

■ Table 1: Light touch CPV codes for all contracts and contracting authorities

Light touch CPV codes relevant to defence and security	Procurement Act: light touch CPV codes relevant to defence and security
PCR 2015 - light touch: <i>Applicable to all contracts</i> 75000000-6 Administrative, defence and social security services 80600000-0 Training services in defence and security materials 80610000-3 Training and simulation in security equipment 80620000-6 Training and simulation in firearms and ammunition 80630000-9 Training and simulation in military vehicles 80640000-2 Training and simulation in warships 80650000-5 Training and simulation in aircrafts, missiles and space crafts 80660000-8 Training and simulation in military electronic systems 75211300-1 Foreign military aid related services 75220000-4 Defence services 75221000-1 Military defence services 75222000-8 Civil defence services 75240000-0 Public security, law and order services 75241000-7 Public security services 79700000-1 Investigation and security services 79710000-4 Security services 79711000-1 Alarm monitoring services 79713000-5 Guard services 79714000-2 Surveillance services	Procurement Act 2023 Regulations Schedule 1, Table 1. <i>Applicable to all contracts</i> 75000000 Administration, defence and social security services 80600000 Training services in defence and security materials 80610000 Training and simulation in security equipment 80620000 Training and simulation in firearms and ammunition 80630000 Training and simulation in military vehicles 80640000 Training and simulation in warships 80650000 Training and simulation in aircrafts, missiles and space crafts 80660000 Training and simulation in military electronic systems 75211300 Foreign military-aid-related services 75220000 Defence services 75221000 Military defence services 75222000 Civil defence services 75240000 Public security, law and order services 75241000 Public security services 79700000 Investigation and security services 79710000 Security services 79711000 Alarm-monitoring services 79713000 Guard services 79714000 Surveillance services

■ **Table 2: light touch CPV codes applicable to defence and security only**

Light touch CPV codes relevant to defence and security	Procurement Act: light touch CPV codes relevant to defence and security
DSPCR 2011 - Part B Services: Hotel & restaurant services (From 55100000-1 to 55524000-9 and from 98340000-8 to 98341100-6) Supporting and auxiliary transport services (From 63000000-9 to 63734000-3 (except 63711200-8, 63712700-0, 63712710-3), from 63727000-1 to 63727200-3 and 98361000-1 Legal services (From 79100000-5 to 79140000-7) Personnel placement and supply services (not employment contracts) (From 79600000-0 to 79635000-4 (except 79611000-0, 79632000-3, 79633000-0) and from 98500000-8 to 98514000-9) Health and social services (79611000-0 and from 85000000-9 to 85323000-9 (except 85321000-5, 85322000-2) Other services	Procurement Act 2023 Regulations Schedule 1, Table 2. Additional light touch services for certain defence and security contracts. Hotel and restaurant services 98340000 - 98341100 Support and auxiliary transport services 63000000 - 63122000, 63500000 - 63524000, 63700000 - 63734000 and 98361000 Personal placement and supply services but not employment contracts 79600000 - 79635000 (except 79611000) and 98510000 - 98512000 Procurement Act 2023 Regulations Schedule 1, Table 1: Light Touch Services <i>Applicable to all contracts</i> Legal Services 79100000 - 79140000 Health & social services 79611000, 85000000 - 85323000 (except 85321000, 85322000) Hotel & restaurant services 55100000-1 to 55524000-9 Miscellaneous services 50116510 and 71550000



Defence and security transparency requirements

This content applies only to contracts that meet the definition of a ‘defence and security contract’ as outlined in section 7(1) of the Procurement Act. It covers **all** of the transparency publication requirements that apply across the act, and maps these against the notices published when undertaking a procurement process under DSPCR 2011.

Procurement lifecycle stage	Ref.	Notice name	Publication requirement (in the regulations some notices are listed as having separate versions depending on the procurement process, e.g. open, competitive flexible and below-threshold “version” of the tender notice. You must complete different fields in the core notices, and / or submit different information, depending on the process followed.	Change from UCR 2016
Plan	UK1	Pipeline notice	Mandatory for organisations with £100m+ spend per annum. Publish 12-month forward-look at planned procurements of £2m+.	N/A - new notice

Procurement lifecycle stage	Ref.	Notice name	Publication requirement (in the regulations some notices are listed as having separate versions depending on the procurement process, e.g. open, competitive flexible and below-threshold “version” of the tender notice. You must complete different fields in the core notices, and / or submit different information, depending on the process followed.	Change from UCR 2016
Define	UK2	Preliminary market engagement notice	Optional and best practice, must be published where pre-market engagement is anticipated or has taken place (or reason for non-publication explained in tender notice).	N/A - new notice
Procure	UK3	Planned procurement notice	Optional and best practice , advises the market of an upcoming procurement. A qualifying planned procurement notice can reduce tender timescales to 10 days.	F16: prior information notice
Procure	UK4	Tender notice	Mandatory for open, competitive flexible and regulated below-threshold procurements; to establish a framework; to award a contract under an existing dynamic market.	F17: contract notice (defence and security contracts)
Procure	UK5	Transparency notice	Mandatory when undertaking a direct award (publish prior to award).	F15: voluntary ex ante transparency (VEAT) notice
Procure	UK6	Contract award notice	Mandatory - communicates the outcome of the procurement and commences standstill prior to awarding a contract. This is not required for defence and security contracts awarded under a defence and security framework.	N/A - new notice

Procurement lifecycle stage	Ref.	Notice name	Publication requirement (in the regulations some notices are listed as having separate versions depending on the procurement process, e.g. open, competitive flexible and below-threshold “version” of the tender notice. You must complete different fields in the core notices, and / or submit different information, depending on the process followed.	Change from UCR 2016
Procure	UK7	Contract details notice	Mandatory - details of the awarded contract (including the redacted contract, for public contracts £5m+).	F18: contract award notice (defence and security contracts)
Manage	UK8	Contract payment notice	Mandatory - details of payments over £30,000 made under a public contract (published quarterly).	N/A - new notice
Manage	UK9	Contract performance notice	Mandatory to report: a. KPI scores for public contracts valued £5m+ (annually) b. poor supplier performance / breach of contract (within 30 days)	N/A - new notice
Manage	UK10	Contract change notice	Defence and security contracts do not need to publish a contract change notice or a copy of the contract as modified.	N/A
Manage	UK11	Contract termination notice	Mandatory when a public contract ends.	N/A - new notice

Procurement lifecycle stage	Ref.	Notice name	Publication requirement (in the regulations some notices are listed as having separate versions depending on the procurement process, e.g. open, competitive flexible and below-threshold “version” of the tender notice. You must complete different fields in the core notices, and / or submit different information, depending on the process followed.	Change from UCR 2016
Procure	UK12	Procurement termination notice	Mandatory where, after publishing a tender or transparency notice, the process is terminated without awarding a contract.	F14: corrigendum notice
Procure	UK13-16	Dynamic market notice	Mandatory for advertising, establishing, changing or terminating a dynamic market.	N/A - new notice
Manage	UK17	Payments compliance notice	Mandatory - details of contracting authority performance against 30-day payment terms (twice annually).	N/A - new notice



New obligations for defence and security

Fact sheet

This table shows the new obligations that contracts which were previously procured under DSPCR 2011 must comply with under the Procurement Act.

Topic	DSPCR 2011	New obligations under the Procurement Act
Exemption for intelligence agencies	N/A - new.	Intelligence agencies (section 2(5)(b)) The Act includes a new exemption for specific intelligence service organisations.
Lots	N/A - there is no provision for lots under DSPCR 2011.	Duty to consider lots (section 18) Defence and security contracts are now subject to the duty to consider, prior to publishing a tender notice, whether a contract could be divided into lots. If the contract could be divided into lots but you do not do so, reasons for this must be recorded. See Summary Document 3 for details.

Topic	DSPCR 2011	New obligations under the Procurement Act
Direct award	Negotiated procedure without prior publication of a notice (reg. 16).	Direct award (section 41 & schedule 5) The Direct Award procedure requires publication of a transparency notice in almost all cases. Specific grounds are provided for defence and security contracts, in addition to the general rules. Defence and security contracts must follow the process for direct award as set out in the Act. See Summary Document 3 for details.
Open procedure	N/A - there is no provision in DSPCR 2011 for a single stage “open” procurement procedure.	Competitive tendering procedures (section 20(2)(a)) A single stage “open procedure” is now available for all contracting authorities to use, including for defence and security contracts. See Summary Document 3 for details.
Multistage procurements	The Restricted Procedure (Reg. 17), The Negotiated Procedure (Reg 18), The Competitive Dialogue Procedure (Reg 19).	Competitive tendering procedures (section 20(2)(b)) The competitive flexible procedure replaces the three multistage procedures provided for in DSPCR 2011. See Summary Document 4 for details.
Supplier exclusions	Criteria for the rejection of economic operators (reg. 23(1) & 23(4)). These clauses set out the grounds under which suppliers would be “ineligible” should a ground apply to them or their connected persons.	Exclusions (Sections 26-27 & 57-58) The exclusions regime applies to all contracting authorities under the Procurement Act. The mandatory and discretionary grounds cover a broader range of offences and circumstances, and also apply to associated persons and subcontractors. Defence and security contracts must follow the process for supplier exclusions as set out in the Act. See Summary Document 6 for details.

Topic	DSPCR 2011	New obligations under the Procurement Act
Frameworks	Frameworks (reg 20(10)). A framework may not exceed 7 years.	Frameworks: maximum term (section 47(4)(a)) The length of defence and security frameworks is extended to 8 years.
Contract modifications	N/A - previous rules on amending contracts were derived from retained EU case law (Presstext), where a substantial / material change would require a new procurement procedure. Note - Presstext defined a material change as: i. one that would have changed the outcome of the original procurement; ii. one that would result in a “considerable” change in scope; iii. one that would change the economic balance in favour of the contractor.	Contract modifications (section 74 & schedule 8) The Act contains ten grounds under which a contract may be legally modified. Most grounds apply to all contracting authorities, but there are additional grounds for defence and defence authority contracts. Defence and security contracts must follow the process for modifying a contract as set out in the Act. See Summary Document 9 for details.

Topic	DSPCR 2011	New obligations under the Procurement Act
Below-threshold procurements	N/A - the DSPCRs do not contain provisions for contracts that are below the thresholds set out in reg.9.	Below threshold procurements (sections 84-88) The Procurement Act contains provisions for contracts that are below the thresholds set out in schedule 1 - “below-threshold contracts”. Defence and security contracts must follow the process for below-threshold contracts as set out in the Act. See Summary Document 1 for details.
Implied payment terms	Reg. A66 - the regulations imply a term into every contract requiring that valid, undisputed invoices are accepted electronically.	Implied payment terms in public contracts (section 68) The Act implies 30-day payment terms (for valid, undisputed invoices) into every public contract. This provision is also extended to cover payments made under a public contract by a supplier to their own subcontractor, ensuring that 30-day payment terms flow through supply chains. See Summary Document 9 for details.



Utilities Summary Document

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- A. Introduction
- B. Exemptions and differences
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 - 2. Transparency
 - 3. Procedures
 - 4. Competitive Flexible Procedure
 - 5. Frameworks and Dynamic Markets
 - 6. Supplier Selection and Exclusions
 - 7. Assessment and Award
 - 8. Remedies, Procurement oversight and the Debarment List
 - 9. Contract Governance
- C. Key changes from UCR 2016

A. Introduction

Scope of Summary Document

This document provides an overview of the differences in the Procurement Act for utilities. While the majority of procurements for utilities contracts will generally follow the rules set out in the Procurement Act (as detailed in Summary Documents 1 to 9), some differences apply to utilities and utilities contracts. For example, some of the exempted contract provisions in schedule 2 only apply to utilities that are public authorities and the rules on pipeline notices in section 93 do not apply to private utilities. This document provides details of:

- The differences in the Procurement Act for utilities contracts and different types of utilities
- The key changes between utilities Contracts Regulations 2016 (UCR 2016) and the Procurement Act.

Utilities Procurement

Prior to the Procurement Act coming into force, above threshold utilities contracts were required to be procured and modified under the UCR 2016 unless the contract was excluded.

All other types of contracts that were not utilities contracts were required to be procured using (as relevant) the Public Contracts Regulations 2015, the Defence and Security Public Contracts Regulations 2011 or the Concession Contracts Regulations 2016, unless the contract was excluded.

Where no change, exemption or additional provision is listed, it should be presumed that the general regime applies, as detailed in Summary Documents 1-9. This document is designed to supplement those Summary Documents.

What is a utility?

The definition of a utility in the Act captures the same bodies as in the UCR 2016, although the drafting is not identical.

Utility. In the Procurement Act “utility” means a public authority, or public undertaking, that carries out a utility activity; or a private utility.

Contracting authority. A “contracting authority” is either a “public authority”; or in relation to a utilities contract, it may be a public authority, “public undertaking” or “private utility”.

Public authorities. Public authorities are funded wholly or mainly out of public funds or subject to public authority oversight, and, in each case, do not operate on a commercial basis.

Public undertakings. Public undertakings differ from public authorities in that they are not wholly or mainly funded out of public funds, although they are subject to public authority oversight. They also operate commercially. The express commercial operating requirement at Section 2(2)(b) is a change from the UCR 2016 where there is a control (dominant influence) requirement, but there is no express requirement that an entity operates commercially, although many do.

Public authority oversight. Public authority oversight, which appears in the definition of both public authorities and public undertakings, is defined at Section 2(3), in a similar way to UCR 4(2)(c)(ii)(iii), and means that the entity is subject to management or control by one or more public authorities or a board of which more than half of the members are appointed by one or more public authorities.

Private utility. Private utilities are other entities (i.e. not public authorities or public undertakings) that carry out a utility activity. Private utilities are only covered by the Procurement Act where they have been granted a special or exclusive right to carry out a utility activity.

It is not possible to have a definitive list of utilities as structures can be complex or change over time and whether an entity has been granted special or exclusive rights can change. Utilities will need to make an assessment of whether they are a public authority, public undertaking or private utility using the definitions in Section 2(2) of the Act.

What is a utilities contract?

A utilities contract is a contract for the supply of goods, services or works wholly or mainly for the purpose of a “utility activity”.

The Procurement Act Part 1 of Schedule 4 (utility activities) lists utility activities and Part 2 of Schedule 4 lists activities that are not, at a particular point in time, considered utility activities within the meaning of the Act. This largely mirrors the coverage of the UCR 2016 - except for the removal of postal services.

Part 1 utility activities are activities connected with the:

1. Provision or operation of gas and heat, electricity and water networks and the supply to those networks;
2. Provision or operation of public transport networks, ports and airports; and
3. Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels.

B. Exemptions and differences

Schedule 2 sets out the types of contracts that are exempt from the Procurement Act. Provided the relevant conditions are met, they can all be used by utilities unless it is stated otherwise. The exemptions that apply specifically to utilities are summarised below.

Para 5 of Schedule 2 exempts utilities contracts awarded by a joint venture between utilities to one of those joint venture members, and vice versa.

Para 6 of Schedule 2 exempts utilities contracts awarded by a utility to an affiliate and by a utility that is a joint venture to an affiliate of any member of that joint venture.

Para 21 of Schedule 2 exempts contracts for public passenger transport services that are awarded under separate legislation - that legislation is specified at section 136(11) of the Railways Act 1993.

Para 31 of Schedule 2 exempts utilities contracts awarded for the purpose of further sale or lease to third parties, provided the utility does not have a special or exclusive right to sell or lease the goods, services or works purchased and the market is open.

Para 32 of Schedule 2 exempts utilities contracts for the purchase of water by utilities carrying out a utility activity in paragraph 3(1) of Schedule 4 (provision or operation of a fixed network or the supply of drinking water to such a fixed network).

Para 33 exempts utilities contracts for purchases of energy, or fuel for the production of energy, by utilities carrying out a utility activity in paragraphs 1, 2 or 6 of Schedule 4 (gas and heat, electricity and extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels).

Para 34 operates to ensure that contracts for the purpose of the activities set out in Part 2 of Schedule 4 are exempt from the Act.

The Procurement Act has provisions that do not apply to utilities contracts or private utilities and also differences for utilities. **A quick reference guide to the exemptions and differences can be found in this Utilities Fact Sheet.**

The information in the following sections is organised on a module-by-module basis, mirroring the structure of the e-Learning and accompanying Summary Documents. **Unless otherwise stated below or exempted under Schedule 2 or Part 2 of Schedule 4, as referred to above, the Procurement Act will apply in full to utilities.**

■ 1. Scope, Definitions and Principles

Thresholds (Schedule 1)

Utilities contracts have their own threshold amounts, as set out in Schedule 1 of the Act (the amounts set out in Schedule 1 will be updated when the Act comes into force to reflect the thresholds that came into force on 1 January 2024):

Type of contract	Threshold amount (including VAT) as of January 2024
Utilities “works contract”	£5,372,609
Utilities non-works contract <i>(i.e. utilities contracts generally referred to as “goods” and “services” contracts and utilities contracts that are also concession contracts for services)</i>	£429,809
Utility light touch contract	£884,720

Below-Threshold Procurements (Part 6 - Sections 84 to 88)

Exemption: A utilities contract is not caught by the “regulated below-threshold contract” definition in the Procurement Act, therefore Part 6 - regulated below-threshold contracts obligations do not apply to a utilities contract.

However, if a utilities contract was awarded below the threshold for its contract type, and following a modification (in accordance with section 74(1)) the contract value increases to above the threshold for its type of contract, it will become a public contract (a “convertible contract”), subject to the full scope of the Act.

National Procurement Policy Statements (Sections 13 and 14)

Exemption: The duty to have regard to the national procurement policy statement and the Wales procurement policy statement does not apply to private utilities and in relation to the award of a contract under a framework (including a utilities framework), or under a dynamic market (including a utilities dynamic market).

Pipeline Notices (Section 93)

Exemption: The obligation to publish pipeline notices if you are a contracting authority with £100 million spend and are entering into a contract with an estimated value of more than £2 million does not apply to private utilities

Transitioning to the Procurement Act

Can existing qualification systems still be used as a call for competition to award a contract after the commencement date?

You can continue to call off under a qualification system set up under the utilities contracts Regulations 2016 until the termination or expiry of the relevant qualification system (although no later than 27th October 2028, when all qualification systems must end).

Can an existing qualification system just be renamed to a dynamic market?

No, a dynamic market must be set up in accordance with the rules for establishing a dynamic market

See Summary Document 1: Scope, Definitions and Principles for further information.

■ 2. Transparency

Notices and Documents

Exemption: Utilities (mainly private utilities) are exempt from publishing some notices:

- **Pipeline notice (Section 93):** Private utilities are exempt from publishing pipelines.
- **Preliminary market engagement notice (Section 17):** Private utilities are exempt from publishing preliminary market engagement notices.
- **Tender notice (Section 21):** The exemption applies to contracts to be awarded under a utilities dynamic market established by reference to a qualifying utilities dynamic market notice. Section 40 states there is no requirement to publish the tender notice, but that utilities must instead provide it directly to existing members of the market
- **Dynamic market notice (Section 39):** The obligation to publish a dynamic market notice after a dynamic market ceases to operate does not apply to private utilities.
- **Contract details notice and publication of contracts (Section 53):** Private utilities are exempt from publishing contract details notices and copies of contracts.
- **Procurement termination notice (Section 55):** Private utilities are exempt from publishing procurement termination notices.

- **Key performance indicators (Section 52):** Setting and publishing key performance indicators does not apply to a public contract awarded by a private utility.
- **Assessment of contract performance (supplier breach or failure to perform) (Section 71):** Assessing and publishing further information on key performance indicators does not apply to private utilities.
- **Payments compliance notice (Section 69):** Private utilities are exempt from publishing payment compliance notices.
- **Information about payments under public contracts (Section 70):** Private utilities are exempt from publishing specific payment information where payments more than £30,000 are made under utilities contracts.
- **Contract change notice (Section 75):** Publishing contract change notices does not apply to a public contract awarded by a private utility.
- **Publication of modifications (Section 77):** Publishing a copy of the contract as modified or the modification does not apply to a contract awarded by a private utility.
- **Contract termination notice (Section 80):** Publishing a contract termination notice does not apply to private utilities.

Exemption: Electronic communications(Section 96): Electronic communications systems do not need to be provided free of charge and readily accessible to suppliers in relation to a utilities dynamic market.

See Summary Document 2: Transparency for further information.

■ 3. Procedures

Mixed Procurements: Special Regime Contracts (Section 10) Where the subject matter of a contract is mixed, i.e. is for goods, services or works that could be supplied under more than one type of contract, of which at least one would be a special regime contract - such as utilities plus non-utilities, or utilities plus light touch, or utilities plus defence and security, etc. - and the contracting authority has chosen not to split the different elements into individual contracts, then that contract will be subject to the full scope of the Act (without any of the exemptions that are applicable to any of the special regimes involved).

Exemption: Preliminary market engagement notice (Section 17): The obligation to publish a preliminary market engagement notice before publishing a tender notice or providing reasons for not doing so in the tender notice does not apply to private utilities.

Vertical and Horizontal arrangements (Schedule 2) vertical and horizontal exemptions do not apply to private utilities or public undertakings. The joint venture and affiliated persons exemptions for utility contracts provides a similar exemption for all utilities.

Time limits (Section 54): For utilities contracts, no minimum timescales are mandated for tenders from “pre-selected suppliers” (i.e. suppliers that have been required to satisfy conditions of participation before submitting tenders or are members of a utilities dynamic market) where a short tendering period has been agreed by all. In the absence of such agreement, the minimum timescales is 10 days.

See Summary Document 3: Procedures, for further information.

■ 4. Competitive Flexible Procedure

Utilities contracts under the Procurement Act can utilise the full flexibility in the design and undertaking of a procurement procedure under the new competitive flexible procedure (see summary document 4 - competitive flexible). Likewise, an open procedure can also be used.

See Summary Document 4: Competitive Flexible Procedure, for further information.

■ 5. Frameworks and Dynamic Markets

The rules for dynamic markets apply to utilities dynamic markets (which include markets established under a qualifying utilities dynamic market notice) and utilities contracts - (see summary document 5 - Frameworks and Dynamic Markets). Exceptions are:

Dynamic Markets

In the Procurement Act a “utilities dynamic market” means a dynamic market established only for the purpose of the award of utilities contracts by utilities.

Exemption: Competitive award by reference to dynamic markets (Section 34) The duty to consider applications for membership does not apply in relation to the award of a contract by reference to suppliers’ membership of a utilities dynamic market established by reference to a qualifying utilities dynamic market notice, or a part of such a market

Concession contracts which are utilities contracts can be awarded under a utilities dynamic markets.

Exemption: fees (Section 38) Utilities dynamic markets may provide for the charging of fees to suppliers in connection with obtaining and maintaining membership of the market. They can not provide for charging fees to suppliers that are awarded a contract by reference to their membership of the utilities dynamic market.

Exemption: Dynamic market notices (Section 39) All dynamic market notice requirements apply other than private utilities do not have to publish a notice to confirm the dynamic market has ceased to operate

Exemption: Qualifying utilities dynamic market notices: no duty to publish a tender notice

(Section 40) Utilities that establish dynamic markets using a qualifying utilities dynamic market notice do not publish a tender notice for the purpose of inviting suppliers to submit a request to participate or tender; instead a tender notice must be provided to members of the market or appropriate part of the market. Contracting authorities have discretion to provide a tender notice to suppliers that are still being considered for membership of the market, or part of the market,

Frameworks

The rules for frameworks and open frameworks apply to utilities contracts - see Frameworks and Dynamic Markets summary document.

A utilities framework is a framework which does not provide for the future award of public contracts other than utilities contracts.

Exemption: frameworks: maximum term (Section 47) The term of a utilities framework may not exceed eight years unless the contracting authority considers the nature of the goods, services or works to be supplied under contracts awarded in accordance with the framework means that a longer term is required.

If a contracting authority considers the nature of the goods, services or works to be supplied under contracts awarded in accordance with the framework means that a longer term is required, the contracting authority must set out its reasons in the tender or transparency notice for the framework.

The maximum term does not apply to a framework awarded by a private utility

Exemption: Contract award notices and assessment summaries (Section 50) Under UCR 2016, private utilities are not required to publish a contract award notice following the award of a contract under a framework, as required by section 50 of the Procurement Act. Whilst this is a new obligation, the information requirement for private utilities is less than for other utilities.

See Summary Document : Frameworks and Dynamic Markets, for further information.

■ 6. Supplier Selection and Exclusions

Exemption: Meaning of excluded and excludable supplier (Section 57) For private utilities an excluded supplier is to be regarded as an excludable supplier and references to an excludable supplier includes a reference to such an excludable supplier.

See Summary Document 6: Supplier Selection, for further information.

■ 7. Assessment and Award

The rules around award criteria, assessing tenders, awarding contracts and entering into contracts [generally] apply (see summary document 7 - Assessment and Award).

Exemption: Contract detail notices and publication of contracts (Section 53) The requirements to publish a contract details notice and a copy of the contract does not apply to private utilities.

Exemption: Procurement termination notices (Section 55) Private utilities do not have to publish a procurement termination notice.

Exemption: Standstill periods on the award of contracts (Section 51) the prohibition on entering into a contract before the end of a standstill period does not apply to private utilities when the award is made under direct award (Section 41 or switching to a direct award Section 43). A standstill is also not required for a contract that is awarded in accordance with a framework, including a utilities framework or by reference to a dynamic market, which includes utilities dynamic markets (including utilities dynamic markets established pursuant to a qualifying utilities dynamic market notice).

See Summary Document 7: Assessment and Award, for further information

■ 8. Remedies, Procurement oversight and the Debarment List

The rules around remedies, procurement oversight and the debarment list generally apply to utilities

Exemption: Procurement Investigations (Section 108) a private utility is not considered a “relevant contracting authority” for the purposes of this section and as a result is not subject to procurement investigations under this section (although they may be required to have regard to guidance published following an investigation (see section 109).

Remember that when considering the debarment list that an excluded supplier (mandatory) is to be regarded as an excludable (discretionary) supplier by private utilities.

See Summary Document 8: Remedies, Procurement oversight and the Debarment List, for further information.

■ 9. Contract Governance

There are a number of exemptions to the contract governance obligations (outlined in summary document 9 - Contract Governance) for private utilities contracts:

Exemption: Key Performance Indicators (Section 52) the requirement to set and publish key performance indicators does not apply to utilities contracts awarded by a private utility.

Exemption: Implied payment terms in public contracts (Section 68) these terms are not implied in a utilities contract awarded by a private utility.

Exemption: Payments compliance notices (Section 69) publishing a payments compliance notice does not apply to private utilities.

Exemption: Information about payments under public contracts (Section 70) publishing specified information about any payment of more than £30,000 does not apply to utilities contracts awarded by a private utility.

Exemption: Assessment of contract performance (Section 71) assessing and publishing performance information does not apply to private utilities.

Exemption: implied payment terms in sub-contracts (Section 73) payment terms are not implied into public sub-contracts that are for the purpose of performing (or contributing to the performance of) all or any part of a utilities contract awarded by a private utility.

Exemption: Contract change notices (Section 75) the requirement to publish a contract change notice before modifying a contract does not apply if the contract was awarded by a private utility.

Exemption: Publication of modifications (Section 77) the requirement to publish a modified contract or modification does not apply if the contract was awarded by a private utility.

Exemption: Contract termination notices (Section 80) the requirement to publish a contract termination notice does not apply to private utilities.

Exemption: Contract modifications (Schedule 8 permitted contract modifications 4(2), 5(2) and 8(2))
The 50% financial cap on the value of permitted modifications does not apply if the contract being modified is a utilities contract.

See Summary Document 9 Contract Governance, for further information

C. Key changes from UCR 2016

Utilities Contracts Regulations 2016	Procurement Act	Exemptions
Separate regime for utilities	Utilities under the same regime as other contracting authorities in accordance with the Procurement Act	n/a
Postal services were covered by the UCRs	Postal services are not a utility activity as they are not covered by international agreements and it is considered that there is now sufficient competition in the relevant market, therefore postal services fall outside the scope of the Procurement Act.	n/a
N/A	The national procurement policy Statement (Section 13) A contracting authority must have regard to the national procurement policy statement	Private utilities All contracting authorities in relation to the award of a contract in accordance with a framework, or a dynamic market
Qualification systems (Regulation 77)	Competitive Award by reference to Dynamic Markets (Section 34) Qualification systems have been replaced by utilities dynamic markets, including markets set up under a qualifying utilities dynamic market notice	n/a
Preliminary market consultations (Regulation 58)	Preliminary market engagement notice (Section 17) This is a new notice that you must publish prior to publishing a tender notice if you undertake pre-market engagement activities.	Private utilities

Utilities Contracts Regulations 2016	Procurement Act	Exemptions
Restricted procedure (Regulation 46) Negotiated procedure with prior call for competition (Regulation 47) Competitive dialogue (Regulation 38) Innovation partnership (Regulation 49)	Competitive Tendering Procedures (Section 20) The four multi-stage procedures have been reduced to a single competitive tendering procedure (known as the competitive flexible procedure), which provides the flexibility to design and undertake your own procedure as required.	n/a
Use of exclusion grounds and selection criteria provided for under the Public Contracts Regulations (Regulation 80)	Excluding suppliers from a competitive award (Section 26) Excluding suppliers from a competitive flexible procedure (Section 27) Exclusion grounds are now mandatory for utilities Meaning of excluded and excludable supplier (Section 57) Considering whether a supplier is excluded or excludable (Section 58)	For the purposes of a covered procurement carried out by a private utility an excluded supplier is to be regarded as an excludable supplier

Utilities Contracts Regulations 2016	Procurement Act	Exemptions
Contract award notices (Regulation 70) Published no later than 30 days after the award of a contract	Contract award notices and assessment summaries (Section 50) A new notice that must be published prior to awarding a contract and after providing assessment summaries to suppliers that submitted an assessed tender	n/a
	Contract details notices and publication of contracts (Section 53) Published no later than 30 days after the contract is entered into (unless the contract is a light touch contract, in which case the period is 120 days)	Private utilities
Conditions for performance of contracts (Regulation 86)	Key performance indicators (Section 52) All contracts over £5m must set and publish a minimum of three KPIs designed to measure a supplier's performance during the life-cycle of the contract.	Private utilities
N/A	Payments Compliance Notices (Section 69) New requirements to publish performance against 30 day payment terms	Private utilities
	Information about payments under public contracts (Section 70) New requirements to publish payment information	Private utilities

Utilities Contracts Regulations 2016	Procurement Act	Exemptions
N/A	Modifying a public contract (Section 74) Allows for contract modifications to below-threshold contracts that, as a result of the modification, will become a public contract (a “convertible contract”). That contract would then become a public contract that is within scope of the Act.	n/a
N/A	Contract termination notices (Section 80) A new notice that must be published within 30 days of the date a contract is terminated.	Private Utilities
N/A	Conflicts assessment (Section 83) There is now a clear obligation to carry out and keep under review a conflicts of interest assessment, to record this and to confirm in the applicable notice this has been done. The conflicts assessment has to be reviewed and updated as necessary throughout the procurement.	n/a
N/A	Pipeline notices (Section 93) A new requirement for contracting authorities with an expected annual procurement spend of £100m+ to publish a pipeline notice within 56 days of the start of each financial year for any procurement over £2m due to take place within that year.	Private utilities

Utilities Contracts Regulations 2016	Procurement Act	Exemptions
N/A	Procurement Investigations (Section 108) Sets out that relevant authorities can carry out procurement investigations relating to contracting authority compliance with the Act and publish the results.	Private utilities
	Recommendations following procurement Investigations (Section 109) Sets out the contracting authority's obligations if it receives "section 109 recommendations" following a procurement investigation.	Private utilities
	Guidance following procurement Investigations (Section 110) Sets out that contracting authorities must have regard to any relevant guidance published following procurement investigations.	n/a

Change: Utilities can no longer group together contract award notices for contracts entered into under dynamic purchasing systems and hold them for publication at the end of each quarter, they must now be published (as individual contract details notices under the Act) within 30 days of the contract being entered into (or 120 days in the case of a light touch contract). A copy of the contract, if over £5m, must be published within 90 days of the contract being entered into (except in the case of private utilities).

Change: Under the UCRs exclusion grounds were not mandated (although following the PCR 2015 exclusions process was considered best practice). Exclusion grounds now apply in full to procurements carried out by utilities, although are discretionary for private utilities. See the summary document 6 - supplier selection for further details.



Utilities

Process flows

Open procedure

1. Publish planned procurement notice (optional) or qualifying planned procurement notice (min 40 days before tender notice if using to reduce timescales).



2. Publish preliminary market engagement notice and undertake preliminary market engagement. You must publish a preliminary market engagement notice if undertaking preliminary market engagement, but preliminary market engagement is optional. **Exemption: private utilities.**



3. Publish tender notice for open procedure.

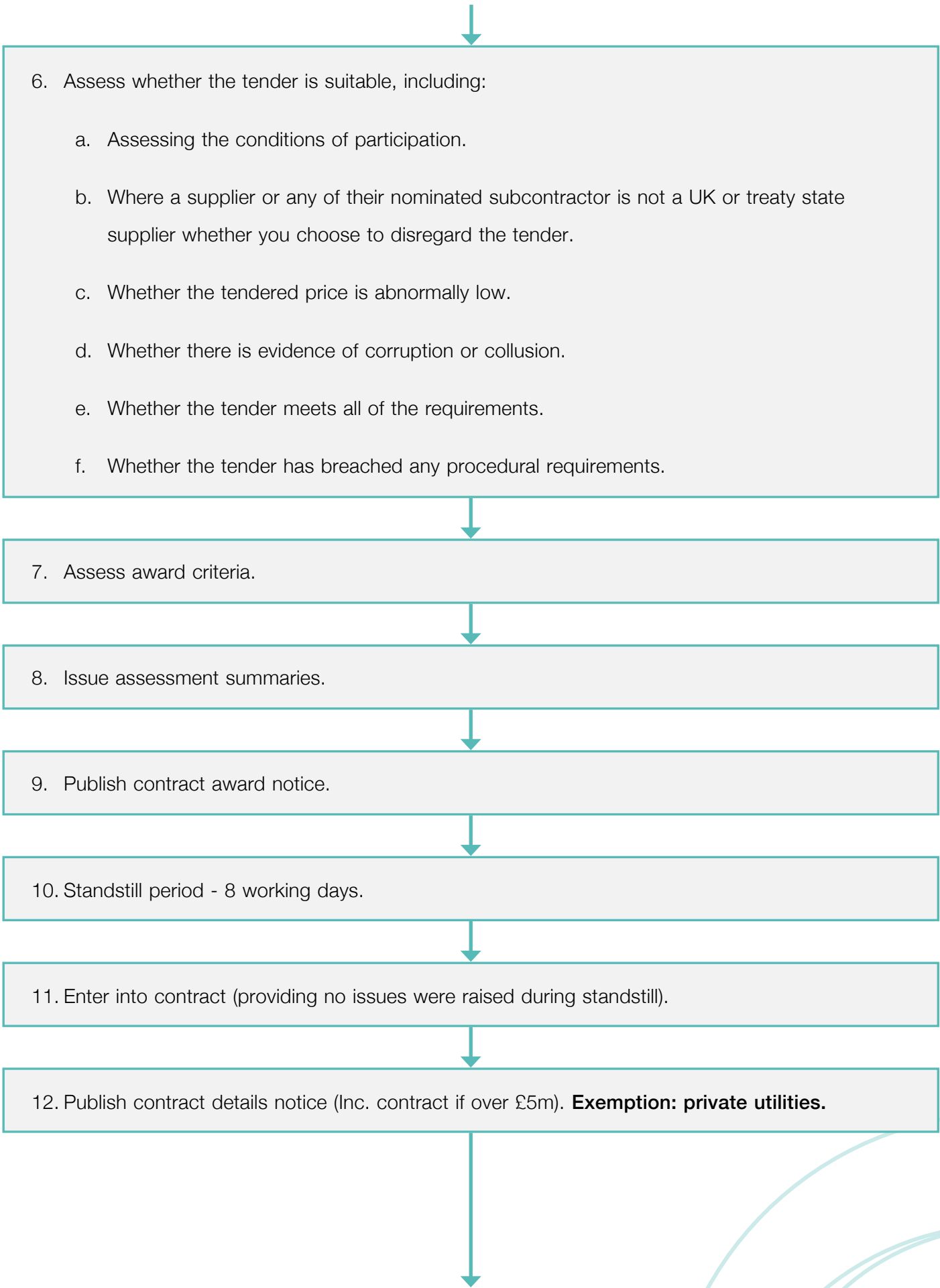


4. Observe minimum tender timescales.



5. Determine whether the supplier is an excluded or an excludable supplier.





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graph TD; A[ ] --> B[6. Assess whether the tender is suitable, including:  
a. Assessing the conditions of participation.  
b. Where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender.  
c. Whether the tendered price is abnormally low.  
d. Whether there is evidence of corruption or collusion.  
e. Whether the tender meets all of the requirements.  
f. Whether the tender has breached any procedural requirements.]; B --> C[7. Assess award criteria.]; C --> D[8. Issue assessment summaries.]; D --> E[9. Publish contract award notice.]; E --> F[10. Standstill period - 8 working days.]; F --> G[11. Enter into contract (providing no issues were raised during standstill).]; G --> H[12. Publish contract details notice (Inc. contract if over £5m). Exemption: private utilities.]; H --> I[ ]; style A fill:none,stroke:none; style I fill:none,stroke:none;
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6. Assess whether the tender is suitable, including:

- a. Assessing the conditions of participation.
- b. Where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender.
- c. Whether the tendered price is abnormally low.
- d. Whether there is evidence of corruption or collusion.
- e. Whether the tender meets all of the requirements.
- f. Whether the tender has breached any procedural requirements.

7. Assess award criteria.

8. Issue assessment summaries.

9. Publish contract award notice.

10. Standstill period - 8 working days.

11. Enter into contract (providing no issues were raised during standstill).

12. Publish contract details notice (Inc. contract if over £5m). **Exemption: private utilities.**



13. Could happen at any time during the term of the contract:

- a. Publish contract payment notice (where applicable - payments over £30k). **Exemption: private utilities.**
- b. Publish contract performance notice (where applicable). **Exemption: private utilities.**
- c. Publish payments compliance notice. **Exemption: private utilities.**
- d. Publish contract change notice (if / when modifications are made) and copy of the modified contract (where applicable - contracts over £5m). **Exemption: private utilities.**
- e. Voluntary standstill period (8 working days) if and when modifications are made and a contract change notice has been published.



14. Publish contract termination notice. **Exemption: private utilities.**

Direct award

1. Identify requirement.



2. Ensure direct award ground is met.



3. Option to publish a transparency notice now.



4. Identify supplier(s).



5. Assess best value (informal competition where appropriate).



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graph TD; A[6. Determine whether the supplier is an excluded or an excludable supplier.] --> B[7. Publish transparency notice if not already done so.]; B --> C[8. Agree terms.]; C --> D[9. Publish contract award notice.]; D --> E[10. Standstill period - 8 working days (unless contract is based on grounds of urgency or to protect life etc). Exemption: private utilities.]; E --> F[11. Enter into contract (providing no issues were raised during standstill).]; F --> G[12. Publish contract details notice (Inc. contract if over £5m). Exemption: private utilities.]; G --> H[13. Could happen at any time during the term of the contract:  
a. Publish contract payment notice (where applicable - payments over £30k). Exemption: private utilities.  
b. Publish contract performance notice (where applicable). Exemption: private utilities.  
c. Publish payments compliance notice. Exemption: private utilities.  
d. Publish contract change notice (if / when modifications are made) and copy of the modified contract (where applicable - contracts over £5m). Exemption: private utilities.  
e. Voluntary standstill period (8 working days) if and when modifications are made and a contract change notice has been published.];
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6. Determine whether the supplier is an excluded or an excludable supplier.

7. Publish transparency notice if not already done so.

8. Agree terms.

9. Publish contract award notice.

10. Standstill period - 8 working days (unless contract is based on grounds of urgency or to protect life etc). **Exemption: private utilities.**

11. Enter into contract (providing no issues were raised during standstill).

12. Publish contract details notice (Inc. contract if over £5m). **Exemption: private utilities.**

13. Could happen at any time during the term of the contract:

- a. Publish contract payment notice (where applicable - payments over £30k). **Exemption: private utilities.**
- b. Publish contract performance notice (where applicable). **Exemption: private utilities.**
- c. Publish payments compliance notice. **Exemption: private utilities.**
- d. Publish contract change notice (if / when modifications are made) and copy of the modified contract (where applicable - contracts over £5m). **Exemption: private utilities.**
- e. Voluntary standstill period (8 working days) if and when modifications are made and a contract change notice has been published.



14. Publish contract termination notice. **Exemption: private utilities.**

Establishing a utilities framework

A utilities framework is a framework which provides for the future award of utilities contracts.



1. Publish planned procurement notice (optional) or qualifying planned procurement notice (min 40 days before tender notice if using to reduce timescales).



2. Publish preliminary market engagement notice and undertake preliminary market engagement. You must publish a preliminary market engagement notice if undertaking preliminary market engagement, but preliminary market engagement is optional. **Exemption: private utilities.**



3. Publish tender notice and associated tender documents for frameworks based on competitive procedure (open or competitive flexible procedure).



4. Observe minimum participation or tender timescales.



5. Determine whether the supplier is an excluded or an excludable supplier.





6. Assess whether the tender is suitable, including:
- a. Assessing the conditions of participation.
 - b. Where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender.
 - c. Whether the tendered price is abnormally low.
 - d. Whether there is evidence of corruption or collusion.
 - e. Whether the tender meets all of the requirements.
 - f. Whether the tender has breached any procedural requirements.



7. Assess award criteria.



8. Issue assessment summaries.



9. Publish contract award notice.



10. Standstill period - 8 working days.



11. Enter into contract (providing no issues were raised during standstill).



12. Publish contract details notice (Inc. contract if over £5m). **Exemption: private utilities.**





13. Could happen at any time during the term of the framework:

- a. Publish contract change notice (if / when modifications are made). **Exemption: private utilities.**
- b. Voluntary standstill period (8 working days) if and when modifications are made.
- c. Contract performance notice (in the event of breach or poor performance of the framework contract as specified in the T&Cs). **Exemption: private utilities.**



14. Publish contract termination notice when framework comes to an end. **Exemption: private utilities.**

Establishing an open framework (initial and every framework in the scheme)



1. Publish planned procurement notice (optional) or qualifying planned procurement notice (min 40 days before tender notice if using to reduce timescales).



2. Publish preliminary market engagement notice and undertake preliminary market engagement. You must publish a preliminary market engagement notice if undertaking preliminary market engagement, but preliminary market engagement is optional. **Exemption: private utilities.**



3. Publish tender notice and associated tender documents for frameworks based on competitive procedure (open or competitive flexible procedure).



4. Observe minimum participation or tender timescales.

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graph TD; A[5. Determine whether the supplier is an excluded or an excludable supplier.] --> B[6. Assess whether the tender is suitable, including:  
a. Assessing the conditions of participation.  
b. Where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender.  
c. Whether the tendered price is abnormally low.  
d. Whether there is evidence of corruption or collusion.  
e. Whether the tender meets all of the requirements.  
f. Whether the tender has breached any procedural requirements.]; B --> C[7. Assess award criteria.]; C --> D[8. Issue assessment summaries.]; D --> E[9. Publish contract award notice.]; E --> F[10. Standstill period - 8 working days.]; F --> G[11. Enter into contract (providing no issues were raised during standstill).]; G --> H[12. Publish contract details notice (Inc. contract if over £5m). Exemption: private utilities.]; H --> I[581];
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5. Determine whether the supplier is an excluded or an excludable supplier.

6. Assess whether the tender is suitable, including:
- Assessing the conditions of participation.
 - Where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender.
 - Whether the tendered price is abnormally low.
 - Whether there is evidence of corruption or collusion.
 - Whether the tender meets all of the requirements.
 - Whether the tender has breached any procedural requirements.

7. Assess award criteria.

8. Issue assessment summaries.

9. Publish contract award notice.

10. Standstill period - 8 working days.

11. Enter into contract (providing no issues were raised during standstill).

12. Publish contract details notice (Inc. contract if over £5m). **Exemption: private utilities.**

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graph TD; A[13. Could happen at any time during the term of the open framework:  
a. Publish contract change notice (if / when modifications are made). Exemption: private utilities.  
b. Voluntary standstill period (8 working days) if and when modifications are made.  
c. Contract performance notice (in the event of breach or poor performance of the framework contract as specified in the T&Cs). Exemption: private utilities.] --> B[14. Repeat process for reopening (linking back to initial notice).]; B --> C[15. Publish contract termination notice when framework comes to an end. Exemption: private utilities.];
```

13. Could happen at any time during the term of the open framework:

a. Publish contract change notice (if / when modifications are made). **Exemption: private utilities.**

b. Voluntary standstill period (8 working days) if and when modifications are made.

c. Contract performance notice (in the event of breach or poor performance of the framework contract as specified in the T&Cs). **Exemption: private utilities.**

14. Repeat process for reopening (linking back to initial notice).

15. Publish contract termination notice when framework comes to an end. **Exemption: private utilities.**

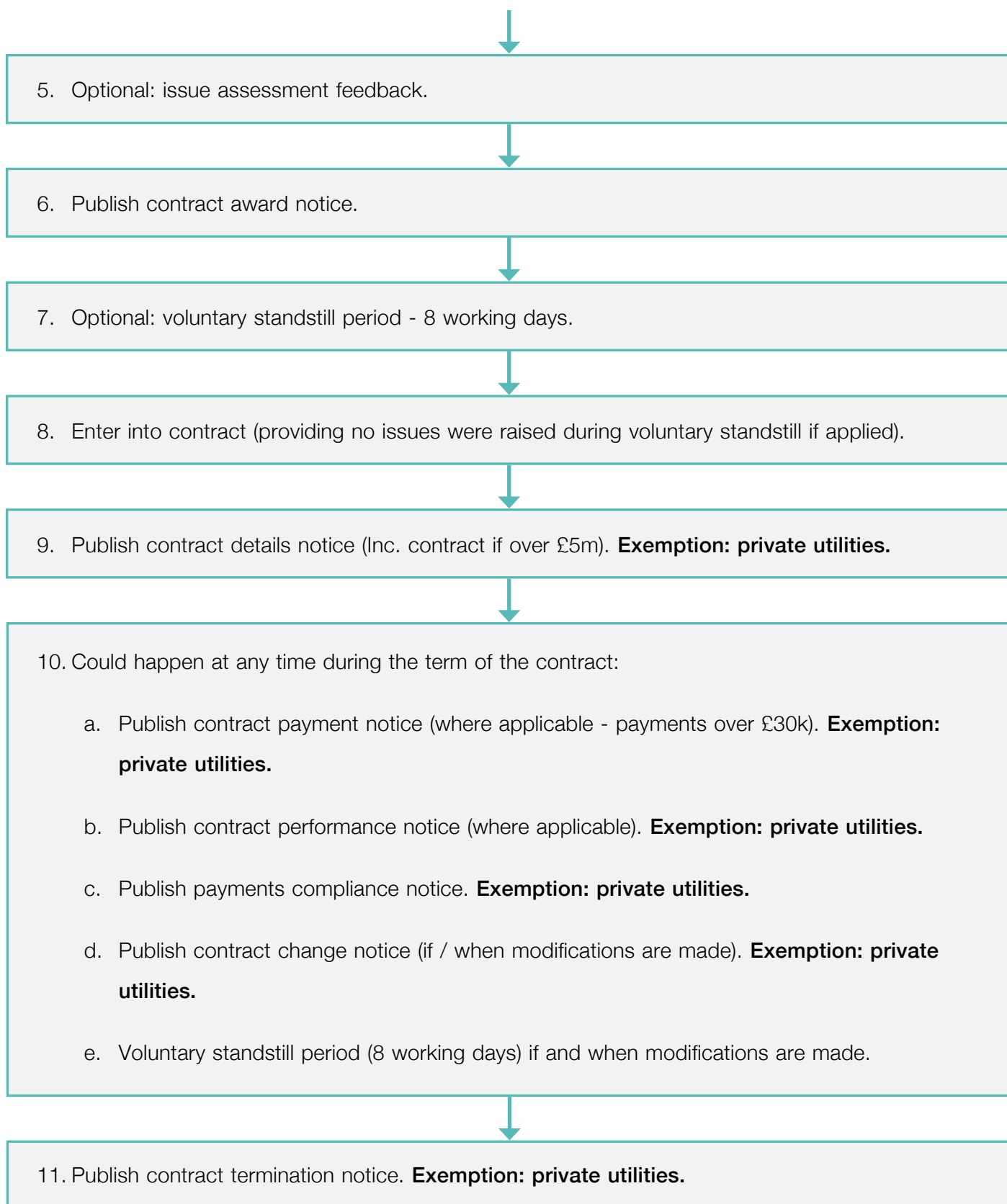
Awarding a utilities contract under utilities framework - with competition

1. Invite suppliers to tender (in accordance with the procedure allowed for within the framework).

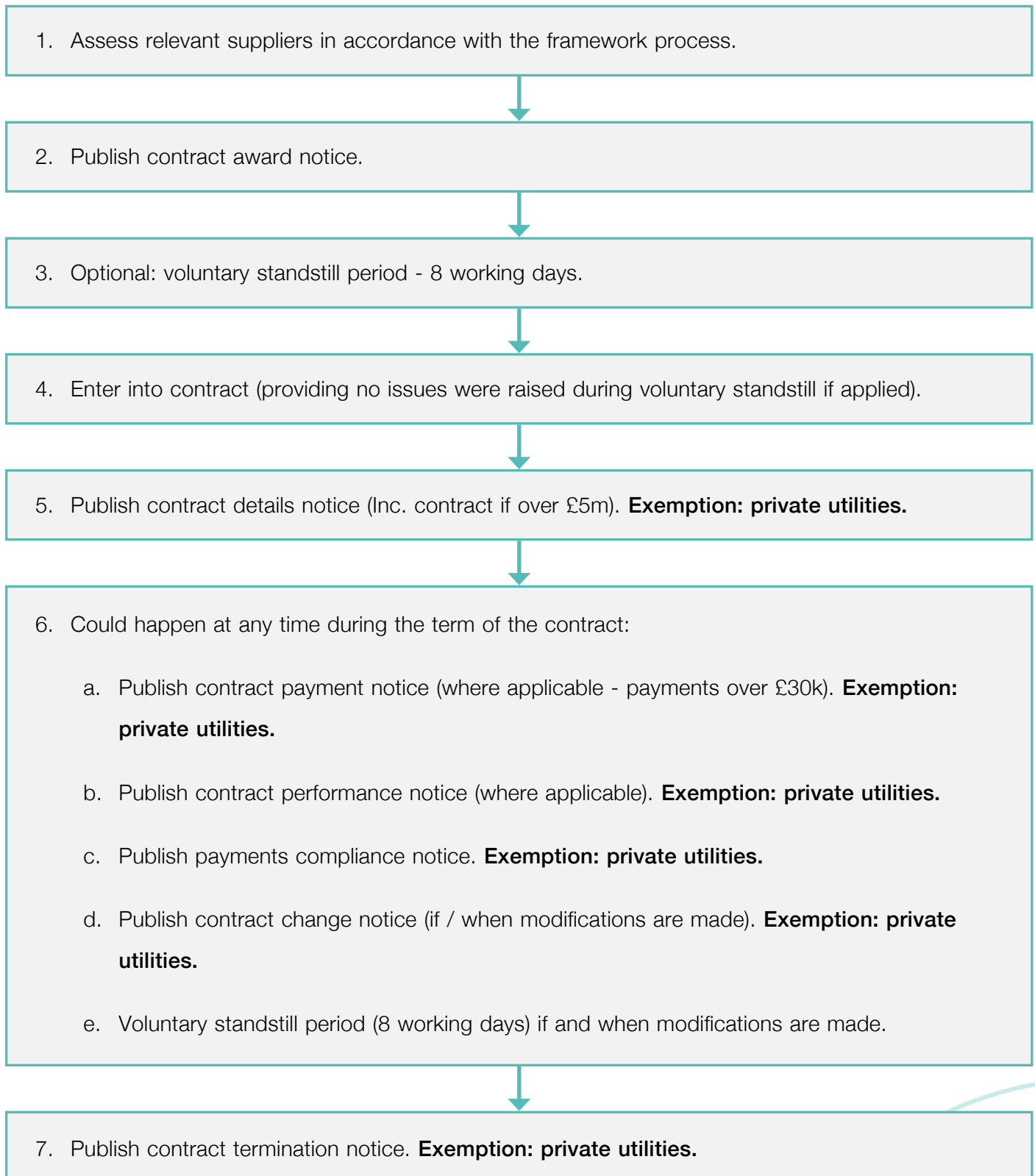
2. Observe tender timescales (no minimum applies).

3. Determine whether the supplier is an excluded or an excludable supplier.

4. Assess submissions.



Awarding a utilities contract under utilities framework - without competition



Establishing a utilities dynamic market

1. Publish preliminary market engagement notice and undertake preliminary market engagement. You must publish a preliminary market engagement notice if undertaking preliminary market engagement, but preliminary market engagement is optional. **Exemption: private utilities.**

2. Publish a utilities dynamic market notice.

3. Assess applications for membership within a reasonable period.

4. Notify suppliers.

5. Publish the utilities dynamic market notice with suppliers that have been added.

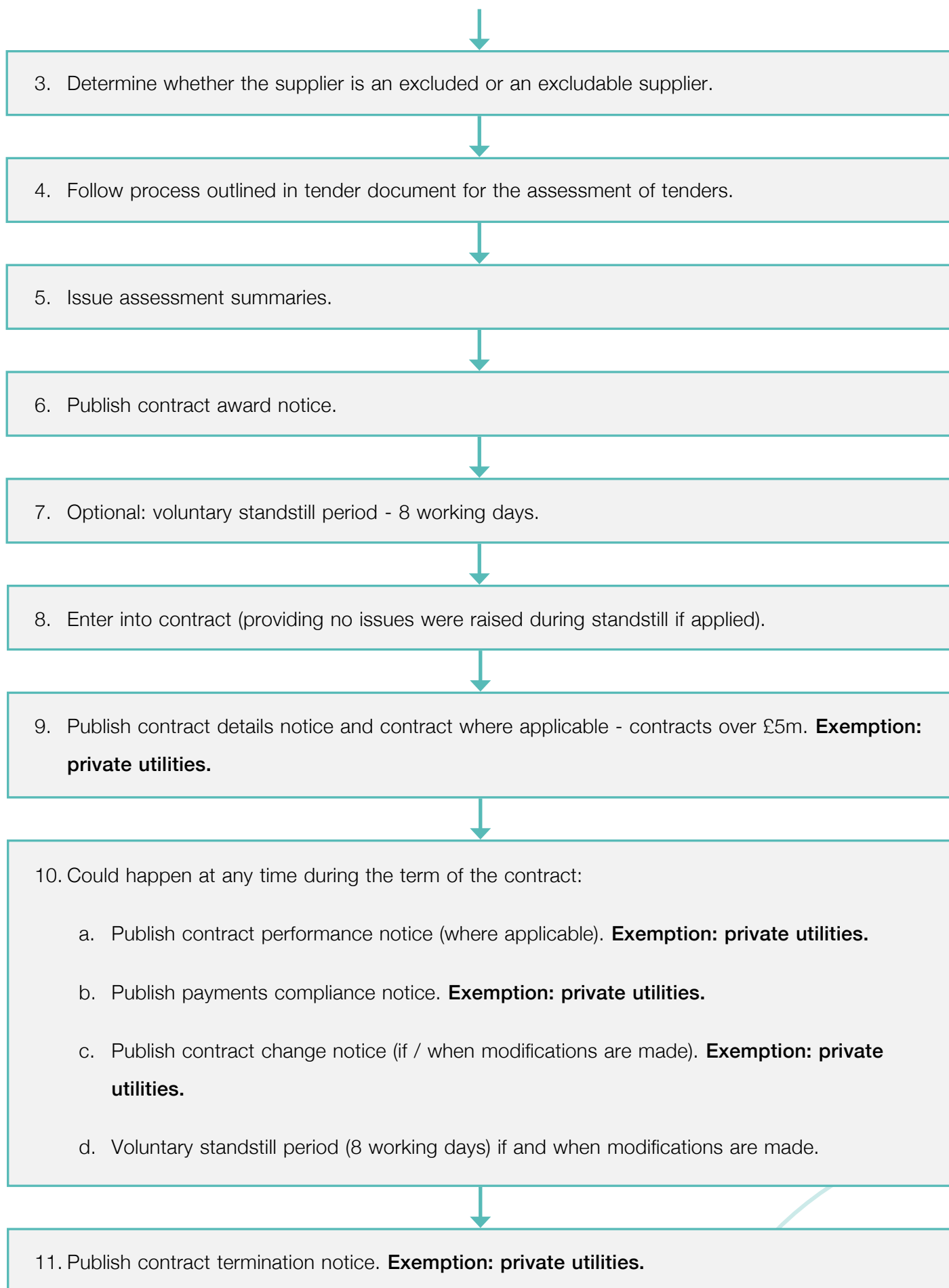
6. Publish the utilities dynamic market notice (if / when modifications are made).

7. Publish the utilities dynamic market notice when terminating the utilities dynamic market.
Exemption: private utilities.

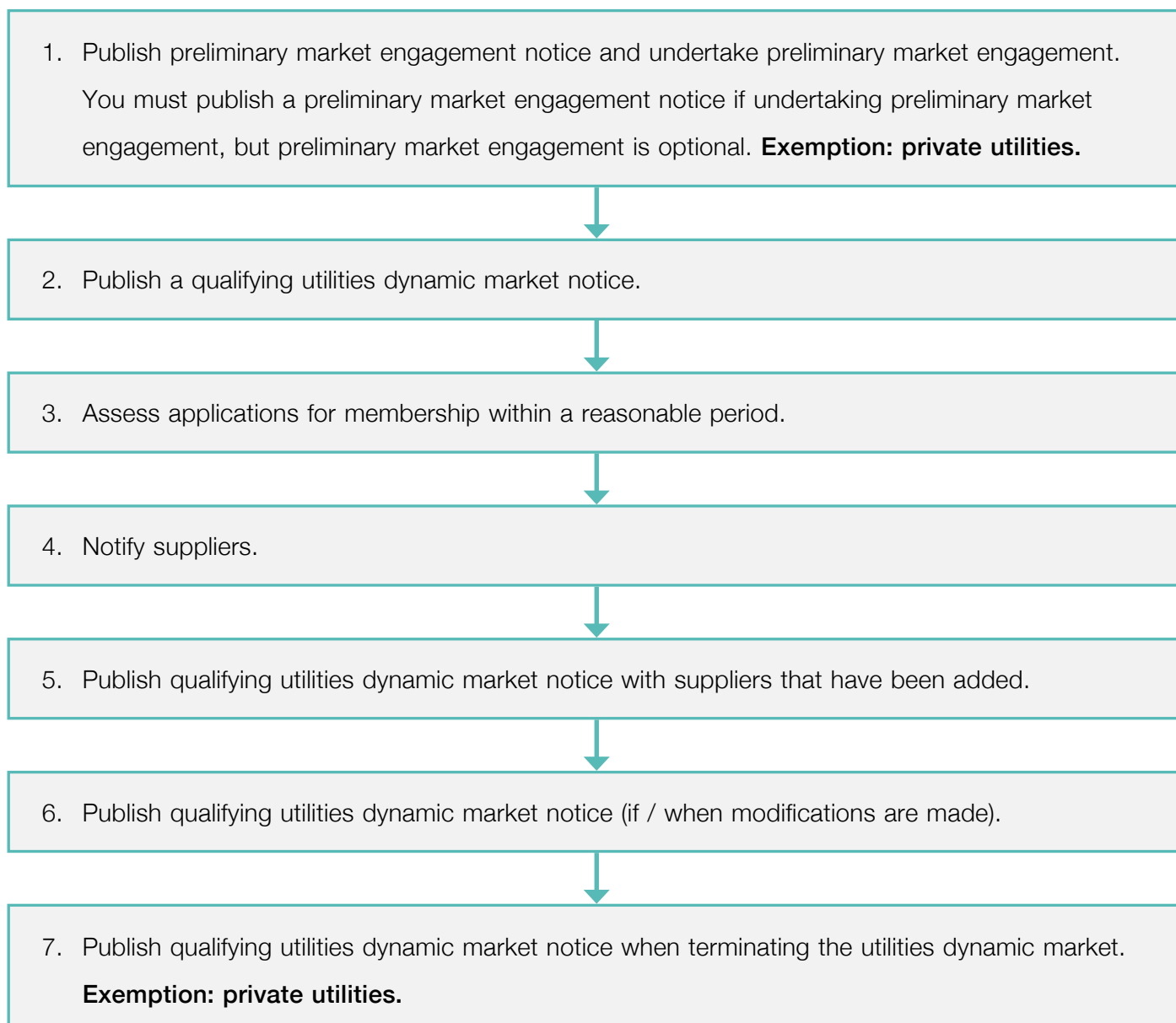
Awarding a utilities contract under a utilities dynamic market

1. Publish tender notice (competitive flexible procedure must be used).

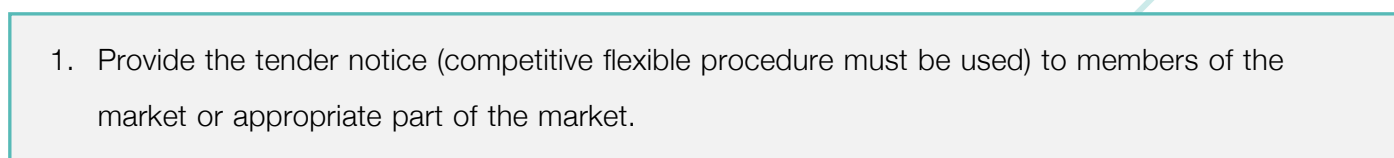
2. No minimum timescales where the tendering period is agreed by all, otherwise 10 days minimum tender period.



Establishing a utilities dynamic market by reference to a qualifying utilities dynamic market notice



Awarding a utilities contract under a dynamic market established by a qualifying utilities dynamic market notice




```
graph TD; A[2. No minimum timescales where the tendering period is agreed by all, otherwise 10 days minimum tender period.] --> B[3. Determine whether the supplier is an excluded or an excludable supplier.]; B --> C[4. Follow process outlined in tender document for the assessment of tenders.]; C --> D[5. Issue assessment summaries.]; D --> E[6. Publish contract award notice.]; E --> F[7. Optional: voluntary standstill period - 8 working days.]; F --> G[8. Enter into contract (providing no issues were raised during standstill if applied).]; G --> H[9. Publish contract details notice and contract where applicable - contracts over £5m. Exemption: private utilities.]; H --> I[10. Could happen at any time during the term of the contract:]; I --> J[1. Publish contract performance notice (where applicable). Exemption: private utilities.]; I --> K[2. Publish payments compliance notice. Exemption: private utilities.]; I --> L[3. Publish contract change notice (if / when modifications are made). Exemption: private utilities.]; I --> M[4. Voluntary standstill period (8 working days) if and when modifications are made.];
```

2. No minimum timescales where the tendering period is agreed by all, otherwise 10 days minimum tender period.

3. Determine whether the supplier is an excluded or an excludable supplier.

4. Follow process outlined in tender document for the assessment of tenders.

5. Issue assessment summaries.

6. Publish contract award notice.

7. Optional: voluntary standstill period - 8 working days.

8. Enter into contract (providing no issues were raised during standstill if applied).

9. Publish contract details notice and contract where applicable - contracts over £5m. **Exemption: private utilities.**

10. Could happen at any time during the term of the contract:

1. Publish contract performance notice (where applicable). **Exemption: private utilities.**

2. Publish payments compliance notice. **Exemption: private utilities.**

3. Publish contract change notice (if / when modifications are made). **Exemption: private utilities.**

4. Voluntary standstill period (8 working days) if and when modifications are made.



11. Publish contract termination notice. **Exemption: private utilities.**



Utilities transparency requirements

This content applies to utilities contracts. It covers **all** of the transparency publication requirements that apply across the Act, and maps these against the notices published when undertaking a procurement process under UCR 2015.

Procurement lifecycle stage	Notice name	Publication requirement (in the regulations some notices are listed as having separate versions depending on the procurement process, e.g. open, competitive flexible and below-threshold)	Exemptions	Change from UCR 2016
Plan	Pipeline notice	Mandatory for organisations with £100m+ spend per annum. Publish 12-month forward-look at planned procurements of £2m+.	Private utilities	N/A - new notice
Define	Preliminary market engagement notice	Optional and best practice , <i>must be published</i> where pre-market engagement is anticipated or has taken place (or reason for non-publication explained in tender notice).	Private utilities	N/A - new notice

Procurement lifecycle stage	Notice name	Publication requirement (in the regulations some notices are listed as having separate versions depending on the procurement process, e.g. open, competitive flexible and below-threshold)	Exemptions	Change from UCR 2016
Procure	Planned procurement notice	Optional and best practice , advises the market of an upcoming procurement. A <i>qualifying</i> planned procurement notice can reduce tender timescales to 10 days.		Periodic indicative notice
Procure	Tender notice (separate versions of the notice for open, competitive flexible, frameworks, dynamic markets and below-threshold contract)	Mandatory for below-threshold open, competitive flexible and regulated procurements; to establish a framework; to award a contract under an existing dynamic market.	Qualifying utilities dynamic markets (existing or pending members of the market may be invited directly without publishing a tender notice)	Contract notice
Procure	Transparency notice	Mandatory when undertaking a direct award (publish prior to award).		Voluntary Ex Ante Transparency (VEAT) Notice
Procure	Contract award notice (separate versions of the notice for private utilities)	Mandatory (communicates the outcome of the procurement and commences standstill prior to awarding a contract).		N/A - new notice

Procurement lifecycle stage	Notice name	Publication requirement (in the regulations some notices are listed as having separate versions depending on the procurement process, e.g. open, competitive flexible and below-threshold)	Exemptions	Change from UCR 2016
Procure	Contract details notice (separate versions of the notice for frameworks, framework call offs, direct awards and below-threshold contract)	Mandatory - details of the awarded contract (including the redacted contract, for public contracts £5m+).	Private utilities	Contract award notice
Manage	Contract payment notice	Mandatory - details of individual payments over £30,000 made under a public contract (published quarterly).	Utilities contracts awarded by a private utility	N/A - new notice
Manage	Contract performance notice	Mandatory to report: a. KPI scores for public contracts valued £5m+ (annually) b. poor supplier performance / breach of contract (within 30 days)	Private utilities	N/A - new notice
Manage	Contract change notice	Mandatory prior to a qualifying modification taking place. Voluntary standstill. Where modification results in total contract value of +£5m, modified contract or modification details to be published within 90-days of modification.	Private utilities	Modification notice

Procurement lifecycle stage	Notice name	Publication requirement (in the regulations some notices are listed as having separate versions depending on the procurement process, e.g. open, competitive flexible and below-threshold)	Exemptions	Change from UCR 2016
Manage	Contract termination notice	Mandatory when a public contract ends.	Private utilities	N/A - new notice
Procure	Procurement termination notice	Mandatory where, after publishing a tender or transparency notice, the process is terminated without awarding a contract.	Private utilities	Corrigendum notice
Procure	Dynamic market notice	Mandatory for advertising, establishing, changing or terminating a dynamic market.	Private utilities are not required to update the dynamic market notice when the market ceases to operate	Qualification system
Manage	Payments compliance notice	Mandatory - details of contracting authority performance against 30-day payment terms (twice annually).	Private utilities	N/A - new notice



Procurement Act sections

Which sections apply to utilities contracts and private utilities

Part 1 key definitions

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
1 Procurement and covered procurement	Yes	Yes
2 Contracting authorities	Yes - in the case of a utilities contract, 'contracting authority' means a public authority, public undertaking or private utility, other than an excluded authority 'Public authority' means a person that is: a. wholly or mainly funded out of public funds, or b. subject to public authority oversight, and does not operate on a commercial basis - but see subsections (9) and (10) 'Public undertaking' means a person that: a. is subject to public authority oversight, and b. operates on a commercial basis	Yes - in the case of a utilities contract, 'contracting authority' means a public authority, public undertaking or private utility, other than an excluded authority 'Private utility' means a person that: a. is not a public authority or public undertaking, and b. carries out a utility activity

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
3 Public contracts	Yes	Yes
4 Valuation of contracts	Yes	Yes
5 Mixed procurement: above and below threshold	Yes	Yes
6 Utilities contracts	Yes - a reference to a utilities contract includes a reference to a framework for the future award of contracts for the supply of goods, services or works wholly or mainly for the purpose of a utility activity	Yes - a reference to a utilities contract includes a reference to a framework for the future award of contracts for the supply of goods, services or works wholly or mainly for the purpose of a utility activities
7 Defence and security contracts	Yes - whilst utilities are not specifically excluded from this section, they are very unlikely to ever place a defence and security contract	Yes
8 Concession contracts	Yes	Yes
9 Light touch contracts	Yes	Yes
10 Mixed procurement: special regime contracts	Yes	Yes

Part 2 principles and objectives

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
11 Covered procurement only in accordance with this act	Yes	Yes
12 Covered procurement: objectives	Yes	Yes
13 The national procurement policy statement	Yes	No
14 The Wales procurement policy statement	Yes	No

Part 3 award of public contracts and procedures

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
15 Planned procurement notice	Yes	Yes
16 Preliminary market engagement	Yes	Yes
17 Preliminary market engagement notices	Yes	No
18 Duty to consider lots	Yes	Yes
19 Award of public contracts following a competitive procedure	Yes	Yes

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
20 Competitive tendering procedures	Yes	Yes
21 Tender notices and associated tender documents	Yes - qualifying utilities dynamic markets (tender notices do not have to be published but can be provided to existing members of the market)	Yes - qualifying utilities dynamic markets (tender notices do not have to be published but can be provided to existing members of the market)
22 Conditions of participation	Yes	Yes
23 Award criteria	Yes	Yes
24 Refining award criteria	Yes	Yes
25 Sub-contracting specifications	Yes	Yes
26 Excluding suppliers from a competitive award	Yes	Yes
27 Excluding suppliers from a competitive flexible procedure	Yes	Yes
28 Excluding suppliers by reference to sub-contractors	Yes	Yes
29 Excluding a supplier that is a threat to national security	Yes	Yes
30 Excluding suppliers for improper behaviour	Yes	Yes

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
31 Modifying a section 19 procurement	Yes	Yes
32 Reserving contracts to supported employment providers	Yes	Yes
33 Reserving contracts to public service mutuals	No	No
34 Competitive award by reference to dynamic markets	Yes - if the utilities dynamic market was established by reference to a qualifying utilities dynamic market notice contracting authorities have discretion whether to provide a tender notice to suppliers that are still being considered for membership of the market, or part of the market	Yes - if the utilities dynamic market was established by reference to a qualifying utilities dynamic market notice contracting authorities have discretion whether to provide a tender notice to suppliers that are still being considered for membership of the market, or part of the market
35 Dynamic markets: establishment	Yes	Yes
36 Dynamic markets: membership	Yes	Yes
37 Dynamic markets: removing members from a market	Yes	Yes

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
38 Dynamic markets: fees	Yes - utilities dynamic markets may provide for the charging of fees to suppliers in connection with obtaining and maintaining membership of the market They can not provide for charging fees to suppliers that are awarded a contract by reference to their membership of the utilities dynamic market	Yes - utilities dynamic markets may provide for the charging of fees to suppliers in connection with obtaining and maintaining membership of the market They can not provide for charging fees to suppliers that are awarded a contract by reference to their membership of the utilities dynamic market
39 Dynamic market notices	Yes	Yes with exemptions - private utilities do not have to publish a notice to confirm the dynamic market has ceased to operate
40 Qualifying utilities dynamic market notices: no duty to publish a tender notice	Yes	Yes
41 Direct award in special cases	Yes	Yes
42 Direct award to protect life etc	Yes	Yes
43 Switching to direct award	Yes	Yes
44 Transparency notices	Yes	Yes
45 Frameworks	Yes	Yes

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
46 Frameworks: competitive selection process	Yes	Yes
47 Frameworks: maximum terms	Yes	No
48 Frameworks: implied terms	Yes	Yes
49 Open frameworks	Yes	Yes
50 Contract award notices and assessment summaries	Yes	Yes
51 Standstill periods on the award of contracts	Yes - a standstill is also not required for a contract that is awarded in accordance with a framework, including a utilities framework or by reference to a dynamic market, which includes utility dynamic markets and qualified utility dynamic markets	Yes with exceptions - the prohibition on entering into a contract before the end of a standstill period does not apply to private utilities when the award is made under direct award (section 41) or switching to a direct award section 43) A standstill is also not required for a contract that is awarded in accordance with a framework, including a utilities framework or by reference to a dynamic market, which includes utility dynamic markets and qualified utility dynamic markets
52 Key performance indicators	Yes - exceptions - frameworks	No

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
53 Contract details notices and publication of contracts	Yes	No
54 Time limits	Yes	Yes
55 Procurement termination notices	Yes	No
56 Technical specifications	Yes	Yes
57 Meaning of excluded and excludable supplier	Yes	Yes with exemptions - for private utilities an excluded supplier is to be regarded as an excludable supplier
58 Considering whether a supplier is excluded or excludable	Yes	Yes
59 Notification of exclusion of supplier	Yes	Yes
60 Investigations of supplier: exclusion grounds	Yes	Yes
61 Investigation under section 60: reports	Yes	Yes
62 Debarment list	Yes	Yes
63 Debarment decisions: interim relief	Yes	Yes

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
64 Debarment list: application for approval	Yes	Yes
65 Debarment decisions: appeals	Yes	Yes
66 Debarment proceedings and closed material procedure	Yes	Yes

Part 4 management of public contracts

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
67 Electronic invoicing: implied term	Yes	Yes
68 Implied payment terms in public contracts	Yes	No
69 Payment compliance notices	Yes	No
70 Information about payments under public contracts	Yes	No
71 Assessment of contract performance	Yes	No
72 Sub-contracting: directions	Yes	Yes

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
73 Implied terms in sub-contracts	Yes	No
74 Modifying a public contract	Yes	Yes
75 Contract change notices	Yes	No
76 Voluntary standstill period on the modification of contracts	Yes	No
77 Publication of modifications	Yes	No
78 Implied right to terminate public contracts	Yes	Yes
79 Terminating public contracts: national security	Yes	Yes
80 Contract termination notices	Yes	No

Part 5 conflicts of interest

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
81 Conflicts of interest: duty to identify	Yes	Yes
82 Conflicts of interest: duty to mitigate	Yes	Yes
83 Conflicts assessments	Yes	Yes

Part 6 below-threshold contracts

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
84 Regulated below-threshold contracts	No	No
85 Regulated below-threshold contracts: procedure	No	No
86 Regulated below-threshold contracts: duty to consider small and medium-sized enterprises	No	No
87 Regulated below-threshold contracts: notices	No	No
88 Regulated below-threshold contracts: implied payment terms	No	No

Part 7 implementation of international obligations

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
89 Treaty state suppliers	Yes	Yes
90 Treaty state suppliers: non-discrimination	Yes	Yes
91 Treaty state suppliers: non-discrimination in Scotland	Yes	Yes
92 Trade disputes	Yes	Yes

Part 8 information and notices: general provisions

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
93 Pipeline notices	Yes	No
94 General exemptions from duties to publish or disclose information	Yes	Yes
95 Notices, documents and information: regulations and online system	Yes	Yes
96 Electronic communications	Yes	Yes
97 Information relating to a procurement	Yes	Yes
98 Record keeping	Yes	Yes
99 Data protection	Yes	Yes

Part 9 remedies for breach of statutory duty

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
100 Duties under this act enforceable in civil proceedings	Yes	Yes
101 Automatic suspension of the entry into or modification of contracts	Yes	Yes
102 Interim remedies	Yes	Yes
103 Pre-contractual remedies	Yes	Yes
104 Post-contractual remedies	Yes	Yes
105 Post-contractual remedies: set aside conditions	Yes	Yes
106 Time limits on claims	Yes	Yes
107 Part 9 proceedings and closed material procedure	Yes	Yes

Part 10 procurement oversight

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
108 Procurement investigations	Yes	No - the published guidance will specify who has to adhere to the guidance
109 Recommendations following procurement investigations	Yes	No
110 Guidance following procurement investigations	Yes	Yes - the published guidance will specify who has to adhere to the guidance

Part 11 appropriate authorities and cross-border procurement

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
111 Welsh Ministers: restrictions on the exercise of powers	Yes	Yes
112 Northern Ireland department: restrictions on the exercise of powers	Yes	Yes
113 Minister of the Crown: restrictions on the exercise of powers	Yes	Yes
114 Definitions relating to procurement arrangements	Yes	Yes

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
115 Powers relating to procurement arrangements	Yes	Yes

Part 12 amendments and appeals

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
116 Disapplication of duty in section 17 of the Local Government Act 1988	No	No
117 Single source defence contracts	No	No
118 Concurrent powers and the Government of Wales Act 2006	No	No
119 Repeals etc	Yes	Yes

Part 13 general

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
120 Application of this act to procurement by NHS England	No	No
121 Power to amend this act in relation to private utilities	No	Yes
122 Regulations	Yes	Yes
123 Interpretation	Yes	Yes
124 Index of defined expressions	Yes	Yes
125 Power to make consequential, etc, provision	Yes	Yes
126 Extent	Yes	Yes
127 Commencement	Yes	Yes
128 Short title	Yes	Yes

Schedules

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
1 Threshold amounts	Yes	Yes
2 Exempted contracts	Yes	Yes
3 Estimating the value of a contract	Yes	Yes
4 Utility activities	Yes	Yes
5 Direct award justifications	Yes	Yes
6 Mandatory exclusion grounds	Yes	Yes
7 Discretionary exclusion grounds	Yes	Yes
8 Permitted contract modifications	Yes with exemptions 50% threshold for modifying contracts for unforeseeable circumstances does not apply to utility contracts 50% threshold for modifying contracts for materialisation of a known risk does not apply to utility contracts 50% threshold for modifying contracts for additional goods, services or works does not apply to utility contracts	Yes with exemptions 50% threshold for modifying contracts for unforeseeable circumstances does not apply to utility contracts 50% threshold for modifying contracts for materialisation of a known risk does not apply to utility contracts 50% threshold for modifying contracts for additional goods, services or works does not apply to utility contracts
9 Treaty state suppliers (specified international agreements)	Yes	Yes

Section	Is it applicable to utilities contracts?	Is it applicable to private utilities?
10 Single source defence contracts	No	No
11 Repeals and revocations	Yes	Yes



Light Touch Summary Document

Contents

- A. Introduction
- B. Overview
- C. Changes and exemptions
 - 1. Scope, Definitions and Principles
 - 2. Transparency
 - 3. Procedures
 - 4. Competitive Flexible Procedure
 - 5. Frameworks and Dynamic Markets
 - 6. Supplier Selection
 - 7. Assessment and award
 - 8. Remedies, Procurement Oversight and Debarment
 - 9. Contract Governance

A. Introduction

Scope of summary document

This document provides an overview of light touch contracts in the Procurement Act and regulations. Whilst light touch contracts will now be subject to the general rules within the Act (as set out in Summary Documents 1-9), there are some exemptions specifically for light touch contracts and some changes from the light touch regime to the Procurement Act.

This document provides details of:

- The key changes against the previous regulations (primarily by reference to the Public Contracts Regulations 2015 (PCR 2015) and the light touch regime)
- The exemptions in the Procurement Act for light touch contracts, and
- What a contracting authority must do to be compliant with the Procurement Act whilst highlighting the opportunities in the Act and how they can be exploited to get the most public benefit.

Light touch contracts defined

Section 9 (light touch contracts) of the Procurement Act defines light touch contracts as contracts wholly or mainly for the supply of services of a kind specified in regulations. These “light touch services” are set out in Schedule 1 of the Procurement Regulations 2024, using common procurement vocabulary (CPV) codes. The scope of services that can be procured using a light touch contract has broadly remained the same as those in the light touch regime under the PCR 2015. Table 1 of Schedule 1 to the Procurement Regulations 2024 specifies the general light touch services, which includes:

- Health, social and related services
- Administrative social, educational, healthcare and cultural services
- Compulsory social security services
- Benefit services
- Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisations services
- Religious services
- Hotel and restaurant services
- Legal services (not otherwise exempt under the Act)
- Other administrative services and government services
- Provision of services to the community
- Prison related services, public security and rescue services (not otherwise exempt under the Act)

- Investigation and security services
- International services
- Postal services, and
- Miscellaneous services

Table 2 of Schedule 1 to the Procurement Regulations 2024 specifies additional light touch services, but only where those services are supplied under certain defence and security contracts.

B. Overview

Light touch contracts (section 9) are public contracts that are subject to more flexible procurement rules (and these flexibilities broadly reflect the same regime that was available under PCR 2015) for certain social, health, education and other public services, or “light touch services”.

Light touch services are defined by reference to a list which uses ‘CPV codes’¹ to identify the services. These are specified in Schedule 1 to the Procurement Regulations 2024. This list may be added to or amended by a Minister of the Crown, should the need arise.

The Procurement Act also introduces a new ground to justify the direct award² of a contract for light touch services where there is a legal justification to do so due to ‘user choice’ (in Schedule 5, paragraphs 15-17). There are also some provisions for the establishment of a light touch framework (section 9(5)).

C. Changes and exemptions

This section contains details of the exemptions and new provisions applicable to light touch contracts under the Procurement Act.

A quick reference guide to these exemptions and provisions can be found in the Light Touch Contract cheat sheet.

¹ CPV (Common Procurement Vocabulary) codes have been developed specifically for public procurement. Their main purpose is to help classify contract notices consistently and to help suppliers find opportunities by using a standardised vocabulary.

² An explanation of all direct award grounds are contained in the procedures summary document

The information in this document is organised on a topic by topic basis, following the procurement lifecycle and should be reviewed alongside the relevant summary documents 1-9. Unless stated here, the general rules of the Procurement Act apply in full to light touch contracts.

■ 1. Scope, Definitions and Principles

Thresholds

Light touch contracts have their own thresholds as set out in Schedule 1 to the Act:

Type of contract	Threshold amount (including VAT) as of January 2024
Light touch contracts (including defence and security light touch contracts - see defence and security summary document)	£663,540
Utilities contract that is a light touch contract (see utilities summary document)	£884,720
Light touch contract that is a concession contract	£5,372,609

The “light touch” thresholds in Schedule 1 are not determined by the Government Procurement Agreement (GPA) and as such are not subject to change every two years. Where a light touch contract is also a concession contract, the higher threshold used for concession contracts applies. This threshold continues to align with the UK GPA threshold for construction services which is Special Drawing Rights (SDR) 5,000,000 (currently £5,372,609) and is updated every two years.

Exempted Contracts

The Health Care Services (Provider Selection Regime) Regulations 2023 (PSR 2023) are a new set of bespoke procurement regulations covering procurement of certain healthcare services in England (not Wales). The services in scope of PSR 2023 are set out in Schedule 1 of those regulations and describe services delivered to patients and service users by ‘relevant authorities’, which include NHS trusts and local authorities. The Procurement Act does not apply to procurements that are properly in scope of the PSR 2023 (see regulation 49 of the Procurement Regulations 2024). The Procurement Act will cover all other goods, services, and works purchased by such ‘relevant authorities’ (e.g. NHS trusts and local authorities). It will be important for contracting authorities to check whether the Procurement Act or the PSR 2023 apply from the earliest stage of procurement planning.

See Summary Document 1: Scope, Definitions and Principles for further information.

■ 2. Transparency

Light touch contracts benefit from lighter regulation in that they are exempt from certain provisions of the Procurement Act in relation to the publication of notices both before and beyond the award of the contract. In respect of light touch contracts awarded under the ground of user choice, there is even greater flexibility; this is covered later in the procedures section.

The table below shows a summary of the transparency requirements for above threshold light touch contracts, further detail can be found in the Transparency Summary Document

Notice	Applicable	Exceptions
Pipeline notice	Y	
Preliminary market engagement notice	Y	
Planned procurement notice	Y	A qualifying planned procurement notice would not be needed for the purposes of reducing time periods as there are no mandated minimum period for light touch contracts
Tender notice	Y	Must identify that the contract is a light touch contract Regulation 18(2)(q) exempts contracting authorities from the requirement to provide a justification in the tender notice if not dividing the contract into lots
Transparency notice	Y	Except for when undertaking a direct award on the ground of user choice Must identify that the contract is a light touch contract
Contract award notice	Y	Except for when undertaking a direct award on the ground of user choice Must identify that the contract is a light touch contract
Contract details notice	Y	Have a longer time period of 120 days to publish the notice Not applicable when undertaking a direct award on the ground of user choice Must identify that the contract is a light touch contract
Copy of the Contract	Y	Where the estimated value of the light touch contract is over £5 million, a copy of the contract must be published but there is a longer time period of 180 days to publish

Notice	Applicable	Exceptions
Contract performance notice	N	
Contract change notice	N	
Contract termination notice	Y	Except for when undertaking a direct award on the ground of user choice
Procurement termination notice	Y	
Payments compliance notice	Y	

See **Summary Document 2: Transparency** for further information.

■ 3. Procedures

Duty to consider lots

Change: Under the light touch regime in the PCR 2015, the consideration of lots was not mandated, although doing so was considered to be best practice. It is now a requirement under the Procurement Act to consider the use of lots for a light touch contract prior to undertaking a procurement and publishing a tender notice. Where a contracting authority determines that lots could be reasonable and appropriate, they must either use lots or keep a record for not doing so.

Benefit: This duty supports the duty to have regard to SMEs and allows for greater opportunity for smaller suppliers to participate in public procurements. This is particularly useful for light touch contracts where there may be a number of small, local services providers.

Competitive tendering procedures

As they did under PCR 2015, contracting authorities have the freedom to design appropriate competitive tendering procedures for light touch contracts under the Procurement Act by utilising the full flexibilities of the new competitive flexible procedure (see competitive flexible procedure summary document), although an open procedure can still be used.

Time limits

The minimum time limits for participation and tendering periods for light touch contracts are not mandated (section 54), allowing for time-critical and sensitive services to be procured more swiftly. However,

contracting authorities must take into account the overall procurement objectives and the considerations at section 54(1) when setting time periods and ensure that timescales are proportionate and reasonable for the nature of the requirement and the complexity of the procurement process. Any time limit imposed must be the same for each supplier.

Mixed procurement

Where a contract is not solely for light touch services, the mixed procurement special regime rules also need to be applied (section 10) (procedures summary document). For example, where certain goods or services under a light touch contract are reasonably capable of being supplied under a separate contract or framework. Where that separate contract or framework would itself not be a special regime contract of the same kind (or even at all) but would be above the threshold applicable to it, and the contracting authority chooses to procure both elements together, the resulting combined contract will not be treated as a light touch contract.

Direct award

Light touch contracts can utilise the grounds in the Procurement Act that justify direct award to a supplier without running a competition. The following new ground is specific to light touch contracts.

User choice contracts

Change: where a public contract is for user choice services, meaning light touch-defined services supplied for the benefit of a particular individual (end user), this is now a ground for a direct award (schedule 5).

This ground can only be used where the contract is for user choice services and where certain conditions are met.

Benefit: Critical and sensitive care and support contracts can be entered into directly with the end user's (or their carers') preferred or selected supplier without the need for a full competitive tendering procedure, which may result in an outcome that is not the right one for the individual based on their (or their carers') own personal preferences and needs.

User choice services are:

- services that are light touch services as specified in Schedule 1 to the Procurement Regulations 2024,
- for the benefit of a particular individual (end user), and
- services where the contracting authority would be legally required to consider the views of the end user, or their carers, in relation to who should supply the services

And the conditions for using this ground to undertake a direct award are:

- The end user or their carer has expressed a preference as to which supplier should provide the services or there is only one supplier capable of providing the service, **and**
- The contracting authority considers that a competitive tendering procedure would not be in the best interests of the end user

Direct awards made based on the ground of user choice are not subject to the same transparency requirements as a direct award under any other ground (see procedures summary document). This means that the following **do not** have to be published:

- A transparency notice
- Any other notices, namely:
 - Contract award notice
 - Contract details notice
 - A contract termination notice

Other obligations such as issuing assessment summaries to suppliers and publishing a copy of the contract also do not apply.

Direct awards for other light touch contracts

When undertaking a direct award for a light touch contract that is **not** based on user choice (i.e. using any of the other direct award grounds in Schedule 5), a transparency notice must be published (see procedures summary document) as well as the other relevant notices during the award and life of the contract.

Modifying a procurement

For light touch contracts there is greater flexibility to make any necessary modifications to a procedure which is already underway. Section 31(2)(b) (modifying a section 19 procurement) allows modifications, even if considered to be substantial, to be made up until the tender deadline for light touch contracts.

When making such modifications contracting authorities must:

- Have regard to the procurement objectives (section 12) and consider revising any applicable timescales as a result of such modification (section 31(4)).
- Revise and republish the tender notice (and/or update any associated tender documents) if they are impacted by the modification or the revised timescales (section 31(5)).
- Notify the participating suppliers of such changes (section 31(6)).

See Summary Document 3: Procedures, for further information.

■ 4. Competitive Flexible Procedure

Reserving contracts to public service mutuals

In respect of certain, specified light touch contracts, the ability to reserve contracts to qualifying public service mutuals has been retained as long as the contract term is for 5 years or less (section 33(1)).

Where a contract is being reserved to a public service mutual, only the competitive flexible procedure can be used (section 33(2)). The open procedure cannot be used as the market is being restricted to suppliers who meet the requirements of a qualifying public service mutual. Contracting authorities must disregard any tenders from suppliers that are not qualifying public service mutuals (section 33(4)).

Public service mutuals are organisations that operate for the purpose of delivering public services and mainly for the purpose of delivering one or more reservable light touch services, are not for profit or provide for the distribution of profits only to its members and are under the management and control of its employees. To be a qualifying public service mutual, the organisation must not have entered into a reserved contract for the same kind of light touch services with the same contracting authority in the previous 3 years.

The ability to reserve a contract to a public service mutual can help contracting authorities to deliver on social value commitments by awarding contracts to suppliers that have such priorities at the heart of their organisation. Whilst reserving contracts is encouraged, it must be considered in the wider context of value for money.

See Table 1 in Schedule 1 to the Procurement Regulations 2024 where the light touch services which are specified as a reservable light touch service are identified by the letter “R” in column 3.

See Summary Document 4: Competitive Flexible Procedure, for further information.

■ 5. Frameworks and Dynamic Markets

Frameworks

Change: The definition of a light touch contract under the Act captures a framework for the future award of contracts wholly or mainly for light touch services (referred to here as “light touch frameworks”).

A framework is a contract between a contracting authority and one or more suppliers that provides for the future award of contracts to a supplier or suppliers (commonly known as call off contracts).

This means that generally light touch frameworks are subject to the framework rules prescribed under the Act, for example establishing a framework (see Frameworks and Dynamic Markets summary document). However, there are a number of exceptions from the general rules (see sections 45(9), 46(11) and 47(5)).

Section 45(9) removes the requirement for competition between suppliers on a light touch framework in all circumstances, so it is permissible for contracting authorities to award a contract directly to a supplier without carrying out a competition if the light touch framework terms and conditions allows for this. It also removes the requirement to include certain information in the framework.

However, where a framework, that is not a light touch framework, is being used to call off a light touch contract, a contract cannot be awarded under the framework without carrying out a competition unless section 45(4) applies.

Examples

A framework for social care services procured as a light touch framework would allow for call off contracts to be awarded directly to a supplier without carrying out a competition.

If the framework is not a light touch framework e.g. an ICT software framework with a training lot (which are light touch services), the full framework rules in the Act apply, regardless as to whether a light touch contract is being awarded under it or not. In this circumstance, the contract could not be directly awarded to the supplier unless there is only one supplier on the framework or the framework sets out the core terms of the contract to be awarded and an objective mechanism for selecting the supplier (i.e. if section 45(4) applies)

There is no maximum term specified for a light touch framework contract (section 47(5)(c)), although the term should be relevant and proportionate to the type of services and the market to ensure that competition and value for money is maintained over time.

Open Frameworks and Dynamic Markets

The general rules in the Procurement Act for Open Frameworks and Dynamic Markets apply in full for light touch contracts (Frameworks and Dynamic Markets summary document).

See Summary Document : Frameworks and Dynamic Markets, for further information.

■ 6. Supplier Selection

Exclusions

Change: Under the light touch regime in PCR 2015, the application of exclusion grounds was not mandated, although doing so was considered to be best practice. Exclusion grounds now apply in full to light touch contracts in the same way as other public contracts, meaning that contracting authorities awarding light touch contracts must now consider whether a supplier is an excluded or excludable supplier based on the exclusion grounds before assessing their tender.

Benefit: Through assessing the exclusion grounds contracting authorities can be assured that the suppliers being awarded a contract do not pose unacceptable risks. Assessing this up front reduces the risk of issues arising during the term of the contract that may put critical services such as fostering or domestic abuse services in jeopardy which would be detrimental to the end users and the reputation of the contracting authority.

For direct awards for light touch and user choice contracts, this now means that excluded suppliers cannot be directly awarded to, unless there is an overriding public interest in awarding the contract to the supplier.

See Summary Document 6: Supplier Selection, for further information.

■ 7. Assessment and award

End user/service recipient choice - in assessment and award criteria

The main rules around award criteria apply (see Assessment and Award summary document). However there are some additional flexibilities that can be considered to help ensure the most appropriate outcome. The requirement for the award criteria to relate to the subject matter of the contract is widened for certain light touch contracts so that the subject matter of the contract also includes views, needs and the benefit to “particular individuals” (end users).

Change: Under section 23(6) of the Act there is the ability to consider certain views and needs of the end user/service recipient in the award of contracts which are for the benefit of an end user/service recipient.

Benefit: light touch contracts can now be procured to better suit the specific individual (end user) needs and requirements of the service user resulting in more appropriate and fit for purpose contracts.

In such contracts the award criteria may also make reference to:

- the views of the individual (end user) for whose benefit the service is being provided or of a person providing care to that individual (end user) in relation to:
 - who should supply the services, and
 - how and when they should be supplied;
- the different needs of different service recipients;
- the importance of proximity between the supplier and service recipients for the effective and efficient supply of the services.

Example award criteria:

- *Accessibility for individuals with severe incapacitating disabilities requiring specialised mobile text to speech technology.*
- *Service providers must be located within 10 miles of the service recipient's family*
- *Treatment premises must meet specific accessibility requirements*

■ Contract Award

Assessment summaries

Change: Awards made for light touch contracts require assessment summaries to be issued to suppliers prior to the contract award notice being published. The contract award notice signals the intention to enter into a contract, and initiates the start of a standstill period (where one is to be observed). However, there is no requirement to observe a standstill period for light touch contracts (section 51(3)(f)), although it is considered best practice to do so.

Benefit: the assessment summary will provide a more consistent quality of information to unsuccessful suppliers and where planned for throughout the procurement process will be less burdensome for contracting authorities.

The Assessment and Award summary document covers assessment summaries and contract award in more detail.

Contract details notice

Change: Under the PCR 2015, contract award notices for light touch contracts could be grouped and published within 30 days of the end of each quarter. The Procurement Act requires the contract details notice to be published within 120 days of the light touch contract being entered into (section 53(1)(a)) and if the light touch contract is over £5m, then a copy of the contract must also be published within 180 days of the contract being entered into (section 53(3)(a)).

Benefit: The timescales for publishing light touch contract notices are longer, meaning that there is the ability to focus more time initially on implementing the contract and ensuring the smooth transition of sensitive services to new providers.

As a reminder - contract award notices and contract details notices do not have to be published for contracts entered into via direct award based on the user choice ground in paragraph 15 of Schedule 5.

See Summary Document 7: Assessment and Award, for further information

■ 8. Remedies, Procurement Oversight and Debarment

The remedies set out in Part 9 of the Act also apply to light touch contracts (see Remedies, Procurement oversight and the Debarment List summary document).

However, contracting authorities should note:

- **The automatic suspension of the entry into or modification of contracts** (section 101) only applies to light touch contracts when a voluntary standstill period is observed (see contract governance section below)
- **Post contractual remedies: set aside conditions** (in section 105), have the following considerations in the context of light touch contracts
 - “A **required** contract award notice was not published” (section 105(1)(a)) - this set aside condition is not applicable to direct awards made under the ground of ‘user choice,’ as the publication of a contract award notice is not mandatory.
 - “Contract was entered into or modified before end of any applicable standstill period)” (section 105(1)(b)) - this will apply to light touch contracts where a voluntary standstill is notified in the contract award notice.
 - “In the case of a modification under section 74, the breach became apparent only on publication of a contract change notice” (section 105(1)(e)) - this is not applicable to light touch contracts as a contract change notice is not mandatory, although it would apply where a voluntary contract change notice is published.

See Summary Document 8: Remedies, Procurement oversight and the Debarment List, for further information.

■ 9. Contract Governance

There are a number of exemptions to the contract governance obligations (outlined in the Contract Governance summary document) under the Procurement Act for light touch contracts:

- **Key Performance Indicators (KPIs)** - KPIs are not mandated for light touch contracts (Section 52(6)(d)), although it is considered best practice to ensure there is a way to measure contractual performance.
- **Assessment of contract performance** - As KPIs are not mandated for light touch contracts, there is also no requirement to assess and publish performance information, even where KPIs may have been voluntarily agreed (section 71(1)). Contracting authorities are also not mandated to publish information relating to a supplier breach or failure to perform the contract (section 71(6)).

- **Modifying public contracts** - This provides the ability for modifications to be made to light touch contracts during their term, without having to ensure one of the permitted grounds applies. This means substantial or above threshold modifications could be made(section 74(2)), however contracting authorities should have regard to the procurement objectives.
- **Contract Change Notices** - For any modifications made to a light touch contract, the contracting authority does not have to publish a contract change notice (section 75(6)(b)).
- **Publication of modifications** - As a contract change notice is not required when modifying a light touch contract, there is also no requirement to publish the modified contract or details of the modification (section 77(2)(a))

Change: Contracting authorities are now required to publish a contract termination notice within 30 days of a light touch contract being terminated (section 80).

Benefit: this notice enables suppliers, contracting authorities and the public to see when a contract has formally ended (see contract governance summary document)

Reminder - the requirement to publish a contract termination notice does not apply to a contract awarded via direct award based on the user choice ground.

See Summary Document 9 Contract Governance, for further information



Procurement Act sections

Which sections apply to light touch and user choice?

This learning aid is designed to be a quick reference guide to the provisions that apply to light touch contracts and light touch contracts that are awarded under the grounds of user choice (user choice contracts), and where there are key changes to the previous light touch regime and where there are exceptions from the general rules of the Procurement Act 2023.

Part 1 key definitions

Section number	Section title	Applicable to light touch contracts	Key changes or part exemptions	Applicable to user choice direct award contracts
1	Procurement and covered procurement	Yes	N/A	Yes

Section number	Section title	Applicable to light touch contracts	Key changes or part exemptions	Applicable to user choice direct award contracts
2	Contracting authorities	Yes	N/A	Yes
3	Public contracts	Yes	N/A	Yes
4	Valuation of contracts	Yes	N/A	Yes
5	Mixed procurement: above and below threshold	Yes	N/A	Yes
6	Utilities contracts	Yes	N/A	Yes
7	Defence and security contracts	Yes	N/A	Yes
8	Concession contracts	Yes	N/A	Yes
9	Light touch contracts	Yes	Light touch services (within stated common procurement vocabulary (CPV) designated by appropriate authority) contracts now include light touch frameworks which are public contracts providing for the future award of contracts that are either wholly or mainly for light touch services.	Yes

Section number	Section title	Applicable to light touch contracts	Key changes or part exemptions	Applicable to user choice direct award contracts
10	Mixed procurement: special regime contracts	Yes	A light touch contract is a “special regime contract” for the purposes of a mixed procurement. Where a contract is not solely for light touch services the mixed procurement special regime rules apply.	Yes

Part 2 principles and objectives

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
11	Covered procurement only in accordance with this act	Yes	N/A	Yes
12	Covered procurement: objectives	Yes	N/A	Yes
13	The national procurement policy statement	Yes	N/A	Yes
14	The Wales procurement policy statement	Yes	N/A	Yes

Part 3 award of public contracts and procedures

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
15	Planned procurement notice	Yes	Contracting authorities may publish a planned procurement notice for light touch contracts, however a qualifying planned procurement notice would not be needed for the purposes of reducing time periods as there are no mandated minimum period for light touch contracts. See section 54.	No
16	Preliminary market engagement	Yes	N/A	No
17	Preliminary market engagement notices	Yes	N/A	No
18	Duty to consider lots	Yes	The duty to consider lots is now also mandated for light touch contracts.	No
19	Award of public contracts following a competitive tendering procedure	Yes	Light touch contracts must be awarded based on MAT, tenders that do not meet conditions of participation must be disregarded and may also disregard tenders from non UK suppliers or treaty state suppliers or subcontractors. Tenders can be reserved to qualifying public service mutuals - see section 33 below.	No

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
20	Competitive tendering procedures	Yes	Freedom to design appropriate procedures for light touch contracts provided that the tender notice or associated tender documents clearly outlines the procurement procedure to be followed. Tenders can be reserved to qualifying public service mutuals - see section 33 below.	No
21	Tender notices and associated tender documents	Yes	N/A	No
22	Conditions of participation	Yes	N/A	No
23	Award criteria	Yes	The views of an individual for whose benefit the services are to be supplied (service recipient) or a person providing care to the service recipient regarding the different needs of different service recipients, who, when and how the services are provided as well as the proximity (of care, etc.) can be taken into consideration for the award criteria for user choice contracts.	No
24	Refining award criteria	Yes	N/A	No

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
25	Sub-contracting specifications	Yes	N/A	No
26	Excluding suppliers from a competitive award	Yes	Exclusions now apply meaning an excluded supplier must not be awarded the contract and an excludable suppliers tender may be disregarded.	No
27	Excluding suppliers from a competitive flexible procedure	Yes	Exclusions now apply meaning an excluded supplier must not be awarded the contract and an excludable suppliers tender may be disregarded.	No
28	Excluding suppliers by reference to sub-contractors	Yes	Exclusions now apply meaning an excluded supplier must not be awarded the contract and an excludable suppliers tender may be disregarded.	No
29	Excluding a supplier that is a threat to national security	Yes	Exclusions now apply meaning an excluded supplier must not be awarded the contract and an excludable suppliers tender may be disregarded.	No
30	Excluding suppliers for improper behaviour	Yes	Exclusions now apply meaning an excluded supplier must not be awarded the contract and an excludable suppliers tender may be disregarded.	No

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
31	Modifying a section 19 procurement	Yes	For light touch contracts substantial amendments can be made at any time up until the deadline for submitting a final tender.	No
32	Reserving contracts to supported employment providers	Yes	N/A	No
33	Reserving contracts to public service mutuals	Yes	Light touch contracts are reservable, subject to a contract term of 5 years or less, for a public service mutual body. The same public service mutual cannot have provided the same service to the contracting authority in the preceding 3-years.	No
34	Competitive award by reference to dynamic markets	Yes	N/A	No
35	Dynamic markets: establishment	Yes	N/A	No
36	Dynamic markets: membership	Yes	N/A	No

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
37	Dynamic markets: removing members from the market	Yes	N/A	No
38	Dynamic markets: fees	Yes	N/A	No
39	Dynamic market notices	Yes	N/A	No
40	Qualifying utilities dynamic market notices: no duty to publish a tender notice	No	N/A	No
41	Direct award in special cases	Yes	Excluded suppliers cannot be directly awarded to unless there is an overriding public interest.	Yes
42	Direct award to protect life etc	Yes	N/A	No
43	Switching to direct award	Yes	N/A	No
44	Transparency notices	Yes	Except when when awarding a contract via a direct award on the ground of user choice - see section 23 above.	No

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
45	Frameworks	Yes	Except sections 45 (3) to (5) provides exemptions from the competitive selection process requirements and the information requirement which gives greater flexibility around the competitive selection processes and the information to be included as part of the framework.	No
46	Frameworks: competitive selection process	No	Light touch frameworks are not subject to this section leading to greater flexibility around the competitive selection process.	No
47	Frameworks: maximum terms	No	Light touch contracts are not subject to this clause meaning there is no maximum term for a light touch framework.	No
48	Frameworks: implied terms	Yes	N/A	No
49	Open frameworks	Yes	N/A	No
50	Contract award notices and assessment summaries	Yes	Except when awarding a contract via a direct award on the ground of user choice.	No

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
51	Standstill periods on the award of contracts	No	Light touch contracts are not subject to this section meaning there is no requirement for a mandatory standstill period before the award of light touch contracts.	No
52	Key performance indicators	No	Light touch contracts are not subject to this section meaning that KPIs are not mandated for light touch contracts, although it is best practice to measure performance.	No
53	Contract details notices and publication of contracts	Yes	Light touch contracts have a period of 120 days from when the contract was entered into to publish the contract details notice, compared to the standard 30 days. Light touch contracts over £5m have a period of up to 180 days for publication rather than the standard 90. A contract details notice is not required when awarding a contract via a direct award on the ground of user choice.	No
54	Time limits	Yes	There are no mandated competition process minimum timescales for light touch contracts, however you should have regard to the procurement objectives when setting time limits.	No
55	Procurement termination notices	Yes	N/A	No

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
56	Technical specifications	Yes	N/A	No
57	Meaning of excluded and excludable supplier	Yes	Exclusions now apply to light touch contracts.	Yes
58	Considering whether a supplier is excluded or excludable	Yes	Exclusions now apply to light touch contracts.	Yes
59	Notification of exclusion of supplier	Yes	Exclusions now apply to light touch contracts.	Yes
60	Investigations of supplier: exclusion grounds	Yes	Exclusions now apply to light touch contracts.	Yes
61	Investigation under section 60: reports	Yes	Exclusions now apply to light touch contracts.	Yes
62	Debarment list	Yes	Exclusions now apply to light touch contracts.	Yes

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
63	Debarment decisions: interim relief	Yes	Exclusions now apply to light touch contracts.	Yes
64	Debarment list: application for approval	Yes	Exclusions now apply to light touch contracts.	Yes
65	Debarment decisions: appeals	Yes	Exclusions now apply to light touch contracts.	Yes
66	Debarment proceedings and closed material procedure	Yes	Exclusions now apply to light touch contracts.	Yes

Part 4 management of public contracts

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
67	Electronic invoicing: implied term	Yes	N/A	Yes

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
68	Implied payment terms in public contracts	Yes	N/A	Yes
69	Payments compliance notices	Yes	N/A	Yes
70	Information about payments under public contracts	Yes	Light touch contracts must publish specified information of any payment of more than £30k.	Yes
71	Assessment of contract performance	No	Light touch contracts are not subject to this section, meaning that contracting authorities are not mandated to publish supplier performance data for light touch contracts (even if KPIs have been set) - see section 52 above.	No
72	Sub-contracting: directions	Yes	N/A	Yes
73	Implied terms in sub-contracts	Yes	N/A	Yes

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
74	Modifying a public contract	No	Light touch contracts are not subject to this section, which permits greater flexibility for modifications to be made to light touch contracts during their term and could possibly be substantial or above threshold, but contracting authorities should have regard to the procurement objectives see section 75 below.	No
75	Contract change notices	No	Light touch contracts are not subject to this section which means that for any modifications made to a light touch contract, the contracting authority does not have to publish a contract change notice. See section 74 above.	No
76	Voluntary standstill period on the modification of contracts	No	The voluntary standstill period does not apply to light touch contracts as there is no requirement to publish a contract change notice under section 75.	No
77	Publication of modifications	No	Publication of modifications does not apply to light touch contracts as there is no requirement to publish a contract change notice under section 75.	No
78	Implied right to terminate public contracts	Yes	N/A	Yes

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
79	Terminating public contracts: national security	Yes	N/A	Yes
80	Contract termination notices	Yes	Except when awarding a contract via a direct award on the ground of user choice.	No

Part 5 conflicts of interest

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
81	Conflicts of interest: duty to identify	Yes	N/A	Yes
82	Conflicts of interest: duty to mitigate	Yes	N/A	Yes
83	Conflicts assessments	Yes	Applies to all light touch contracts except those awarded via a direct award under the ground of user choice as there is no obligation to publish any of the relevant notices defined in this section.	No

Part 6 below-threshold contracts

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
84	Regulated below-threshold contracts	Yes	N/A	Yes
85	Regulated below-threshold contracts: procedure	Yes	N/A	Yes
86	Regulated below-threshold contracts: duty to consider small and medium-sized enterprises	Yes	N/A	Yes
87	Regulated below-threshold contracts: notices	Yes	N/A	Yes
88	Regulated below-threshold contracts: implied payment terms	Yes	N/A	Yes

Part 7 implementation of international obligations

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
89	Treaty state suppliers	Yes	N/A	Yes
90	Treaty state suppliers: non-discrimination	Yes	N/A	Yes
91	Treaty state suppliers: non discrimination in Scotland	Yes	N/A	Yes
92	Trade disputes	Yes	N/A	Yes

Part 8 information and notices: general provisions

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
93	Pipeline notices	Yes	N/A	Yes
94	General exemptions from duties to publish or disclose information	Yes	N/A	Yes

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
95	Notices, documents and information: regulations and online system	Yes	N/A	Yes
96	Electronic communications	Yes	N/A	Yes
97	Information relating to a procurement	Yes	N/A	Yes
98	Record-keeping	Yes	N/A	Yes
99	Data protection	Yes	N/A	Yes

Part 9 remedies for breach of statutory duty

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
100	Duties under this act enforceable in civil proceedings	Yes	N/A	Yes

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
101	Automatic suspension of the entry into or modification of contracts	No	This section only applies to light touch contracts if a voluntary standstill period is used.	No
102	Interim remedies	Yes	N/A	Yes
103	Pre-contractual remedies	Yes	N/A	Yes
104	Post-contractual remedies	Yes	N/A	Yes

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
105	Post-contractual remedies: set aside conditions	Yes	Exceptions: A required contract award notice was not published. Not applicable to direct awards made under the ground of user choice as the publication of a contract award notice is not mandatory. Contract was entered into or modified before end of any applicable standstill period. Not applicable to light touch contracts as a standstill is not mandatory, however this would apply where a voluntary standstill period, which has been detailed within the tender notice and/or associated tender documents, has been undertaken. In the case of a modification under section 74, the breach became apparent only on publication of a contract notice. Not applicable to light touch contracts as a contract change notice is not mandatory.	Yes
106	Time limits on claims	Yes	N/A	Yes
107	Part 9 proceedings and closed material procedure	Yes	N/A	Yes

Part 10 procurement oversight

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
108	Procurement investigations	Yes	N/A	Yes
109	Recommendations following procurement investigations	Yes	N/A	Yes
110	Guidance following procurement investigations	Yes	N/A	Yes

Part 11 appropriate authorities and cross-border procurement

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
111	Welsh Ministers: restrictions on the exercise of powers	Yes	N/A	Yes

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
112	Northern Ireland department: restrictions on the exercise of powers	Yes	N/A	Yes
113	Minister of the crown: restrictions on the exercise of powers	Yes	N/A	Yes
114	Definitions relating to procurement arrangements	Yes	N/A	Yes
115	Powers relating to procurement arrangements	Yes	N/A	Yes

Part 12 amendments and appeals

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
116	Disapplication of duty in section 17 of the Local Government Act 1988	Yes	Applies to the contracting authority - applicable where the contracting authority procuring the light touch contract is relevant authority defined under the Local Government Act 1988.	Yes
117	Single source defence contracts	Yes	N/A	Yes
118	Concurrent powers and the Government of Wales Act 2006	Yes	N/A	Yes
119	Repeals etc	Yes	N/A	Yes

Part 13 general

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
120	Application of this act to procurement by NHS England	Yes	For healthcare procurement there will be further exemptions where the act will be disapplied in relation to healthcare procurement by NHS in England (where the Provider Selection Regime (PSR 2023 regulations) will apply).	Yes
121	Power to amend this act in relation to private utilities	No	N/A	No
122	Regulations	Yes	N/A	Yes
123	Interpretation	Yes	N/A	Yes
124	Index of defined expressions	Yes	N/A	Yes
125	Power to make consequential, etc, provision	Yes	N/A	Yes
126	Extent	Yes	N/A	Yes

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
127	Commencement	Yes	N/A	Yes
128	Short title	Yes	N/A	Yes

Schedules

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
1	Threshold amounts	Yes	There are different thresholds for light touch contracts.	Yes
2	Exempted contracts	Yes	N/A	Yes
3	Estimating the value of a contract	Yes	N/A	Yes
4	Utility activities	Yes	N/A	Yes
5	Direct award justifications	Yes	In particular, user choice contracts.	Yes
6	Mandatory exclusion grounds	Yes	N/A	Yes

Section number	Section title	Applicable to light touch contracts	Key changes / or part exemptions	Applicable to user choice direct award contracts
7	Discretionary exclusion grounds	Yes	N/A	Yes
8	Permitted contract modifications	No	Light touch contracts are not subject to this section meaning that there is greater flexibility for modification to light touch contracts.	No
9	Treaty state suppliers (specified international agreements)	Yes	N/A	Yes
10	Single source defence contracts	No	N/A	No
11	Repeals and revocations	Yes	N/A	Yes



Light touch contracts

Process flows

This learning aid is designed to demonstrate step by step process flows that apply to contracts that meet the definition of a 'light touch contract' as outlined in section 9 of the Procurement Act 2023, including transparency requirements, minimum time periods and aspects of best practice.

Open procedure for light touch contracts

1. Publish planned procurement notice (optional).



2. Publish preliminary market engagement notice and undertake preliminary market engagement.
You must publish a preliminary market engagement notice if undertaking pre-market engagement, but pre-market engagement is optional.



3. Publish tender notice for open procedure.



4. Tendering period - **no minimum timescales.**



```
graph TD; A[5. Determine whether the supplier is an excluded or an excludable supplier.] --> B[6. Assess whether the tender is suitable, including:  
a. assessing the conditions of participation  
b. where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender  
c. whether the tendered price is considered to be abnormally low  
d. whether there is evidence of corruption or collusion  
e. whether the tender meets all of the requirements  
f. whether the tender has breached any procedural requirements]; B --> C[7. Assess award criteria.]; C --> D[8. Issue assessment summaries.]; D --> E[9. Publish contract award notice.]; E --> F[10. Observe voluntary standstill period (optional).]; F --> G[11. Enter into contract.]; G --> H[12. Publish contract details notice within 120 days.];
```

5. Determine whether the supplier is an excluded or an excludable supplier.

6. Assess whether the tender is suitable, including:
- assessing the conditions of participation
 - where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender
 - whether the tendered price is considered to be abnormally low
 - whether there is evidence of corruption or collusion
 - whether the tender meets all of the requirements
 - whether the tender has breached any procedural requirements

7. Assess award criteria.

8. Issue assessment summaries.

9. Publish contract award notice.

10. Observe **voluntary** standstill period (optional).

11. Enter into contract.

12. Publish contract details notice **within 120 days**.

```
graph TD; A[13. Publish copy of contract within 180 days where applicable (contracts over £5m).] --> B[14. Could happen at any time during the term of the contract:  
a. publish contract payment notice (where applicable - payments over £30k)  
b. publish payments compliance notice]; B --> C[15. Publish contract termination notice.];
```

13. Publish copy of contract **within 180 days** where applicable (contracts over £5m).

14. Could happen at any time during the term of the contract:

- a. publish contract payment notice (where applicable - payments over £30k)
- b. publish payments compliance notice

15. Publish contract termination notice.

Direct award for light touch contracts - except for user choice

1. Identify requirement.

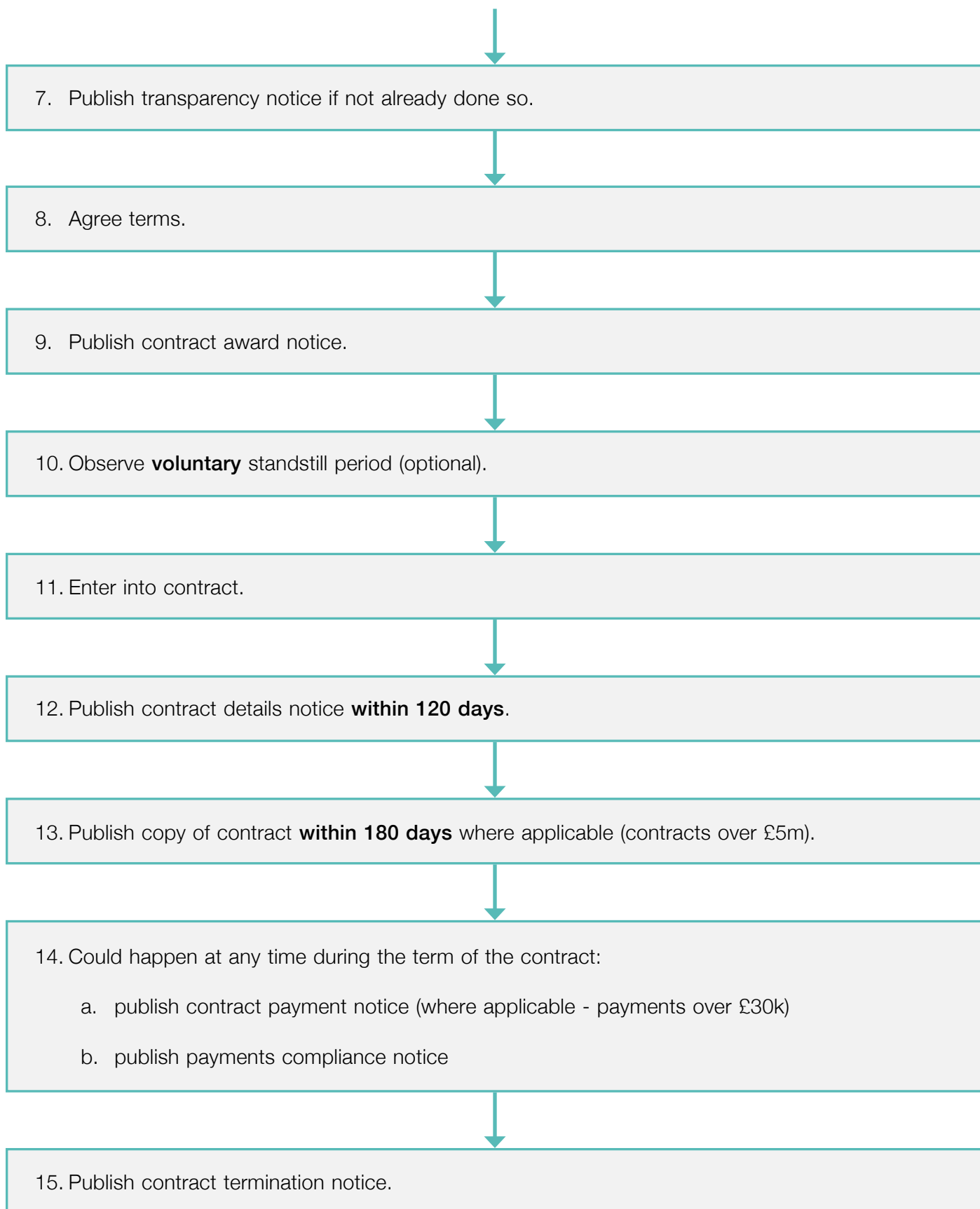
2. Ensure direct award ground is met.

3. Option to publish a transparency notice now.

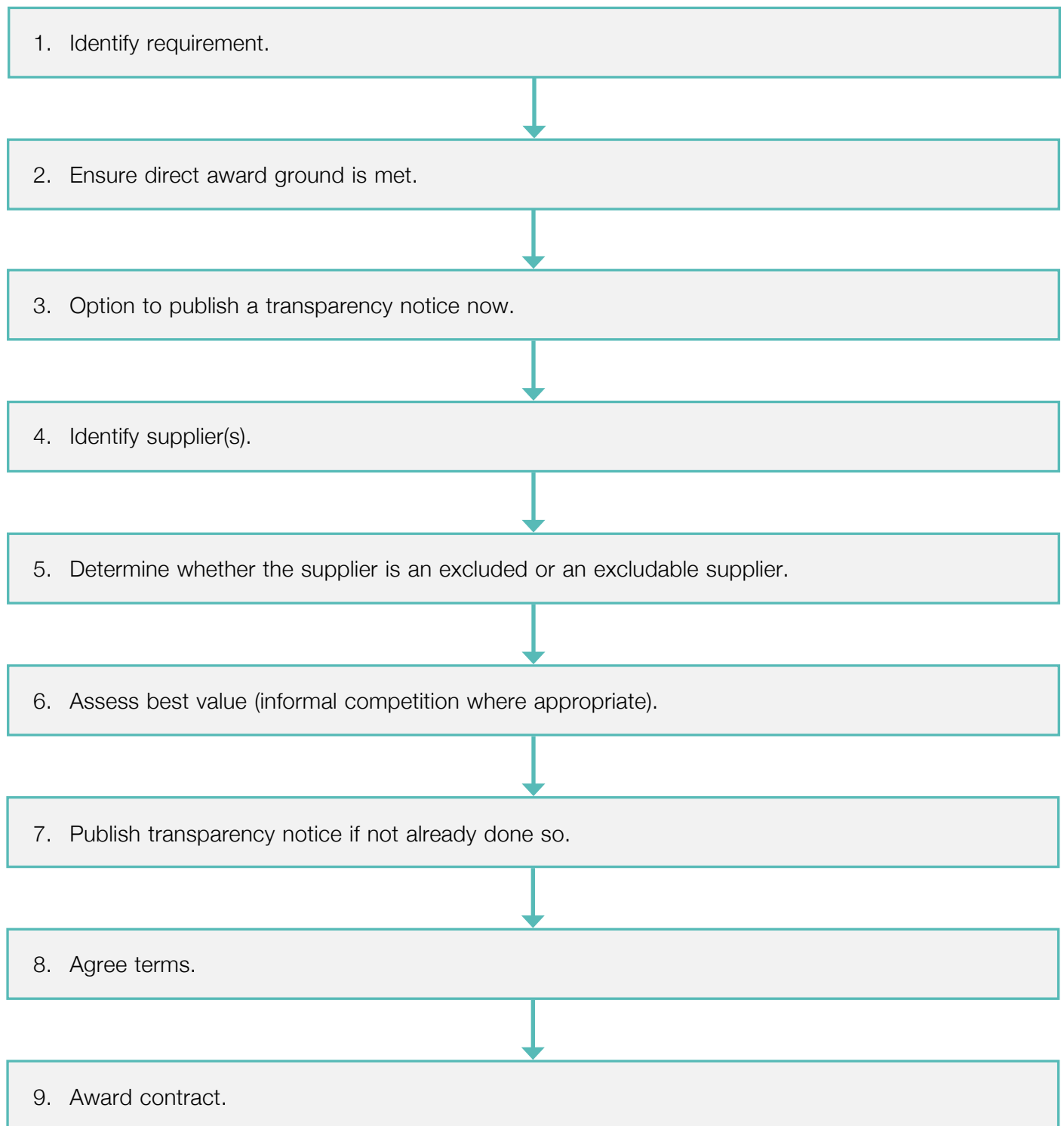
4. Identify supplier(s).

5. Determine whether the supplier is an excluded or an excludable supplier.

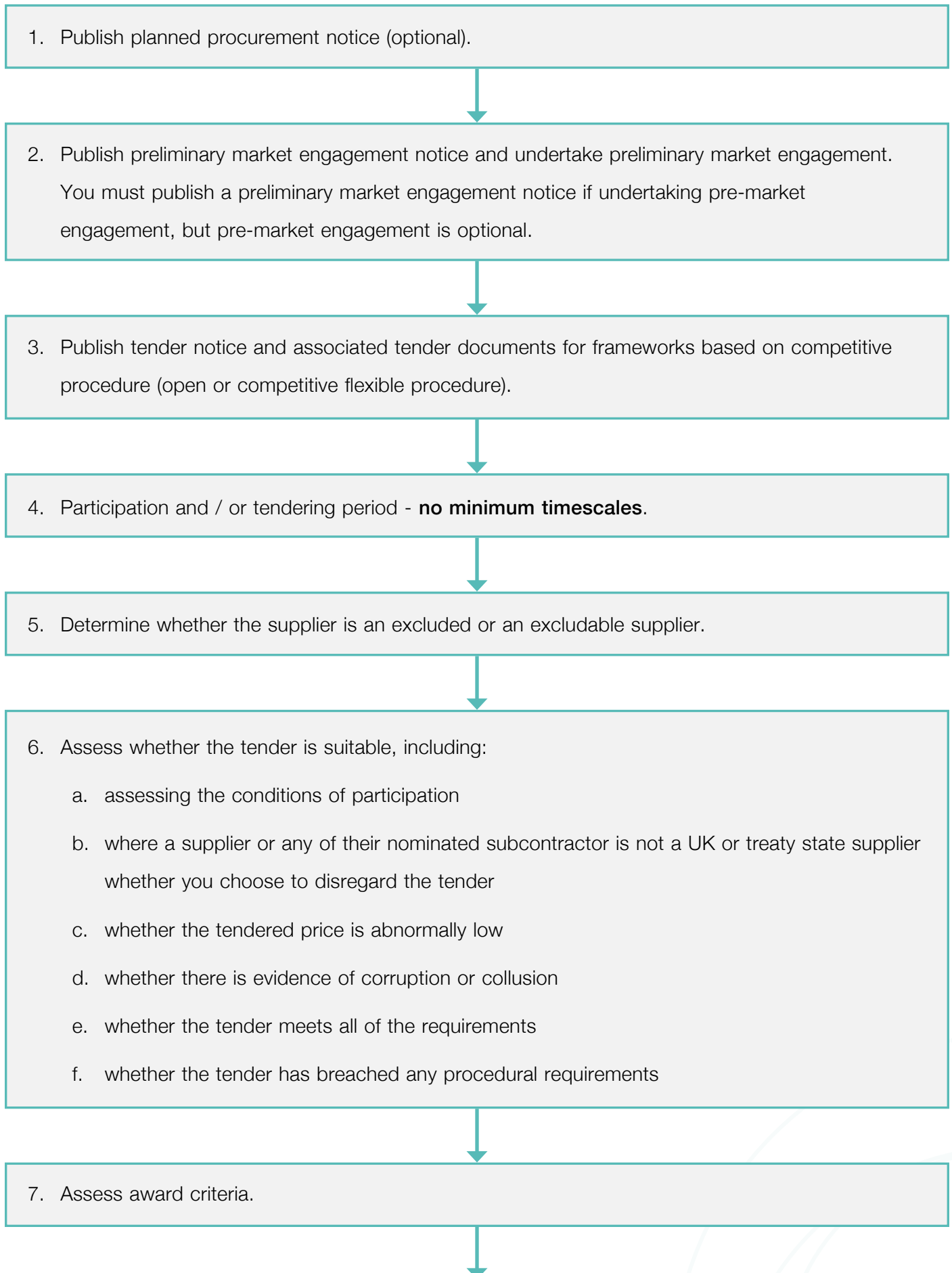
6. Assess best value (informal competition).

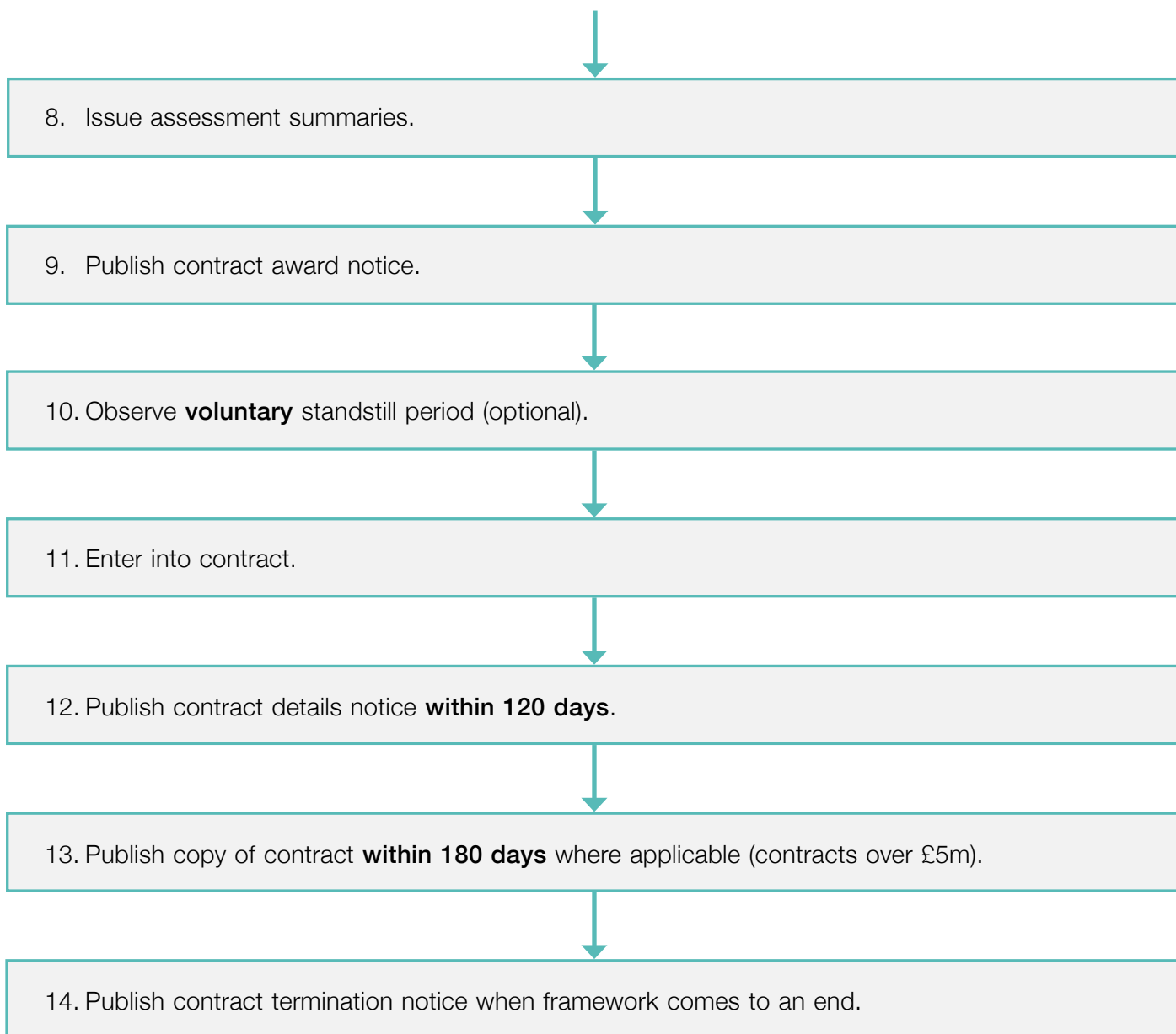


Direct award for user choice contracts

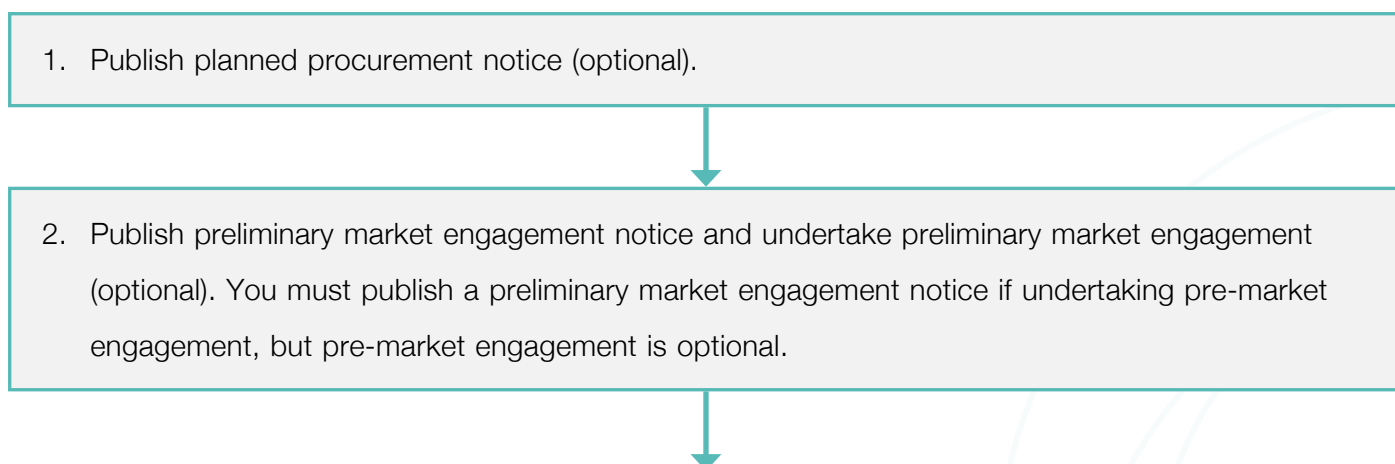


Establishing a light touch framework





Open light touch framework (initial and every framework in the scheme)



```
graph TD; A[3. Publish tender notice and associated tender documents for framework based on competitive procedure (open or competitive flexible).] --> B[4. Participation and / or tendering period minimum timescales.]; B --> C[5. Determine whether the supplier is an excluded or an excludable supplier.]; C --> D[6. Assess whether the tender is suitable, including:  
a. assessing the conditions of participation  
b. where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender  
c. whether the tendered price is abnormally low  
d. whether there is evidence of corruption or collusion  
e. whether the tender meets all of the requirements  
f. whether the tender has breached any procedural requirements]; D --> E[7. Assess intermediate award criteria (if applicable for competitive flexible) and award criteria.]; E --> F[8. Issue assessment summaries.]; F --> G[9. Publish contract award notice.]; G --> H[10. Observe voluntary standstill period (optional).];
```

3. Publish tender notice and associated tender documents for framework based on competitive procedure (open or competitive flexible).

4. Participation and / or tendering period minimum timescales.

5. Determine whether the supplier is an excluded or an excludable supplier.

6. Assess whether the tender is suitable, including:

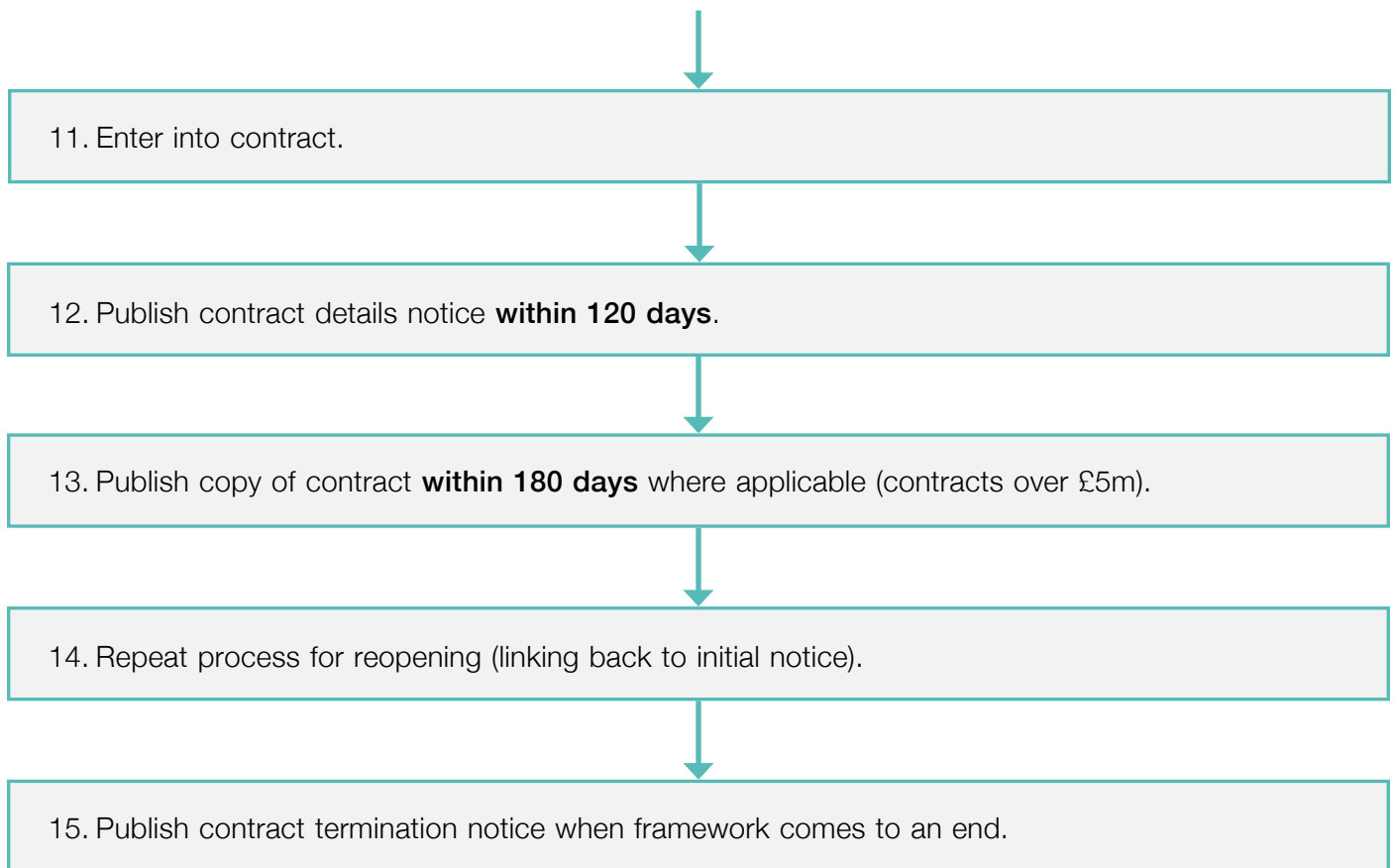
- a. assessing the conditions of participation
- b. where a supplier or any of their nominated subcontractor is not a UK or treaty state supplier whether you choose to disregard the tender
- c. whether the tendered price is abnormally low
- d. whether there is evidence of corruption or collusion
- e. whether the tender meets all of the requirements
- f. whether the tender has breached any procedural requirements

7. Assess intermediate award criteria (if applicable for competitive flexible) and award criteria.

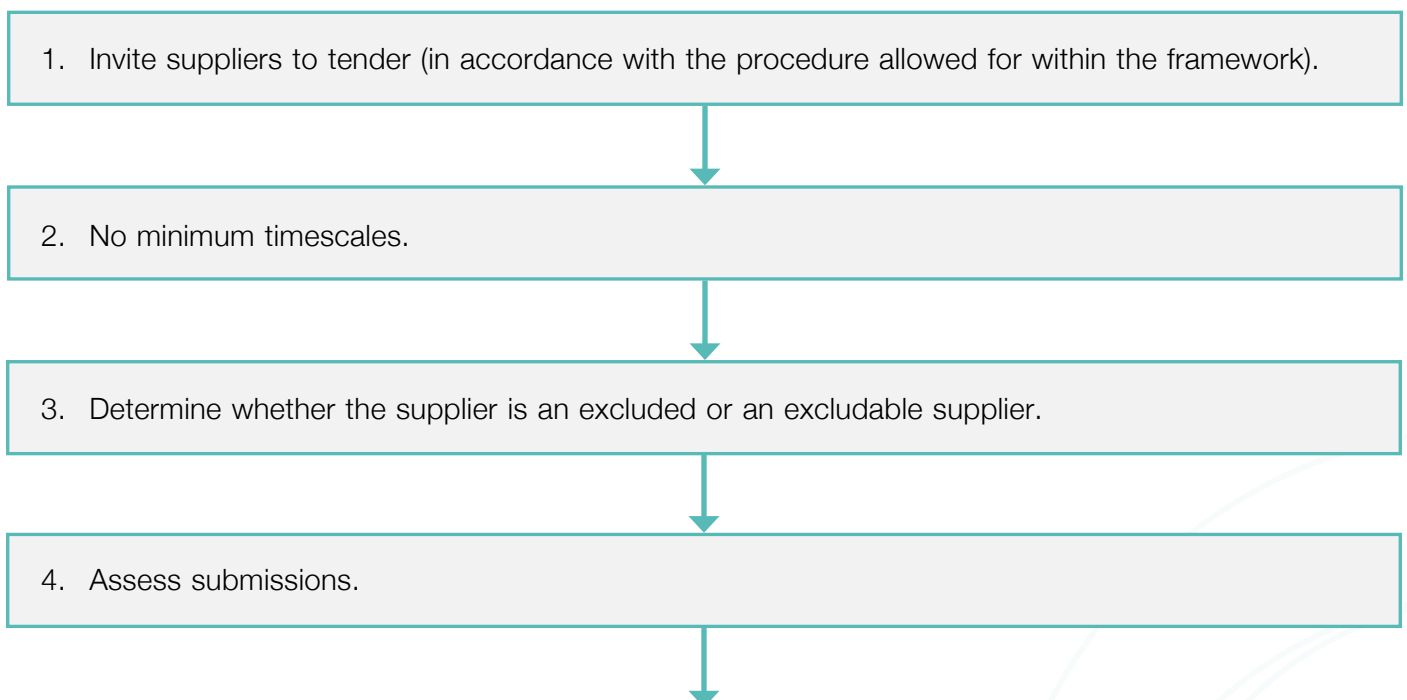
8. Issue assessment summaries.

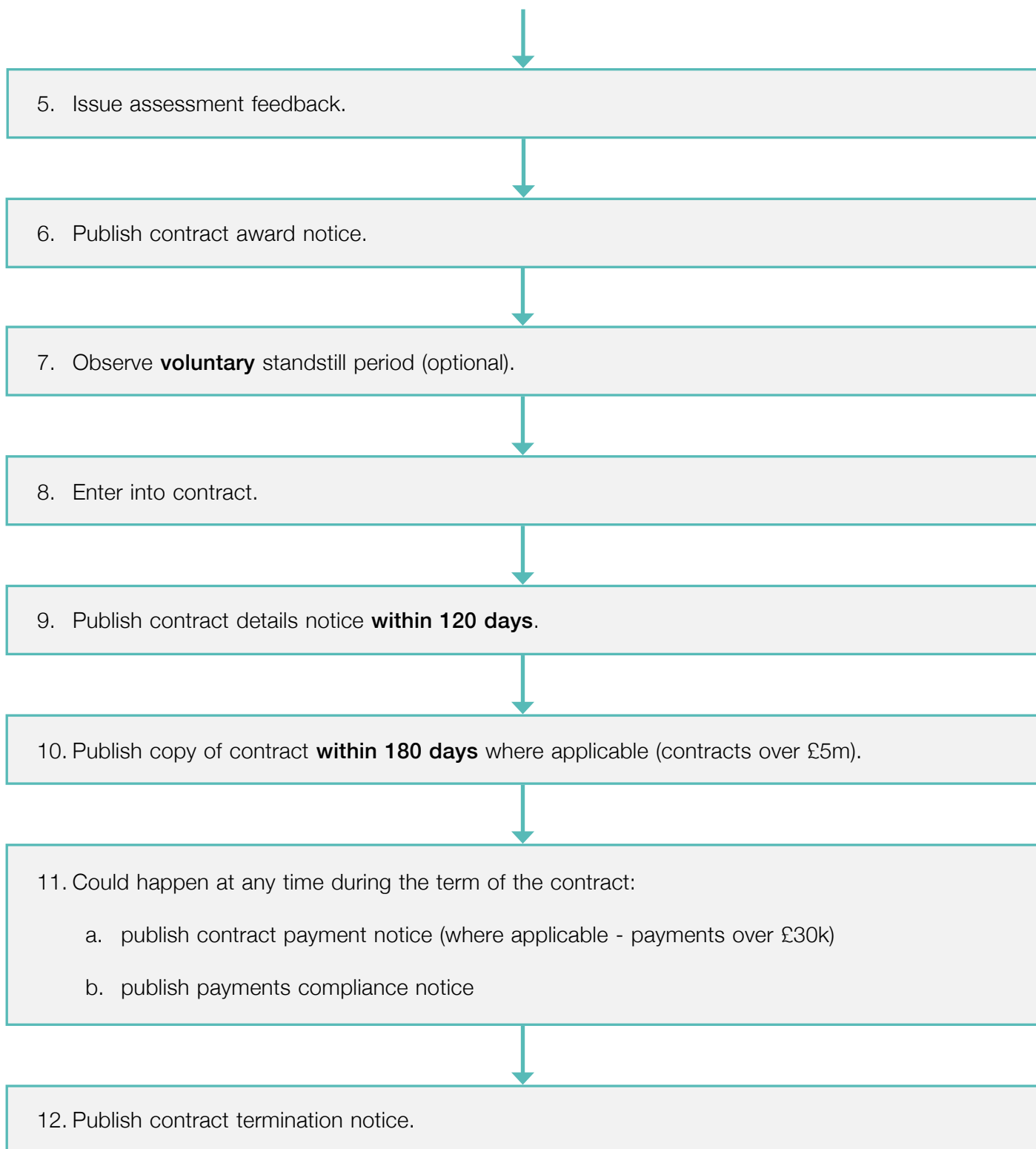
9. Publish contract award notice.

10. Observe **voluntary** standstill period (optional).

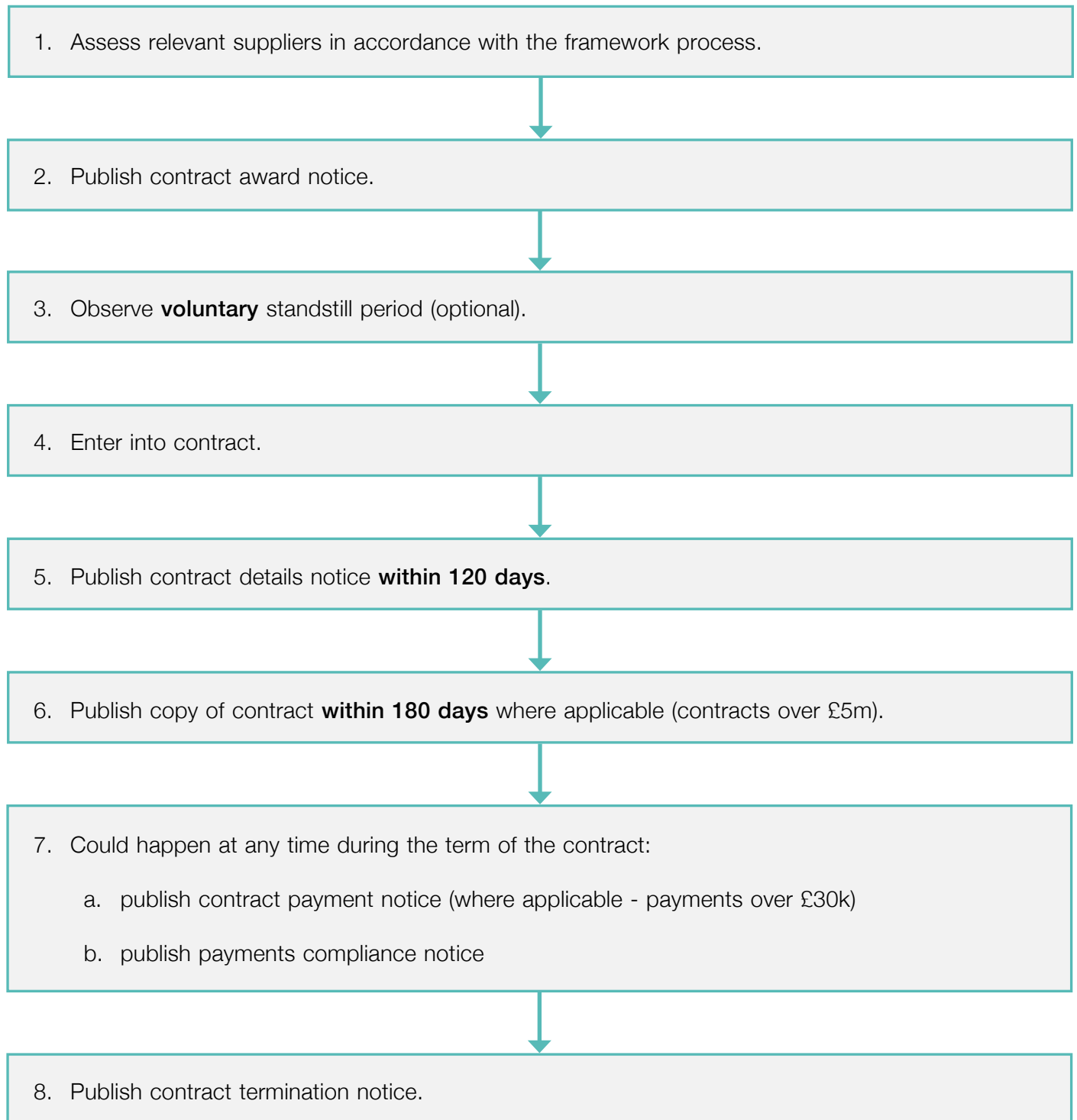


Awarding a light touch contract under a light touch framework - with competition

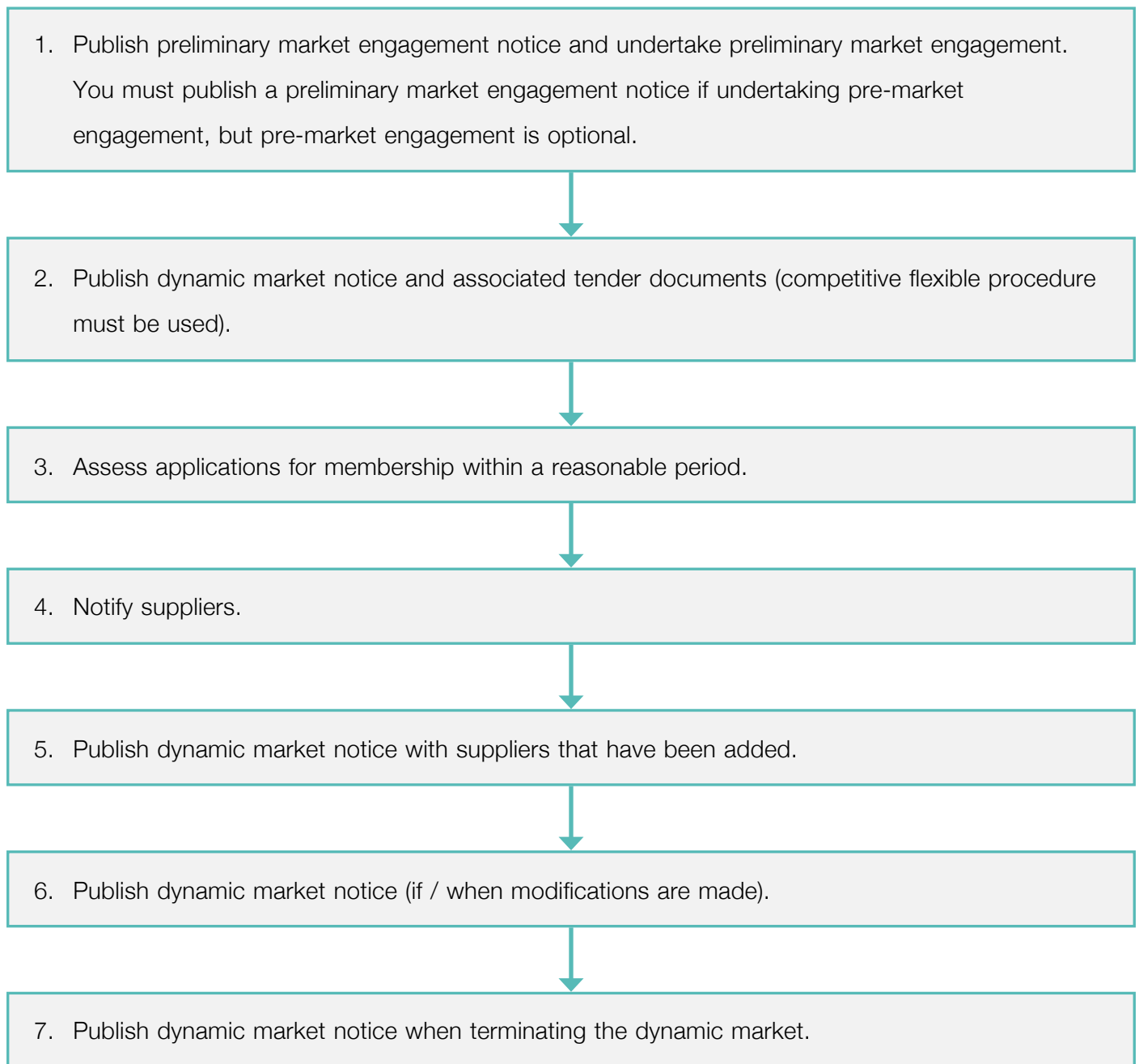




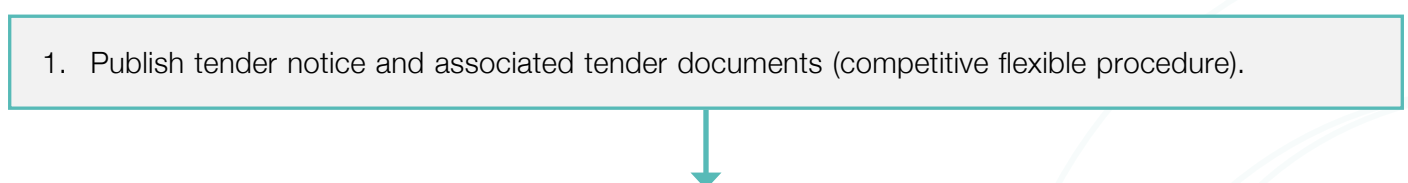
Awarding under a light touch framework - without competition

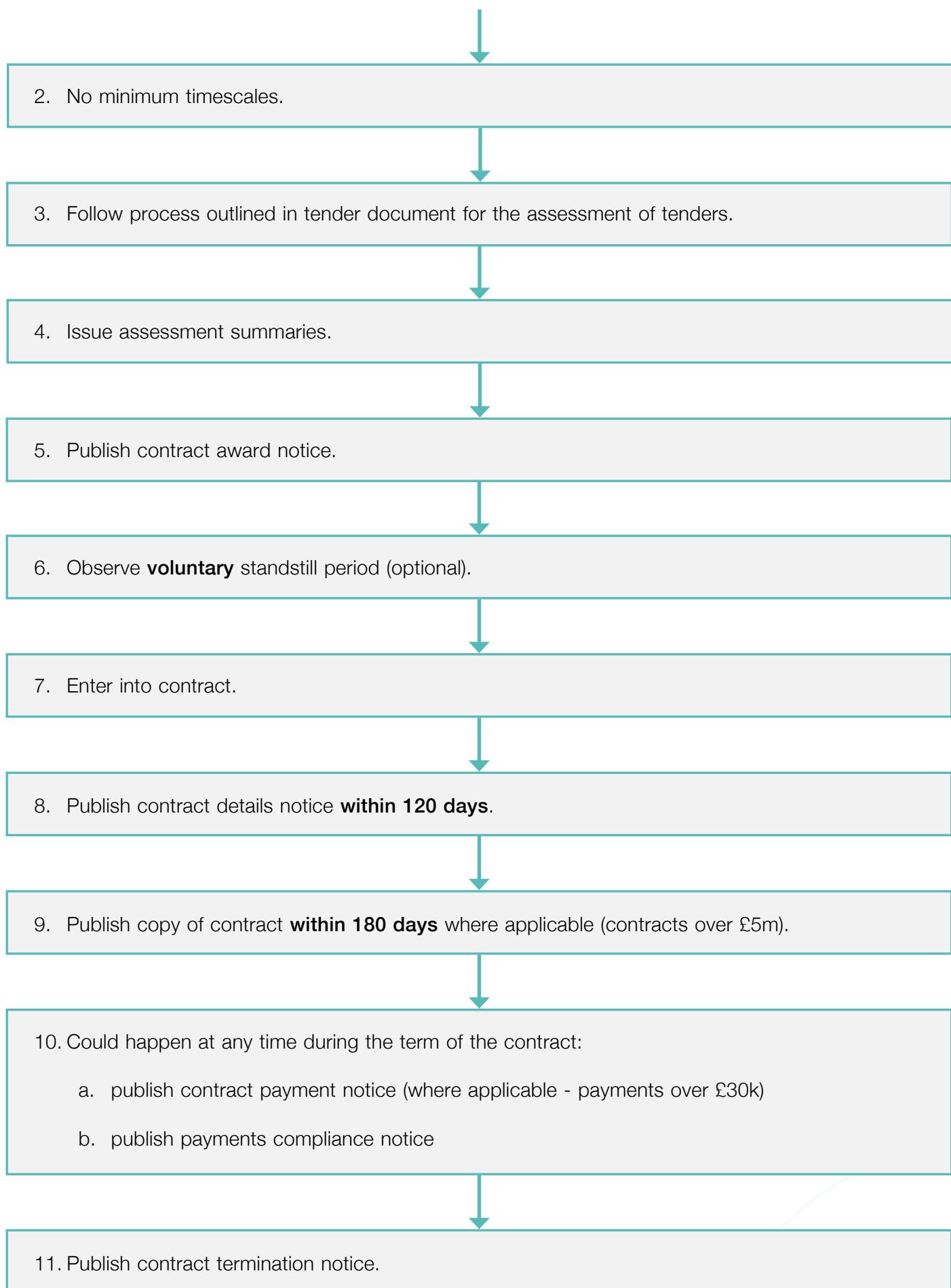


Establishing a dynamic market



Awarding a light touch contract under a dynamic market

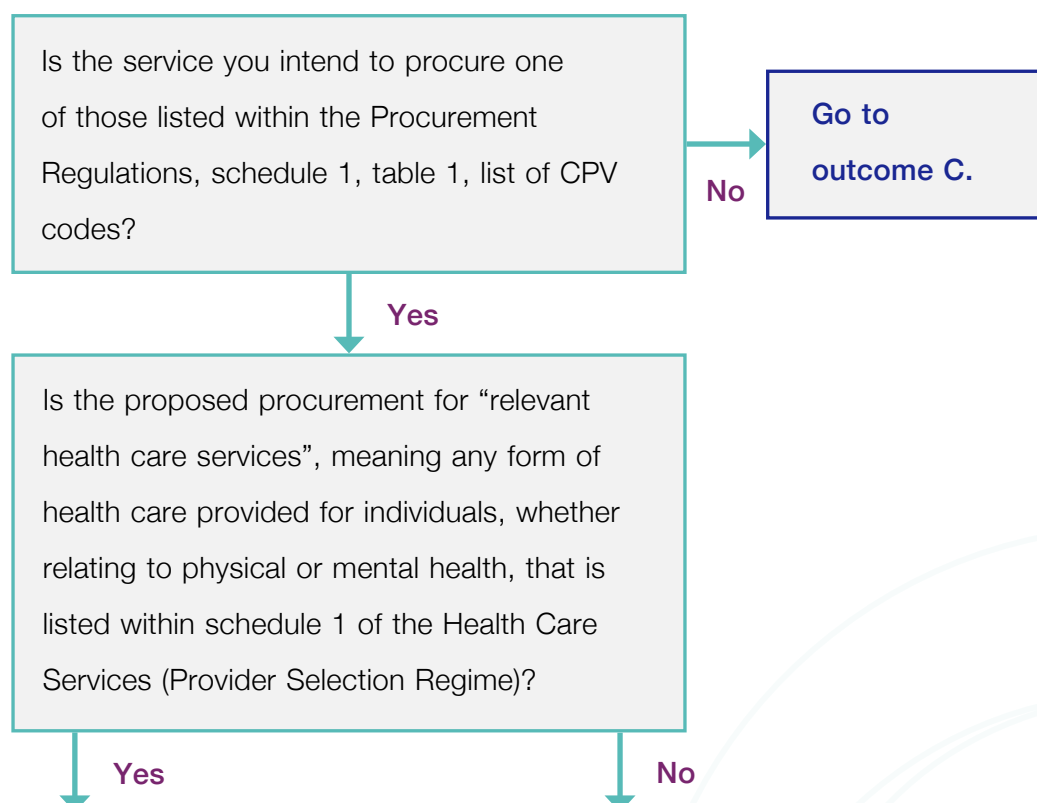


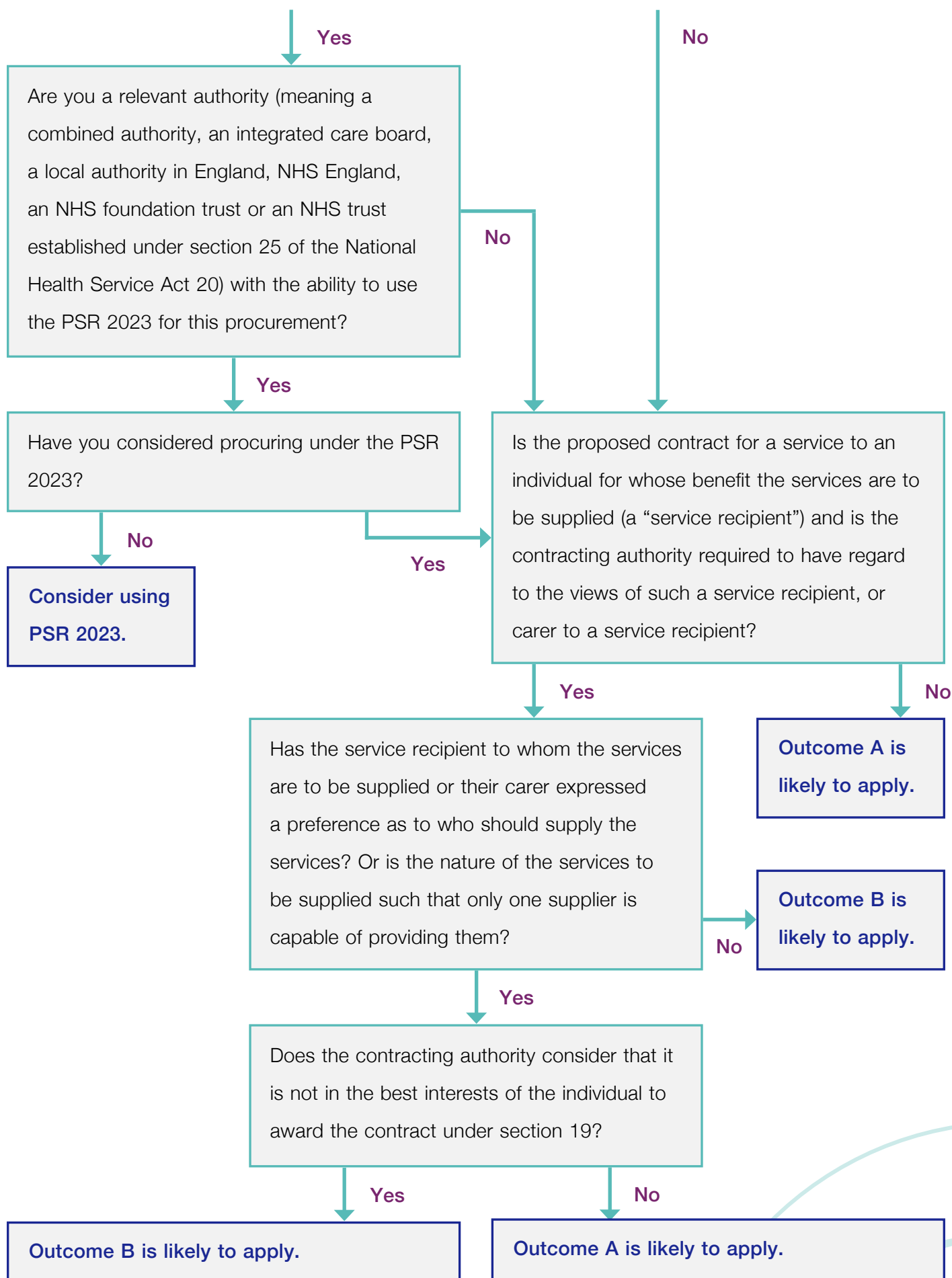




Procurement Act light touch contracts of a kind specified in regulations under section 9 (light touch contracts) or the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR 2023)

Decision tree





Outcome A:

The light touch process of procuring the contract is likely to be available when adopting a competitive or open tendering procedure.

Outcome B:

You may be able to directly award the contract on grounds that you have a user choice contract.

Outcome C:

There are no grounds for using the light touch procurement process, although the open or competitive flexible procedure may apply under the Procurement Act.