
STATUTORY INSTRUMENTS

2024 No. 692

The Procurement Regulations 2024

Part 2

Transparency of procurements under the Procurement Act 2023

Contract performance notices except in relation to full termination

39.—(1) This regulation makes provision about information published under either of the following provisions—

- (a) section 71(2)(b) of the PA 2023 (assessment of performance against key performance indicators);
- (b) section 71(5) of that Act (breach of public contract or failure to perform).

(2) The information must be published in the form of a notice called a “Contract Performance Notice”.

(3) Where the information is being published under section 71(2)(b) of the PA 2023, the notice must include the information set out in paragraph (4).

(4) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for—
 - (i) the procurement, and
 - (ii) the public contract,
- (d) the key performance indicators set in accordance with section 52(1) of the PA 2023,
- (e) a statement that the notice is being used to set out the contracting authority’s assessment of performance against the key performance indicators,
- (f) for each supplier whose performance has been assessed against the key performance indicators—
 - (i) the supplier’s name,
 - (ii) the supplier’s contact postal address and email address, and
 - (iii) the unique identifier for the supplier,
- (g) the contracting authority’s assessment of performance against the indicators in accordance with the ratings set out in [paragraph \(5\)](#), and
- (h) the time period to which the contracting authority’s assessment applies.

(5) The ratings are—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Rating</i>	<i>Description</i>
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	Performance cannot be described as good, approaching target, requires improvement or inadequate

(6) Where the information is being published under section 71(5) of the PA 2023, the notice must include the information set out in paragraph (7).

(7) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for—
 - (i) the procurement, and
 - (ii) the public contract,
- (d) for each supplier that has committed the breach or failure to perform set out in the notice—
 - (i) the supplier’s name,
 - (ii) the supplier’s contact postal address and email address, and
 - (iii) the unique identifier for the supplier,
- (e) the information referred to in—
 - (i) section 71(5)(a) of the PA 2023 (that section 71(5) of that Act applies), and
 - (ii) section 71(5)(b) of the PA 2023 (the circumstances giving rise to the application of section 71(5) of that Act),
- (f) a statement that the information is being published because—
 - (i) the supplier has breached the public contract and the breach resulted in one of the events referred to in section 71(3)(b), or
 - (ii) the supplier is not performing a public contract to the contracting authority’s satisfaction,
- (g) where the supplier has breached the public contract, which of the following resulted from the breach—
 - (i) partial termination of the public contract;
 - (ii) the award of damages;
 - (iii) a settlement agreement between the supplier and the contracting authority,
- (h) where the supplier has breached the public contract, the date of any—
 - (i) partial termination of the public contract,
 - (ii) award of damages, or

- (iii) settlement,
(as the case may be),
 - (i) where the supplier is not performing the public contract to the contracting authority's satisfaction, the date when the contracting authority considered that the supplier had failed to improve its performance in accordance with section 71(4)(c),
 - (j) an explanation of the nature of the contractual obligation which has been breached or is not being performed to the contracting authority's satisfaction,
 - (k) an explanation of the nature of the breach or failure to perform including—
 - (i) an explanation of the impact or consequences of the breach or failure to perform,
 - (ii) the duration of the breach or failure to perform and whether it is ongoing,
 - (iii) an explanation of any steps taken by the supplier to mitigate the impact or consequences of the breach or failure to perform,
 - (iv) any steps that the contracting authority has taken to notify the supplier of the breach or failure to perform and encourage them to improve the situation, including—
 - (aa) any warning notices given under the public contract, or
 - (bb) any opportunity to improve performance,
 - (v) what steps, if any, were taken by the supplier to improve the situation and why these were not sufficient,
 - (l) where the breach has resulted in partial termination of the public contract, a description of which part of, or to what extent, the contract has been partially terminated, and
 - (m) where there has been an award of damages or payment of other monies following the breach or failure to perform—
 - (i) confirmation that this is the case,
 - (ii) the amount of damages or other monies,
 - (iii) the basis on which any damages were awarded or other monies paid, for example—
 - (aa) in the case of damages, in accordance with the public contract,
 - (bb) in the case of damages, in accordance with a decision of a court or tribunal,
or
 - (cc) in the case of other monies, in accordance with a negotiated settlement, and
 - (iv) where there is a recorded decision of a court or tribunal finding that there was a breach, a link to the web page where the decision can be accessed or a copy of the decision.
- (8) Nothing in [this regulation](#) prevents a contracting authority from publishing other information that relates to the same procurement in the notice.
- (9) [This regulation](#) does not apply to information required to be published in accordance with section 71(5) of the PA 2023 where a breach resulted in the full termination of a public contract (see instead [regulation 41](#)).