



# Procurement Act 2023

## 2023 CHAPTER 54

### PART 4

#### MANAGEMENT OF PUBLIC CONTRACTS

##### *Modifying public contracts*

#### **74 Modifying a public contract**

- (1) A contracting authority may modify a public contract or a contract that, as a result of the modification, will become a public contract (a “convertible contract”) if the modification—
  - (a) is a permitted modification under Schedule 8 (permitted modifications),
  - (b) is not a substantial modification, or
  - (c) is a below-threshold modification.
- (2) A contracting authority may also modify a public contract or a convertible contract if the contract is a light touch contract.
- (3) A “substantial modification” is a modification which would—
  - (a) increase or decrease the term of the contract by more than 10 per cent of the maximum term provided for on award,
  - (b) materially change the scope of the contract, or
  - (c) materially change the economic balance of the contract in favour of the supplier.
- (4) A modification is a “below-threshold modification” if—
  - (a) the modification would not itself increase or decrease the estimated value of the contract by more than—
    - (i) in the case of a contract for goods or services, 10 per cent;
    - (ii) in the case of a contract for works, 15 per cent,
  - (b) the aggregated value of below-threshold modifications would be less than the threshold amount for the type of contract,

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*Status: This is the original version (as it was originally enacted).*

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- (c) the modification would not materially change the scope of the contract, and
  - (d) the modification is not within subsection (1)(a) or (b).
- (5) In this section, a reference to a modification changing the scope of a contract is a reference to a modification providing for the supply of goods, services or works of a kind not already provided for in the contract.
- (6) For the purposes of subsection (4), the “aggregated value of below-threshold modifications” is the amount of the estimated value of the contract after modification that is attributable to below-threshold modifications.
- (7) Subsection (8) applies if, on modifying a public contract under this section, a contracting authority considers that—
- (a) the modification could reasonably have been made together with another modification made to the contract under this section, and
  - (b) that single modification would not have been permitted under subsection (1).
- (8) The modification is to be treated as not within subsection (1).
- (9) Except as provided for in paragraph 9 of Schedule 8 (modification permitted on corporate restructuring), a contracting authority may not modify a public contract so as to change the supplier.
- (10) Part 3 does not apply in relation to a contract to modify a contract where the modification is made in accordance with this section.

## **75 Contract change notices**

- (1) Before modifying a public contract or a convertible contract (see section 74(1)), a contracting authority must publish a contract change notice.
- (2) Subsection (1) does not apply if—
- (a) the modification increases or decreases the estimated value of the contract by—
    - (i) in the case of a contract for goods or services, 10 per cent or less,
    - (ii) in the case of a contract for works, 15 per cent or less, or
  - (b) the modification increases or decreases the term of the contract by 10 per cent or less of the maximum term provided for on award,
- unless the modification is a permitted modification under paragraph 9 of Schedule 8 (novation or assignment on corporate restructuring).
- (3) A “contract change notice” is a notice setting out—
- (a) that the contracting authority intends to modify the contract;
  - (b) any other information specified in regulations under section 95.
- (4) Subsection (5) applies if, on making a modification within subsection (2)(a) or (2)(b), a contracting authority considers that—
- (a) the modification could reasonably have been made together with an earlier modification of the contract, and
  - (b) subsection (1) would have applied to that single modification.
- (5) Subsection (1) is to be treated as applying to the modification.
- (6) This section does not apply in relation to a modification of a contract that—

- (a) is a defence and security contract,
  - (b) is a light touch contract,
  - (c) was awarded by a private utility,
  - (d) was 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, or
  - (e) was awarded as part of a procurement under a transferred Northern Ireland procurement arrangement.
- (7) A Minister of the Crown or the Welsh Ministers may by regulations amend this section for the purpose of changing the percentage thresholds.

## **76 Voluntary standstill period on the modification of contracts**

- (1) A contracting authority may not modify a public contract or a convertible contract before the end of any standstill period (“a voluntary standstill period”) provided for in a contract change notice in respect of the contract.
- (2) A voluntary standstill period may not be less than a period of eight working days beginning with the day on which the contract change notice is published.

## **77 Publication of modifications**

- (1) Before the end of the period of 90 days beginning with the day on which a contracting authority makes a qualifying modification under section 74(1), the authority must publish a copy of—
- (a) the contract as modified, or
  - (b) the modification.
- (2) A “qualifying modification” is a modification—
- (a) in respect of which the contracting authority is required to publish a contract change notice under section 75, and
  - (b) which modifies, or results in, a public contract with an estimated value of more than £5 million.
- (3) Subsection (1) does not apply in relation to a modification of a contract that—
- (a) was awarded by a devolved Welsh authority, unless it was awarded as part of a procurement under a reserved procurement arrangement, or
  - (b) was awarded as part of a procurement under a devolved Welsh procurement arrangement.
- (4) A Minister of the Crown may by regulations amend this section for the purpose of changing the financial threshold.