



# Procurement Act 2023

## 2023 CHAPTER 54

### PART 5

#### CONFLICTS OF INTEREST

#### **81 Conflicts of interest: duty to identify**

- (1) A contracting authority must take all reasonable steps to identify, and keep under review, in relation to a covered procurement any—
  - (a) conflicts of interest, or
  - (b) potential conflicts of interest.
- (2) There is a conflict of interest in relation to a covered procurement if—
  - (a) a person acting for or on behalf of the contracting authority in relation to the procurement has a conflict of interest, or
  - (b) a Minister acting in relation to the procurement has a conflict of interest.
- (3) A person who influences a decision made by or on behalf of a contracting authority in relation to a covered procurement is to be treated as acting in relation to the procurement.
- (4) In this section—
  - “interest” includes a personal, professional or financial interest and may be direct or indirect;
  - “Minister” means—
    - (a) a Minister of the Crown;
    - (b) a member of the Welsh Government;
    - (c) the First Minister, deputy First Minister or a Northern Ireland Minister;
  - “member of the Welsh Government” means a person referred to in section 45 of the Government of Wales Act 2006.

**82 Conflicts of interest: duty to mitigate**

- (1) A contracting authority must take all reasonable steps to ensure that a conflict of interest does not put a supplier at an unfair advantage or disadvantage in relation to a covered procurement.
- (2) Reasonable steps may include requiring a supplier to take reasonable steps.
- (3) Subsection (4) applies if a contracting authority considers that—
  - (a) a conflict of interest puts a supplier at an unfair advantage in relation to the award of a public contract, and
  - (b) either—
    - (i) the advantage cannot be avoided, or
    - (ii) the supplier will not take steps that the contracting authority considers are necessary in order to ensure it is not put at an unfair advantage.
- (4) The contracting authority must in relation to the award—
  - (a) treat the supplier as an excluded supplier for the purpose of—
    - (i) assessing tenders under section 19 (competitive award), or
    - (ii) awarding a contract under section 41 or 43 (direct award), and
  - (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.
- (5) In this section, “conflict of interest” has the meaning given in section 81.

**83 Conflicts assessments**

- (1) Before publishing a tender or transparency notice in relation to a covered procurement, a contracting authority must prepare a conflicts assessment in relation to the procurement.
- (2) Before publishing a dynamic market notice in relation to the establishment of a dynamic market, a contracting authority must prepare a conflicts assessment in relation to the establishment.
- (3) A conflicts assessment must include details of—
  - (a) conflicts or potential conflicts of interest identified in accordance with section 81 (duty to identify), and
  - (b) any steps the contracting authority has taken or will take for the purposes of section 82 (duty to mitigate).
- (4) 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, a conflicts assessment 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.
- (5) A contracting authority must—
  - (a) keep any conflicts assessment under review,
  - (b) revise the assessment as necessary, and
  - (c) when publishing any relevant notice, confirm that a conflicts assessment has been prepared and revised in accordance with this section.
- (6) Subsection (5) does not apply after—

---

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

---

- (a) a contracting authority has given notice of its decision not to award the contract (under section 55),
  - (b) a contract termination notice is published in relation to the procurement, or
  - (c) a dynamic market notice is published in relation to the market ceasing to operate.
- (7) In the case of a contracting authority that is a private utility—
- (a) the reference in this section to notice of a decision not to award a contract is a reference to the decision;
  - (b) the reference in this section to a contract termination notice being published in relation to a procurement is a reference to the contract being terminated;
  - (c) the reference in this section to a dynamic market notice being published in relation to a market ceasing to operate is a reference to the market ceasing to operate.
- (8) In this section—
- “conflict of interest” has the meaning given in section 81;
  - “relevant notice” means—
    - (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 relating to a public contract, or
    - (e) a contract change notice;
  - “terminated” is to be understood by reference to section 80(3).