

A woman with curly brown hair is smiling and looking towards a man on the right. Another man is partially visible on the left, looking towards the woman. The background is a blurred office setting.

geldards

# Procurement Update

---

Clare Hardy

7 December 2023

# Agenda

- Procurement Act 2023
- Draft Regulations
- Transparency
- Practical actions to take
- UK Government Knowledge Drops

# Procurement Act 2023

- An Act to make provision about procurement
  - 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 6 – Below Threshold Contracts

# Procurement Act 2023

- An Act to make provision about procurement
  - Part 7 – Implementation of International Obligations
  - Part 8 – Information and Notices
  - Part 9 – Remedies for breach of statutory duty
  - Part 10 – Procurement Oversight
  - Part 11 – Appropriate Authorities and Cross-Border Procurement

# Key Definitions

- Procurement and covered procurement
- Contracting authority
- Public contract
- Concession contract
- Light touch contract
- Special regime contract

# How to procure a covered procurement

- A contracting authority may not enter into a public contract unless it is awarded in accordance with:
  - Section 19 (competitive award)
  - Section 41 (direct award in special cases)
  - Section 43 (direct award after switching procedures)
  - Section 45 (award under frameworks)

# Objectives

- In carrying out a covered procurement, a contracting authority must have regard to the importance of:
  - Delivering value for money
  - Maximising public benefit
  - Sharing information
  - Acting with integrity
  - Removing barriers to participation by SME's
- Must treat suppliers the same unless difference justifies different treatment

# Procurement Policy Statements

- Minister may publish statement of Government's strategic priorities
- Welsh Ministers may publish statement of Welsh Government's Strategic Priorities
- Contracting authorities must have regard



# Preliminary Market Engagement

- Planned Procurement Notice
- Preliminary Market Engagement
- Duty to consider lots

# Competitive Award

- Contract awarded to most advantageous tender
- Procedures – Open or competitive flexible
- Publication of tender notices and associated tender documents
- May set conditions of participation
- Use and refinement of award criteria
- Exclusion of suppliers

# Direct Award

- If a direct award justification (in Schedule 5) applies, a contracting authority may award a public contract directly:
  - To a supplier that is not an excluded supplier, or
  - To a supplier that is an excluded supplier if there is an overriding public interest in awarding the contract to that supplier

Before awarding such a contract a contracting authority must publish a transparency notice

# Direct award to protect life, public order or safety

- Regulations may provide for direct award of a contract even if no direct award justification applies if this is necessary to protect human, animal or plant life or health, or protect public order or safety.

# Contract award notices and standstill

- Before entering into a public contract, a contracting authority must publish a contract award notice
- Before publishing a contract following competitive tendering procedure, a contracting authority must provide an assessment summary to each supplier that submitted an assessed tender.
- Mandatory standstill period of eight working days beginning with the day of publication of contract award notice

# Contract modifications

- 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:
  - Is a permitted modification under Schedule 8
  - Is not a substantial modification, or
  - Is a below-threshold modification
- A contracting authority may also modify a public contract or a convertible contract if the contract is a light touch contract.
- Contracting authority must first publish a contract change notice

# Oversight

- A Minister may investigate a relevant contracting authority's compliance with the requirements of the Bill and may publish the results of a procurement investigation, including any recommendation issued
- A relevant contracting authority must have regard to a recommendation issued to it and must, when required, submit a progress report

# Implementing the Act

- Consultation on draft regulations
- Part 1 – Provisions for calculations and further definitions
- Transparency and transitional arrangements



# Transparency

- Draft Procurement (Transparency) Regulations
- Details of notices to be published and information to be included in them
- Notices to be published on digital platform developed by the Cabinet Office

# Transparency - Notices

- Pipeline Notice
- Planned Procurement Notice
- Preliminary Market Engagement Notice
- Tender Notice
- Utilities Dynamic Market/Dynamic Market Notice
- Transparency Notice

# Transparency - Notices

- Procurement Termination Notice
- Contract Award Notice
- Contract Details Notice
- Payments Compliance Notice
- Contract Performance Notice
- Contract Change Notice
- Contract Termination Notice

# Transparency Notice

- Required before a direct award
- Must include:
  - Title of the procurement
  - Unique identifier for the procurement
  - Contract subject-matter
  - Whether the contract is a special regime contract
  - Whether the contract is being awarded directly to a supplier that is not an excluded supplier because a direct award justification applies

# Transparency Notice

## Must include

- Direct award justification and explanation of why the contracting authority considers it applies
- Whether the contract is being awarded directly to an excluded supplier because the contracting authority considers there is an overriding public interest in awarding the contract to that supplier
- Which ground in section 41(5) of the Procurement Act 2023 (overriding public interest for direct award in special cases) applies and an explanation of why the contracting authority considers that it applies
- Estimated value of the public contract
- Description of any risk that could jeopardise the performance of the contract but may not be addressed in the contract and may require a subsequent modification to the contract

# Transparency Notice

Must include:

- Whether suppliers have been selected for the award of the contract and, if so, their names and unique identifiers
- Date when the public contract will be entered into
- Confirmation that any conflicts assessment has been prepared and revised as necessary

# Contract Change Notice

- Required before modifying a public contract or a convertible contract
- Must include:
  - Title of the procurement
  - Unique identifier for the procurement and for the contract
  - For each supplier party to the public contract, name, address and unique identifier

# Contract Change Notice

Must include:

- Whether (and an explanation of why) the contracting authority is permitted to make the modification to the public contract or convertible contract under one of the following grounds:
  - It is provided for under the contract
  - Urgency and the protection of life
  - Unforeseeable circumstances
  - Materialisation of a known risk
  - Additional goods, services or works
  - Transfer on corporate restructuring



# Contract Change Notice

Must include:

- Details of any change as a result of the modification to the estimated value of the contract or to the term of the contract
- Where the modification is a transfer on corporate restructuring, the name, address and unique identifier of each new supplier
- Estimated date when the contract will be modified and the modification will have effect
- Confirmation that any required conflicts assessment has been prepared and revised as necessary
- Whether a voluntary standstill period applies and the duration of that period

# Wales

- Social Partnership and Public Procurement (Wales) Act 2023
  - Establishment of Social Partnership Council
  - Socially responsible procurement duty
- Welsh Government Resources – Guidance, case studies

# Practical Actions

- Review of contract procedure rules
  - References to legislation
  - Statutory Objectives
  - Methods of procurement
  - Below threshold contracts
  - Direct awards
- Resources and strategies
- Training

# Case Law

- *Siemens Mobility Limited v High Speed Two Ltd* [2023] EWHC 2768
- Unsuccessful challenge
- Multiple grounds

# Transforming Public Procurement

- Knowledge Drops
- E-Learning
- Deep Dives
- Communities of Practice

# Transforming Public Procurement Knowledge Drops

- Guidance designed to provide a high level overview of the changes to the procurement. Aimed at those who have regular interactions with procurement
- Knowledge drops for contracting authorities
  - Part 1 – Overview
  - Part 2 – Pipeline publishing requirements, early supplier engagement, value for money considerations, conflict of interest assessments
  - Part 3 – Competitive flexible procedure, open frameworks, dynamic markets, direct awards
  - Part 4 – Exclusion, debarment, requirements prior to and after award of a contract
  - Part 5 – Contract modification, performance and termination, transparency, role of Procurement Review Unit
  - Part 6 – Preparing for the changes

# Transforming Public Procurement Knowledge Drops

- Knowledge drops for suppliers
  - Part 1 – Overview
  - Part 2 – Conflicts of interests, central digital platform, early market engagement, value for money, procurement procedures, open frameworks, dynamic markets
  - Part 3 – Exclusion, debarment, award and management of contracts, transparency, role of Procurement Review Unit, preparing for the changes
  - Part 3b – Knowledge drop for SMEs/VCSEs

# Any Questions



geldards



**Clare Hardy**

Partner

+44 (0)29 2039 1766

[clare.hardy@geldards.com](mailto:clare.hardy@geldards.com)

geldards

# Thank You

---

[www.geldards.com](http://www.geldards.com)  
[info@geldards.com](mailto:info@geldards.com)