

A photograph of three business professionals (two men and one woman) sitting around a table in a modern office or meeting room at night. They are looking at laptops and talking. The room has large windows showing a city view at night. The lighting is warm and focused on the people. The woman is on the left, wearing a grey blazer. The man in the middle is wearing a light blue sweater. The man on the right is wearing a dark red shirt and has a beard. There are coffee cups and a small plant on the table.

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Geldards Public Sector: Procurement Update

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Agenda

- Guidance
- Preliminary market engagement

Guidance – Devolved contracting authorities

- Devolved Welsh authority – defined by reference to Government of Wales Act 2006
- Devolved Welsh authorities subject to Procurement Act 2023 but subject to some differences
 - Regulations for Wales
 - Welsh Government guidance

Guidance – Devolved contracting authorities

- Contracting authorities carrying out procurement under a devolved procurement arrangement are bound by the rules that apply to the contracting authority establishing the procurement arrangement
- Wales procurement policy statement applies to devolved Welsh authorities

Procurement Act 2023 Templates

- Recently published templates
 - Assessment summary
 - Conflict of interest declaration form
 - Conflicts assessment
- Other templates
 - Pre-procurement checklist
 - Direct award justification report

Welsh Government Guidance – Assessing Competitive Tenders

- Legal Framework: Sections 19, 23 and 24 Procurement Act 2023
- Key points and policy intent:
 - Contracting authorities must have regard to section 12 objectives
 - Contracting authorities must have regard to Wales Procurement Policy Statement
 - Setting and refining award criteria
 - Awarding contracts following a competitive tendering exercise

Welsh Government Guidance – Assessing Competitive Tenders

- Other guidance relevant to this topic area
 - Covered procurement objectives
 - Wales procurement policy statement
 - Preliminary market engagement
 - Conditions of participation
 - Competitive tendering procedures

Welsh Government Guidance – Assessing Competitive Tenders

- Other guidance relevant to this topic area
 - Light touch contracts
 - Lots
 - Contract award notice and standstill
 - Assessment summaries

Guidance – Central Digital Platform and Publication of Information

- Legal framework: sections 94, 98 and 99 Procurement Act 2023, Regulations 5 and 6 Procurement Regulations 2024 and Procurement (Wales) Regulations 2024

Guidance – Central Digital Platform and Publication of Information

- Exemptions more limited than under current regulations
- Contracting authority not required to publish or disclose information if:
 - Withholding information is necessary to safeguard national security, or
 - Information is sensitive commercial information and there is an overriding public interest in withholding it
- Contracting authority must publish the fact that information is being withheld or notify anyone to whom it would otherwise be provided unless this would be contrary to interests of national security

Guidance – Central Digital Platform and Publication of Information

- Data Protection
- Section 99 Procurement Act 2023
- Procurement Act does not require disclosure of information if this would contravene data protection legislation
- When determining this, you must consider powers and duties under the Procurement Act

Guidance – Central Digital Platform and Publication of Information

- Key points and policy intent
 - Unique identifiers
 - Publication of notices and other information
 - Data Protection
 - Supplier information
 - Record keeping

Guidance – Unique identifiers

- Contracting authorities, suppliers, procurements and contracts will all have a unique identifier on the central digital platform
- Contracting authorities and suppliers generate identifiers when registering
- Procurement identifier is allocated by central digital platform when contracting authority publishes first notice relating to a procurement

Guidance – Publication of notices and other information

- Notices must be published on central digital platform before being published elsewhere
- Contracting authorities have a duty to publish information about a supplier's associated person – subject to exemptions where disclosure of information could put a person at risk

Guidance – Supplier Information

- Procurement Act 2023 aims to reduce burden on suppliers by storing core supplier information in central digital platform
- Conditions of participation in a procurement should set out that suppliers will be required to register and submit core supplier information through central digital platform

Guidance – Record keeping

- Section 98 Procurement Act 2023
- Contracting authority must keep records sufficient to explain a material decision made for the purpose of awarding or entering into a public contract

Guidance – Central Digital Platform and Publication of Information

- Other guidance of relevance to this topic area
 - Remedies
 - Notices

Preliminary Market Engagement

- Conducted before publishing a tender or transparency notice.
- Prepares market and contracting authorities for procurement under PA 2023.
- Must ensure fair competition and avoid giving suppliers an unfair advantage.
- Authorities can publish a notice to invite or inform suppliers of engagement.

Legal Framework

- Governed by Sections 16 and 17 of PA 2023.
- Includes provisions on non-discrimination, conflicts of interest, and procurement objectives.
- Section 16 outlines purposes of engagement, e.g., developing procurement strategies.
- Section 16(3): Ensure engagement does not distort competition.

Preliminary Market Engagement Notice

- Details required under Procurement Regulations 2024:
 - Contracting authority info, procurement title, subject matter.
 - Timeline for engagement and process details.
 - Optional: Any relevant additional information.

What Has Changed?

- Introduction of mandatory preliminary market engagement notices.
- No specific measures to prevent competition distortion in PA 2023, unlike PCR 2015.
- Suggested measures: Share information and allow sufficient time for tenders.

Policy Intent

- Engagement helps clarify requirements, assess market capacity, and develop strategies.
- Aims to promote value for money and reduce lifecycle costs.
- Encourages greater competition and diverse supplier participation.

Preparation

- Define clear purpose and outcomes.
- Use formats like workshops, webinars, or site visits.
- Address barriers for SMEs and ensure accessibility (e.g., digital events).

Steps to Prevent Unfair Advantage

- Maintain fairness by:
 - Documenting shared information.
 - Sharing relevant data with all bidders.
 - Excluding suppliers with unavoidable advantages.
- Handle confidential information appropriately.

Publishing a Preliminary Market Engagement Notice

- Advisable for most engagements to ensure transparency.
- Include timelines and engagement process details.
- Can notify suppliers of completed engagement and share outcomes.

Joint Preliminary Market Engagement

- Multiple authorities can collaborate on market engagement.
- A lead authority publishes a notice on behalf of all parties.
- Each authority references the joint notice in its tender.

Engagement Without a Notice

- Allowed if reasons are provided in the tender notice.
- Justifiable in cases like national security or critical service failures.
- Authorities must still comply with Section 16 to ensure fairness.

Non-Tendered Procurements

- Engagement can occur without a tender notice for:
 - Framework agreements or direct awards.
 - Establishing dynamic markets.
- Authorities can voluntarily use notices to inform the market.

Exemptions

- Below-threshold contracts: No obligation to publish a notice or justify non-publication.
- Private utilities: Encouraged to publish notices but not required to justify absence.

Resources

- Guidance on devolved contracting authorities: [Guidance: Devolved Contracting Authorities \(HTML\) - GOV.UK](#)
- Guidance on the central digital platform and publication of information: [Guidance: Central Digital Platform and Publication of Information \(HTML\) - GOV.UK](#)
- Welsh Government Guidance: Assessing competitive tenders: [Procurement Act 2023 guidance: assessing competitive tenders | GOV.WALES](#)

Resources

- Assessment Summary Template: [\(PA 2023\) Assessment summary: assessed tender | Procurement Pathway](#)
- [\(PA 2023\) Assessment summary: most advantageous tender | Procurement Pathway](#)
- Conflict of Interest Declaration Form Template: [\(PA 2023\) Conflict of Interest declaration form | Procurement Pathway](#)
- Conflicts assessment Template: [\(PA 2023\) Conflicts assessment | Procurement Pathway](#)
- Pre-procurement checklist Template: [\(PA 2023\) Pre-procurement checklist | Procurement Pathway](#)
- (Direct award justification report Template: [\(PA 2023\) Direct award justification report | Procurement Pathway](#)

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Thank You

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