



Guidance on the new transparency requirements for publishing on Contracts Finder

This guidance is aimed at contracting authorities across the public sector. It applies to new procurements from the day upon which the Public Contracts Regulations 2015 (the Regulations) come into force.

This guidance supplements, but does not replace or supersede, existing transparency guidance or codes of practice in central government, the NHS, and local government. This guidance is not statutory.

The guidance underpins Regulations 106, 108, 109, 110, 112 of the Public Contracts Regulations 2015. It explains the main features of the relevant Regulations, but is not a comprehensive guide to the law. You should seek legal advice if you are unsure about the effect of the Regulations.

For exclusions see below.

1. Introduction

A number of new reforms to make public sector procurement more accessible, particularly to smaller businesses and voluntary or charitable organisations, have now been implemented in the Public Contracts Regulations 2015, following consultation in September 2013. (www.gov.uk/government/consultations/making-public-sector-procurement-more-accessible-to-smes).

These reforms include new transparency obligations on all contracting authorities (with a few exceptions listed below,) which will mean that new public sector opportunities will be available in one place, the Contracts Finder portal. In addition contract award information relating to the winning contractor will also be available on Contracts Finder.

The Contracts Finder portal has been fully redeveloped and will be launched on 26 February 2015
www.gov.uk/contracts-finder

2. The new requirements

Contracting authorities are required to ensure that any new procurement opportunities, above thresholds, are published on Contracts Finder (in addition to, or instead of any other portal or publications route they may currently use).

Once a contract has been awarded as a result of a procurement process, contracting authorities must also publish details of who has won the contract, the contract value, and for procurements below the EU thresholds, indicate whether the winning supplier is a small business or voluntary sector organisation.

3. Thresholds for publishing opportunities

The threshold for publishing is £10,000 contract value, for Central Government and £25,000 contract value, for non Central Government contracting authorities, including NHS Trusts.

4. Specific requirements for placing contract opportunities on Contracts Finder

The requirement to publish a contract opportunity on Contracts Finder applies where a contracting authority advertises an opportunity, either by issuing an EU Contract Notice, or by advertising in another way. The Directive requires the majority of above-threshold contract opportunities to be advertised on an EU-wide level. Contracting authorities may also be required by law or by internal policies to advertise below-threshold contract opportunities, or may choose to do so. Regulations 106 and 110 do not change these rules determining the circumstances in which a contract must be advertised. But where a contract is advertised, they require that it must be advertised on Contracts Finder in addition to any other forms of advertising used.

Where a contracting authority is satisfied it is lawful not to advertise an opportunity and chooses not to advertise the opportunity at all, the requirement to advertise on Contracts Finder does not apply to that contract. This may be the case where, for example, a contracting authority has a standing order stating that advertising is not required for contracts with a value below a certain amount, and there is no legal requirement to advertise the contract. This means that, for example, if a contracting authority is dealing with a procurement worth £40,000; its standing orders state that contracts with a value below £50,000 need not be advertised; it is satisfied there is no legal requirement to advertise, and it does not voluntarily advertise the procurement, then there is no requirement to advertise the procurement on Contracts Finder.

If the opportunity appears on other portals or sites, for example a local portal or the TED portal, the information must also be published on Contracts Finder within 24 hours of the time when it is first advertised. For contracts advertised on TED, the information must be published on Contracts Finder within 24 hours of the time when the contracting authority becomes entitled to publish the notice at national level.

Where a contracting authority has an existing electronic link between their own portal and Contracts Finder, which means that the opportunities (or information contained within) are automatically published on Contracts Finder, this link will normally be sufficient to comply with these new requirements, as long as the advertisement contains the minimum data requirements listed in para 5. The contracting authority remains responsible for ensuring that this is the case.

For below-EU threshold contracts, the requirement to publish does not apply where a contracting authority is making an opportunity known to a closed group of suppliers who have already been selected onto a Framework Agreement or Dynamic Purchasing System. However the requirement does apply when the contracting authority is in the process of establishing a new Framework Agreement or Dynamic Purchasing System.

5. Minimum data requirements for publication Procurement opportunities

The following information must be published as a minimum however contracting authorities are advised to consult the Regulations to ensure that all the necessary requirements have been met.

Procurements above EU thresholds

- I. The time by which any interested supplier must respond if it wishes to be considered;
- II. How and to whom an interested supplier is to respond, with appropriate contact details; and,
- III. Any other requirements for participating in the procurement, (e.g. suitability requirements or explanatory information);

Procurements below EU thresholds

- I. The time by which any interested supplier must respond if it wishes to be considered. This period must be sufficient to enable interested suppliers to respond to the opportunity and proportionate to the value of the procurement. (Where the contracting authority is seeking a tender response, it is recommended that the minimum time required to submit a tender response is 10 working days.)
- II. How and to whom an interested supplier is to respond, with appropriate contact details etc; and,
- III. Any other requirements for participating in the procurement. (e.g. suitability requirements or explanatory information.)

It is recommended that contracting authorities, where appropriate, record the relevant information in the fields which are prompted by the system when they log on as buyers, however they may also choose to upload documents containing the required information.

For all opportunities either above or below EU thresholds, please refer to the regulations to determine the appropriate requirements for making procurement documents freely available and accessible.

Contract award

Once a contract has been awarded contracting authorities are required to publish at least the following information on Contracts Finder. It is recommended that this information is published in the Award Details section.

- I. the full company name of the winning contractor;
- II. the date on which the contract was entered into;
- III. the total value of the contract in pounds sterling; and,
- IV. an indication of whether the contractor is an Small or Medium-sized Enterprise (SME) or a Voluntary Community and Social Enterprise (VCSE) (this information is only required for below EU threshold procurements, see below for definitions).

This information should also be published in relation to contracts awarded as a result of a Framework Agreement (e.g. as a result of a mini competition).

The information must be published within a reasonable time. It is recommended that the information be published no later than 90 calendar days after the contract award date. Where a Contract Award Notice is published on TED, the contracting authority should not publish the notice in Contracts Finder before the time when they are entitled to publish the notice at national level in accordance with Regulation 52 of the PCRs.

There are some exceptions to this requirement, and a contracting authority may withhold contract award information from publication where its release:

- would impede law enforcement or would otherwise be contrary to the public interest;
- would prejudice the legitimate commercial interests of a particular supplier; or
- might prejudice fair competition between suppliers.

Legal advice should be sought in determining whether any information may be withheld.

6. Definitions

'SME' means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the European Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; and

'VCSE' means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

7. Exemptions

- Contracting authorities carrying out devolved or mainly devolved functions in Scotland, Wales and Northern Ireland;
- The procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013(b);
- Maintained Schools and Academies are exempt from Contracts Finder obligations.

For further information

Please contact the Crown Commercial Service Help Desk on

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