



Llywodraeth Cymru
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Procurement Act 2023 guidance: below-threshold contracts - devolved Welsh Authorities

Technical guidance on below-threshold contracts.

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Point to note

1. If a devolved Welsh Authority is conducting a procurement in relation to a below-threshold contract under a reserved procurement arrangement as defined in **Section 114 of the Procurement Act 2023** (the Act), please refer to **UK government below-threshold guidance**.

What is a below-threshold contract?

2. A 'below-threshold contract' is defined in **section 5 of the Act** (see paragraph 8 below) and is broadly a contract of lower monetary value than a 'public contract' (which is defined in section 3 of the Act and is subject to the thresholds set out in Schedule 1 of the Act).

3. The award, entry into and management of a below-threshold contract is not a 'covered procurement' as defined in **section 1 of the Act**. This means that fewer obligations in the Act apply to the procurement of below-threshold contracts than apply to covered procurement.

4. If a provision in the Act expressly refers to covered procurement, it does not apply to below-threshold contracts. Generally the only provisions in the Act that are relevant to the procurement of below-threshold contracts are those **set out in Part 6**, although there are some exceptions. For example, the obligations in **section 14 of the Act** to have regard to the Wales procurement policy statement and in section 90(1) to not discriminate against a treaty state supplier (but only to the extent that below-threshold procurements are covered by an international agreement set out in Schedule 9 of the Act) apply to any procurement, including below-threshold contracts.

5. This gives contracting authorities undertaking a below-threshold procurement

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greater flexibility in designing and running the procurement, and awarding and managing the resulting contract.

6. This flexibility (which may be subject to local policies and procedures) might include, for example the ability to request quotes, proposals or tenders from targeted known suppliers only; or to suppliers who are small and medium-sized enterprises (SMEs), or voluntary, community and social enterprises (VCSEs).

7. Note however that the option to reserve procurements on the basis of location should not be used in relation to procurements which are of cross-border interest (i.e. which may be of potential interest to suppliers from EU Member States including the Republic of Ireland) and which involve the provision of goods into Northern Ireland.

What is the legal framework that governs below-threshold contracts?

8. **Section 5 of the Act** defines a below-threshold contract as:

- a. a contract for the supply, for pecuniary interest, of goods, services or works to a contracting authority
- b. a framework, or
- c. a concession contract, that has an estimated value of less than the 'threshold amount' for the type of contract.

9. The threshold amounts are set out in Schedule 1 of the Act.

10. **Section 84** provides that a 'regulated below-threshold contract' is a below-threshold contract that is not:

- a. an exempted contract as defined in Schedule 2 of the Act

- b. a concession contract, or
- c. a utilities contract.

11. **Part 6 of the Act** sets out the rules that apply when carrying out the procurement of below threshold contracts. This includes provisions relating to procurement procedures, duties, notices and implied payment terms. Regulation 25 of the Procurement (Wales) Regulations 2024 (the Regulations) sets out the information required to be included in a 'below-threshold tender notice'.

12. **Section 84 of the Act** provides that the below-threshold contract provisions in Part 6 do not apply to procurements undertaken:

- a. by a school (as defined in section 123 of the Act), or
- b. by transferred Northern Ireland authorities, unless the procurement takes place under a reserved procurement arrangement or a devolved Welsh procurement arrangement (such as a framework or dynamic market). This would also be the case if the transferred Northern Ireland authority participated in a joint procurement led by a non-devolved authority or devolved Welsh authority, or a non-devolved or devolved Welsh central purchasing authority (for information about central purchasing authorities see guidance on frameworks), or
- c. under a transferred Northern Ireland procurement arrangement, that is to say using a framework or dynamic market established by a transferred Northern Ireland authority. This is also the case where a contracting authority participates in a joint procurement led by a transferred Northern Ireland authority or a transferred Northern Ireland central purchasing authority.

What has changed for devolved Welsh Authorities?

13. Unlike the Public Contracts Regulations 2015 the Act sets out statutory

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requirements for devolved Welsh authorities covering below-threshold contracts.

Categories and thresholds

14. The below-threshold requirements included in the Act and associated regulations apply at different thresholds to different categories of contracting authorities.

15. The categories are listed at section 87(4) of the Act but different thresholds apply to devolved Welsh authorities to those listed in section 87(4) as these have been amended pursuant to Welsh regulations (see regulation 47 of The Procurement (Wales) Regulations 2024). The thresholds for devolved Welsh authorities are:

- a. central government authorities that are a devolved Welsh authority - not less than £30,000 including VAT, and
- b. all other contracting authorities - not less than £30,000 including VAT.

16. As detailed at the start of the guidance, if a devolved Welsh authority is conducting a procurement in relation to a below-threshold contract under a reserved procurement arrangement (such as a CCS framework), then the UK government below-threshold guidance should be reviewed. This is because the application of the legislation will be different. For example, the threshold for central government authorities is not less than £12,000 including VAT, and there is a prohibition on applying a separate suitability stage which effects call-offs from Dynamic Markets.

17. A list of Welsh central government authorities can be found in Schedule 2 of the Procurement (Wales) Regulations 2024.

Below-threshold – notice publication requirements

18. Where a below-threshold tender notice or a below-threshold contract details notice is required to be published, under the Act and Procurement (Wales) Regulations 2024, it must be published on the Welsh digital platform, Sell2Wales. The Welsh digital platform will then forward the notice to the central digital platform, thereby fulfilling the legal requirement to publish the notice on the central digital platform in the circumstances set out in the Act.

Below-threshold – tender notice

19. Section 87 of the Act requires that if a contracting authority intends to advertise a ‘notifiable below-threshold contract’ it must first publish a ‘below-threshold tender notice’. A notifiable below-threshold contract is a regulated below-threshold contract with a value of not less than £30,000 including VAT.

Regulation 5 of the Procurement (Wales) Regulations 2024 provides that this notice must be published on the central digital platform by publishing it on the Welsh digital platform.

20. There is no requirement to publish a below-threshold tender notice where the contracting authority invites quotes, proposals or tenders from a closed group of pre-selected suppliers, (i.e. suppliers on a framework) or from one or more targeted suppliers, provided it does not advertise the procurement in any other way (for example in a newspaper or on a local website or portal). In these circumstances, only the contract details notice is mandatory once the contract is awarded.

21. The below-threshold tender notice is a lighter touch version of the tender notice for covered procurement. It must set out that the contracting authority intends to invite the submission of tenders and contain as a minimum the

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information set out at regulation 25 of the Procurement (Wales) Regulations 2024, although contracting authorities may include additional information.

22. Whilst not set out in the regulations, a contracting authority may supplement the information in the below-threshold tender notice by including additional information in tender documents. Tender documents can be made available by the contracting authority in any way, for example at a portal/website address or via email. The information in the tender documents can duplicate information provided in the below-threshold tender notice. Tender documents could include information such as the specification, assessment methodology and terms and conditions of the contract.

23. Contracting authorities will need to ensure that the tender notice (and tender documents where applicable) provide suppliers with sufficient information to allow them to prepare a tender within the timeframes provided for in the tender notice.

24. Authorities should specify in any below-threshold tender notice if the contract is being awarded by reference to a dynamic market (and the relevant part of the market, if appropriate) and where that is the case, the unique identifier of the dynamic market. Contracting authorities may choose to give suppliers the opportunity to join a dynamic market in order to participate in a procurement and, if doing so, should allow enough time for suppliers to become members of the dynamic market. Please refer to guidance on Dynamic Markets for further information.

Contract details notice and unique identifiers

25. Section 87(3) of the Act provides that as soon as reasonably practicable after entering into a notifiable below-threshold contract, the contracting authority must publish a contract details notice. What is reasonably practicable will be a judgement for the contracting authority based upon the size, complexity and

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nature of each procurement but will usually mean:

- a. in the case of a contract to be awarded by a central government authority, within 30 days of the contract being entered into, or
- b. otherwise, within 90 days of the contract being entered into. This timeframe does not apply in the case of a below-threshold light touch contract, in which case the notice should be published within 120 days of the contract being entered into.

26. A notifiable below-threshold contract is a regulated below-threshold contract with a value of not less than £30,000 including VAT. As there is not always a requirement to publish a below-threshold tender notice, the contract details notice may sometimes be the first and only notice published in relation to a below-threshold contract.

27. The requirement to publish the contract details notice applies to all notifiable below-threshold contracts, and not just those which require the publication of a below-threshold tender notice. Contracting authorities should note that this includes where a contracting authority has not published a below-threshold tender notice because it has only sought a quote from a single supplier and where a below-threshold contract has been awarded under a framework.

28. **Regulation 37 of the Procurement (Wales) Regulations 2024** sets out the details to be included in the below-threshold contract details notice for devolved Welsh authorities. For devolved Welsh authorities all contracts awarded under the Procurement Act will need to include a unique supplier identifier in the contracts details notice. Unique identifiers are defined in **Regulation 9 of the Procurement (Wales) Regulations 2024**. The information to be included in a contract details notice for a below-threshold contract is less than that required under section 53 for public contracts.

Contract change notice

29. As set out in paragraph 41 below, when the value of a modification will take the value of a contract over the relevant threshold amount in Schedule 1 such that it will become a public contract, it is a convertible contract. A modification which will make the contract a public contract, and any subsequent modification to a convertible contract, is only permitted under section 74 of the Act and a contract change notice must be published in accordance with section 75.

Pre-qualification in below-threshold contracts

30. Section 85 of the Act (which restricts the submission of tenders by reference to an assessment of the supplier's suitability to perform the contract) does not apply to the award of a contract by a devolved Welsh authority, unless it is awarded under a reserved procurement arrangement. Therefore, for regulated below-threshold contracts which are devolved Welsh procurement arrangements, the submission of tenders can be restricted by reference to an assessment of the supplier's suitability to perform the contract (i.e. they can use a pre-qualification questionnaire (PQQ) stage) if they wish to (although authorities will still need to consider their duty to consider SMEs as laid out in Section 86 of the Act).

31. As section 85 of the Act does not apply to devolved Welsh authorities (unless awarding under a reserved procurement arrangement) this also means that below-threshold contracts can be awarded under Dynamic Markets which have been established by a devolved Welsh authority.

Duty to consider potential barriers to SME's

32. Section 86 of the Act imposes a duty on contracting authorities, before

inviting tenders, to consider the barriers SMEs may face in competing for a contract and whether such barriers can be removed or reduced. This obligation does not however apply to below-threshold contracts awarded under a framework.

Time limits

33. Section 87(6) of the Act requires contracting authorities to provide a reasonable time period in the below-threshold tender notice for the submission of tenders. This time period must be the same for all suppliers.

Prompt payment

34. Section 88 of the Act applies specifically to below-threshold contracts and mirrors the prompt payment provisions in sections 68 and 73 that apply to public contracts. Further information on these is available in the guidance on electronic invoicing and payment.

Below-threshold frameworks

35. Whilst unlikely, it is possible to award a below-threshold contract that is a framework (“below-threshold framework”). The definition of a below-threshold contract in section 5 of the Act recognises this. Section 45(2) of the Act defines a framework as a contract between a contracting authority and one or more suppliers that provides for the future award of contracts by a contracting authority to the supplier or suppliers.

36. A below-threshold Framework is one where the estimated total value of contracts to be awarded under the framework is below the applicable threshold for that type of contract (see Schedule 3 for how to estimate the value of a

framework). It may be more likely that a below-threshold framework is awarded for works contracts where the threshold is much higher than for goods and services at £5,372,609 (and therefore the estimated value of contracts to be awarded under the framework is higher). If the contracting authority considers there is a possibility that a threshold may be exceeded they should award the framework as though it is an above-threshold contract i.e. a public contract.

Dynamic markets

37. Below-threshold contracts can be awarded under Dynamic Markets established by a devolved Welsh authority. It should be noted that there is a prohibition on applying a separate suitability stage for non-devolved contracting authorities under section 85 of the Act which affects call-offs from Dynamic Markets which are reserved procurement arrangements. If a devolved Welsh authority is conducting a procurement in relation to a below-threshold works contract under a reserved procurement arrangement (as defined in Section 114 of the Act), please refer to [UK government below-threshold guidance](#).

38. The Act only regulates dynamic markets established for the future award of public contracts and not below-threshold contracts. Therefore, below-threshold contracts can be awarded under a dynamic market, but those awards are not regulated by the Act's provisions on dynamic markets. In those cases, the contracting authority should follow this guidance for below threshold contracts notice requirements. For instance, if awarding a below-threshold contract under a dynamic market, contracting authorities may be required to publish a below-threshold tender notice and a contracts details notice for below threshold contracts.

39. In the contract details notice for a below-threshold contract awarded under a dynamic market, the contracting authority must also provide the unique identifier of the dynamic market.

Modifying a below-threshold contract

40. Below-threshold contracts may be modified after the contract has been entered into without the same constraints on modifications that apply to public contracts in sections 74-77 of the Act. Local policies and procedures may apply to modification of contracts.

41. However, section 74(1) of the Act introduces the concept of a 'convertible contract', which is a contract where the value of a modification will take the value of the contract after the modification over the relevant threshold amount in Schedule 1 of the Act, such that the contract will become a public contract. A modification to a convertible contract is only permitted under section 74. Following the modification of the convertible contract, the contract is subject to the provisions in the Act that govern public contracts, rather than the provisions specific to below-threshold contracts in Part 6. See guidance on contract modifications for more information.

Pipeline notice requirements

42. A pipeline notice is required if a contracting authority considers that it will, in the coming financial year, pay more than £100 million under contracts for the supply of goods, services or works, other than exempted contracts ('relevant contracts').

43. For the purpose of calculating whether a contracting authority will exceed the £100 million threshold, the calculation must include all payments that will be made under existing and future contracts. This includes payments made under below-threshold contracts.

44. Where a contracting authority is required to publish a pipeline notice, there is no requirement under the Act to include planned below-threshold contracts in

that notice as they are not ‘public contracts’ as defined by the Act. However, a contracting authority may include below-threshold contracts in the notice if it wishes and should consider whether it would be useful to give early visibility to the market of upcoming below-threshold contracts as part of the authority’s duty to consider barriers to SMEs under section 86 of the Act. In particular, the authority might consider including below threshold works contracts, whose estimated value is between £2 million and the relevant threshold for works contracts, in the pipeline notice, to allow SME’s more time to consider if they wish to respond to a planned tender and allocate resources accordingly.

Unregulated below-threshold contracts

45. Section 84 of the Act provides that Part 6 of the Act does not apply to below-threshold contracts that are:

- a. exempted contracts
- b. utilities or concession contracts, or
- c. procured by a school, by a transferred Northern Ireland authority (unless the transferred Northern Ireland authority is carrying out a procurement under a reserved or devolved Welsh procurement arrangement, as defined in section 114 of the Act) or under a transferred Northern Ireland procurement arrangement (see section 84(2)).

However, obligations elsewhere in the Act relating to ‘procurement’ will apply, such as those relating to the WPPS and relevant treaty state suppliers (see paragraph 4 above)

What other guidance is of particular relevance to this topic area

- Guidance on thresholds
- Guidance on valuation
- Guidance on the publication of information and the central digital platform
- Guidance on notice sequencing and flowcharts
- Guidance on WPPS
- Guidance on treaty state suppliers
- UK government below-threshold guidance
- UK government guidance on NPPS

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