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Procurement Act 2023 guidance: time periods

Technical guidance on minimum time limits in procurement.

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What are time periods and why is it important to regulate them?

1. The Procurement Act 2023 (the Act) specifies certain minimum time limits, which a contracting authority must comply with during a competitive tendering procedure. The Act also sets out the considerations that apply in setting time periods more generally.
2. As well as ensuring that suppliers have reasonable time to prepare, for example, for the submission of tenders, the minimum time limits set out in the Act ensure compliance with the UK's international obligations on public procurement.

What is the legal framework that governs modifications during a procurement?

3. Section 54 (Time limits) provides the minimum time limits to be set by contracting authorities in different circumstances.

What has changed?

4. The rules relating to 'participation periods' and 'tendering periods' are largely unchanged from the previous legislation. In the Act, they are consolidated into a single section rather than referenced in different places in the legislation.

Key points and policy intent

5. There are mandatory minimum time periods that must be provided for in a competitive tendering procedure. There are no set maximum time periods. In designing the procurement timetable, a contracting authority must find an appropriate balance which gives suppliers sufficient time to prepare and takes into account, where relevant, matters such as the complexity of the contract (see paragraph 7 below).

6. The tables in section 54(3) and (4) set out the mandatory minimum time periods that apply in different circumstances. Broadly, the minimum time periods are reduced where there is a state of urgency, or if suppliers are already aware of the impending procurement via publication of a 'qualifying planned procurement notice' (see paragraph 20(d) below); or in specific circumstance, such as when it is a light touch contract or when a dynamic market is being utilised etc. Minimum periods are longer if tenders cannot be submitted electronically or if associated tender documents are not provided at the same time as the tender notice.

7. In addition to compliance with the minimum time periods for participation and tendering, there are other situations where contracting authorities have an obligation to consider setting reasonable time limits. For example, when undertaking preliminary market engagement, directly awarding a contract or making a modification to the terms of the procurement procedure. When setting any time limits for a procurement, contracting authorities must, where relevant, have regard to the factors in section 54(1):

- a. the nature and complexity of the contract being awarded
- b. the need for site visits, physical inspections and other practical steps
- c. the need for sub-contracting
- d. the nature and complexity of any modification of the tender notice or any associated tender documents

e. the importance of avoiding unnecessary delay

8. The factors set out in section 54(1)(a)-(c) will be particularly relevant when inviting requests to participate or inviting tenders, and contracting authorities must consider whether allowing more time for suppliers to prepare and submit their responses is necessary, taking into account the relevant factors.

9. Section 54(1)(d) is relevant when making a modification to the tender notice or associated tender documents during the procedure, although other factors may also be relevant. Further information on modifications during a procedure can be found in the guidance on modifying a section 19 procurement.

10. In accordance with section 54(1)(e), contracting authorities must have regard to the importance of avoiding unnecessary delay. This could, for example, mean having all the tender documents prepared as early as possible, ready to be shared with suppliers at the same time as publication of the tender notice. Or not having significant gaps in the procedure, such as between receipt of requests to participate and issuing an invitation to tender. It may also mean responding quickly to clarification questions.

11. Any time limit set must be the same for all suppliers.

12. The contracting authority must also have regard to the procurement objectives when setting time limits. Of particular relevance is acting and being seen to act, with integrity, and the requirement to have regard to the fact that small and medium-sized enterprises may face particular barriers to participation and whether such barriers can be removed (for example, by providing a longer time period).

13. The participation and tendering periods can be reduced where the contracting authority considers there to be a state of urgency which means the usual minimum time period is impractical. 'State of urgency' is not a defined term in the Act and should only be used in exceptional circumstances; the decision to

reduce the minimum time period must be based on an objective need for urgency and where following the usual time scales would have a genuine adverse effect. It should not be used as a way to 'catch up' following delays in the procurement.

Participation period

14. In a competitive flexible procedure there may be a separate participation stage to limit the number of suppliers invited to participate further in the procedure (this is akin to a selection stage in the previous legislation).

15. The contracting authority will invite suppliers to submit requests to participate by publishing a tender notice, detailing the conditions of participation and any other criteria by which the number of suppliers may be limited (see The Procurement (Wales) Regulations 2024, regulations 19 (Tender notices: open procedure) and 20 (Tender notices: competitive flexible procedure)). The participation period starts with the day after a contracting authority invites requests to participate in a competitive flexible procedure and ending with the day by which those requests must be submitted.

16. Section 54(3) provides that in most cases a participation period of at least 25 days must be allowed for suppliers to submit requests. The only exceptions are:

- a. where the contract is a light touch contract: there is no minimum participation period
- b. where the contracting authority considers there to be a state of urgency meaning a 25 day participation period is impractical: the minimum participation period may be reduced to 10 days.

Tendering period

17. All competitive tendering procedures will include at least one tendering period. This is the period during which suppliers prepare their tenders.

18. In an open procedure, there will only be one tendering period and this will start following publication of the tender notice.

19. In a competitive flexible procedure, if the contracting authority has chosen not to have a separate participation period, the tender will be submitted in response to the tender notice and therefore the tendering period will again commence following publication of the tender notice. Where there is a separate participation period or multiple tendering rounds, tenders will be submitted in response to an invitation to tender sent directly to participating suppliers. In these circumstances, the tendering period starts with the day after a contracting authority invites the submission of tenders as part of a competitive tendering procedure and ends with the day by which tenders must be submitted.

20. Section 54(4) provides that the minimum tendering period will depend on the type of contract/circumstance as set out below:

- a. No minimum tendering period for light touch contracts.
- b. No minimum tendering period for utilities contracts or those awarded by non-central government authorities (such as local authorities) where there is a negotiated tendering period. This will be the situation where only pre-selected suppliers are invited to tender and a tendering period is agreed between the contracting authority and those pre-selected suppliers. A pre-selected supplier is defined in section 54(5) as a supplier that:
 - i. has been assessed as satisfying conditions of participation before being invited to submit a tender, or
 - ii. is a member of a dynamic market where the contract is being awarded under that dynamic market.

- c. 10 day minimum tendering period for utilities contracts or those awarded by non-central government authorities where only pre-selected suppliers are invited to tender (and they have not agreed to a shorter time period for submitting tenders).
- d. 10 day minimum tendering period where a qualifying planned procurement notice has been published. A qualifying planned procurement notice is a planned procurement notice that is published at least 40 days and no more than 12 months before the tender notice. See the guidance on the planned procurement notice for more information.
- e. 10 day minimum tendering period where the contracting authority considers there to be a state of urgency meaning any other applicable minimum tender period is impractical.
- f. 10 day minimum tendering period if the contract is being awarded under a dynamic market.
- g. 25 day minimum tendering period where tenders are submitted electronically and all of the associated tender documents are provided at the same time as the tender notice.
- h. 30 day minimum tendering period where tenders are submitted electronically but not all of the associated tender documents are provided at the same time as the tender notice.
- i. 30 day minimum tendering period where tenders are not submitted electronically but all of the associated tender documents are provided at the same time as the tender notice.
- j. 35 day minimum tendering period where tenders are not submitted electronically and all of the associated tender documents are not provided at the same time as the tender notice.

21. Where there are multiple tendering rounds, it is expected that the minimum tendering period will apply to each tendering round, unless the contracting authority considers further tenders to simply be updates to previously submitted tenders (for example as an outcome of negotiations). In this case it is expected that a reasonable time limit is set, which is the same for all suppliers, having

regard to the factors set out in section 54(1).

22. In accordance with section 96 (electronic communications), the contracting authority must, as far as practicable, communicate with suppliers electronically (and take steps to ensure that suppliers participating in the procurement communicate electronically) (see guidance on electronic communications).

23. The requirement in section 96 extends to allowing for electronic submission of tenders unless it is not practicable. Electronic submission may not be practicable because, for example:

- a. the specialised nature of the procurement means the use of electronic means of communication would require specific tools, devices or file formats that are not generally available or supported by generally available applications
- b. the applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting authority
- c. the submission of physical or scale models is required
- d. some or all of the tender is above the security classification that can be sent electronically.

What notices are linked to this aspect of the Act?

Planned procurement notice

24. Publication of the planned procurement notice may take place at any time before publication of the tender notice. If publication of this notice is a qualifying planned procurement notice (see paragraph 20(d) above), the contracting

authority may reduce the minimum tendering period to 10 days.

Tender notice

25. Publication of the tender notice formally initiates the procedure and invites suppliers either to submit requests to participate or submit a tender.

What other guidance is of particular relevance to this topic area?

- Guidance on covered procurement objectives
- Guidance on planned procurement notices
- Guidance on electronic communications
- Guidance on competitive tendering procedures
- Guidance on assessing competitive tenders
- Guidance on modifying a competitive procurement

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