



Llywodraeth Cymru
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Procurement Act 2023 guidance: Reserving contracts for supported employment providers

Technical guidance on reserving a contract for providers that employ or provide employment-related support to disabled or disadvantaged people.

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Contents

[What does it mean to reserve a contract?](#)

[Legal framework](#)

[What has changed?](#)

[Key points and policy intent](#)

[Other guidance](#)

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What does it mean to reserve a contract?

1. A contract is reserved if only certain types of suppliers can participate in the procurement for the contract. This guidance focuses on reserving a contract for 'supported employment providers', which are organisations that employ or provide employment related support to disabled or disadvantaged people.
2. Contracting authorities can also reserve a light touch contract for public sector mutuals, which is dealt with in the guidance on light touch contracts.

What is the legal framework that governs reserving contracts for supported employment providers?

3. Section 32 of the Procurement Act 2023 (the Act) provides for reserving contracts to supported employment providers.

What has changed?

4. While the provisions in the Act that relate to reserving contracts for supported employment providers look different from those in the previous legislation, this is due to changes in terminology to remove EU-derived phraseology. There is no change in the policy intent.

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Key points and policy intent

5. Reserving contracts to supported employment providers enables public procurement to be used in such a way as to improve employment prospects for people who may face barriers to finding employment. To maximise the potential to do this, contracts for any type of goods, services or works can be reserved under section 32.

6. Section 32(4) of the Act requires that the supported employment provider must provide employment, or employment-related support, to disabled or disadvantaged people. The Equality Act 2010 defines a disabled person as someone with a physical or mental impairment that has a substantial and long-term negative effect on their ability to do normal daily activities. There isn't a definition of disadvantaged people in other legislation and the Act hasn't introduced a definition. This is to enable the provision to work with evolving social

policy and recognise the breadth of people that may benefit from the support of a supported employment provider. For example, single parents, carers, and people that have been unemployed for some time can all experience barriers to employment.

7. Although there are no restrictions on the type of contract contracting authorities can reserve, the viability of a restricted competition should be considered. Contracting authorities should use market knowledge to consider whether a reserved procurement will attract sufficient interest from supported employment providers and deliver value for money. Contracting authorities may choose to undertake some preliminary market engagement to inform their procurement strategy.

8. A supported employment provider is an organisation that operates wholly or partly for the purpose of providing employment, or employment-related support, to disabled or disadvantaged people where at least 30% of the employees of the

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organisation (or the part of the organisation that will perform the relevant contract) are disabled or disadvantaged (see section 32(4)). A supplier must demonstrate to the contracting authority's satisfaction that it meets both parts of the definition i.e. the organisation's purpose and the 30% workforce requirement.

9. The Act provides some flexibility to allow the criteria to be met in various ways, depending on the organisation and the organisational arrangement that will deliver the contract. For example, if a supplier with 50 employees tenders for the contract, it must demonstrate:

- a. that the organisation operates wholly or partly for the purpose of providing employment or employment related support to disabled or disadvantaged people; and
- b. at least 15 (i.e. 30%) of its employees are disabled or disadvantaged (to meet section 32(4)(a)).

10. If a large organisation tenders for the contract and a single division (a part) is going to deliver the contract, it must demonstrate:

- a. that the organisation operates wholly or partly for the purpose of providing employment or employment related support to disabled or disadvantaged people (which could be met even if only the division operates wholly or partly for that purpose); and
- b. that 30% of the workforce in that division are disabled or disadvantaged (to meet section 32(4)(b)).

11. In more complex arrangements, where multiple organisations may be collaborating together (to form what is often referred to as an employment programme), the programme must operate wholly or partly for the purpose of providing employment, or employment related support to disabled or disadvantaged people. In this scenario, the contract may be delivered by several distinct parts of the collaborating organisations and the 30% requirement applies to the combined workforce from across the various parts of the organisations

that will deliver the contract (to meet section 32(4)(c)). For example, if a tender is submitted by a collaboration between three organisations where the contract will be delivered by several departments within those organisations and:

- a. organisation 1 will contribute a department of 10 people to the delivery
- b. organisation 2 will contribute two departments of 20 people each to the delivery, and
- c. organisation 3 will contribute a department of 40 people to the delivery,

the collaborating organisations must demonstrate that at least 27 workers from across the relevant departments in the organisations are disabled or disadvantaged (27 is 30% of the total workforce of 90 engaged on the delivery of the contract). The Act does not prescribe any particular distribution across the organisations, so in this example organisation 3 could employ all 27 people and the threshold would still be met.

12. The definition also caters for the various ways in which an organisation can help disabled or disadvantaged people with regard to employment. This can include direct employment (sometimes known as sheltered employment) such as a manufacturing company which predominantly employs disabled people, or the provision of employment-related support, such as helping people to improve their interview skills, or to find appropriate positions in other organisations. The Act isn't prescriptive about what counts as 'providing employment-related support' to enable the contracting authority to use its own judgement.

13. Contracting authorities must use the competitive flexible procedure when carrying out a procurement in which they reserve the contract to a supported employment provider.

14. The competitive flexible procedure must provide for the exclusion of suppliers that do not meet the definition of a supported employment provider. Contracting authorities are able to apply the test as a condition of participation, or as part of the assessment of tenders, depending on how the procedure is

structured.

15. A contracting authority that intends to reserve a contract to supported employment providers is required to identify this in the tender notice, contract award notice and contract details notice*.

* **The Procurement (Wales) Regulations 2024**, regulations 20 (Tender notices: competitive flexible procedure), 28 (Contract award notices except those published by private utilities) and 33 (Contract details notices: open or competitive flexible procedure)

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

- Guidance on preliminary market engagement
- Guidance on conditions of participation
- Guidance on competitive procurement procedures
- Guidance on awarding competitive contracts

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