



Procurement Bill podcast:

Episode 2 – Modifications

Changes to live procurement processes

If using the **Open procedure**, you can amend the process **before the tender deadline**.

If you are using a **multi-stage process**, then you can amend the procedure **before requests to participate** (what we currently call then SQ submission) **or** if you are not using a selection stage, then **before the deadline for tenders again**.

If the **multi-stage process** includes a number of tender submission rounds, then you can amend the process before the final tender deadline as long as the changes are not substantial.

Permitted modifications to a public contract

The Procurement Bill refers to “permitted modifications” to public contracts as falling into three categories:

- those that are **“not substantial”**
- those that are **below threshold**
- those that are **set out in the new Schedule 8**.

These rules will apply to public contracts (those already subject to the legislation) and also to “convertible contracts”. This is a new concept and refers to a contract that becomes a public contract due to the modification.

Publishing changes to live procurements

When you make changes, you have to **republish your tender notice including the changes and republish your updated procurement documents**. If there is renewed interest then you might have to start the timescales again.

If modifying a **multi-stage process** before the submission of final tenders, you need to republish the updated procurement documents to the bidders remaining in the process.

“Not substantial” and below threshold” changes to public contracts

Substantial changes mean changing the term by over 10%, the overall nature/materially changes in scope or materially changes the economic balance of the contract in the supplier’s favour.

Below threshold are changes in value of 10% (goods/services) and 15% (works).

What is a substantial change to a live procurement process?

A substantial change would be one that would:

- permit suppliers not participating to submit a tender; or
- change the composition of participants had the modification been in the tender notice or procurement documents.

This is **looking at whether the change(s) would impact on how the market responded** to the procurement and the suppliers participating in the process.

Schedule 8 Permitted Changes

Schedule 8 is a new list of permitted modifications. Many will be familiar from Regulation 72 of the Public Contracts Regulations 2015 (with some subtle word changes). Interesting new permitted changes include:

- where there could have been a direct award on grounds of extreme and unavoidable urgency or to protect life
- where a known risk has materialised and the contract could no longer be performed satisfactorily without the change. This needs to have been identified in the tender or transparency notice.



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Publication requirements for changes to public and convertible contracts

Before you make a change to a contract, there will be a **requirement to publish details of the changes** using a contract change notice.

This publication requirement does not apply where the value is changed by less than 10% (goods/services) and 15% (works) or where the term has been changed by less than 10%.

Light touch contracts

It appears there are **no restrictions on modifications to light touch contracts** and the publication requirements do not apply to them. We expect more guidance on this.

Contact



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This summary relates to the first publication of the Procurement Bill in May 2022. The final version of the legislation may be different. Please check for the most up to date position under the legislation.