

Assessment Summaries under the Procurement Act 2023

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- Introduction
- Contract Award Notices & Assessment Summaries,
- Assessed Tenders
- Competitive Flexible Procedure
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- Conclusions

£300 Billion a year



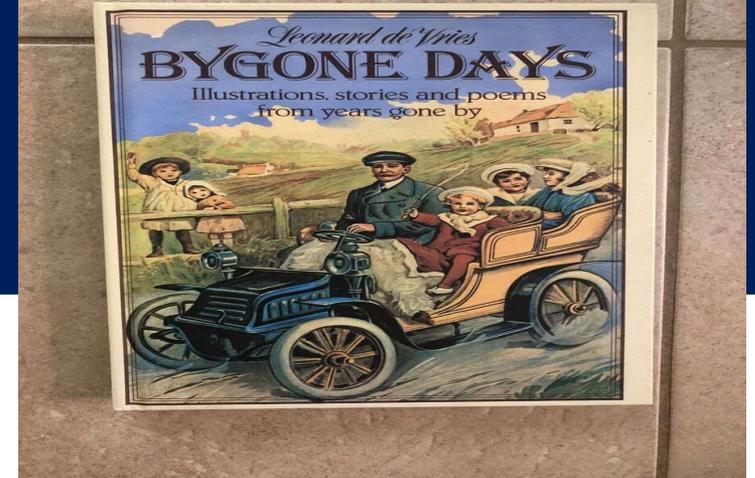
£300 billion a year is spent on public procurement

£1 in every £3 of public money spent annually



Back in the day...

The aim of the reforms



- Shake up our outdated procurement system
- Place **VFM, public benefit, transparency and integrity** at the heart of the system
- Transparency agenda runs throughout the Bill
- Aim to deliver **world-leading standards of transparency in public procurement**

The Procurement Bill – a summary guide to the provisions 16 June 2022

Why Transparency?



- Bidder confidence
- Improved bids
- Greater competitiveness
- CAs get the bids that they want
- Convince unsuccessful tenderers that there were good reasons that they lost = fewer legal challenges

Contract Award Notices



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50 Contract award notices and assessment summaries

(3) Before publishing a contract award notice in respect of a contract awarded under section 19 (award following competitive tendering procedure), a contracting authority must provide an assessment summary to each supplier that submitted an **assessed tender**.

Contract Award Notices



50 Contract award notices and assessment summaries

(5) In this section, an “assessed tender” is a tender which—

(a) was submitted in respect of the contract and assessed for the purposes of determining the most advantageous tender under s. 19(1), &

(b) was not disregarded in the assessment of tenders.

Assessment Summaries

- Aims



- Ensuring suppliers continue to receive an explanation as to why they did or did not win the contract
- Drive consistency across Assessment Summaries (“AS”) by clearly indicating what needs to be addressed and reducing the potential for differing interpretations
- Reduce the time taken to create AS (compared to standstill letters) by removing the obligation to provide the relative advantages of the winning bid
- Enables AS to be drafted once only

Assessment Summaries Detail



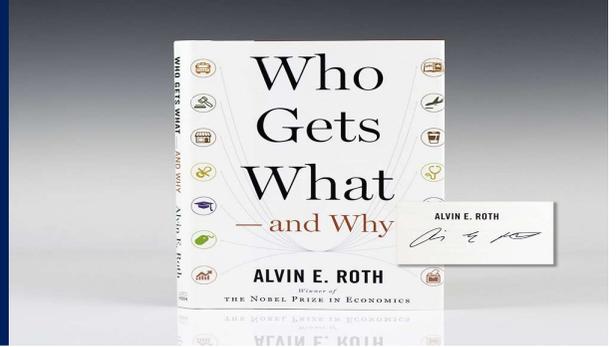
- Procurement Regulations 2024 (SI 2024 No. 692) made under section 95 PA 2023
- Assessment Summaries are to be provided to bidders, who submitted an assessed tender, before the CA notice can be published and must include specified information, including..

Assessment Summaries Content



- How the tender was assessed against each award criterion by reference to a score and reasons for score (reg. 31(2)(e));
- Further explanation of why not successful, including reasons for disqualification under assessment methodology (reg. 31(3)(c));
- For unsuccessful tenderers, assessment of scores and reasons of most advantageous tender (reg. 31(3)(d)).

Who gets an Assessment Summary?



Section 50(5)(6)

To be entitled to AS therefore the tender must have been

(i) assessed and

(ii) not “disregarded”

No Assessment Summary if.....



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- **Mandatory disregard**
- **Discretionary disregard**
- **Is from an excluded supplier**

References are to the Procurement Act

Competitive Flexible Procedure under Section 20(4)



Section 20(4)

A competitive flexible procedure—

.....

(c) may not permit the participation of suppliers that did not submit a tender in the first round of tendering or that were excluded following an earlier round.

Competitive Flexible Procedure under section 20(5)



Section 20(5)

A competitive flexible procedure may provide for the **exclusion** of suppliers—

(a) by reference to conditions of participation (s.22);

(b) by reference to an **intermediate assessment** of tenders;....

Competitive Flexible Procedure under section 20(6)



Section 20(6)

The reference in subsection (5)(b) to an intermediate assessment of tenders is a reference to an assessment of which tenders—

(a) satisfy the contracting authority's requirements, and

(b) best satisfy the award criteria at the point of exclusion

Competitive Flexible Procedure & Consequences for Assessment Summaries



Does this mean that, in a Competitive Flexible Procedure under section 19(4) with intermediate assessment of tenders, a bidder that is excluded at an interim stage is not entitled to an Assessment Summary?

Arguments for provision of Assessment Summaries



- The objectives of a procurement covered by the PA 2023 require the CA to have regard to importance of sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions.
- The Procurement Regulations 2024 provide that unsuccessful tenderers are to have an explanation of why the contract is not being awarded to it.

Arguments against provision of Assessment Summaries



- Tender was excluded (and thus disregarded) at an interim stage
- A proper construction of the Procurement Regulations 2024 means that the AS is only produced at the final stage of the competition, as the most advantageous tender needs to have been identified, and so it cannot apply to bidders excluded at an earlier stage

Assessment Summaries

- Debate

**DEBATING
MATTERS**

- This should not be a matter of debate, or even left to guidance; c.f. situation under reg 86(1)(4)(a) PCR 2015
- It should be crystal clear from the PA 2023 and the 2024 Regulations the precise circumstances in which a CA is obliged to provide an AS/reasons to a disregarded/excluded bidder

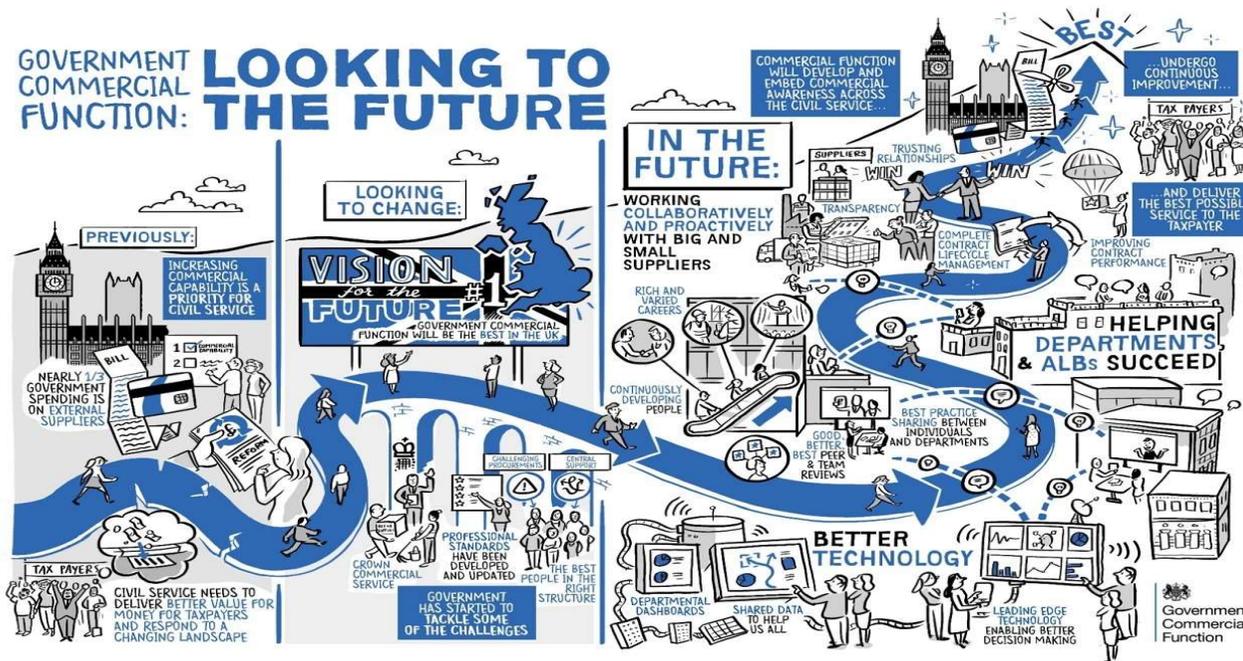
Conclusions



- The Assessment Summary is currently granted to a select few but not all unsuccessful bidders/suppliers
- Could amount to a disappointing and worrying absence of transparency – especially in controversial circumstances
- There should not be any scope for argument about who is to receive an Assessment Summary, even if lacuna is partially filled by Statutory Guidance

Diolch am wrando

Thank you for listening



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