PUBLIC PROCUREMENT / AWARD CRITERIA & EVALUATION

MONCKTON CHAMBERS

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Transparency, scoring and the limits of disclosure

A legal and practical framework for designing, evaluating and challenging award decisions

01 DESIGN — 02 DISCLOSE — 03 EVALUATE — 04 EXPLAIN — 05 DEFEND

Anneli Howard KC, MA BCL

Which regime applies?

Check the procurement's commencement and territorial scope with PA 2023 transitional provisions

PROCUREMENT ACT 2023

In force for new covered procurements from 24 February 2025

s.12 Transparency objective: share information so suppliers and others understand procurement policies and decisions; equal treatment.

s.23 Award criteria must be contract-related, clear, measurable, specific and proportionate; disclose assessment methodology and relative importance.

s.50 + PR 2024 r.31 Assessment summaries to each assessed-tender supplier before contract award notice; scores and reasons, including sub-criteria.

LEGACY PCR 2015 / EU DIRECTIVE

Relevant to procurements governed by the former regime

PCR 2015 reg.18 Equal treatment, non-discrimination, transparency and proportionality.

PCR 2015 reg.67(9)–(11) Award criteria and relative weightings; if weighting is not possible, descending order of importance.

Directive 2014/24/EU for EU procurements - Arts 18 and 67: equal treatment, transparency and advance specification of award criteria/weightings.

Check Northern Ireland procurement and devolved procurements for separate analysis

RWIND Test - Disclose competition rules before bids are prepared

The test is practical: Not the bare minimum
What could a Reasonably Well-informed and Normally Diligent tenderer bidder understand what matters and how it will be assessed?

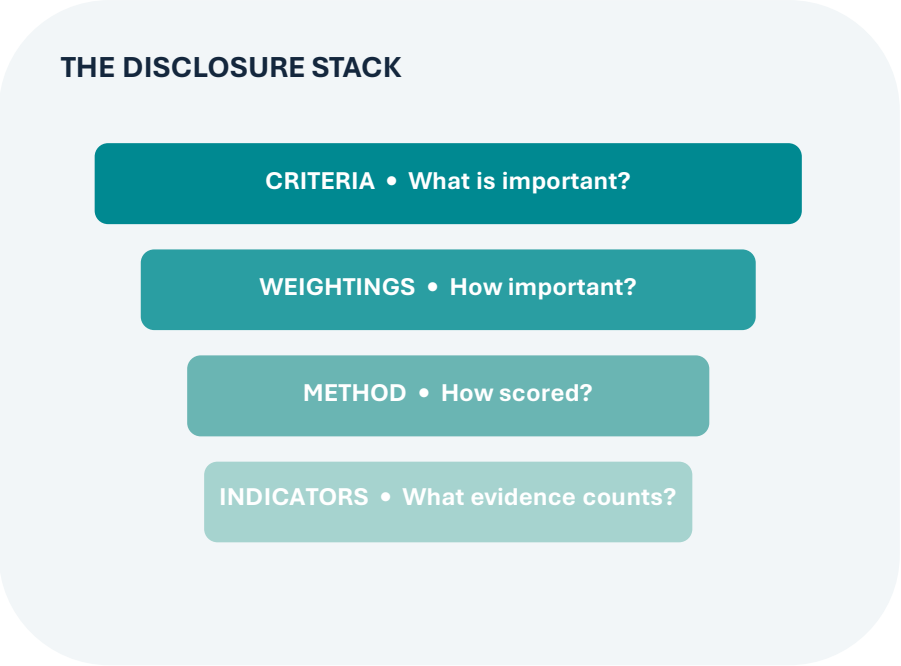
1 Award criteria What is being assessed; each criterion must relate to the contract and be sufficiently clear.

2 Relative importance Weighting, ranking or another intelligible indication of importance.

3 Assessment methodology How the criteria will be applied, including scoring bands / available scores and disqualification thresholds.

4 Sub-criteria / indicators Disclose where they are genuinely additional evaluative factors or materially shape what is rewarded.

5 Process commitments Any thresholds, moderation, formulae or stages that materially affect the outcome.



Not every evaluator aid is a publishable criterion

The legal question is substance, not the label attached to an internal document.

DISCLOSE

Award criteria, weightings, material sub-criteria and methodology.

A bidder should be able to shape its tender and anticipate the assessment.

Lianakis: Authority cannot stipulate new weighting factors or sub-criteria once competition under way

MAY RETAIN

Genuine internal model answers, prompts and evaluator calibration aids.

Mears: Only if they do not introduce a new criterion, sub-criterion or hidden weighting.

ATI EXCEPTION

A sub-weighting may remain undisclosed only where all three safeguards hold.

- No alteration of published criteria
- No effect on tender preparation
- No discriminatory risk

Narrow exception: ***J Varney & Sons - not a general permission to keep sub-criteria or weighting secret***

Practical red flag: an "internal scoring guide" that tells evaluators to reward something bidders could not reasonably infer.

The evaluator’s discipline: same rules, same evidence standard

A transparent design can still fail if the panel changes or applies it inconsistently.

01

LOCK DOWN DESIGN

Approve criteria, weightings, score descriptors, thresholds and moderation rules before launch.

02

TEST AND CALIBRATE

Train evaluators; test dummy bids; agree what evidence maps to each published descriptor.

03

ASSESS

Score independently against tender evidence; record criterion-specific reasons and avoid hindsight.

04

MODERATE

Resolve differences by reference to the published method; retain original scores and reasoned changes.

Audit trail = question asked → evidence cited → descriptor applied → score reached → moderation rationale

Keep selection criteria (supplier capability) analytically separate from award criteria (the tender / offer).

Post Award: Debriefing is now more structured — but not unlimited

Under the Procurement Act 2023, the assessment summary is a statutory, supplier-facing explanation.

PROCUREMENT ACT 2023

s.50 + Procurement Regulations 2024, r.31

- Give an assessment summary to every supplier that submitted an assessed tender.
- Explain the recipient's score by reference to its tender and the most advantageous tender's assessment.
- Include criterion / sub-criterion explanations, total and sub-total scores, and why the contract was not awarded.

SEQUENCE

1	**Decision made**	Prepare complete, reasoned summaries.
2	**Summaries sent**	Same time to all assessed-tender suppliers.
3	**Contract award notice**	Published after summaries; starts standstill.
4	**8 working days**	Minimum standstill; proceedings + notice to authority can trigger automatic suspension.

No general right to the entire evaluation report.

Confidentiality and Judicial Scrutiny

Transparency is not a licence to publish everything
The task is to explain the assessment while protecting genuinely sensitive information.

CONFIDENTIALITY

PA 2023 s.94 Withhold only where national security requires it, or sensitive commercial information is subject to an overriding public interest in withholding.

Practical response Redact narrowly; explain the score sufficiently without disclosing trade secrets or commercially prejudicial detail.

Litigation Confidentiality rings / redactions can protect legitimate interests, but cannot defeat candour or necessary disclosure.

** Lessons from CAT and other High Court Litigation: Competition proceedings and Dieselgate – RAG approach

JUDICIAL SCRUTINY OF THE AWARD

Healthcare at Home Reasons must be clear and unequivocal; no automatic requirement to hand over the whole evaluation report.

Siemens Mobility Court supervises legality, consistency and manifest error; it does not re-score the tender.

Challenge focus Undisclosed criterion / weighting, inconsistent application, irrational score, failure to follow the ITT, unequal treatment.

The court's restraint on merits does not insulate a process that departed from its own published rules.

Design for defensibility, not just disclosure

BEFORE

Define criteria, weightings, method and thresholds.
Publish what could affect bid design.
Clear scoring scale and relative importance

DURING

Freeze the method;
Train and calibrate evaluators
Paper Trail - document evidence and moderation.

AFTER

Provide meaningful score reasons;
Disclose successful tender assessment as required;
Redact only on a defensible basis.

IF CHALLENGED

Preserve records;
Test the challenge against the published rules, equal treatment and manifest error
Distinguish legal error from disagreement with merits/evaluation
Candour

THE RULE OF THUMB: TRANSPARENCY + CONSISTENCY = EQUALITY AND FAIRNESS
If criteria could change how a bidder tenders or how the authority awards, disclose it
Do not introduce new criteria or weightings after the event

Core authorities define the line

SIAC Construction C-19/00 | 2001

Criteria must permit a common, objective interpretation by a reasonably well-informed and normally diligent tenderer.

ATI EAC C-331/04 | 2005

Limited exception for subsequent sub-weighting, subject to the three ATI safeguards.

Mears (No 2) [2011] EWHC 1031 (TCC)

Model answers need not automatically be disclosed; they must not smuggle in new criteria or weightings.

Siemens Mobility [2023] EWHC 2768 (TCC)

Modern, fact-heavy illustration of evaluation challenge, discretion, disclosed rules and manifest error.

Lianakis C-532/06 | 2008

No later invention of weighting factors or sub-criteria that should have been disclosed.

J Varney [2011] EWCA Civ 708

Applies ATI: ask whether the weighting altered the criteria, tender preparation or equal treatment.

Healthcare at Home [2014] UKSC 49

Reasons must be clear and unequivocal; no automatic entitlement to the full evaluation report.

ANNELI HOWARD KC

Monckton Chambers

ahoward@monckton.com

