



# Exclusions

## Step by step guide

This step-by-step guide is designed to take you through the process of assessing a supplier against the mandatory and discretionary exclusions grounds set out in the act, to determine whether or not a ground applies, and whether the circumstances giving rise to the ground are continuing or are likely to reoccur when to exclude a supplier from a procurement.

Within any competitive tendering procedure (open or competitive flexible) suppliers must be assessed to see if they are an excluded or excludable supplier **as the first step** following receipt of tenders or requests to participate.

**Where the procurement is a direct award, a public interest test applies, meaning that excluded suppliers (where a mandatory exclusion ground applies) may not be excluded. This can be confirmed at step 8.**

### Step 1 - Has the supplier done any of the following:

- unduly influenced the decision-making process, failed to provide information (or provided inaccurate incomplete or misleading information) where requested or accessed confidential information that has put them at an unfair advantage that cannot otherwise be avoided?
- obtained an unfair advantage, either by participating in pre-market engagement or through a conflict of interest, that cannot otherwise be avoided?

Having invited and considered representations and evidence from the supplier, does the supplier remain in this position?

If yes, the supplier must be excluded from the procurement. For private utilities, any reference to an excluded supplier, becomes reference to an excludable supplier. Go to **step 9**.

If no, continue to **step 2**.

**Step 2** - Has the supplier failed to provide information (or provided information that is inaccurate, incomplete or misleading) requested by the contracting authority about their connected persons, associated persons or sub-contractors?

If yes, the supplier must be excluded from the procurement. For private utilities, any reference to an excluded supplier, becomes reference to an excludable supplier. Go to **step 9**.

If no, continue to **step 3**.

**Step 3 - Debarment.** Check the debarment list - is the supplier and/or their associated persons on the debarment list by virtue of a mandatory or discretionary exclusion ground?

If yes:

- a. A mandatory ground. The supplier must be excluded from the procurement, and no further assessment steps taken. Where the supplier (or an associated persons) is on the debarment list based on schedule 6 para 34A (national security only), then they are only excluded from contracts of the nature that are described in their entry on the list (e.g. they may only be debarred for providing certain products/services). Go to **step 9**.
- b. A discretionary ground. The supplier is excludable - you may exercise discretion not to exclude. Go to **step 4**.

If no, continue to **step 4**.

**Step 4** - Check the supplier's self-declarations, including for any connected persons, associated persons and sub-contractors. Is any party subject to a mandatory or discretionary exclusion ground?

If yes, continue to **step 5**.

If no, go to **step 6**.

**Step 5** - Allow the supplier to provide evidence for self-cleaning purposes. Review the self-cleaning evidence provided. Do you consider that the circumstances giving rise to the exclusion ground are continuing or likely to reoccur?

If yes:

- a. If a mandatory ground applies to the supplier or a connected person, the supplier must be excluded from the procurement. Go to **step 9**.
- b. If a discretionary ground applies to the supplier or a connected person, the supplier is excludable subject to your discretion on whether to exclude. Go to **step 7**.
- c. If a mandatory or discretionary ground applies to an associated person or a sub-contractor, continue to **step 6**.

If no, continue with your procurement.

**Step 6** - The supplier has the opportunity to replace the relevant associated person or sub-contractor. Does the supplier replace the relevant party (as applicable)?

If yes, repeat **steps 3 to 5** (as appropriate) to ensure the supplier is no longer an excluded or excludable supplier (and, in the case of associated persons, still able to meet the relevant conditions of participation); if not, continue with your procurement.

If no:

- a. In the case of a mandatory ground applying to any associated person or sub-contractor, the supplier must be excluded from the procurement. Go to **step 9**.
- b. Where a discretionary ground applies, the supplier is excludable subject to your discretion on whether to exclude. Go to **step 7**.

**Step 7 - Discretion.** Based on factors that include, but are not limited to, the nature of the supplier's circumstances, the subject matter of the procurement and proportionality, you may exercise discretion as to whether or not to exclude an excludable supplier (where a discretionary exclusion ground applies). Do you exercise this discretion to exclude the supplier?

If yes, subject to ministerial approval, where required, the supplier is therefore excluded from the procurement. If the supplier is to be excluded on basis of the discretionary exclusion ground in paragraph 14 of schedule 7 (threat to national security), you must notify a minister of the crown of the intention to exclude the supplier, and gain confirmation to exclude. Go to **step 9**.

If no, continue with your procurement.

**Step 8 - Overriding public interest test.** Is the contract being procured by way of direct award and, if so, is there an overriding public interest in awarding the contract to an excluded supplier?

If yes, continue with your procurement.

If no, the supplier must be excluded from the procurement. Exclude the supplier, find an alternative supplier and complete **step 9**.

**Step 9 - Notification.** Where a supplier is excluded from a procurement, you must notify the Procurement Review Unit of the decision to do so within 30 days.

**It is best practice to notify the supplier, in writing, of the decision to exclude, as soon as is reasonably possible, and to keep a record of the decision-making process.**