

Procurement Policy Notice 09/21: Update to legal and policy requirements to publish procurement information on Contracts Finder

The Cabinet Office updated Procurement Policy Notice 09/21 and accompanying guidance in December 2021, which replaces PPN 07/21. We outline its scope, associated guidance and impact for contracting authorities.

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This article is taken from January's public matters newsletter. [Click here to view more articles from this issue.](#)

The Cabinet Office updated Procurement Policy Notice 09/21 ("**PPN 09/21**") and accompanying guidance in December 2021 (originally published November 2021), which replaces PPN 07/21.

PPN 09/21 mainly:

- acts as a reminder of the requirements of the Public Contracts Regulations 2015 ("**PCR 2015**") in respect of publishing procurement opportunities and awards which are over certain value thresholds on Contracts Finder;
- includes additional policy requirements regarding publishing procurement and contract documents for Central Government;
- clarifies that the same publication value thresholds which apply to central government authorities should be followed by NHS Foundation Trusts, but that NHS Foundation Trusts need only publish the minimum information required by the PCR 2015, and to a 90-day timescale; and
- brings it to the attention of contracting authorities that from 1 January 2022, contract value limits are calculated inclusive of VAT, which is a significant post-Brexit change to the rules.

A copy of PPN 09/21 and its accompanying guidance can be found [here](#).

Scope of the PPN 09/21 and associated guidance

PPN 09/21 applies immediately to 'In-Scope Organisations'. The accompanying guidance officially replaces PPN 07/16 and its associated guidance titled "Guidance on the new transparency requirements for publishing on Contracts Finder" as well as replacing previous guidance on "Publication of Central Government Tenders and Contracts".

The guidance is in two parts:

Part 1: applies to all contracting authorities (other than contracting authorities performing mainly Welsh, Northern Ireland or Scottish devolved functions, the procurement of health care services for the NHS under the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, and maintained schools, academies and sixth form college corporations) and provides that these organisations must:

- advertise above threshold contracting opportunities on the Find a Tender Service ("**FTS**") and also on Contracts Finder – the advertisement on FTS must be published first;
- ensure that below threshold procurement opportunities are published on Contracts Finder (in addition to any other portal or publications route), if the value of the contract is at or above certain limits (£25,000 (inc VAT) for sub-central contracting authorities and

NHS Trusts, and £10,000 (inc VAT) for NHS Foundation Trusts and central government authorities); and

- publish certain information on Contracts Finder about the award of a contract awarded as a result of a procurement process.

Contracting authorities do not need to publish information about contracts which have not been advertised, where the contracting authority considers that it was lawful not to advertise the contract. However, contracting authorities are reminded to consider whether a contract may have cross-border interest before deciding not to advertise it, and document this as part of the procurement process.

Where an opportunity is advertised, the timescales for publication on Contracts Finder must be adhered to. These depend on how the opportunity was advertised and are set out within the guidance.

Part 1 of the guidance also sets out certain minimum information which must be published in relation to contracts which are being advertised, or which have been awarded – however, it should be noted that contracting authorities are specifically directed to the PCR 2015, which contains the full scope of information which must be published.

Information must be published on Contracts Finder within a reasonable time. The guidance sets out what is considered to be a reasonable time:

- For sub-central contracting authorities, NHS Trusts and NHS Foundation Trusts, a reasonable time is 90 calendar days after the contract award date;
- For central government contracting authorities (but not including NHS Trusts and NHS Foundation Trusts), a shorter period of 30 calendar days after the contract award date applies. Additional requirements to publish the contract documents alongside the award details apply for central government authorities – these are set out in Part 2 of the guidance.

For the purposes of the guidance, the contract award date is the date that the contract is signed by the last contracting party.

Contracting authorities are also recommended to try and ensure key information about contracts is presented consistently across all the platforms they use, and notices they publish.

Part 2: applies to central government authorities (other than contracting authorities performing mainly Welsh, Northern Ireland or Scottish devolved functions, the procurement of health care services for the NHS under the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, and maintained schools, academies and sixth form college corporations).

The intention of Part 2 is to provide the public with greater visibility of government contracting by requiring central government contracting authorities to publish tender and contract documents alongside contract notices on Contracts Finder. The guidance acknowledges that publishing tender documents on an e-tendering portal is likely to meet the requirements of the PCR 2015 in respect of allowing free and unrestricted direct access to the procurement documents for interested bidders, but the government require central government organisations to go further, so that the public also have access to these documents. The guidance therefore requires that central government contracting authorities publish copies of their procurement documents on Contracts Finder – the details of these requirements are set out in the guidance, along with detailed guidance on when contract documents may be withheld from publication, in whole or in part.

Annex 1 of the guidance provides a quick reference table which clarifies the requirements for publishing on Contracts Finder, and Annex 2 contains helpful FAQs, which may be useful for contracting authorities considering their obligations under this guidance.

What is the impact of this?

The guidance provides a helpful overview of the publication and transparency requirements for contracting authorities, along with useful reminders of some key points, such as the duties to publish information on Contracts Finder where below threshold opportunities are advertised, as well as the fact that contract values for the purposes of applying the thresholds for application of the PCR 2015, should now be calculated inclusive of VAT.

Although not significantly different to PPN 07/21, if your organisation has any queries about publishing requirements, or the application of the PCR 2015 to your organisation, please do not hesitate to contact our [procurement team](#).

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