

Unpacking ‘The Official Transforming Procurement Knowledge Drops’.

What the Procurement Act 2023 means for you.

Contents.

Introduction.

- About eXceeding 2

1. The Procurement Act 2023. >>

- About the Act 3
 - International obligations 4
- When does the Procurement Act apply? 4
- Exemptions 4

2. The Principles of Public Procurement. >>

- Requirements for contracting authorities 6
- National procurement policy statement 7

3. Pre-Procurement Considerations. >>

- Pipeline publishing requirements 8
- Pre-market supplier engagement 8
- Value for money 10
- Conflicts of interest 10

4. Procurement Procedures. >>

- The open procedure 11
- The competitive flexible procedure 11
- Frameworks and dynamic markets 12
- Direct award 13

5. Supplier Exclusion. >>

- New grounds for exclusion 14
- Exemptions 14
- Debarment list 15

6. Awards Procedure. >>

- Assessment summary 16
- Contract award notice and standstill period 17
- Further publishing requirements 17

7. Contract Governance. >>

- Contract management 18
- Prompt payment 18
- Contract amendments 19
- Transparent communication 19
 - Central Digital Platform 20
- Procurement Review Unit 20

8. Getting Started. >>

- Ensuring effective implementation 22

9. How eXceeding can help. >>

23



Introduction.

In December 2023, the [Government Commercial Function](#) released its [Official Transforming Public Procurement Knowledge Drops](#) series, designed to provide organisations with a high-level overview of upcoming changes to the procurement regulations as well as advice and guidance on how to prepare for and use the [Procurement Act](#) to its full potential.

In this guide, our public sector procurement experts seek to ‘unpack’ these official knowledge drops for contracting authorities in England, Wales, Scotland and Northern Ireland, exploring the key changes between the previous regulations and the Procurement Act, the benefits of a new approach to public procurement, and the steps organisations can take now to ready themselves for implementation.

About eXceeding.

[eXceeding](#) is a procurement consultancy founded on the principle of providing organisations with impartial, best practice advice to help them achieve the best services and solutions for their needs.



Certificate Number 14594-QMS-001
ISO 9001



Certificate Number 14594-EMS-001
ISO 14001



Certificate Number 14594-ITN-001
ISO 27001



Public procurement accounts for around £300 billion spend a year in the UK – around a third of all public expenditure.

Prior to leaving the European Union, UK public procurement legislation was tied to EU directives and consisted of four separate sets of regulations: the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016, the Defence and Security Public Contracts Regulations 2011, and the Concessions Contracts Regulations 2016.

When the UK left the EU in January 2020, its public procurement legislation was no longer bound by these rules, creating an opportunity to transform UK public procurement regulations for the future.

The Procurement Act 2023 seeks to bring about that transformation.

About the Act.

The Procurement Act 2023 seeks to simplify public procurement in the UK, by bringing all the rules for the procurement of public contracts, concession contracts, utility contracts and defence and security public contracts together under a single piece of legislation.

Anticipated to come into effect in late 2024, its stated aim is to create a shorter, more simplified set of rules which offer contracting authorities greater flexibility to undertake procurement activities that are fit for purpose and meet organisational needs as well as local and national objectives.

In practice, this means:

- Establishing more flexible processes
- Improving transparency
- Increasing innovation
- Giving more access to opportunities for businesses, especially small-to-medium-sized businesses (SMEs)
- Driving greater social, environmental and economic benefits on a local and national scale
- Taking a broader approach to value for money for the UK taxpayer

International obligations.

The Act has been designed to maintain compliance with the UK's international obligations, including those that apply under the World Trade Organisation's agreement on government procurement (WTO GPA), which ensures UK businesses can continue to compete for public procurement contracts around the world.

When does the Procurement Act apply?

The Procurement Act 2023 applies in full to all procurements over a certain financial threshold undertaken by contracting authorities in England, Wales and Northern Ireland, and to contracting authorities with reserved functions carrying out procurement in Scotland.

'Contracting authorities' for the purposes of the Act are those defined as a **public authority**, a **public undertaking** or a **private utility**. This includes central Government departments and their associated bodies, local authorities, NHS trusts, and some schools, universities, housing associations and healthcare organisations.

Exemptions.

Some organisations and procurements are exempt from the requirements of the Procurement Act 2023. This includes certain utilities, defence and security, and healthcare contracts similar to those provided for under the [Utilities Contracts Regulations 2016](#), the [Defence and Security Public Contracts Regulations 2011](#), and the [Light Touch Regime \(LTR\)](#).

Although most Welsh and Northern Irish procurements will be covered under the Act, some are exempt from a small number of its requirements.

Devolved Scottish authorities will continue to be governed by separate legislation, with Scottish contracting authorities able to make use of certain contracts, such as frameworks established under the Act.



Full details of exemptions to the Act can be found on the [gov.uk website](https://www.gov.uk).

2

The Principles of Public Procurement.

The Procurement Act 2023 sets out six principles considered the foundation for all public procurement that it says should be at the forefront of mind and given proper consideration in all procurement decision-making.

These are:

1 Delivering value for money.

2 Maximising public benefit.

3 Sharing information.

4 Acting with integrity.

5 Fair treatment of suppliers.

6 Non-discrimination.

Contracting authorities are also expected to ensure that SMEs are not excluded from participation, by considering procurement requirements from their perspective and by removing potential barriers such as short tender response times.

Requirements for contracting authorities.



Delivering value for money.

Contracting authorities should consider what 'value' means to their organisation and the communities it serves, as well as how they can ensure they get the best balance between quality and price over the lifetime of their contracts.



Maximising public benefit.

Contracting authorities must consider how their contracts could deliver wider benefits to the public purse, such as by enabling resource-sharing, reducing costs, or through added social value commitments.



Sharing information.

A contracting authority must – as a minimum – share information for the purpose of allowing suppliers and others to understand its policies and decisions. Further transparency is encouraged through clear publication requirements embedded in the Act, designed to inspire an approach of transparency by default.



Acting with integrity.

Acting with integrity is key to preventing fraud and corruption, and contracting authorities should be able to demonstrate this through good management, prevention of misconduct and maintaining full control over their processes.



Fair treatment of suppliers.

No supplier should receive different treatment. This means that suppliers of all types and sizes should be subject to the same deadlines, word count limits and minimum quality or quantity standards – among other requirements – unless authorities have a justifiable reason for not doing so.



Non-discrimination.

No supplier should be at an unfair advantage or disadvantage. If different treatment of suppliers is justified, appropriate steps should be taken to ensure this does not discriminate for or against their chances of success.

Failure to satisfy any of the above could result in a lengthy and costly legal challenge for the awarding authority!

National Procurement Policy Statement.

In addition to these six principles listed, the Procurement Act 2023 also paves the way for a series of national strategic priorities in public procurement which are to come and which contracting authorities will also need to make efforts to support in their procurements.

These national strategic priorities will be published in a [National Procurement Policy Statement \(NPPS\)](#) covering contracting authorities in England, as well as those exercising non-devolved functions in Wales, Scotland and Northern Ireland.

A separate [Wales Procurement Policy Statement \(WPPS\)](#) will set out the principles, considerations and intended outcomes that will govern public procurement by devolved Welsh authorities.



The Procurement Act 2023 sets out a number of standard practices it considers key to achieving public procurement that complies with its principles.

These include publishing future pipelines, conducting early supplier engagement, exploring the full range of value for money considerations, and robustly identifying and tackling conflicts of interest.

Pipeline publishing requirements.

Larger contracting authorities with spend of £100 million or more per annum are required under the Procurement Act to publish pipelines of their anticipated future procurements at the start of each financial year.

This is intended to help suppliers better plan and focus their resources, concentrating on the public sector opportunities of most interest to them.

Working in this way requires all those involved with commissioning services at contracting authorities to be aware of the upcoming dates for publication, and to liaise with their procurement or commercial teams at the earliest opportunity to ensure their organisation's future requirements are captured in these published notices.

Pre-market supplier engagement.

Good, transparent and open communication with suppliers builds trust and can reduce the risk of issues arising during or after any procurement.

Always considered by procurement experts to constitute good practice, the Procurement Act further emphasises the importance of conducting preliminary market engagement to help inform and shape a competitive procurement procedure, ultimately driving less abortive procurement and delivering better outcomes.

Early supplier engagement can help contracting authorities and suppliers alike to understand the deliverability of the requirement(s) and explore alternative or innovative solutions.

The information gained during early market engagement may be used to help develop the procurement procedure, award criteria and overall project timetable. This, in turn, helps ensure that, when going to market:

- The procurement process is proportionate to the requirement(s)
- Suppliers have sufficient time to respond to the tender
- Removal of unnecessarily burdensome tasks and other complexities that could:
 - Create barriers to effective competition and/or achieving value for money
 - Disadvantage, or discourage SME from bidding.

Transparency and fairness.

The Procurement Act 2023 encourages contracting authorities to publish a preliminary market engagement notice detailing what engagement is planned or has already been conducted. Contracting authorities may choose not to publish such a notice but must explain their reasons in the tender notice.

For the purposes of ensuring fair and equal treatment of suppliers, all market engagement activity should be conducted through a contracting authority's procurement or commercial team, to ensure consistency and transparency.

Ease of supplier access.

A new **Central Digital Platform** (CDP) will be introduced alongside the Procurement Act, providing a single place where suppliers can register free of charge and upload their key business information to save time and reduce duplication when responding to tender opportunities.

The CDP will also enable contracting authorities to maintain a single standard business record for each of their suppliers, reducing the administrative burden of managing multiple procurements and suppliers.

More information on the CDP may be found in [Chapter 7: Contract governance](#).

Value for money.

Contracting authorities awarding contracts under the Procurement Act must do so on the basis of **Most Advantageous Tender (MAT)**, which allows for far more consideration for social value, sustainability and total lifetime cost.

This is in contrast to previous regulations, which prioritised the **Most Economically Advantageous Tender (MEAT)**.

Organisations are encouraged to design their procurements in a way that sends a strong signal to the market that they are interested in more than just the lowest price bid. This can be achieved by using a broad range of award criteria – where relevant, non-discriminatory and linked to the delivery of the contract – to give weight to tenders that deliver against relevant national and local priorities, including the creation of social value, opportunities for SMEs and environmental benefits.



Conflicts of interest.

Identifying and mitigating conflicts of interest has always been an important part of the public procurement process, but the Procurement Act creates a new duty for contracting authorities to prepare a **conflicts assessment** which can be revisited and revised throughout the course of the procurement and any resulting contract.

It continues to be the responsibility of every individual involved in a procurement to highlight any actual, potential or perceived conflict of interest they are aware of to those managing the assessment and mitigation processes.

Where an identified conflict of interest puts a supplier at an advantage that cannot be avoided or the supplier refuses to take the necessary steps to prevent it from being at an unfair advantage, that supplier must be excluded from the procurement in question.

The Procurement Act 2023 seeks to replace the multiple, rigid procedures of previous public procurement legislation with a more simplified and flexible approach encompassing a choice of two: the **open procedure** and the **competitive flexible procedure**.

Minimum timescales for key stages of each procedure are detailed in the Act, and contracting authorities are encouraged to consider the nature and complexity of each individual procurement to ensure their chosen procedure is proportionate to the requirement.

The detailed process for procurements under the chosen procedure must be set out in the tender notice or associated tender documents and should:

- Take into account the outcome of pre-market engagement with suppliers
- Be suited to requirements
- Drive best value
- Achieve organisational and social benefits

The open procedure.

An open, single-stage procedure has been retained from previous public procurement regulations and broadly operates in the same way as it did under that legislation.

The competitive flexible procedure.

The competitive flexible procedure is a new, multi-stage procurement procedure that enables contracting authorities to design their own procurement processes to suit their requirements and local needs, as well as to deliver best value for money in the context of the Act's key principles.

By providing the opportunity to engage with suppliers through negotiation, dialogue and other tools, it is hoped this new flexible procedure will help drive innovation and unlock the benefits of a more commercial approach to procurement.

Frameworks and dynamic markets.

Enabling faster awards via call-off contracts and framework agreements with one or more suppliers will still be permissible under the Procurement Act 2023.

The Act also introduces the use of dynamic markets for complex or specialist requirements.

A **central digital register** will be established under the Act to offer contracting authorities full visibility of existing frameworks and dynamic markets, to reduce duplication when going to market.

Framework agreements.

As well as conventional frameworks with a four-year maximum term, which are closed to new suppliers once awarded, the Procurement Act introduces a new, open framework which can run for a maximum of eight years.

The open nature of the framework means contracting authorities may apply and be appointed to the framework at any point during its term, allowing the supplier base to be refreshed to ensure the framework remains competitive.

Dynamic markets.

Similar to a dynamic purchasing system, a dynamic market is a list of qualified suppliers that are eligible to participate in future procurements. They may be used to procure a wide range of goods, works and services, but are most suited to emerging and niche markets for complex and/or specialist requirements.

New suppliers can join a dynamic market list at any time, meaning contracting authorities always benefit from the latest innovative solutions.

Direct award.

As under the previous legislation, direct award of a contract to a supplier without competition is occasionally permissible, providing one of the following circumstances applies:

- In times of extreme and unavoidable urgency
- Where only a single supplier can deliver due to technical or intellectual property reasons

The Procurement Act also introduces a new power, allowing a Minister of the Crown to permit the direct award of contracts *where action is necessary to protect life, public order, or safety*.

Even in circumstances where direct award is allowed, contracting authorities are encouraged to run quick, informal competitions wherever possible, to give the public confidence that contracts are being awarded appropriately, even in urgent situations.

Where a direct award is unavoidable, a mandatory transparency notice must be published in advance, highlighting to the market a contracting authority's intention to undertake a direct award, and the reasons for doing so.



The Procurement Act 2023 aims to provide a robust defence for contracting authorities from suppliers who pose a risk to its key principles. These include effective competition for public contracts, ensuring public confidence in procurement, enabling reliable delivery, and protecting the public, environment, public funds, national security and the rights of workers.

By adding new grounds on which suppliers may be excluded from procurements, and introducing a provision for a debarment list of suppliers, the Act aims to be clear on which suppliers must and may be excluded from procurements.

New grounds for exclusion.

Under the Act, misconduct by individuals and other suppliers connected with a supplier is now grounds for that supplier being excluded from a procurement.

This removes the possibility of suppliers avoiding being excluded from bidding for public contracts by either:

- a) Bidding in the name of a subsidiary
- b) Dissolving and reforming under a different name

Exemptions.

Suppliers who meet one of the grounds for exclusion must be further assessed by the contracting authority and a decision taken as to whether exclusion is justified.

Suppliers can avoid exclusion by demonstrating satisfactory self-cleaning activity, such as reducing the likelihood of further misconduct by improving compliance and training procedures.

There are also some limited exemptions to the exclusion rules to cover exceptional circumstances, such as where an overriding public interest relating to matters of critical defence and national infrastructure warrants permitting a supplier to compete in a certain procurement procedure.

Debarment list.

The Act introduces provision for a central debarment list to be published that will provide a register of suppliers that must or may be excluded by contracting authorities during public procurements.

A supplier will be added to the list if, following a debarment investigation, it is found that one or more exclusion grounds applies and there has been insufficient evidence of self-cleaning.

In most cases, the debarment investigation process will be managed by the **Procurement Review Unit**, more information on which may be found in [Chapter 7: Contract Governance](#).

A new National Security Procurement Unit will also be established to support exclusions and debarments on the grounds of national security.



The Procurement Act 2023 introduces a number of changes to the awards procedure aimed at improving supplier relationships and increasing transparency.

Assessment summary.

In order to ensure unsuccessful suppliers are given consistent and helpful feedback to improve their chances of success in future procurement procedures and to reduce the likelihood of complaints, and/or legal challenges, the Act introduces a new requirement for an **assessment summary** to be provided to all those suppliers whose tender is assessed.

This assessment summary must be accompanied by that of the successful supplier, to enable comparisons to be drawn between the two.

Contracting authorities are encouraged to provide the assessment summaries produced as part of the procurement process, redacted for commercially sensitive information, rather than create new documents unique to each tenderer.

They may also choose to accompany the assessment summaries with supplementary information such as debrief or standstill letters, although this is optional.



Contract award notice and standstill period.

Once supplier assessment summaries have been issued, the Act dictates that contracting authorities must publish a **contract award notice**. This mandatory step provides notice to the marketplace of the intent to award a contract.

Publication of the contract award notice marks the beginning of any **standstill period** to be observed prior to entering into a contract with the successful supplier. The Act sets this standstill period at **eight working days**, a change from the 10 calendar days required under previous legislation.

In the majority of cases, once the contract has been entered into, a mandatory **contract detail notice** must be published within 30 days.

Further publishing requirements.

Where contracts have been awarded with a total value of £5 million or more, contracting authorities will also be required to publish copies of their redacted contract documents, together with details of three key performance indicators.

These key performance indicators should be those the contracting authority deems most material to the performance of the core contractual obligations.



By imposing more detailed requirements for managing contracts than previous public procurement regulations, the Procurement Act 2023 aims to improve contract management practices across the public sector.

In order to ensure they are complying with the requirements, contracting authorities are encouraged to ensure a comprehensive handover process between their procurement or commercial functions and their contract delivery teams so the relevant information may be collated and published in a timely fashion.

Contract management.

For contracts procured under the Procurement Act 2023, there will be a requirement to:

- Publish a contract change notice whenever the contract is amended,
- Record and publish details of contract spend above £30,000
- Publish a contract termination notice whenever a contract comes to an end, whether through natural expiry, completion of deliverables, or early termination

In addition, for contracts over £5million in total value, contracting authorities must:

- Set KPIs
- Record and publish contract performance information
- Publish a redacted copy of a modified contract or contract modifications alongside a contract change notice

Prompt payment.

To support prompt payment of suppliers, the Act introduces strict 30-day payment terms which it states will apply by default, regardless of whether they are written into a contract.

These payment terms should be passed down to public sector supply chains so they apply to subcontractors as well.

Contract amendments.

The Procurement Act 2023 introduces new grounds under which contracts can be amended that aim to increase contract flexibility and improve the process of making contract modifications.

New grounds for contract amendments include in cases of urgency and to protect life, as well as to address complex risks that genuinely cannot be mitigated against in advance of a contract.

However, there remain strict rules around contract modifications, and contracting authorities are encouraged to strive to capture all risks and requirements into their contracts from the planning stage in order to reduce the need for amendments.

Transparent communication.

Transparency is one of the key principles behind the Procurement Act 2023, and so a requirement for transparent communication with suppliers is embedded throughout the entire procurement lifecycle, from planning through to procurement, contract implementation and finalisation.

Greater transparency:

- Ensures the integrity of public procurement
- Enables effective competition
- Highlights opportunities for collaboration
- Helps with fraud prevention and identifying poor contract performance
- Allows contracting authorities to capture data about the whole life of public contracts, including spend, supplier performance, modifications and termination
- Provides easier access to data that may inform better procurement decision-making – including the availability of framework agreements and dynamic markets – reducing administration and speeding up processes

Transparency requirements include the publishing of notices throughout the procurement lifecycle such as contract change notices and contract termination notices.

Exemptions to publication rules for certain contracting authorities and the procurement of certain goods, works and services are detailed in the [Transforming Public Procurement](#) section of the gov.uk website.

Central Digital Platform.

A new central digital platform will be developed as a place to house all data and information shared by contracting authorities through these notices.

By maintaining a central information system, it is hoped to expand the type of information available to report on, improve the usability of the data, and allow the information to be easily accessed by all.

Contracting authorities will be required to publish notices directly to the central digital platform or via an approved e-procurement systems provider.

By providing access to contract information and spend data for all contracting authorities, it is hoped that those authorities will develop a greater understanding of how much is being spent in their local area, helping them respond to citizens' enquiries more quickly.

Procurement Review Unit.

Under the Procurement Act 2023, a new **Procurement Review Unit** will be established to provide improved procurement oversight, ensuring compliance with the regulations and helping realise the intended benefits of transforming public procurement legislation.

The Procurement Review Unit will work across three main areas:

1

Encouraging compliance with the Procurement Act 2023 by investigating repeat incidences of non-compliance, whether at a single contracting authority or similar issues across a number of contracting authorities.

2

Investigating suppliers for addition to the debarment list by considering whether they have met mandatory or discretionary grounds for exclusion.

3

Continuing the work of the Public Procurement Review Service to investigate poor procurement practices and cases of late payment in public sector supply chains.

The contracting authorities that will gain the most benefit from changes to public procurement legislation under the Procurement Act 2023 will be those that prepare in advance for its implementation, taking the necessary steps now to ensure they are ready to use the Act to its full potential from the outset.

Actions contracting authorities may take now to prepare for the Act's implementation include:

1

Review current contracts and seek to understand upcoming requirements to identify which procurements it could be beneficial to undertake under the Procurement Act.

2

Review internal guidance, policies, procedures and governance to ensure everything is aligned to the requirements of the Act.

3

Educate and upskill individuals and teams as necessary to raise awareness and understanding of the changes being brought about as a result of the new legislation.

4

Prepare procurement systems including e-tendering solutions, contract management, peer-to-peer and finance systems for any changes to procurement operations under the Act.

5

Consider how the authority's procurement may support national procurement priorities, as well as the range of societal benefits that may be driven through its contracts.

6

Encourage and empower procurement and commercial teams to make changes to their ways of working to embrace innovative solutions and take full advantage of the new flexibilities being made available in the Act.

Ensuring effective implementation.

The Procurement Act 2023 sets the framework for the public sector to achieve great commercial outcomes. However, realising its full potential to achieve outstanding delivery outcomes will require the effective commercial leadership of contracting authorities and the cooperation of capable suppliers.

Successful implementation in practice requires all those involved in commissioning services, supporting tender processes and/or managing contracts or suppliers to understand the key changes brought about by the Act and the benefits to their organisation.

We hope this guide will help your organisation to get to grips with the key changes to public procurement legislation under the new Act, as well as the practical steps you can take now to prepare and support your procurement and commercial teams to implement and deliver against the regulations.

If you need any additional help on the journey, the Government Commercial College has a suite of [free e-learning modules](#) aimed at procurement and commercial practitioners tasked with delivering requirements under the Procurement Act 2023. Further materials will also be made available during the implementation period prior to the commencement of the Act.



No matter where your organisation currently sits on its journey, our procurement experts can support you to achieve compliance with – and maximise benefit from – the Procurement Act 2023. Ways in which we can help include:

- 1** Providing an expert audit of current contracts to identify potential areas for improvement.
- 2** Scoping requirements for goods and services to ensure all relevant information is captured at the outset.
- 3** Advising on internal procurement policies, procedures and governance.
- 4** Establishing compliant frameworks.
- 5** Sourcing pre-qualified suppliers.
- 6** Providing outsourced consultancy services to help with pre-contract supplier engagement, tendering and contract management.
- 7** Advising on ways to maximise social value and create a better world through procurement.

Contact us to find out more about our services:



Talk to us.



0330 088 1620



info@exceeding.co.uk



www.exceeding.co.uk