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Procurement Act 2023

A Guide for SMEs





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Key Changes Summary

1. New procurement procedures:

- **Open procedure:** Similar to the current open procedure, this allows any supplier to submit a tender.
- **Competitive flexible procedure:** This new procedure gives contracting authorities the flexibility to design their own procurement process. They can set their own timelines, stages, and criteria as long as they still meet transparency and fairness requirements. This could include things like negotiation rounds, requests for proposals, proof of concept stages, etc.

SMEs should engage with contracting authorities to understand how they plan to use the competitive flexible procedure and adapt their bidding strategies accordingly.

The competitive flexible procedure also provides for intermittent assessment of tenders. This means that suppliers who are unable to meet Contracting Authorities minimum/desired requirements will be prevented from progressing in the procedure. This may significantly decrease supplier's time and resources devoted to forming final tender response.

2. Transparency:

- **Pipeline notices:** Contracting authorities spending over £100m per year must publish 18-month pipeline notices every April of upcoming procurements valued over £2m.
- **Transparency notices:** Authorities must publish more detailed information at key points, including tender notices, contract details notices, contract change notices, and contract termination notices.
- **Key Performance Indicators:** Authorities must set and report on KPIs for contracts over £5m.

SMEs should monitor these notices closely to identify opportunities and gain market intelligence. The additional information will help businesses plan their bidding.

3. Frameworks:

- **Open frameworks:** A new type of framework that contracting authorities must re-open to new suppliers at least once within period of first 3 years, and then again within 5 years. This provides more frequent opportunities for businesses to join long-term frameworks. Maximum duration of an open framework is 8 years and existing providers can be awarded onto the next framework in the scheme by reference to their previous submission, which significantly reduces resources needed to prepare a new compliant tender submission.
- **Dynamic markets (DM):** Replacing DPSs, suppliers can apply to join at any time, but authorities must consider applications before awarding contracts. Unlike DPS, under DM Contracting Authorities must publish tender notice when running a competition. This means that suppliers can now decide whether to apply for membership in a DM, based on the live opportunities advertised under DM on Central Digital Platform. Contracting Authorities need to consider applications for membership in a reasonable time to give new providers opportunity to participate in ongoing and live competitions.

SMEs should take advantage of more opportunities to join frameworks and dynamic markets, as they are a common route to market.

Key Changes Summary

continued

4. Central digital platform:

- **Find-a-Tender service:** Will expand to cover more notices below the current high-value thresholds. Free to access.
- **Contracting authority and supplier registration:** Authorities and suppliers must register on the central platform. Registered suppliers can reuse their data across different procurements. The data needs to be provided once, which prevents duplication.
- **Debarment list:** A centrally managed list of suppliers who met grounds for mandatory and discretionary exclusions, also known as “excluded” and “excludable” suppliers”.

SMEs should register early on the new platform, keep their information up to date, and monitor it for opportunities. Ensure any required technical solutions are compatible.

Central digital platform will be rolled out in phases. Some commercial tools/notices like performance assessment notice or payment compliance notice will be launched in phase 2 which is estimated to be September 2025.

5. Challenges:

- **Remedies:** The 30-day limitation period remains (starting from when suppliers knew, or ought to have known about a breach) however the Act allows in certain circumstances for this to be extended for up to three months if the court considers there to be good reason.
- **Debarment:** Suppliers can be excluded if they have relevant convictions or have previously underperformed on public contracts. (Further detail in the Supplier Measurement Section)

SMEs should ensure they understand the rules and keep thorough records. Seek legal advice promptly if considering a challenge. Prioritise strong contract performance to avoid exclusion.

6. Setting conditions of participation

- Contracting Authorities will have greater flexibility in setting conditions of participation in a given tender opportunity, meaning that conditions will be more relevant and proportionate, avoidance of questions only remotely related to the project.
- The Act permits wider range of evidence to be accepted as means of proof whether conditions of participation are met. This can be beneficial to SMEs who may struggle to provide specific evidence.



Key Changes Summary

continued

7. Specific SME considerations

- **Duty to consider lots:** Contracting Authorities must consider whether a public contract can be split into lots and if so, the Authority must award contract by reference to lots or provide reason for not doing so. This will make contracts more attractive to SMEs as they can bid for smaller elements as opposed to the entire contract scope.
- **Removing SME barriers:** The Act makes it mandatory for Contracting Authorities to assess particular barriers that SMEs may face throughout the entire procurement lifecycle and consider whether such barriers can be removed.

8. Assessment Summaries

- Contracting authorities must provide full feedback on assessed tenders, which must include all criteria and sub-criteria with reference to marks awarded and reasoning behind it. The idea is that all suppliers will have a clear explanation of why they received the score they did.
- This will be especially beneficial to SMEs who at times may not be experienced in public sector tendering or do not have dedicated bid writer. Full submission feedback will allow suppliers to improve their future bids and identify weak points in their responses.

9. Technical Specifications

- Technical specifications must be now based on “performance or functional” requirements rather than descriptive characteristics as per PCR 2015. This means that the specification will define what the final output/outcomes should accomplish rather than detailing how it should be done.



Notices Summary

Notices required under the Procurement Act 2023:

1. Pipeline notices:

- Contracting authorities with an annual spend over £100 million must publish pipeline notices outlining their planned procurements for the next 18 months.
- The notice should cover procurements with an estimated value above £2 million.
- Authorities must publish pipeline notices within 56 days of the start of each financial year.

2. Preliminary market engagement notice:

- Contracting Authorities must publish preliminary engagement notice for most of the procurements under the Act.
- PMEN aims to inform the market that Authority will or has already carried out preliminary market engagement.
- This is a new notice, which will give suppliers the opportunity to engage with Authorities early in the process and present their opinion as to how specification, tender process and award criteria should be developed to accurately reflect the contract scope and complexity.

3. Planned procurement notice:

- This is an optional notice and Contracting Authorities may use it to signal the market that they are planning on going out to tender shortly. It can be used to warm up the market and simply notify about the upcoming opportunity.

4. Transparency Notice:

- Mandatory, unlike under 2015, to publish if contract is entered into without prior competition. This notice can be published only under specific circumstances stated in the Act.

5. Tender notices and associated tender documents:

- Contracting authorities must publish a tender notice to commence a procurement procedure.
- The notice should include information about the procurement, such as the goods, services or works required, estimated value, conditions of participation, award criteria, etc.
- Associated tender documents with additional information must also be provided.

6. Contract award notices and standstill periods:

- For procurements over the threshold, there is a mandatory standstill period of 8 working days before the contract can be entered into, which starts on the day the contract award notice is published. Authorities can choose to apply a voluntary standstill period in other cases.
- Standstill period provides a cooling-off period between contract award and start date, in case any challenges arise from participating suppliers. Suppliers have 30 days to challenge the award decision, from the day the supplier first knew, or ought to have known, about the circumstances giving rise to the claim

7. Procurement termination notices:

- Contracting Authorities must publish procurement termination notice if they chose not to award a public contract or if procedure is abandoned.

Notices Summary

continued

8. Contract details notices

- Contract details notice must be published for any above threshold public contract within 30 days beginning with the day on which the contract is entered into (120 days for light touch contracts)
- For contracts valued over £5 million, Contracting Authorities additionally must publish a copy of the contract within 90 days beginning with the day the contract is entered into (180 days for light touch contracts).

9. Contract change notices:

- If a contracting authority intends to make permitted changes to a contract, they must publish a contract change notice.
- This does not apply to defence and security contracts, contracts awarded by private utilities or transferred Northern Ireland authorities or contracts below certain value/duration thresholds.

Contracting authorities should carefully review the requirements and thresholds for each type of notice, as there are some exceptions and variations depending on the contract type and value. Notices will need to be published on the new central digital platform.

11. Dynamic market notices:

- When establishing a dynamic market, a contracting authority must first publish a notice of its intention, and then a notice confirming the dynamic market has been established.
- Further notices are required if the dynamic market is modified or ceases to operate.
- Additional notices are also required for call-offs under DM: tender notice, contract award notice and contract details notice.

10. Contract termination notices:

- If a public contract is terminated, the contracting authority must publish a contract termination notice within 30 days.
- This applies to termination by discharge, expiry, by a party, rescission or set aside by court order.

12. Assessment of contract performance notice:

- Mandatory to publish for contracts above £5M where there is a requirement set at least 3 KPIs.
- Contracting Authorities must assess the performance against those KPIs at least once a year and publish their finding.

13. Payment compliance notice:

- Contracting Authorities must publish this notice to confirm whether they complied with requirement to pay suppliers within 30 days.
- Suppliers can check payment compliance notices to decide whether Contracting Authority is promptly paying its supply chain or whether risk of late payment is likely with a given authority.

SMEs should monitor these notices to identify opportunities and understand the pipeline of future public sector purchasing. The increased transparency will provide valuable market intelligence to inform business planning and bidding strategies.

Supplier Measurement and Contract Management

The Procurement Act 2023 places a greater emphasis on supplier performance, both during the procurement process and throughout the life of the contract. SMEs should be prepared for increased scrutiny and higher expectations in these areas.

Key aspects of **supplier measurement** include:

1. Quality of Service:

Moving beyond simply delivering on time and within budget, contracting authorities will assess the overall quality and value-add of the services or goods provided. This shifts the focus from “Most Economically Advantageous Tender” (MEAT) to “Most Advantageous Tender” (MAT).

2. Innovation:

Suppliers are encouraged to propose innovative solutions that can improve efficiency, effectiveness, and outcomes. SMEs should highlight their innovative capabilities in bids.

3. Sustainability and Environmental Impact:

In line with the growing emphasis on green procurement, suppliers’ environmental practices and the sustainability of their products/services will be key evaluation criteria. SMEs should review and strengthen their environmental policies and performance.

4. Social Value:

The Act prioritises suppliers’ contributions to social goals, such as creating employment opportunities, delivering community benefits, and demonstrating ethical practices. SMEs should clearly articulate how they create social value in their bids and delivery.

5. Transparency:

Is also a key theme in supplier measurement under the Act. Performance data, including ratings on innovation, sustainability, and social value, may be published. SMEs should be prepared for this increased public scrutiny and ensure they have robust processes in place to monitor and report on their performance.

6. Debarment:

The Act introduces a new centralised debarment list, which will be maintained by the Minister for the Cabinet Office and Procurement Review Unit (PRU). Suppliers on this list will have met mandatory and discretionary grounds for exclusion. Contracting Authorities must disregard bids from excluded suppliers but can consider bids from excludable suppliers. This is a significant change from the previous regime, where exclusion decisions were made by individual contracting authorities only.

Supplier Measurement and Contract Management

continued

Grounds for Debarment: Suppliers can be added to the debarment list for a range of reasons, including:

- **Legal and Regulatory Non-compliance:** Violations of laws and regulations, such as fraud, corruption, involvement in organised crime, significant breaches of contract, tax evasion, and labour law violations.
- **Poor Performance:** Consistently poor performance on previous contracts that demonstrates an inability to meet contractual obligations.
- **Financial Instability:** Evidence of significant financial issues that could jeopardise the supplier's ability to fulfil contractual obligations.
- **Ethical Misconduct:** Involvement in unethical practices, such as conflicts of interest, exploitation, or environmental violations.
- **National Security:** If a supplier poses a threat to national security, they can be added to the debarment list for specific types of contracts.

Process for Debarment:

- **Investigation:** An appropriate authority (a Minister of the Crown, Welsh Ministers, or a Northern Ireland Department) can investigate a supplier if they believe there are grounds for debarment.
- **Notification:** If the authority intends to add the supplier to the debarment list, they must notify the supplier, providing reasons and an opportunity for the supplier to make representations.
- **Debarment Decision:** After considering any representations, the Minister for the Cabinet Office will decide whether to add the supplier to the debarment list. The decision must specify the grounds for debarment and the period of exclusion.
- **Publication:** The debarment list will be published, providing transparency about excluded suppliers.

Appeals and Challenges:

Suppliers can appeal a debarment decision to the courts on the grounds that the Minister made a material error of law. They can also apply to the Minister for removal from the list if there has been a material change in circumstances or new evidence can be provided by supplier.

The debarment regime has significant implications for SMEs:

- **Compliance and Ethics:** SMEs must maintain high standards of legal compliance, contract performance, financial stability, and ethical conduct to avoid the risk of debarment.
- **Subcontracting:** SMEs should be cautious about subcontracting to suppliers on the debarment list, as this could impact their own eligibility for contracts.
- **Reputational Risk:** Debarment can have a serious reputational impact, even if the decision is later overturned. SMEs should seek legal advice immediately if they are at risk of debarment.
- **Appeals and Challenges:** SMEs should be prepared to use the appeals process if they believe a debarment decision is unjustified.

While the debarment regime is intended to protect public funds and maintain the integrity of the procurement process, it does create additional compliance burdens for SMEs. Staying informed about the rules, maintaining high standards, and seeking prompt advice in the event of any issues will be critical for navigating this new landscape.

Supplier Measurement and Contract Management *continued*

In terms of **contract management**, the Act emphasises:

1. Continuous Performance Tracking:

Suppliers will be subject to regular, detailed assessments against both contract KPIs and broader objectives. SMEs should ensure they have systems to monitor and report on their performance.

2. Flexibility and Adaptability:

Contracts will need to allow for agreed changes to meet evolving needs, without compromising accountability. SMEs should be proactive in identifying and proposing beneficial changes, especially when there are known risks associated with a contract that could materialise.

3. Risk Management:

Suppliers will be expected to work with contracting authorities to identify and manage risks throughout the contract. Having a robust risk management approach will be critical.

4. Prompt Payment:

There will be a greater focus on ensuring on-time payment throughout the supply chain. SMEs should review their payment processes and ensure they pay their own suppliers promptly.



How to prepare for the changes



1. Stay informed and seek guidance:

- Monitor the government's "Transforming Public Procurement" webpage for updates, guidance, and resources.
- Attend relevant webinars, workshops, and training sessions organised by the government or industry bodies to understand the changes and how they apply to your business.
- Seek legal advice if necessary to ensure compliance with the new rules.



2. Review your internal processes and capabilities:

- Assess your current bid management processes and identify areas that may need to change to align with the new procedures and requirements.
- Consider whether you need to develop new capabilities or upskill your team to effectively compete under the new rules, such as experience with negotiation or innovative bid techniques.
- Ensure you have the technical capabilities to access and use the new central digital platform for supplier registration and monitoring opportunities.



3. Engage with contracting authorities:

- Build relationships with relevant contracting authorities to understand their procurement pipelines and how they plan to use the new competitive flexible procedure.
- Participate in pre-market engagement and provide feedback to help shape procurements in a way that enables your business to compete effectively.
- Monitor pipeline notices to identify upcoming opportunities and engage early with authorities to position your business.

How to prepare for the changes *continued*



4. Review and update your bidding strategies:

- Adapt your bid/no-bid decision-making process to account for the new procedures and evaluation criteria.
- Develop tailored strategies for different types of procurements, considering factors such as the use of the competitive flexible procedure, emphasis on social value, and contract management requirements.
- Continuously review and refine your strategies based on feedback and performance.

By staying informed, proactively engaging with contracting authorities, adapting your internal processes and strategies, and focusing on excellent contract delivery, your small business can effectively prepare for and succeed under the new procurement regime.

The government's "Transforming Public Procurement Knowledge Drops" provide a wealth of guidance and resources to support businesses through this transition.



5. Focus on contract delivery and management:

- Ensure you have robust processes in place to meet contract KPIs and reporting requirements, as poor performance could lead to exclusion from future procurements.
- Maintain thorough records and documentation to support contract management and mitigate the risk of challenges or disputes.
- Foster a collaborative relationship with contracting authorities to address any issues proactively and deliver successful outcomes.

Key topics covered include:

- Understanding the new procurement procedures
- Preparing for the new procurement platform
- Bidding under the new rules
- Contract management and KPIs
- Remedies and challenges
- Sector-specific guidance



6. Collaborate and seek support:

- Engage with industry bodies, trade associations, and peer networks to share knowledge, best practices, and collective feedback on the new procurement landscape.
- Consider collaborating with other businesses, either as consortium partners or subcontractors, to access larger opportunities and complement your capabilities.
- Seek support from business support organisations, such as the Business Support Helpline or Local Enterprise Partnerships, for advice and resources to help navigate the changes.

For more information, help and support click on the buttons below:

