

Executive Summary of new Procurement Act 2023

- The regulatory regime currently governing the way public procurements are undertaken is primarily the Public Contracts Regulations 2015 (PCR 2015). These rules are set to change in February 2025 with the implementation of the Procurement Act 2023 with its secondary legislation and statutory guidance.
- The aim of the Procurement Act 2023 is to reduce red tape and to support business by simplifying public sector procurement, encouraging innovation and improving transparency.
- Policy themes such as social value, increasing local supplier spend, removing barriers to SMEs and increasing sustainable procurement are all promoted via the new regime.

Introduction - Procurement Act 2023

- The Procurement Act 2023 will replace the Public Contract Regulations 2015, the Concessions Contracts Regulations 2016 and the Utilities Contracts Regulations 2016 to become the law that regulates public procurement
- The current commencement date is 24 February 2025 which was extended to allow the new Government to reconsider the National Procurement Policy Statement.
- Procurements that commence after the Procurement Act 2023 go live date must be conducted under the new Act
- The impact for the Council will be to conduct far more 'front-loading' when it comes to commencing procurements, including preliminary market engagement, considering impacts on local suppliers, SMEs, sustainably and considering how to deliver social value.

Aims of the Procurement Act 2023

- Transform public procurement
- Introduce flexibility in procurement processes
- Embed transparency throughout the commercial lifecycle so that the spending of taxpayers' money
- Open up public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts

Transparency Notices

- A new Central Digital Platform is to be launched by central government, which will replace the Find a Tender Service and Contracts Finder. Suppliers will be able to register and upload core information which can be drawn on by contracting authorities automatically so that suppliers do not have to continually upload the same information.
- There is a requirement for contracting authorities to publish a number of new notices throughout the procurement lifecycle as well as commercial data.

New Notices:

Plan –early notification of upcoming contract over £2million	Market Engagement notices	Procurement phase notices	Contract Management phase notices
<ul style="list-style-type: none">• Pipeline notices	<ul style="list-style-type: none">• Planned procurement notice• Preliminary market engagement notices	<ul style="list-style-type: none">• Tender notice• Contract award notice• Contract detail notice• Transparency notice• Procurement termination notice• Below threshold tender notice• Dynamic market notice	<ul style="list-style-type: none">• Contract performance notices• Contract change notices• Contract payment notice• Payment compliance notice• Contract termination notice

Debarment List

Supplier debarment list: The Act introduces the concept of a supplier debarment list requiring contracting authorities to exclude suppliers mentioned on the list. Suppliers are entered on this list by the Minister of the Crown if an investigation has found them to be unfit to tender and be awarded public contracts.

Procurement Procedures

Choice of Procedure: Under the Procurement Act 2023, the current six (6) procedures which authorities can utilise for awarding public contracts have been replaced with three (3) procedures.

SMEs

There will now be a statutory duty that before inviting Below Threshold tenders we must have regard to the fact that small and medium-sized enterprises may face

particular barriers in competing for a contract and then we must consider whether such barriers can be removed or reduced. This can be achieved through implementing proportionality in tender requirements, streamlined procedures with simpler templates and standardized documents, engaging with and understanding the local economy, dividing contracts into lots and regular preliminary market engagements with local SMEs.

Social Value and Sustainable Procurement

The previous iteration of the National Procurement Policy Statement specifically addressed social value and climate change. We await to see the focus on these areas in the revised published version.

Contract Management

The Act sets out a new requirement for all authorities on contract management which includes;

- **KPIs:** At least 3 KPI's must be set for contracts with a total value of over £5m and at least every 12 months performance must be assessed and published (some exemptions apply)
- **Contract Details Notice:** specified details of contracts must be published for all Above Threshold and Below Threshold tendered contracts
- **Contract modification:**
Under the Act there is a requirement to publish a contract change notice before modifying an Above Threshold contract or a Below Threshold contract which becomes Above Threshold as a result of the modification
- **Contract termination notice** within 30 days of expiry (for both below and above threshold)