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# Advice Pack

# Procurement Act 2023

# Update

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## Overview

Procurement is a key element of retrofit projects. Without successful procurement, project outcomes may not be met, and in some cases projects will fail.

Procurement is required throughout retrofit projects, but it is particularly important for the provision of service providers (e.g. retrofit assessments) and contractors (e.g. retrofit installers).

Where no existing service provider or contractor is in place, or it is not possible to vary an existing contract, a new procurement exercise must be undertaken. The way this must be carried out is changing, with the introduction of a new set of regulations on how public procurement should take place- the Procurement Act 2023.

This advice pack provides information on the Act, helping to contextualize the changes for suppliers and public contracting authorities.

## Background of the Procurement Act 2023

Following exiting the EU, the UK joined the World Trade Organisation's Agreement on Government Procurement (GPA) on 1<sup>st</sup> January 2021, opening up over £1 trillion of new public procurement opportunities for British businesses. Since then, the government has been committed to centring its public procurement regulations around the GPA's principles of transparency and fairness. They felt that the previous procurement regulations (Public Contracts Regulations 2015) were too complex and not flexible enough for both buyers and suppliers.

To address this, they developed the new procurement regulations, consulting with more than 500 stakeholders and organisations in the process, to create the **Procurement Act 2023**.

The Act will come in to force on the **24<sup>th</sup> of February 2025**, following a delay from the original date of 28<sup>th</sup> October 2024, and will govern the laws around public sector procurement and contract management, marking the biggest changes to regulation in the sector for over 20 years.

## Aims of the Procurement Act 2023

The Act broadly aims to:

- Provide a **more agile, easy-to-use commercial system**.

- Allow **small businesses** and social enterprises to **better access** public contracts.
- Ensure that public spending is done **transparently** with value-for-money at the forefront throughout the procurement lifecycle.
- **Promoting flexibility** for councils by reducing restrictions on factors like social value and supplier location
- **Improved oversight** for contracting authorities.

An in-depth breakdown of the aims and benefits of the act are listed below:

## More Agile, easy to use commercial system:

The Act involves the creation of a new Central Digital Platform (CDP), where UK contracting authorities can publish procurement information, it will:

- Build on the original Find a Tender service.
- Be a fully integrated platform facilitating procurement noticing throughout the procurement lifecycle, as well as sign-in and registration.
- Be **free-to-use** for everyone.
- Make searching for procurement opportunities easier.

## Better Access for SMEs:

Small businesses and social enterprises should find it easier to access public procurement opportunities, as the Act will:

- Make tender writing easier, utilizing templates and clearer guidelines.
- Increase transparency and emphasize **payment within a 30-day period.**
- Require government agencies to **use SMEs for 33% of their spend.**
- Improve the flexibility of frameworks.
- Break large contracts into **smaller lots** to increase the number of opportunities.

## Transparency:

The introduction of additional notices, particularly in the pre-tender stage, helps to increase transparency throughout the entire procurement lifecycle, it will:

- Increase visibility of public procurement opportunities.
- Provide more information on contracting authorities payment performance.

- Require information on poor supplier performance, e.g., breaches of contract and failure to deliver.

This will allow greater scrutiny on how public money is being spent and enable contracting authorities to better identify negligent suppliers.

## Promoting Flexibility:

As part of the new Act the previous processes e.g., Competitive Dialogue, Innovation Partnership etc. have been reduced to the following:

- **Competitive Flexible Procedure**
- Open
- Direct Award
- (Limited Tendering Procedure)

Whilst Open and Direct Award may be familiar, the addition of the Competitive Flexible Procedure represents a key change that aims to make the Act more agile than the previous regulations, it will:

- Enable the contracting authority to tailor the procurement processes to the specific contract they are procuring for, as long as it meets the Act's requirements on value for money, transparency, integrity, equal treatment, public good and non-discrimination.
- Allow for a far more flexible procurement process.

## Improved oversight:

The Act promotes ethical, transparent procurement and supports monitoring to ensure this takes place, creating a new Procurement Review Unit (PRU), which will:

- Exclude suppliers which have had a history of unacceptable behavior of poor delivery performance.
- Be made up of: the current Public Procurement Review Service (PPRS), the new Procurement Compliance Services (PCS) and the new Debarment Review Service (DRS).
- Encourage compliance with the Act's regulations through greater transparency.

## Other Notable Changes:

- A change from MEAT (most economically advantageous tender) to **MAT** (most advantageous tender), meaning that although a weighting system is still used to identify a successful bidder, **price does NOT have to be referred to** in the context of the award criteria (although it is likely you would still include it).
- **3 Key Performance Indicators** must be set for suppliers on contracts that are worth over £5million. A Contract Performance Notice must also be published in relation to these KPIs being met at least once per year.
- The addition of the '**Connected Persons Rule**' will mean that a business will be excluded from bidding for contracts following the debarment of a parent company, associated subsidiary or director.

## Summary:

The Procurement Act 2023 should provide **more opportunities, greater transparency and flexibility** for contracting authorities and suppliers, with the key benefits detailed in this advice pack. However, there are several changes to the previous Public Contracts Regulations (PCR) which will alter the way that public procurement activities should be carried out.

To benefit from the improvements brought about by the Act, a clear understanding of the policies and requirements of the Act is necessary. Additionally, familiarity with the new digital platform and effective risk management procedures should be ensured in order to navigate the additional flexibility brought about by the new regulations.

## Useful links

You can access additional resources to support retrofit project planning and delivery [here](#).

- Procurement Act 2023 – Guidance Documents: [Procurement Act 2023 - Guidance documents - GOV.UK](#)
- The Official Procurement Act 2023 learning modules: [The Official Procurement Act 2023 learning modules - GOV.UK](#)



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