

# THE PROCUREMENT ACT 2023

NAVIGATING A BUYER'S MARKET:  
WHAT RIGHTS DO SUPPLIERS HAVE?



# CONTENTS

<b>INTRODUCTION</b>	<b>3</b>
<b>COVERAGE</b>	<b>4</b>
<b>KEY PRINCIPLES AND OBJECTIVES</b>	<b>6</b>
<b>EXCLUSION AND DEBARMENT</b>	<b>12</b>
<b>SPECIFICATIONS</b>	<b>17</b>
<b>CONTRACT MANAGEMENT</b>	<b>20</b>
<b>DEBRIEF, REMEDIES AND CHALLENGES</b>	<b>23</b>
<b>FUTURE CONSIDERATIONS AND BEST PRACTICES</b>	<b>26</b>
<b>KEY TAKEAWAYS AND PRACTICAL TIPS</b>	<b>28</b>





# INTRODUCTION

The **Procurement Act 2023 (the Act)** takes effect on 24 February 2025. The new statute represents a significant shift in the UK's approach to public procurement following Brexit. As one of the most comprehensive overhauls in decades, the Act reshapes the legal landscape for public procurement in England and Wales by streamlining processes and emphasising the importance of flexibility, transparency, and value for money. In most cases, the Act will not apply to procurement in Scotland.

The Act replaces the more rigid frameworks derived from EU law, marking a bold, new direction in public procurement policy. It consolidates the previous patchwork quilt of different statutory instruments.

The introduction of this new framework offers contracting authorities and suppliers alike an opportunity to navigate a more simplified and responsive legal regime potentially better designed to meet the needs of the UK economy. As a result, businesses seeking public contracts must adapt to new procedures while taking advantage of increased opportunities to innovate, compete fairly, and contribute to wider societal goals.

This **Beale & Co Guide** provides a practical overview of the **Procurement Act 2023**. The guide is designed to assist tenderers in understanding the key provisions of the Act and how it will affect their participation in public procurement. We recognise that tendering for public contracts forms a critical aspect of many businesses, and compliance with the new framework is essential. Equally important is ensuring that public bodies conducting procurement respect suppliers'

rights to a fair, transparent, and competitive tender process.

The goal of this Guide is to help businesses understand how the Act's provisions impact them as tenderers, outlining the current state of the law and its practical implications. We focus on where the law stands today, rather than emphasising historical changes, allowing this Guide to serve as a clear, accessible resource on the most important aspects of the Act.

The **Procurement Act 2023** introduces several key objectives and reforms, which we will explore throughout this Guide, including:

- The consolidation of procurement procedures to create a more **streamlined process**.
- Increased emphasis on **public benefit, social value, and environmental sustainability** in procurement decisions.
- The introduction of mechanisms such as the **Debarment List**, aimed at ensuring integrity and accountability.
- Simplified rules on **contract modifications and remedies** in case of breaches.

In the following sections, we will explore these changes and offer practical advice to ensure compliance and successful engagement with public procurement under the new legal framework.



**Paul Henty,**  
Partner and  
Head of Procurement



# COVERAGE

The Act applies to contracts for goods, works and services awarded by ‘contracting authorities’, a term derived from predecessor legislation, which meet a certain value threshold (see below).

Contracting authorities include the following bodies:

- public authorities (see below)
- public utilities
- private utilities

When ascertaining whether an entity is a “public authority”, there are three elements to initially consider:

- a. Public funding (section 2(2)(a)) - whether the entity’s funding is derived entirely or mainly from public funds (e.g. public grants, taxpayer funding or direct payments from local authorities); or
- b. Public authority oversight (section 2(2)(b)) - whether the entity is under the management or control of one or more public authorities, or of a board with more than half of its membership appointed by one or more public authorities (section 2(3)).
- c. In the case of a public authority, does the entity operate on a commercial basis? (section 2(2)). If so, it is not a contracting authority for the purpose of the Act.

## MONETARY THRESHOLDS

*Schedule 1* of the Act includes specific amounts above which contracts fall under its provisions:

- **Public works contracts: (including utilities contracts or defence contracts which are works contracts):** £5,336,937
- **Contracts for services and supplies to a central government body:** £138,760
- **Contracts for services and supplies to a sub-central government body:** £213,477
- **Concession contracts (including utilities concessions):** £5,336,937
- **Light touch contracts (generally):** £663,540 or £5,336,937
- **Contracts for services for a utility body:** £426,955

Amounts include VAT. Please note that these are only the principal thresholds included in *Schedule 1*.



## EXCLUSIONS

The Act explicitly excludes certain types of contracts and procurement scenarios, as detailed in *Schedule 2*:

- **National Security and certain Defence Contracts:** Excludes contracts necessary to protect national security or those covered by international defence agreements.
- **Financial Services:** Contracts for loans, debt instruments, and government securities are exempt.
- **Below-Threshold Contracts:** Contracts that do not meet the specified monetary thresholds are excluded from the full scope of the Act, though simpler rules may still apply.
- **Emergency and Exceptional Circumstances:**
  - Contracts awarded during public health emergencies (e.g., pandemics) or other crises may follow expedited procedures outside the standard Act framework.
  - Direct awards may be allowed under urgent circumstances that cannot wait for competitive procurement processes.

- **International Agreements and Treaties:** Contracts subject to specific international trade agreements or treaties may follow separate rules that override the Act.

## MIXED CONTRACTS

Some contracts serve multiple purposes, such as those combining commercial objectives with defence or security needs. The Act provides guidance for determining whether such contracts fall within its scope:

- **Primary Purpose Test:** If the primary purpose of the contract aligns with a category governed by the Act, it will typically apply to the entire contract.
- **Severable Components:** In cases where distinct parts of the contract serve different purposes, only the applicable portions may fall under the Act.

Suppliers should work closely with contracting authorities to clarify the treatment of mixed contracts, especially in high-stakes sectors like utilities and defence.



# KEY PRINCIPLES AND OBJECTIVES



The **Procurement Act 2023** introduces a new framework for public procurement in the UK, focusing on several core principles designed to ensure fairness, transparency, and value for money in the procurement process. These principles reflect both the Government's strategic priorities and the need for an efficient and competitive marketplace.

## OVERVIEW OF KEY OBJECTIVES

The Act sets out four central objectives that all contracting authorities must adhere to when conducting public procurement. These objectives serve as the foundation of the new regime and are intended to guide procurement decisions across the public sector:

- 1. Value for Money (*S 12(1)(a)*):** The overarching goal of public procurement is to achieve value for money, ensuring that public contracts deliver high-quality outcomes at the most economical cost, considering the entire lifecycle of goods, works, or services.
- 2. Maximising Public Benefit (*S 12(1)(b)*):** Contracting authorities must consider how their procurement activities can maximise public benefit, including

promoting environmental sustainability, social value, and broader societal goals such as addressing climate change and supporting local communities.

- 3. Transparency and Accountability (*S 12(1)(c)*):** The Act mandates the sharing of information for the purpose of allowing suppliers and others to understand the contracting authority's procurement policies and decisions. This includes publishing contract notices, award details, and other relevant data to ensure proper scrutiny and prevent corruption.
- 4. Equal Treatment and Integrity (*S 12(1)(d), S12(2)*):** Contracting authorities must act, and be seen to act, with integrity. They are expected to treat all suppliers fairly, ensuring non-discrimination and equal treatment, while also taking steps to prevent unfair advantages or disadvantages among suppliers. Sometimes, a difference between suppliers may justify different treatment (e.g. if one supplier meets the tender submission deadline but another does not).



## PRINCIPLES OF PROCUREMENT

The principles embedded within the Act reflect the UK's commitment to high standards in public procurement, aligning with international obligations such as the World Trade Organisation's Government Procurement Agreement (GPA). These principles serve as benchmarks for all procurement activities and are as follows:

- **Maximising public benefit** (*S 12(1)(b)*): Procurement decisions should contribute to broader national priorities, such as promoting economic growth, social welfare, and environmental protection. Public spending must reflect the Government's strategic objectives, including reducing carbon emissions and supporting innovation.
- **Non-Discrimination** (*S 12(2), S 90*): Contracting authorities are prohibited from discriminating against suppliers based on nationality or other irrelevant criteria. This principle is critical for fostering a competitive and diverse marketplace where suppliers, regardless of origin, can compete fairly.
- **Fair Treatment of Suppliers** (*S 12(2), S 12(3), S 20(3)*): Contracting authorities must ensure that suppliers are treated fairly throughout the procurement process, including offering reasonable timelines for submissions, providing clear criteria for selection, and ensuring transparency in decision-making. This principle also involves mitigating potential conflicts of interest.
- **Proportionality** (*S 20(3), S 22(1), S 23(2), S 36(1), S 46(1), S 56(4), S 58(3)*): The Act has not retained the overarching obligation on contracting authorities to conduct all aspects of the procurement in a proportionate way. The Act, however, does impose a number of specific duties on contracting authorities to act proportionately. For example, when devising a competitive flexible procedure or conditions of participation, the specification or award criteria,

the contracting authority must act proportionately (or have regard to proportionality) relative to the nature, complexity, and cost of the contract (*S 20(3), S 22(1), S 23(2)* of the Act). This means avoiding overly burdensome requirements that could deter participation, especially from smaller suppliers.

## PROMOTING SME PARTICIPATION

A significant feature of the Act is its commitment to increasing the participation of small and medium-sized enterprises (SMEs) in public procurement. To achieve this, contracting authorities are required to actively consider barriers that may prevent SMEs from participating and take steps to reduce or remove these barriers (*S 12(4)*). This includes simplifying the application processes and eliminating unnecessary financial thresholds that could otherwise disadvantage smaller suppliers.

## STRATEGIC PRIORITIES AND NATIONAL PROCUREMENT POLICY STATEMENT

Under the Act, the UK Government will periodically publish a **National Procurement Policy Statement (NPPS)**, outlining the strategic priorities for public procurement (*S 13*). A separate statement may be published by the Welsh Ministers for Wales (*S 14*). Contracting authorities are legally required to have regard to these priorities when making procurement decisions. The National Procurement Policy Statement may include directives on:

- **Delivering social value**, ensuring that contracts contribute positively to society and the environment.
- **Promoting supplier diversity**, encouraging participation from a wide range of businesses, including social enterprises and SMEs.
- **Supporting innovation and resilience** in supply chains.

By embedding these priorities within procurement practices, the Act aims to leverage public spending as a tool for broader societal and environmental change.



### CASE STUDY

An SME specialising in renewable energy secured a council contract by showcasing how their solar panel installation project would create local jobs and reduce carbon emissions. The council rated their bid highly under the social value criterion, showing how SMEs can compete effectively by aligning with broader societal goals.

### INTEGRITY AND CONFLICT OF INTEREST

The Act places a strong emphasis on integrity in public procurement. Contracting authorities are required to ensure that procurement processes are conducted with transparency and free from conflicts of interest. Contracting authorities must take proactive measures to identify and mitigate potential conflicts, ensuring that all procurement decisions are made impartially and in the best interests of the public (S 81-83).

### PROCEDURES UNDER THE ACT

The Act introduces streamlined procedures that allow for more flexibility and adaptability than the previous frameworks. Contracting authorities are required to select appropriate procurement procedures based on the complexity, scale, and nature of their contracts (S 20(3)). The key procedures provided under the Act are designed to promote efficiency while maintaining transparency, fairness, and competition.

Another important feature of the Act is the use of the **Central Digital Platform**, an all-purpose online facility for buyers and suppliers to share information about opportunities, offers and supplier data.

## CENTRAL DIGITAL PLATFORM OVERVIEW

The **Central Digital Platform (CDP)**, introduced under the **Procurement Act 2023**, serves as a unified online system for public procurement activities across the UK.

### Key Features

- **Unified Access**  
Contracting authorities and suppliers register on the CDP, receiving unique identifiers to streamline interactions.
- **Information Publication**  
Contracting authorities publish procurement notices and related information for both covered and below-threshold procurements, ensuring transparency.
- **Supplier Information Management**  
Suppliers can submit and store core organisational details, sharing them selectively with chosen authorities, enhancing data security and reducing redundancy. This must include any grounds of discretionary or mandatory exclusion under which they may be disqualified (see the section on Exclusion and Debarment in this Guide below).
- **Public Accessibility**  
The platform allows public viewing of procurement notices and data, promoting openness in public sector procurement.

### Benefits

- **Simplified Processes**  
By consolidating procurement activities, the CDP reduces administrative burdens and enhances efficiency.
- **Enhanced Transparency**  
Centralised publication of procurement information fosters greater accountability and public trust.
- **Improved Supplier Engagement**  
Suppliers maintain up-to-date information, facilitating easier participation in procurement opportunities.

The CDP is accessible at Find a Tender. [GOV.UK](https://www.gov.uk)



## OVERVIEW OF PROCEDURES

The Act provides for two main competitive tendering procedures:

- 1. Open Procedure (S 20(2)(a)):** A straightforward, single-stage process where any interested supplier can submit a tender (save where they are subject to a ground of exclusion and removed from the contest). This is most suited to simpler or lower value procurements, allowing for wider competition.
- 2. Competitive Flexible Procedure (S 20(2)(b)):** Replacing several older processes such as the restricted, competitive dialogue and negotiated procedures, this approach gives contracting authorities the freedom to design their own competitive procedure based on their specific needs. For procurements where the subject matter is more complex or the value is higher, this route will be the more appropriate choice. Contracting authorities can include multiple stages, such as pre-qualification or negotiations, to refine bids and ensure the best possible outcome. This flexibility allows for a tailored approach, such as limiting the number of bidders at various stages or allowing for post-tender negotiations, depending on the nature of the goods, services, or works being procured.

In both cases, and to meet the requirements of the regulations, the procedure starts with the publication of a tender notice on the new Central Digital Platform (CDP), before being posted elsewhere. Authorities must ensure that the procurement process adheres to the objectives and principles outlined in the Act, such as transparency, proportionality, and non-discrimination.



### CASE STUDY

A Hospital Trust needed to procure advanced diagnostic equipment. Using the Competitive Flexible Procedure, they shortlisted suppliers after an initial tender, then invited finalists to demonstrate their technology. This iterative approach ensured the Trust selected a supplier that met their performance and budgetary requirements while enabling innovation.



### CASE STUDY

#### 1. Using the Open Procedure for Simplicity

**Scenario:** A local primary school needed to procure bulk stationery (e.g., pens, notebooks, and art supplies) for the upcoming academic year.

**Action:** The school issued a tender using the Open Procedure, inviting bids from all interested suppliers. The criteria focused on cost-effectiveness, quality of products, and compliance with basic delivery timelines.

**Outcome:** The school quickly secured a supplier offering competitive pricing and acceptable delivery schedules. The simplicity of the Open Procedure saved time and resources for a straightforward procurement.

#### 2. Switching to the Competitive Flexible Procedure

**Scenario:** The following year, the school faced significant issues with late deliveries from their previous supplier, which disrupted teaching plans. To avoid repeating the problem, they decided to switch to the Competitive Flexible Procedure for their next stationery procurement.

**Action:** The school designed a multi-stage process:

1. An initial tender to assess basic cost and quality.
2. Shortlisting suppliers based on their bids.
3. A final stage involving interviews to evaluate how each bidder would ensure timely deliveries, including supply chain management and contingency plans.

**Outcome:** By tailoring the process, the school gained better insight into suppliers' operational reliability. They awarded the contract to a supplier with robust logistics and a proven track record, ensuring timely deliveries for the academic year.

## FRAMEWORK AGREEMENTS

Framework agreements are termed “frameworks” under the Act but remain largely recognisable and a key procurement tool. As before, frameworks will allow contracting authorities to establish long-term agreements with one or more suppliers for the provision of goods, services, or works. These frameworks simplify future procurement by setting out the terms and conditions for subsequent call-off contracts, which can be awarded without the need for a full procurement procedure.

- **Standard Frameworks** (S 45 – 47): These agreements may generally last up to four years (or eight years for utilities and defence) and allow contracting authorities to call off contracts based on the pre-agreed terms. The authority may adopt a longer duration where it considers this necessary due to the nature of the contract (e.g. for infrastructure projects where a variety of call-off contracts are awarded under a framework throughout the life of a development). The initial places on frameworks will be awarded through a competitive tendering process. Contracting authorities must ensure that the framework complies with all transparency and competition rules.
- **Open Frameworks** (S 49): Introduced by the Act and defined as a ‘scheme of frameworks that provides for the award of successive frameworks on substantially the same terms’ (S 49(1)). Open frameworks allow for the addition of new suppliers over time, providing more flexibility compared to traditional frameworks and introduce the possibility of more competition within the lifetime of the framework. Open frameworks must be re-opened at least once during their duration (typically between three and five years after commencement), which prevents suppliers from being locked out for long periods. It is anticipated that this type of framework will be particularly useful in rapidly changing or competitive markets where new suppliers frequently emerge.

With regard to open framework agreements, these may either set a limit on the number of participants or be unlimited. Where unlimited, it will be easier for incumbents to remain on the framework without having to issue an updated tender offer when the framework is renewed within its lifetime.

## SCENARIO

An NHS Trust oversees the maintenance and repairs of multiple hospital buildings and seeks a long-term solution that offers convenience and economies of scale. To achieve this, the Trust establishes an **open framework** for building repairs.

### Action:

- The Trust specifies that the framework will remain open with **no limit** on the number of suppliers.
- Initially, Suppliers A and B are appointed to the framework and compete for individual contracts awarded under its terms.
- After two years, the framework is **re-opened for competition**, allowing new suppliers to apply. Suppliers A and B resubmit their tenders and are reappointed to the framework. This time, however, Supplier C also successfully applies and joins the framework for the next period.

### Outcome:

- The Trust benefits from greater flexibility and increased competition, with Supplier C introducing fresh options and innovative approaches.
- Suppliers A and B retain their positions, incentivising them to maintain high standards and competitive pricing to secure future contracts.
- The open framework model ensures ongoing value for money and keeps the market accessible to new entrants, aligning with the **Procurement Act 2023**'s objectives of transparency, competition, and adaptability.

### Lessons Learned:

- Open frameworks allow contracting authorities to periodically introduce new suppliers, ensuring competition and innovation over the framework's lifespan.
- For suppliers, open frameworks offer opportunities for long-term engagement while encouraging continuous improvement to remain competitive.



## DYNAMIC MARKETS

The **Procurement Act 2023** introduces Dynamic Markets, which replace the older Dynamic Purchasing Systems (DPS) and qualification systems (for utilities contracts) (S 34-40). It is effectively a list of approved suppliers eligible to compete for contracts competitively awarded through the system amongst its members.

A dynamic market is dynamic insofar as it must continuously remain open for new suppliers to apply to join. In order to join, they must meet specific conditions for admission. Whilst this constant openness to new suppliers sets them apart from traditional, closed frameworks, the new open framework structures will (as we saw in the previous section) allow certain defined entry points.

Key characteristics of dynamic markets include:

- **Continuous Admission:** As stated above, suppliers can apply for admission to the market at any time, allowing new entrants to compete on an equal footing with established players.
- **Competitive Flexible Procedure:** All contracts awarded through dynamic markets must use the competitive flexible procedure (S 20), ensuring flexibility and adaptability in procurement processes.



### CASE STUDY

A utilities company set up a dynamic market for renewable energy solutions. Over time, new suppliers entered the market, introducing innovative battery storage technology that outperformed the initial bidders. The openness of the system allowed the company to procure cutting-edge solutions without issuing a new tender.

### CASE STUDY

A local council created a dynamic market for electric vehicle charging stations. Over time, new suppliers joined, offering better pricing and technology. This continuous competition allowed the council to upgrade its infrastructure cost-effectively, showcasing how dynamic markets adapt to fast-evolving industries.



- **No Maximum Supplier Limit:** Dynamic markets differ from frameworks in that they cannot impose a cap on the number of suppliers, ensuring that competition remains robust.

Dynamic markets are particularly useful for contracting authorities that require flexibility and want to ensure ongoing competition in areas where the market evolves quickly.

### DIRECT AWARDS

In certain circumstances, contracting authorities may purchase directly in order to avoid having to carry out a competitive procurement for a public contract (S 41 - 43). These 17 exempt situations are listed in *Schedule 5* of the Act. This includes, for example, situations of extreme and unavoidable urgency, purchases of additional goods or services where alternatives would not be compatible with the inputs already provided and situations where the authority wishes to take advantage of an insolvency situation. Where the authority wishes to rely on one of these exemptions, it must publish a transparency notice on the Central Digital Platform (CDP), allowing interested parties to challenge its use of the exemption. Conditions for the application of an exemption are likely to be applied strictly and the authority must ensure that it is on firm ground to bypass the general competition requirement.

A photograph showing two men in a large industrial facility, likely a recycling plant. They are wearing white hard hats, safety glasses, and high-visibility yellow vests. The man on the right is also wearing a dark suit jacket. They are standing on a metal walkway overlooking a long conveyor belt filled with various pieces of plastic waste, including bottles and containers. The background shows the complex structure of the facility with metal beams and overhead lighting.

# EXCLUSION AND DEBARMENT

The Act establishes a robust framework for excluding suppliers from participating in public procurement based on specific grounds. The rules it sets out are stricter and pose higher risk for suppliers. This set of rules is intended to ensure that public funds are spent responsibly and that suppliers meet high standards of integrity, performance, and ethical conduct. Debarment serves as a tool for maintaining trust in the procurement process, preventing unethical or unreliable suppliers from accessing public contracts.

## **INTRODUCTION TO EXCLUSION AND DEBARMENT**

What is the difference between exclusion and debarment? Exclusion, firstly, is the one-off refusal to admit a supplier from participating in a specific tender process on the basis of a disqualifying act (as listed in the legislation) applicable to the supplier or a connected person or associated person. It is a decision taken by a specific public body in relation to the purchasing activities it undertakes.

Debarment is more permanent and longer term than exclusion. It refers to the formal process of centrally excluding suppliers from participating in public procurement due to serious misconduct or contract performance issues. This mechanism is critical to ensuring fair competition, protecting public funds, and maintaining the integrity of procurement practices. The Act outlines both mandatory and discretionary exclusion grounds, which are detailed in *Schedule 6 and Schedule 7*, respectively. A summary of all mandatory and discretionary grounds of exclusion is included on the next page.



## GROUPS OF MANDATORY EXCLUSION (SCHEDULE 6)

Part 1 (criminal offences)	Part 2 (other mandatory exclusion grounds)
<p>Conviction (by final judgment) for:</p> <ul style="list-style-type: none"> <li>• Corporate manslaughter;</li> <li>• Counter terrorism offence;</li> <li>• Bribery and corruption;</li> <li>• Theft, fraud, robbery, burglary;</li> <li>• Making off without payment or stolen goods offences;</li> <li>• Conspiracy to defraud;</li> <li>• Agreeing to be involved or participation in serious organised crime;</li> <li>• Offence of refusing or failing to pay national minimum wage;</li> <li>• Terrorism;</li> <li>• Money laundering;</li> <li>• Cartel offence (S 188 of the Enterprise Act 2022);</li> <li>• Child labour and/or human trafficking;</li> <li>• Cheating the public revenue, involvement in tax evasion or failure to prevent tax evasion.</li> </ul>	<p>Posing a threat to UK national security for contracts of the relevant type;</p> <ul style="list-style-type: none"> <li>• Being subject to a HMRC penalty in relation to VAT fraud or tax evasion;</li> <li>• Entering into or carried out tax; arrangements that are abusive (within the meaning given in section 207 of the Finance Act 2013);</li> <li>• Being found by HMRC to have engaged in abusive practice;</li> <li>• Incurring a defeat in respect of notifiable tax arrangements entered into;</li> <li>• A decision by the UK Competition and Markets Authority of involvement in an anti-competitive cartel.</li> </ul>
<p>Offence in a foreign jurisdiction outside the UK which is substantially similar to any of the offences listed above.</p>	<p>Offence, infringement or regulatory finding in a foreign jurisdiction outside the UK which is substantially similar to any of the offences or infringements listed above.</p>

## GROUPS OF DISCRETIONARY EXCLUSION (SCHEDULE 7)

- An order being made against the supplier under modern slavery or trafficking legislation;
- A conviction for an offence related to environmental harm or non-compliance with social, or labour law;
- Bankruptcy or being subject to insolvency proceedings or a whole or partial suspension of supplier's business;
- Professional misconduct calling into question the supplier's integrity;
- Where the authority considers the supplier has engaged in anti-competitive agreements contrary to Chapter I of the Competition Act 1998 (e.g. collusion with other tenderers) or abuse of dominance contrary to Chapter II of the Competition Act 1998;
- Severe conflicts of interest which cannot be resolved by measures less restrictive than exclusion;
- Supplier has breached a public contract (in the UK or outside, if equivalent) or not performed to the satisfaction of the contracting authority (e.g. missed contractual key performance indicators);
- Improper conduct in procurement (e.g. providing false or misleading information in the procurement or seeking confidential information about procurement) to obtain an unfair advantage; and
- The contracting authority considering the supplier a national security threat.

## CONNECTED PERSONS AND ASSOCIATED PERSONS

Under the Act, exclusion or debarment may occur not just as a result of grounds applicable to the supplier, but also where those apply to its connected persons and associated persons. Broadly put, a “connected person” can include directors, subsidiaries and parents as well as predecessor companies (but not sister companies).

An associated person is one on whose capabilities or resources the supplier relies upon in order to qualify for a particular procurement process. This could include, for example, consortium partners or key sub-contractors, as well as parent companies relied upon to provide guarantees.

## MANDATORY EXCLUSION GROUNDS

The Act mandates that contracting authorities exclude suppliers under certain circumstances, ensuring that entities convicted of serious offences or engaged in grave misconduct are barred from public contracts.

Where a contracting authority considers that a supplier is subject to a mandatory ground, but this is unlikely to re-occur, it may still admit the supplier (*S 57(1)(a)*). For that purpose, it will take account of remedial and compensatory measures taken by the relevant entity since the occurrence.

However, where the supplier or its connected or associated persons has been listed on the Debarment List for a mandatory ground, the authority has no choice but to disqualify the tenderer (*S 57(1)(b)*).

The list of mandatory grounds at *Schedule 6* includes a number of new grounds not previously included in the list, including participation in anti-competitive cartels (previously a discretionary ground).

**A supplier is an “excluded supplier” if: (a) the contracting authority considers a ground of mandatory exclusion applies to it or a connected person and this is likely to happen again or (b) it (or a connected person) has been listed on the debarment list for having committed a mandatory ground of exclusion.**



## CASE STUDY

Supplier X suffers a serious data breach resulting in hackers accessing customers' personal data but fails to alert data subjects promptly. It also fails to make any notification of the breach within 72 hours to the Information Commissioners' Office under UK GDPR. Although GDPR is not mentioned in either *Schedules 6 or 7*, this may well leave the supplier at risk of being excluded from tender opportunities as its conduct was dishonest, lacked propriety and constituted a serious breach of ethical or professional standards applicable to the supplier (the ICO guidelines are applicable to all sectors).

## DISCRETIONARY EXCLUSION GROUNDS

In addition to mandatory exclusions, the Act grants contracting authorities the discretion to exclude suppliers on various other grounds, as outlined in *Schedule 7*. Whilst less serious than mandatory grounds, the applicability of a discretionary ground in relation to a supplier or connected or associated person, will still be taken seriously.

Where a discretionary ground applies but has not been included in the debarment list, the contracting authority has discretion to admit the supplier into the tender process. Even where it has been listed for a discretionary ground, the authority may allow it to participate. Government guidance states though that listed suppliers should normally be excluded.





### CASE STUDY

An SME contractor for road maintenance was excluded from future tenders after consistently failing to meet response times for urgent repairs. Despite repeated warnings and an opportunity to self-clean, their poor performance persisted. This underscores the importance of aligning KPIs with achievable goals and maintaining open communication with contracting authorities.

The list of discretionary grounds is longer than was the case in the previous legislation. New additions include labour market and environmental violations as well as concerns around national security. A fuller list is included in the table on page 13.

A discretionary exclusion ground applies to a supplier if the decision-maker considers that the supplier or a connected person has engaged in professional misconduct which brings into question the supplier's integrity (*Schedule 7, para 11*). This is a wide catch-all that can allow the contracting authority to exclude a supplier for a breach of the law that is not listed in *Schedule 6 or 7* (e.g. failure to prevent bribery under *S 7* of the Bribery Act 2010).

The Act also enhances the ability of contracting authorities to exclude contractors for poor performance on other public contracts in circumstances where their performance has led to a judicial finding of breach, early termination or a dispute resolved by a settlement agreement. As discussed in the following section, this may also arise where the authority is dissatisfied with the supplier's performance as evidenced by certain missed contractual targets.

Where an authority has published a statement (in accordance with *S 72(5)*) that the supplier has performed a public contract unsatisfactorily (after being given the opportunity to improve), this may also be a ground of discretionary exclusion.

**A supplier is an "excludable supplier" if: (a) the contracting authority considers a ground of discretionary exclusion applies to it or a connected person and this is likely to happen again or (b) it (or a connected person) has been listed on the debarment list for having committed a discretionary ground of exclusion.**

### KEY PERFORMANCE INDICATORS (KPIs) AND EXCLUSION

Under *S 52* of the Act, contracting authorities are generally required to set at least three key performance indicators (KPIs) and to monitor the supplier's performance against those during the lifetime of the contract. These could relate for example to timeliness, ESG matters or quality standards. This requirement applies in relation to contracts with a value above £5 million.

The third sub-ground of *Schedule 7, para 12* allows exclusion where suppliers:

- have not performed a contract to the contracting authority's satisfaction.
- were given opportunity to improve performance but failed to do so.

It is thought that this is a reference to missed KPIs and could be invoked to remove suppliers from tender processes based on failure to meet contractual targets in previous contracts.

The use of KPIs as a measurable, objective indicator of supplier performance ties directly to the contractual performance sub-ground, providing clear evidence that can be used in exclusion decisions. Missed KPIs can thus lead to termination for default or other contract failures, forming the basis for future exclusion under the Act.

There will also be serious reputational and relationship concerns at play where a contracting authority deems a KPI to have been missed. On the one hand, a supplier will be keen to protect its public reputation and avoid future exclusions caused by missed KPIs. On the other, it may see litigation to challenge the finding as an absolute last resort.

The high risk from not challenging the adverse finding will often force the supplier's hand, even if that means a potential loss of goodwill with that contracting authority.

Discretionary exclusions provide contracting authorities with the ability to assess the broader impact of a supplier's behaviour on their reliability and suitability for future contracts.

### THE DEBARMENT LIST

One of the most important changes made by the Act is the introduction of the Debarment list, which will be managed by the Procurement Review Unit (PRU) who oversee compliance and review complaints from suppliers.

This is a centrally managed register of suppliers and connected parties to whom one or more grounds of mandatory or discretionary exclusion apply. Contracting authorities will be required to have regard to this list when conducting procurement exercises.

Before listing any party, the PRU must carry out an investigation and publish a report. The supplier must be notified of the outcome of the investigation. There is a standstill of eight days which must be observed before the supplier's name can be entered into the list. This is to allow the supplier to challenge the proposed decision including seeking interim measures to postpone the listing taking effect until a substantive appeal has been determined before the court.

The debarment process, governed by *Sections 59–62*, requires the PRU to prioritise investigations based on the risk posed by the supplier. Contracting Authorities must focus on high-risk suppliers—those who pose significant financial, security, or reputational risks to the public sector.

Contracting authorities must report incidents that could lead to a supplier's exclusion, triggering a formal investigation into whether the supplier should be added to the debarment list.

### SELF-CLEANING MECHANISMS

The Act also provides suppliers with the opportunity to "self-clean" by addressing the reasons for their exclusion. This involves taking corrective measures, such as:

- **Compensating Damages:** Suppliers may settle outstanding claims or compensate contracting authorities for non-performance.
- **Implementing Remedial Actions:** Suppliers may improve their internal processes or governance structures to demonstrate that the issues leading to exclusion have been resolved.

Suppliers who successfully self-clean may be re-admitted to participate in public procurement, subject to approval by the relevant authorities.

### SUMMARY AND IMPACT

The Debarment and Exclusion provisions in the **Procurement Act 2023** ensure that public procurement remains a fair, transparent, and competitive process. By holding suppliers to high standards of performance and integrity, these mechanisms protect public funds and foster confidence in the procurement system. Suppliers must understand these provisions to maintain compliance, and contracting authorities must ensure that they apply these rules consistently and fairly.



# SPECIFICATIONS



Technical specifications set out the technical requirements for the goods, works, or services that a contracting authority is purchasing. They may be set out in a statement of requirements included in the tender documents, the conditions of participation, award criteria or the contract clauses.

The Act establishes a framework for developing technical specifications that prioritise competition, transparency, and flexibility. The Act prohibits standards which directly or indirectly discriminate against suppliers from “Treaty States”, or which are defined by reference to one particular brand name or specific design.

In practice, setting functions by reference to the functionality of works, services or goods will be the preferred way of proceeding. However, contracting authorities may also require compliance with specified technical standards (e.g. ISO 9001 is an international technical standard related to quality management systems and BS5750 its British equivalent).

However, while the Act mandates clear specifications and understandably favours international standards, it does not fully address public safety concerns that emerged from the **Grenfell Tower Inquiry** in the UK. The inquiry laid part of the blame for the tragedy at the door of lax technical specifications.

The British Standards Institution (BSI) revised BS 9991 in 2024 to offer updated guidance on fire safety design for residential buildings. The revised standard expands its scope to include residential care homes and introduces updated guidance on evacuation lifts. The UK has also introduced the **Building Safety Act 2022** (and associated secondary legislation) and **Fire Safety (England) Regulations 2022** with a view to tightening the rules around fire safety. However, it is important in our view for the technical specification to set higher standards than the statutory minimum with a view to safeguarding public safety in construction.

Whilst the lessons of Grenfell are primarily applicable to construction projects, they are also relevant to other areas of procurement where safety is a concern (e.g. security, IT hardware).

## **TECHNICAL SPECIFICATIONS AND COMPLIANCE (SECTION 56)**

*Section 56* of the Act mandates that contracting authorities create specifications that are clear, functional, and performance-oriented, avoiding overly prescriptive requirements where possible. This approach allows suppliers flexibility in achieving the contract’s objectives while ensuring fair competition.

## CASE STUDY

A Hospital Trust issued a tender for fire doors, specifying a 60-minute fire resistance (performance-based) rather than mandating a specific material. This allowed suppliers to propose innovative solutions, such as using composite materials that were lighter, cheaper, and more effective than traditional options.



- **Functional and Performance-Based Specifications** (*S 56(2)*)

Precludes contracting authorities from specifying specific designs when they could instead lay down functional requirements. For example, a contract for fire-resistant doors might specify a 30-minute burn-through requirement instead of prescribing a specific material. This flexibility allows suppliers to propose innovative solutions, provided they meet the required outcome. Such specifications, however, do not explicitly prioritise safety benchmarks, meaning suppliers may need to consider additional measures to meet UK-specific safety expectations.

- **Prohibition on use of trademarks** (*S 56(7)*)

Prohibits the buyer from using trademarks as part of its specification, unless this is considered necessary in order to make its requirements understood. Whilst this carries over the general prohibition on trademarks in specifications, some are concerned that the subjective language could lend itself to more trademarks being used. That in itself could distort competition more.

## STANDARDS AND EQUIVALENCE (SECTIONS 56(3)-(6))

The Act prioritises international standards over UK-specific ones, with *Section 56(3)* directing contracting authorities to use recognised international standards, such as those from ISO or IEC, whenever available. UK standards may only be used where the standard adopts an internationally recognised equivalent or there is no internationally

recognised equivalent. This approach is intended to foster an open and competitive environment by aligning with global standards, but it raises potential safety concerns.

- **Equivalence of Foreign Standards** *S 56(4)*:

Authorities must accept foreign standards if they are demonstrably equivalent to UK standards. For suppliers, this means that certifications from other jurisdictions may be valid if they meet the intended safety, quality, and performance outcomes. However, establishing equivalency requires rigorous verification, as UK standards in certain sectors may be more stringent due to lessons learned from incidents like Grenfell. For instance, suppliers in the construction sector may need to ensure that materials meet enhanced UK safety benchmarks even if they satisfy basic international standards. Contracting authorities may feel at risk of a challenge specifying a British standard over an international one, even if it has been modified in light of the lessons of the Grenfell Inquiry.

- **Challenges in Equivalence and Safety Risks:**

Relying on international standards without incorporating UK-specific safety requirements poses potential risks, particularly in areas like fire safety. The Grenfell Inquiry highlighted the critical importance of strict safety standards for materials such as cladding. Suppliers should be prepared to demonstrate that materials meet or exceed UK safety expectations, even if the contract relies on international standards that may not be as stringent.

## **PUBLIC SAFETY AND REGULATORY COMPLIANCE: SHORTCOMINGS POST-GRENFELL**

While the **Procurement Act 2023** promotes competition and flexibility, it does not directly integrate public safety as a core specification criterion. This omission is particularly notable given the findings of the Grenfell Tower Inquiry, which emphasised the need for strict safety standards in public contracts, especially those involving high-risk materials.

- **Lack of Explicit Safety Requirements in Specifications**  
Neither the Explanatory Memorandum nor the specification guidance explicitly addresses public safety as a central focus in the Act. Instead, the Act encourages a balance between competition and compliance with broad standards. In light of Grenfell, this approach may be insufficient for sectors where safety-critical standards are essential. Suppliers involved in high-risk sectors should anticipate the need to exceed basic compliance and adopt enhanced safety measures to align with UK public safety goals.
- **Certification and Compliance (S 56(6))**  
Allows contracting authorities to request certifications or other evidence of compliance, particularly for quality and safety standards. Suppliers should expect to provide recognised certifications, such as those from UKAS, to substantiate compliance with specified standards. However, given the absence of explicit public safety requirements, suppliers may need to proactively pursue certifications that address the specific safety concerns raised by the Grenfell Inquiry, especially for materials that impact fire resistance and durability.

## **IMPLICATIONS FOR SUPPLIERS: NAVIGATING STANDARDS AND SAFETY**

Suppliers under the **Procurement Act 2023** should be mindful of the Act's emphasis on international standards and the flexibility in functional specifications, while also recognising the implicit expectation to uphold UK-specific safety standards.

- **Meeting Functional and Performance Specifications**

Suppliers should ensure their offerings meet the performance outcomes specified in the contract, utilising flexibility in materials and methods to propose innovative solutions. In sectors like construction, however, where safety risks are high, suppliers may need to exceed basic standards to satisfy UK safety expectations, which are informed by the lessons of Grenfell.

- **Exceeding Minimum Standards for Safety Compliance**

Given the Act's lack of explicit safety requirements, suppliers - especially those in construction, infrastructure, and healthcare - should proactively align with higher UK safety standards. This may involve adhering to more stringent standards for fire resistance, smoke toxicity, and material durability, as UK authorities may implicitly expect such measures even when they are not mandated in specifications.

## **CONCLUSION**

The **Procurement Act 2023** promotes functional, flexible specifications and international standards for competitive fairness. However, contracting authorities and suppliers should recognise that compliance with the Act will not necessarily be sufficient to meet the public safety considerations recommended by the Grenfell Tower Inquiry.

In sectors with heightened safety risks, suppliers should be encouraged to exceed international minimums and consider UK-specific safety standards proactively to meet public sector expectations and safeguard end users effectively. Contracting authorities can help achieve this through the structure of the procurement, technical specifications used, as well as award criteria which should incentivise suppliers to adopt higher safety standards.





# CONTRACT MANAGEMENT

The Act is more prescriptive than predecessors in relation to the management of regulated contracts. This includes for example, provisions in relation to implied termination and payment rights that can be relied upon by the parties to contracts regulated under the Act.

The Act places strong emphasis on effective contract management, recognising it as essential for maintaining transparency, ensuring compliance, and achieving public sector objectives. Suppliers can expect contracting authorities to follow specific guidelines for managing contracts throughout their lifecycle, from monitoring performance to ensuring timely payments.

## OVERVIEW OF CONTRACT MANAGEMENT OBLIGATIONS

Contract management under the Act involves adhering to clear standards for modifications, performance monitoring, and financial compliance. Key provisions, including *Section 74* on contract modifications and *Schedule 8* on permissible changes, provide the statutory framework that governs ongoing management of public contracts.

## CONTRACT MODIFICATIONS (SECTION 74 AND SCHEDULE 8)

*Section 74* of the Act differentiates between substantial and non-substantial modifications, establishing when modifications are permissible under the existing contract versus when they require a new procurement.

- **Substantial Modifications:** Per *Section 74(3)*, modifications are considered substantial if they increase or decrease the contract term by more than 10% (e.g. 4 years to 5 years or vice versa), or significantly alter the contract's economic balance, scope, or competitive conditions. Substantial modifications typically require a new procurement process. Any such change will be permitted only where it can be fitted within one of the exemptions set out in *Schedule 8* (see below).
- **Non-Substantial Modifications:** Minor adjustments that do not fundamentally change the contract may proceed without re-tendering. These include "below threshold modifications" (as defined by *Section 74(4)*) as well as others which are non-substantial. For example, slight timeline changes or updates to technical specifications can be made if they do not impact the contract's core purpose or competitive fairness.

**Schedule 8** outlines the conditions under which modifications are allowed. Some of these are listed below:

- **Change Clauses:** Modifications are permitted where unambiguously provided for by provision(s) of the contract itself (e.g. change clauses) (*Schedule 8, para 1*).
- **Unforeseen Circumstances:** Modifications necessitated by events outside the contracting authority's control (*Schedule 8, para 4*).
- **Additional Requirements for Compatibility:** The modification provides for additional goods or services to those already provided under the contract. Those additional needs cannot be satisfied by a different supplier because of incompatibility with existing systems or continuity with ongoing projects (*Schedule 8, para 8*).
- **Public Safety Needs:** Modifications that address significant public safety needs, especially relevant in sectors like healthcare and construction, where safety standards may continue to evolve.

In general, the substitution of one contractor or supplier for another will not be permitted unless it forms part of a corporate restructuring (such as a group restructuring or purchasing a business from insolvency which includes a public contract) (*S 74(9), Schedule 8, para 8*).

It is important to emphasise that all exemptions are likely to be strictly construed, meaning that suppliers and contracting authorities must exercise caution in ensuring that they satisfy all the conditions of any given exemption even if, superficially, it appears to apply to the situation at hand.

### CONTRACT CHANGE NOTICES AND VOLUNTARY STANDSTILL PERIODS

To ensure transparency, the Act mandates Contract Change Notices for contracts over £5 million when significant modifications occur. This requirement helps suppliers, and the public remain informed about major adjustments in contract terms.

- **Contract Change Notices (*S 74 – 75*):** These notices must include detailed information on the nature and rationale behind the modification, especially for high-value contracts. They serve as an essential transparency measure, helping suppliers understand

the implications of the changes on contract scope or performance expectations.

- **Voluntary Standstill Periods:** In cases of significant modifications, contracting authorities may implement a voluntary standstill period to allow suppliers to review and, if necessary, challenge the modification. This period ensures fairness by giving suppliers time to understand changes that might impact their contractual rights or performance obligations.

This change brings more transparency to modifications to contracts and potentially sparks more challenges. Contracting authorities can be expected in most cases to observe a voluntary standstill period with a view to minimising the time available for third parties to commence a claim. In order to prevent the change going ahead, the claimant will need to actually commence legal proceedings rather than just signal opposition (*S 101*).

### KEY PERFORMANCE INDICATORS (KPIs) AND PERFORMANCE MONITORING

For most contracts over £5 million, contracting authorities will need to include Key Performance Indicators (KPIs) for most contracts in order to monitor supplier performance, ensuring accountability and contract adherence.

- **Use of KPIs:** KPIs will track critical performance metrics such as quality, timeliness, and compliance with contract objectives. These indicators provide a measurable framework for assessing whether suppliers are meeting contract expectations. Suppliers should be prepared for regular monitoring, reporting, evaluations and potential feedback sessions with contracting authorities based on KPI outcomes.
- **Impact on Future Procurement Eligibility:** Consistent failure to meet KPIs can lead to discretionary exclusion from future procurement opportunities under Schedule 7. Suppliers should proactively address any performance issues that arise, as repeated underperformance may affect their eligibility for public contracts.

### CONTRACT MONITORING NOTICES

On an at least annual basis, the contracting authority must publish a contract performance notice in accordance with *S 71* on the Central Digital Platform. These notices serve two purposes:

- a. recording the performance of suppliers against key performance indicators (KPIs) where *section 52(1)* of the Act applies; and
- b. recording information relating to particular breaches or failure to perform a public contract except where the breach results in a contract being terminated in full (in which case a contract termination notice must be published (*S 80*)).

The consequence of the second type of notice can be serious for a supplier. Where a contracting authority can show it has failed to perform to its satisfaction, this may be implied grounds for termination.

### TERMINATION RIGHTS

*S 78 and 79* of the Act provide that the contracting authority has certain implied rights of termination under the contract. It will be entitled to bring the agreement to an end on reasonable notice in the following circumstances:

- the contracting authority considers that the contract was awarded or modified in material breach of this Act or regulations made under it;
- a supplier has, since the award of the contract, become an excluded supplier (i.e. a mandatory ground of exclusion applies) or excludable supplier (i.e. a discretionary ground applies) (including by reference to an associated person);
- a supplier (other than an associated person) to which the supplier is sub-contracting the performance of all or part of the public contract is an excluded or excludable supplier.

The concept of “excluded” and “excludable” suppliers were discussed above. This is a new right which did not exist under previous legislation. Where the ground relates to national security, the contracting authority must first seek consent from a Minister of the Crown before exercising its right to terminate (*S 79*).

Under *S 48*, similar rights exist to exclude suppliers from awards of call off contracts under a framework where one of the above grounds applies.

### PAYMENT COMPLIANCE AND NOTICES

The key points are:

- Contracting authorities must generally pay suppliers within 30 days of issue of invoice (*S 68*);

- A similar payment requirement will be implied into the terms of key sub-contracts;
- Electronic invoicing must be used in public contracts (*S 67*). A specific format of invoice must be applied as laid down in *S 68*; and
- Contracting authorities must publish payment compliance notices, setting out the timeframes within which they pay suppliers (*S 69*).

Under *S 72*, contracting authorities may also direct that a supplier enter into legally binding agreements with sub-contractors on whose resources they have relied in order to qualify for public tender processes.

#### Publishing Payment Compliance Notices:

For contracts with significant value, contracting authorities must publish Payment Compliance Notices outlining their adherence to payment timelines. These notices promote transparency, allowing suppliers to assess the reliability of contracting authorities’ payment practices and better manage financial risks associated with delayed payments.

### SUMMARY AND SUPPLIER TAKEAWAYS

Effective contract management under the **Procurement Act 2023** requires suppliers to remain attentive to performance metrics, modification protocols, and payment compliance. By understanding these obligations and proactively addressing issues, suppliers can enhance their standing with contracting authorities and improve their eligibility for future contracts. Key points include:

- **Staying Aligned with KPI Expectations:** Regularly review performance metrics and communicate proactively with authorities to ensure KPIs are met or exceeded.
- **Anticipating Contract Modifications:** Be aware of the grounds for modifications under *Schedule 8* and prepare to review contract change notices and standstill periods as needed.
- **Ensuring Payment Compliance:** Monitor payment timelines and understand the recourse available if payments are delayed.

This section provides a structured approach for suppliers to navigate contract management under the Act, balancing performance monitoring, transparency, and financial compliance to maintain robust public sector relationships.



# DEBRIEF, REMEDIES AND CHALLENGES



The **Procurement Act 2023** provides a structured framework for suppliers to challenge breaches by contracting authorities. Time limits are critical in these processes, ensuring timely recourse for suppliers and procedural efficiency.

## **DEBRIEF RIGHTS: ASSESSMENT SUMMARIES AND AWARD NOTICES**

The Act made changes to the information to be provided to bidders in relation to the final contract award. As before, unsuccessful bidders must be told the identity of the preferred bidder, the scores attained in each area of evaluation by both the loser and the winner.

Under the Act, unsuccessful bidders receive two assessment summary letters: one setting out its losing recipient's scores and the other the winner's scores. Each bidder will receive an explanation for its score in each area, as well as the reasons why it did not attain a higher score.

After the assessment summaries have been sent, the authority must publish a "contract award notice", setting out the details of the proposed award (S 50(2)).

## **OVERVIEW OF LEGAL REMEDIES (PART 9 OF THE ACT)**

As with previous legislation, the Act grants suppliers the ability to challenge contested procurement decisions before the Courts.

Legal remedies address breaches that result in supplier loss, offering interim relief, pre-contractual remedies, and post-contractual options, including damages. Suppliers must act within statutory time limits to secure these remedies.

## **STANDSTILL PERIOD AND AUTOMATIC SUSPENSION (S 101-102)**

- **Standstill Period:** Following an award decision, an eight-day standstill period allows suppliers to review and, if necessary, challenge the outcome. Challenges must be lodged within this period to benefit from the automatic suspension of contract finalisation.
- **Automatic Suspension:** Filing a challenge within the standstill period automatically suspends contract finalisation until resolved. Contracting authorities may request a court to lift the suspension, granted only if justified by operational or public interest.

A key change under the Act relates to the non-availability of the automatic suspension after the standstill period passes. Suppliers will no longer be entitled to an automatic injunction restraining the award if they commence proceedings after the standstill has passed.

### CHALLENGING A PROCUREMENT DECISION – GENERAL TIMEFRAMES (SS 100 AND 106)

A contracting authority's duty to comply with *Parts 1 to 5, 7 and 8* of the Act is enforceable in civil proceedings under the Act (*S 100*). Actions may be brought by either UK suppliers or suppliers from a "Treaty state" (which broadly includes suppliers from the EU 27, from other GPA countries and from countries listed in *Schedule 9* of the Act who benefit from a relevant treaty). These general points should be noted:

- **Bringing court action generally:** any court proceedings must generally be commenced within 30 days of knowledge of the facts on which the claim is based which indicate a breach of duty (or the date when the supplier could reasonably have been aware of such facts);
- **Debarment and exclusion:** for debarment and exclusion, appeals must be filed within 30 days from the point at which the supplier became aware of the decision. This ensures swift handling and resolution; and
- **Judicial Review:** suppliers may seek general judicial review on general public law grounds (e.g. irrationality, illegality, procedural irregularity) for breaches outside *Part 9*, generally required within 30 days of when grounds for judicial review first arose (*Part 54(6) Civil Procedure Rules*).

### INTERIM REMEDIES (S 102)

Interim remedies under *S 102* provide provisional relief, such as suspending further actions on the contract and ensuring fairness during the review process. Time limits vary depending on the remedy sought and the nature of the breach, reinforcing timely supplier recourse.

### PRE-CONTRACTUAL AND POST-CONTRACTUAL REMEDIES (SS 103-105)

- **Pre-Contractual Remedies (S 103):** These remedies apply before contract finalisation. Courts can order corrective actions, such as reassessment of tenders or awarding the contract to the claimant. Suppliers must act promptly within the standstill period to secure these remedies.
- **Post-Contractual Remedies (S 104-105):** Once a contract is finalised, the primary remedy is damages. *S 105* also allows the court to set aside a contract where one of six grounds is present. These include the following:
  1. a required contract award notice was not published;
  2. the contract was entered into or modified before the end of any applicable standstill period (*S 51 and 76*);
  3. the contract was entered into or modified during a period of automatic suspension under *S 101* or in breach of a court order;
  4. in the case of a contract of a kind described in *S 51(3)* (exceptions to mandatory standstill), the breach became apparent only on publication of a contract award notice (save where the award notice provided a standstill period and the contract was not entered into before the end of that period);
  5. in the case of a modification under *S 74*, the breach became apparent only on publication of a contract change notice (save where the change notice provided a standstill period and the contract was not entered into before the end of that period); and
  6. the breach became apparent only after the contract was entered into or modified.

Suppliers must bring claims quickly in seeking post-contractual remedies, typically within a 30-day or 6-month timeframe (*S 106(1)*).

### ROLE OF THE PROCUREMENT REVIEW UNIT (PRU)

The PRU oversees compliance and reviews complaints from suppliers (*S 108-110*). It plays a central role in ensuring that contracting authorities meet statutory standards, especially in cases where exclusion or debarment decisions are challenged.

The other important role that will be performed by the PRU will be conducting investigations under *S 60* (in relation to debarment) and conducting oversight of procurements conducted by contracting authorities.

There is no formal deadline within which suppliers must file complaints with the PRU. However, the PRU will obviously be able to do more to assist suppliers the earlier the filing is made. A large volume of complaints are likely to relate to late payments by contracting authorities.

### SUMMARY AND SUPPLIER TAKEAWAYS

To protect their rights, suppliers should monitor procurement outcomes closely and initiate challenges promptly within the established time limits. Key takeaways include:

- **Using the Standstill Period:** Leverage the standstill period for thorough decision review and timely challenges. Be aware of the importance of the eight working-day timeframe.
- **Monitor publications for Contract Change Notices and Award Notices:** Since you will be deemed to be aware of the content of these notices and they may reveal grounds for a challenge or unfair treatment.
- **PRU and Judicial Recourse:** Utilise the PRU and court options within statutory timeframes to maintain eligibility and uphold rights.

These mechanisms, governed by strict time limits, ensure that suppliers have effective avenues for redress, enhancing transparency and accountability.







# FUTURE CONSIDERATIONS AND BEST PRACTICES

The **Procurement Act 2023** sets a framework that encourages flexibility, transparency, and alignment with evolving public procurement standards. Suppliers should adopt forward-looking practices to stay competitive and compliant.

## ANTICIPATING REGULATORY AND POLICY CHANGES

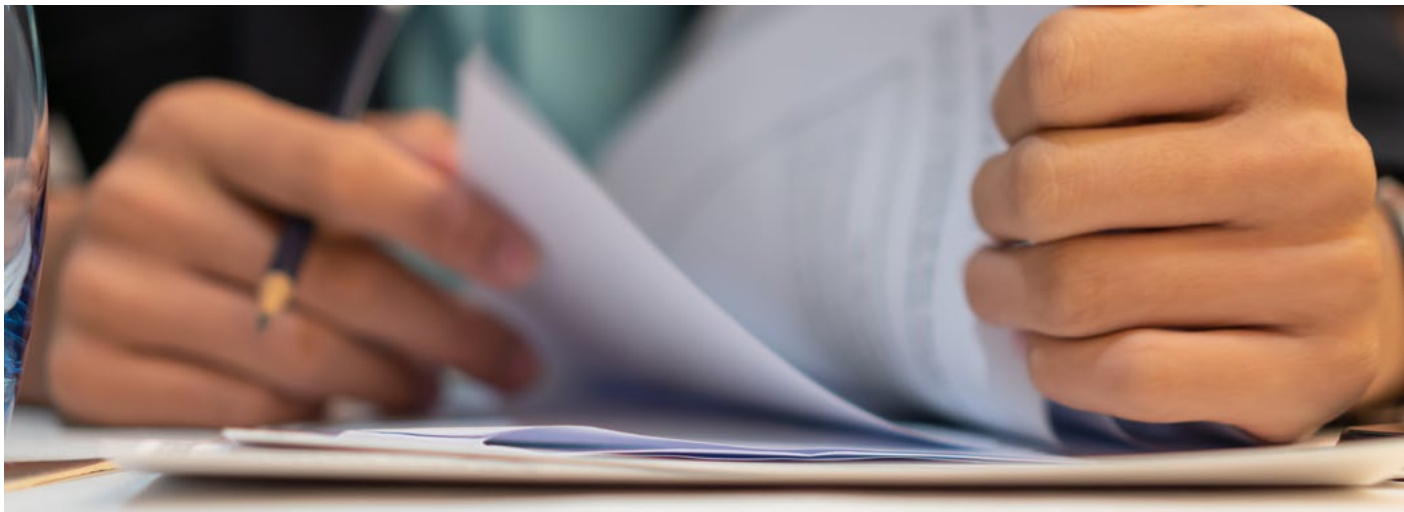
The regulatory environment for public procurement is expected to continue to evolve. Suppliers should:

- **Engage with authorities:** The Act requires the advertisement of more pre-market engagement. This is an opportunity to shape procurements, processes (including those run under the new competitive flexible procedure) and specifications.
- **Monitor for policy updates:** Regularly review updates from the Cabinet Office and other authorities, especially around compliance, modification rules, and safety standards.
- **Align with authority's standards:** Be mindful of any national updates that affect high-stakes sectors, like construction, to anticipate additional safety-related requirements.
- **Avoid potential debarment issues:** Ensure your workforce have received effective compliance training to cover off any potential pitfalls.



## CASE STUDY

Supplier Z challenged a council's tender award after discovering during the debrief that their bid was unfairly scored on sustainability metrics. They filed for judicial review within the standstill period, resulting in the suspension of the contract award. The court found that the council had failed to apply its evaluation criteria consistently, and the decision was overturned.



### EMPHASISING ENVIRONMENTAL SUSTAINABILITY AND SOCIAL VALUE

The UK Government places increasing importance on sustainability and social impact within public procurement:

- **Sustainability Measures:** Adopt environmentally friendly practices, such as carbon reduction and sustainable sourcing, to enhance the appeal of bids.
- **Social Value Contributions:** Address local employment, diversity, and community benefits in proposals, which increasingly align with public sector priorities.

Pursuant to PPN 002, contracting authorities will be expected to ensure that social value (ESG) criteria account for at least 10% of the total marks.

Consider how your organisation can meet these challenges. Do you need to upgrade your efforts to meet net zero targets? Could your organisation be doing more in the local community to enhance its social value profile? Given these are things contracting authorities will increasingly ask about, it is important to be well-positioned.

### COMPLIANCE AND RISK MANAGEMENT STRATEGIES

Maintaining rigorous compliance helps suppliers mitigate risks and ensure eligibility.

- **Familiarity with Schedules 6 and 7:** Review the mandatory and discretionary exclusion grounds, which outline specific legal and ethical standards. Implement internal controls to mitigate risks associated with non-compliance.

- **Self-Cleaning Mechanisms:** Adopt corrective measures proactively, such as addressing past performance issues and strengthening governance, to maintain eligibility.

### ALIGNING WITH THE NATIONAL PROCUREMENT POLICY STATEMENT (NPPS)

The NPPS reflects national priorities in public procurement, including economic growth, environmental sustainability, and social value. To maximise their bids' relevance:

- **Stay Updated on the NPPS:** Regularly review the NPPS for evolving objectives and adjust procurement strategies accordingly.
- **Reflect Policy Priorities in Proposals:** Showcase how your offerings support NPPS goals, such as sustainability or local community impact, to enhance appeal.

### BUILDING STRONG SUPPLIER-AUTHORITY RELATIONSHIPS

Transparent, collaborative relationships with contracting authorities can significantly impact successful contract fulfilment:

- **Maintain Open Communication:** Engage proactively with authorities, to help clarify expectations and address issues early, fostering trust.
- **Address Challenges Proactively:** Resolve performance issues swiftly, demonstrating commitment to quality and alignment with contractual standards.



# KEY TAKEAWAYS AND PRACTICAL TIPS



Suppliers should stay aligned with the evolving priorities of the public sector, emphasising sustainability, social value, and compliance with legal standards. Key tips include:

- **Proactively Adjust to Policy Goals:** Regularly align your practices with national priorities, as outlined in the NPPS.
- **Commit to Continuous Improvement:** Implement processes that ensure ongoing compliance and adaptability to regulatory changes, promoting long-term success.

By adopting these best practices, suppliers can align with the **Procurement Act 2023** and future-proof their eligibility and competitiveness in public procurement.

## HOW WE CAN HELP

We hope this Guide provides valuable insights into navigating the new requirements and changes introduced by the **Procurement Act 2023**. While we have covered key aspects of the law, every procurement scenario is unique. Our team is here to help you address specific opportunities, challenges, and optimise your tendering strategies.

Whether you need:

- Advice on procurement processes, award decisions or shortlisting decisions,
- Advice on tender documents,
- Assistance with putting bids together and checking submissions against tender documents,
- Assistance with complex procurements,
- Guidance on competition law, health and safety, GDPR compliance and other regulatory issues impacting your ability to tender, or
- Advice on debarment risks or self-cleaning mechanisms.

We're ready to support your success.

## CONTACT US

Feel free to reach out to Paul Henty, Partner and Head of Procurement at Beale & Co, with any questions or support you may require.



**Paul Henty**  
Partner and Head of Procurement

p.henty@beale-law.com  
+44 (0) 20 7469 0499

Follow Paul on LinkedIn [here](#)



BEALE&CO

International  
Construction and  
Insurance Law  
Specialists