

Procurement Act 2023

Get ready for change

Corporate Resources and Economic Scrutiny Committee

Quick reminder...

- Fundamental change: part of Transforming Public Procurement
 - Creating a **simpler and more flexible** commercial system (for suppliers, not necessarily the council!)
 - Opening up procurement to **SMEs and social enterprises**
 - Embedding **transparency** in public procurement
- Replaces suite of existing procurement legislation
- Procurement Act 'go live' date set for **24 February 2025**



What is changing?

Transparency by default: many more notices throughout contract life cycle, Central Digital Platform

Increased challenge?: suppliers will have increased grounds and support for civil proceedings

Conflicts of interest: must be assessed, documented and kept under review

Pipeline notice: must publish forward plan for next 18 months from April 2025

Record keeping: must document regard for NPPS objectives, integrity and fairness, removing barriers for SMEs/VCSEs

Waivers: to become almost impossible, with minimal direct award grounds available

Procurement Review Unit: new watchdog with powers to investigate

Contracts and payments: much more information to be published, contract modifications to be more regulated

Key changes: Pre procurement

- New duty to consider **reducing barriers for SMEs**
 - Ensuring process is proportionate to contract
 - Dividing contracts into lots
- New **conflicts assessment** must be completed and kept under review for each procurement
- **Pre market engagement** is now an expectation, and must be documented and published

Pipeline Notice

- Forward plan of all contracts over £2m+ in next 18 months (published annually)

Planned Procurement Notice

- Details of upcoming procurement (can reduce tender return timescale to 10 days)

Pre Market Engagement Notice

- Sets out what pre market engagement will take / has taken place (questionnaires, open days, meetings, site visits etc.)

Key changes: Procurement

- **New competitive flexible procedure**
- **New open frameworks and dynamic markets**
- Excluding suppliers can result in them being added to the **debarment list**
- Move from **MEAT to MAT** (most advantageous tender) for evaluation
- New **assessment summary** to provide bidders with their scores and those of the winner
- **Direct award** is much more challenging – grounds are more clearly defined

Tender Notice

- Advertises contract opportunity

Contract Award Notice

- Publishes intention to award a contract and starts 8 working day standstill period

Contract Details Notice

- Announces a contract has been entered into (within 30 days of contract signing)

Transparency Notice

- To be used in case of direct award (must include grounds for direct award)

Pause for some benefits worth remembering...

- Aligns with Islington's **Progressive Procurement Strategy**
- Benefits for **SMEs/VCSEs**
 - Duty on council to consider **reducing barriers** for SMEs/VCSEs wherever possible
 - Pipeline notice and Planned Procurement notices = opportunity for **market warming**
 - Pre Market Engagement = chance for suppliers to help **shape specs / social value**
 - Duty on council to consider **contract lots**: dividing contracts into smaller, more accessible contract opportunities
 - Find a Tender Service: **central digital platform** for single supplier registration, finding contract opportunities and information on current contracts

Key changes: Contract performance



- Must collect and publish information about contract performance
- New national standard for KPIs:
 - Good
 - Approaching Target
 - Requires Improvement
 - Inadequate
 - Other (i.e. where no data)
- Must report all partial breaches, award of damages, settlement agreements
- Must keep records of decisions and actions and acting in good faith

Contracts £5m+

- **Contract Performance Notice (1):** measures performance against at least 3 KPIs, published annually

All contracts

- **Contract Termination Notice:** reason for termination, published within 30 days of contract termination/discharge/expiry/recission
- **Contract Performance Notice (2):** details of breach/failure, published within 30 days of breach/failure

Key changes: Contract modifications



- Must collect and publish information about changes made to contracts
- ‘Convertible’ contracts: modifying a below threshold contract can bring it in scope as an above threshold contract
- Modifications can now be made successively
- Modifications are only permitted on specific grounds

Contracts £5m+

- **Copy of contract:** publish (redacted) copy of contract or modified sections within 90 days of modification

All contracts

- **Contract Change Notice:** publish changes before modification made

Key changes: Contract payment reporting



- Going live in Phase 2 (not 24 February)
- New implied payment terms:
 - 30 day payment
 - Electronic invoicing
 - Extension of prompt payment to subcontractors
- Payments Compliance Notice must include:
 - Average number of days to make payment
 - Percentage of payments made in 30 days, 60 days and 60+ days
 - Percentage of payments not made in period

Payments over £30,000

- **Information about payments under public contracts:** details individual payments over £30,000 (inc. VAT), published quarterly

All payments

- **Payments Compliance Notice:** reporting on number of invoices paid within 30/60/60+ days, published annually

Day One readiness: actions taken to date

- Policies and procedures
 - Prepared Action Plan in line with national workstreams
 - Redrafted Procurement Rules for review and commencement on 'go live'
 - Updated project plans to cover new requirements
- Guidance and information
 - Established new suite of council templates and guidance documents
 - Engaged in GCC Communities of Practice
 - Developed Progressive Procurement Toolkit in 3 frameworks: Commissioning, Social Value, Commercial
- Systems
 - Engaged with Proactis (e-sender) on readiness for go live
 - Developed plan for publication of notices within service
 - Linked with workstream on CCCR (Corporate Contracts Database Register)
- People
 - Whole service completed PA23 training and gained GCC Certification
 - Delivered briefings to senior leadership teams and key procurers across organisation
 - Developed training programme for commissioners / contract managers
- Commercial activity and transition
 - Identified first procurements under new regime and created plan for delivery
 - Commenced work on first Pipeline Notice (contracts £2m+)
 - Established Action Plan group and weekly meetings to track progress

Day One readiness: next steps

- Policies and procedures
 - Seeking Procurement Rules approval, reviewing Schools Financing Rules
 - Mapping processes required to gather information from services and publish new notices
 - Continuing to communicate new procedures to teams
- Guidance and information
 - Delivering Progressive Procurement Toolkit
 - Monitoring new guidance from central govt and updating templates and procedures
 - Creating new guidance on contract management and modifying contracts
- Systems
 - User testing of new workflows in Proactis (e-sender)
 - Training service members on publishing new notices, contracts/payment info
 - Developing CCDR processes to capture information
- People
 - MyLearning for commissioners / contract managers
 - Delivering internal communications plan on changes
 - Training service members on publishing new notices, contracts/payment info
- Commercial activity and transition
 - Communicating to suppliers need to register on Find a Tender Service when platform available
 - Reviewing forward plan of upcoming procurements and Pipeline notice (contracts £2m+)
 - Working with services on resource planning for redactions/publication of notices and contract information

In summary



Transparency is key – better access for SMEs/VCSEs but much more information for council to collect and publish



Potential for more flexibility – but this can be complex



‘Procurement’ significantly expanded to encompass commissioning, contract management and payments