



PROCUREMENT ACT 2023

AN INTRODUCTION TO OUR TOOLKIT



INTRODUCTION

As of 24 February 2025, the Procurement Act 2023 (PA23) came into force, meaning that there is a new procurement regime for England, Wales and Northern Ireland. Any procurements now launched will need to comply with the new regime. The new regime promises greater flexibility to contracting authorities in how they run procurements but, with greater flexibility comes greater transparency requirements. The reach of PA23 also now extends into the contract management phase of procurement, which is new and poses its own unique requirements and challenges.

The Technology and Construction Court published its annual report on 20 February 2025; this records a 30% increase in procurement claims from 2022/23 to 2023/24 (22% against the average of the preceding three years). Find the report [here](#).

The report notes that “the grounds for most challenges raise issues of equal treatment, non-discrimination, transparency, proportionality, manifest error and irrational decisions”. These grounds for challenge are unlikely to change significantly under PA23 given equal treatment remains an objective, transparency is a key principle underlining PA23 and manifest errors and irrational decisions are a matter of fact based on the action(s) and decisions taken by contracting authorities. The upward trend in procurement claims is likely to continue given the regime is, as yet, untested. This means that it is critical for contracting authorities to ensure that they are up to date on the requirements of PA23 and have robust template documents in place in order to successfully transition to the new regime.

If you feel like you are behind the crowd in getting to grips with PA23, we can help.

PREPARATION

What should contracting authorities be doing to ensure that they are prepared?

The Procurement Act will affect a wide range of teams and functions, and there is no doubt that adjustments will be required in order to adapt to the new regime. Contracting authorities can take steps to streamline their procurement processes and make them simpler for procurement and contract management teams. In particular, contracting authorities should:

1. update template procurement documents;
2. update template contracts;
3. consider providing training to procurement teams, evaluation teams and contract management teams;
4. review and update procurement procedures and internal policies;
5. consider wider implications such as:
 - a. financial reporting obligations;
 - b. the potential for increased Freedom of Information Act requests;
 - c. the potential for increased disputes; and
 - d. the new contract management requirements such as publication of supplier performance.

This is not an exhaustive list and each contracting authority should undertake its own assessment of its needs. Our team has written an article which considers these steps in more detail, please find this [here](#).

Do you feel overwhelmed by the changes to PA23? Do you feel as though you are unsure of your next steps?

If you require assistance, our specialist and dedicated procurement team are well placed to help; they have been providing clients with expert procurement law advice since the laws were first introduced in the 1990s. Our team is at the forefront of emerging procurement law issues and changes: they publish for one of the UK's leading legal databases and provide highly regarded general and bespoke training events for clients.

Our standard toolkit for PA23, details of which are set out overleaf, is available for contracting authorities to purchase in whole or part. Please contact our specialist procurement team who will be happy to help.

TOOLKIT HIGHLIGHTS

PA23 training

Our procurement lawyers are experts in their field, regularly writing for one of the UK's largest legal databases. In order to help you get to grips with the new regime, our team can provide general and bespoke training on any aspect of the new Act. This includes training for procurement teams in how to conduct and manage procurement processes and training for contract managers on the new supplier performance requirements and KPIs.

Risk advice

Our expert procurement lawyers are available to provide bespoke risk advice relating to any aspect of procurement, including the design of the process, supplier exclusion and disqualification, the execution of the process, outcome assurance, contract modification and contract management. This helps authorities to ensure their processes are as robust as possible by ensuring that any issues are dealt with proactively.

Conflicts Assessment

We have produced both a conflicts of interests (COI) assessment template and a COI declaration form to assist authorities to comply with the requirement, in section 83 of PA23, to prepare and keep under review, a conflict assessment. Both documents will ensure that you detail:

- any actual or potential conflicts of interests identified in accordance with section 81 of PA23;
- any action taken or planned to mitigate those actual or potential conflicts of interest in accordance with section 82 of PA23; and
- any steps the contracting authority has taken or will take, to demonstrate that no actual or potential conflict exists where such might be perceived.

Guidance notes

We have produced a range of guidance notes on key topics such as publication requirements and notices (including easy to follow flowcharts), modification of contracts and direct awards (including easy to follow decision flowcharts).

PA23 notice templates

We have a variety of templates available including Competitive Flexible Tender Notice, Frameworks Notice and Dynamic Market Notice, which allow notices to be drafted offline, or for contracting authorities to have template wording or standard information to be included in certain notices.

Evaluation and moderation training masterclass

Our team offers practical training for your evaluation teams to help them understand their role as an evaluator and to carry this out effectively. This training helps to avoid the outcome of the procurement process being undermined by issues such as manifest errors.

Open procedure template

A template that can be used as the basis of an Open procedure procurement, including consolidated conditions of participation and award criteria. The template includes the key aspects of an evaluation methodology to set out clearly to bidders how their tender is to be assessed. This can (and should) be adapted and supplemented according to the specific requirements of your authority and the process you are adopting.

Moderation assurance review

Our expert procurement lawyers work regularly with internal procurement teams to attend and/or review the outcome of moderation processes. This helps contracting authorities to identify and address any issues early, and provides assurance on the robustness of the outcome of the procurement. This is particularly beneficial for high value and/or high risk procurements, including those in particularly litigious sectors.

Competitive Flexible CoP and ITT template

A template Conditions of Participation (CoP) stage document and a separate Invitation to Tender (ITT) that can be adapted for use in any competitive flexible procedure under PA23. The template includes the key aspects of an evaluation methodology to set out clearly to bidders how their tender is to be assessed. These documents can (and should) be adapted and supplemented according to the specific requirements of your authority and the process you are adopting.

Assessment summary

We have produced two template assessment summaries for use by contracting authorities. One is for the successful supplier and the other is for any unsuccessful suppliers. These templates help contracting authorities to ensure that the outcome of the procurement is communicated in accordance with the requirements of section 50 of PA23.

Contract modification justification

To supplement our guidance note on the modification of contracts under PA23, we have a checklist available for contracting authorities to identify and record the relevant justification for any modifications. This is essential to ensure a robust audit trail in the event the modification is challenged.

Section 98 report

A template report to produce a consolidated record of decisions, considerations and action taken by the contracting authority. This template aligns with the requirement of section 98 of PA23 to keep sufficient records to explain a material decision made for the purpose of awarding, or entering into, a public contract.

PA23 contract drafting and guidance

A guidance note setting out the various contract drafting implications of PA23, by contract type, for use by internal legal or buying teams. We also have a dedicated and specialist team of public sector contracts lawyers who can assist with amending standard terms and conditions or drafting bespoke contracts to reflect the requirements of PA23.

Contentious support

Our experienced team of procurement specialists and litigation lawyers work seamlessly together to support contracting authorities to defend their procurement processes. We have achieved successful outcomes for many authorities to date and can assist with any challenges under PA23. In the unfortunate event that your procurement process is challenged (either informally or formally), our expert team can assist.

Direct Award justification

To supplement our guidance note on the direct award of contracts under PA23, we have a checklist available for contracting authorities to identify and record the relevant justification. This is essential to ensure a robust audit trail in the event the direct award is challenged.

YOUR TEAM



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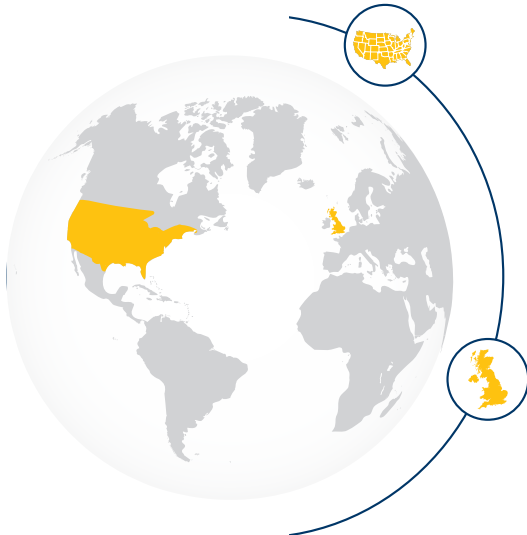
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