



# Extending/ Varying Public contracts

Lunchtime Webinar Series 2023

9 January 2023

The session will begin at 12.30 PM ...  
(sound is currently off – chat box is open so feel free to say Hello!)

# Agenda

- Upcoming Webinars
- Hot topics & technical update
- Extending/ Varying Public Contracts

# Upcoming events

45 Minute Free Webinars	
30 January 2023 (12.30 – 13.15)	Update on the UK Procurement Bill
28 February 2023 (12.30 – 13.15)	TUPE in Tenders
29 March 2023 (12:30 – 13:15)	Tell me more about KPI's in contracts
24 April 2023 (12:30 – 13:15)	Making Sense of Tender Evaluations

Training Webinars Paid	
15 March 2023 (9:30 – 15:45)	Introduction to Contract Management (Level 1)
3 February 2023 (9.30 -15.45)	Beginners Guide to Public Procurement (Level 1) <b>Sold-out</b>
10 March 2023 (9.30 -15.45)	Beginners Guide to Public Procurement (Level 1) <b>New Date</b>
24 March 2023 (09.30 – 12.45)	Guide to completing FTS Notices
28 April 2023 (9.30 -15.45)	How to Undertake Compliant Tender Evaluations

If you would like to pre-book attendance, please email: [walter.akers@rsmuk.com](mailto:walter.akers@rsmuk.com)

# About your hosts

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## **Walter Akers**

Head of Projects & Commercial, RSM

Walter specialises in advising enterprises on procurement, commercial contract risk and maximising value from complex commercial arrangements. He is a guest lecturer at University College London on their MSc and commercial training programmes and he is an accredited assessor on the UK Government's Commercial Capability Programme. Walter is a fellow of the World Commerce & Contracting Association (IACCM, International Association for Contract & Commercial Management).

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## **Mohamed Hans, Solicitor**

Principal Procurement Advisor, CIPFA Procurement Network

Mohamed is a highly experienced procurement solicitor who manages the CIPFA Procurement Network, which has over 130 subscribing authorities. He represents CIPFA at key procurement events, organises and speaks at workshops and conferences, produces newsletters, as well as supports practitioners with legal and procurement queries.

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# Technical Update

- Update on passage of the Procurement Bill
- Bromcom Computers Plc v United Learning Trust
- The Public Contracts (Amendment) Regulations 2022

# Extending/ varying Public Contracts

# Why is the Contract Notice so important?

## Governs the procurement

Key procurement step

- Failure to advertise is a ground for ineffectiveness

Fixes the course of the procurement

- Changes may require re-advertisement

## Governs the Contract

Can't make material changes to a contract which go beyond the scope you advertised:

- Subject-matter
- Value

Can't add parties to a framework, who were not in original scope.

Grounds	Conditions	Detail
1. Amendment Clauses R72(1) a	<ul style="list-style-type: none"> <li>▪ Set out in procurement documents/ Contract</li> <li>▪ Clear, precise and unequivocal review clauses or options.</li> <li>▪ Provided that those clauses: <ul style="list-style-type: none"> <li>a. state the scope and nature of the possible modifications as well as the conditions under which they may be used; and</li> <li>b. do not provide for modifications or options that would alter the overall nature of the contract or framework agreement.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Express scope and nature of possible modifications or options as well as conditions.</li> <li>▪ (irrespective of monetary value however, it must not change overall nature of contract)</li> <li>▪ Requires contracting authority to consider likely changes at the outset</li> </ul>
2. Economic & technical reasons & significant inconvenience R72(1) b	<p>For additional works, services or supplies by the original contractor that have become necessary and were not included in the original procurement where a change of contractor:</p> <ul style="list-style-type: none"> <li>a. cannot be made for economic or technical reasons; and</li> <li>b. would cause significant inconvenience or substantial duplication of costs for the contracting authority,</li> <li>c. provided that any increase in price does not exceed 50% of the value of the original contract.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Evidence of significant inconvenience or substantial duplication of costs.</li> <li>▪ <b>MN required in FTS/ OJEU.</b></li> </ul>
3. Unforeseen changes R72(1) c	<p>Where:</p> <ul style="list-style-type: none"> <li>a. the need for the modification has been brought about by circumstances which a diligent contracting authority could not have foreseen; and</li> <li>b. the modification does not alter the overall nature of the contract; and</li> <li>c. any increase in price does not exceed 50% of the value of the original contract.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Unforeseeable circumstances refers to circumstances that could not have been predicted despite reasonably diligent preparation of the initial award by the contracting authority, taking into account its available means, the nature and characteristics of the specific project</li> <li>• <b>MN required in FTS</b></li> <li>• Wider than Reg 72(1)(b) but only available in exceptional circumstances, not as result of bad planning by CA.</li> </ul>
4. New contractor R72(1) d	<ul style="list-style-type: none"> <li>▪ A new contractor replaces the body originally awarded the contract, either as a consequence of a review clause, or</li> <li>▪ due to corporate restructuring, provided that the replacement contractor fulfils the criteria for qualitative selection originally applied, that the change does not result in substantial changes to the contract, and that the change is not implemented to circumvent the requirements of the Regulations generally.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Corporate restructuring, including takeover, merger, acquisition or insolvency provided: <ul style="list-style-type: none"> <li>▪ EO satisfies criteria for selection (SQ)</li> <li>▪ No other substantial modifications</li> <li>▪ Not trying to circumvent Reg's</li> </ul> </li> </ul>
5. Variations which are not substantial R72(1) e	<p>Modification would:</p> <ul style="list-style-type: none"> <li>▪ Materially alters the character of the original contract/framework; or</li> <li>▪ Allow other potential suppliers to participate or be selected, or another tender to be accepted; or</li> <li>▪ Changes the economic balance in favour of the contractor; or</li> <li>▪ Extends the scope of the contract/framework "considerably"; or</li> <li>▪ A new contractor replaces the original contractor, other than where change arises from an unequivocal review or option clause in original contract or from corporate changes.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Reg 72 (8) PCR – what is substantial - not possible to define "materially alter" or "considerably" as this may depend on the circumstances of each case.</li> </ul>
6. Minor variations R72(1)f	<p>Where the value is:</p> <ul style="list-style-type: none"> <li>• less than the relevant value threshold triggering the application of the procurement rules; and</li> <li>• less than 10% (for services or supplies) or 15% (for works) of the original value of the contract or framework.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Overall nature not altered</li> <li>▪ <b>This is not cumulative</b></li> </ul>

# Plenary Session - Discussion, Summary & Close

# If you have any questions, please contact:

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