

Procurement Reforms Update

The New Procurement Bill

Lunchtime Webinar Series 2023

30 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
- Getting ready for the Procurement Act 2023

Upcoming events

45 Minute Free Webinars	
28 February 2023 (12.30 – 13:15)	TUPE in Tenders
6 March 2023 (12:30 – 13:15)	Bromcom Computers Plc v United Learning Trust
23 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	
3 February 2023 (9.30 -15.45)	Beginners Guide to Public Procurement (Level 1) Sold-out
15 March 2023 (09:30 – 15:45)	Introduction to Contract Management (Level 1)
24 March 2023 (09.30 – 12.45)	Guide to Completing FTS Notices
28 April 2023 (09.30 -15.45)	How to Undertake Compliant Tender Evaluations
19 May 2023 (09.30- 12.00)	Procurement Challenges – What to watch out for?
23 June 2023 (09.30 – 15.45)	Beginners Guide to Public Procurement (Level 1)

If you would like to pre-book attendance, please email: walter.akers@rsmuk.com

About your hosts

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

- Public Procurement Review Service Progress Report 2021-22
- Bromcom Computers Plc v United Learning Trust
- Provider Selection Regime – Delay
- Procurement Policy Note 01/23 / The Public Contracts (Amendment) Regulations 2022

Current Reform Proposals

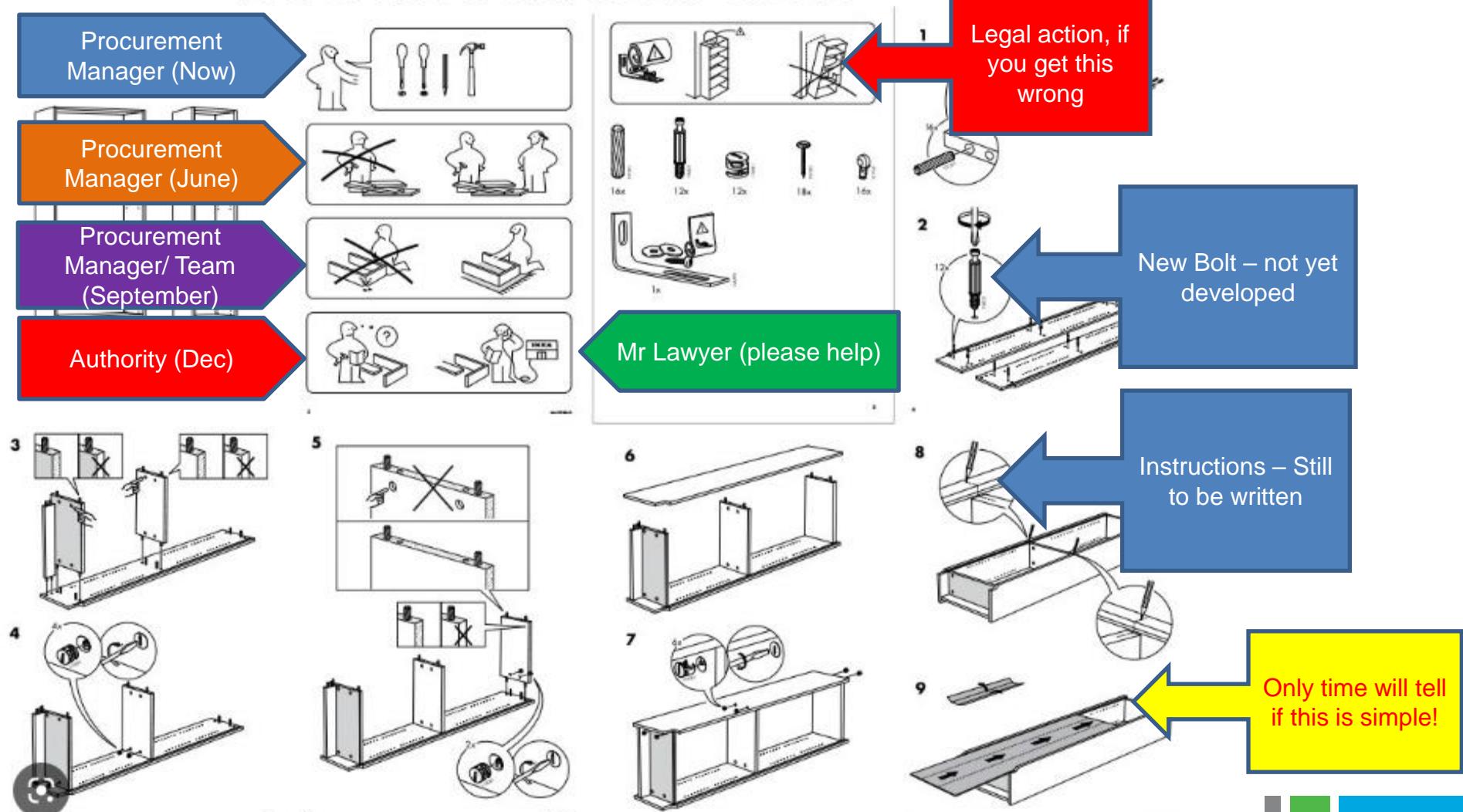
The Procurement Bill

- The **Procurement Bill** is likely to become the *Procurement Act in Spring 2023*.
- Cabinet Office has promised a transition period of at least **six months** before its provisions replace the Public Contracts Regulations 2015.
- During today's session we will draw attention to potential changes included in this change in legislation.
- 160 amendments to original bill after passage through Lords.

Ministers' procurement bill a 'charter for cronies', says Labour

Tory procurement bill will legalise VIP lane, says Labour

Procurement bill



Procurement Bill moves house

Key Provisions:

- Definition of “covered procurement” and “contracting authority”.
- PA will apply to both above and below threshold procurements.
- SME’s to get a bigger slice of procurement pie (**Note:** duty to “have regard”)
 - (i) alternative evidence where audited accounts not available, and
 - (ii) require insurance cover at contract award.
- Have regard to National Procurement Policy Statement, but not actionable under PA.
- MAT – Dual Test –satisfies the CAs requirements and best satisfies the award criteria.
- Conditions of Participation (Section 26-30, Schedules 6 & 7)
- Frameworks under LTR not limited in duration.
- Closed and Open Framework Agreements.
- Conflict of interest assessment
- Debarment (Section 56 - 61)
- Online portal

What's in the Procurement Bill?

- The Procurement Bill removes the current range of procedures.
- It will replaces them with just two procedures:
 - The **Open Procedure**
 - The **Competitive Flexible Procedure**
 - *This will replace all of the current multi-stage procedures.*
 - *You will be able to design your own procedure, provided that it complies with the general principles and procedural rules.*
 - Direct award, a Contract Award Notice would still be relevant, and a standstill period would still be required (unless urgent to protect life).
 - New Time limits and terms – “Participation period” and “Tendering period”,

Extensive Transparency - Procurement Notices

Pre-Procurement

Currently we have a PIN (voluntary)

- **Planned procurement notice** – Informs the market about CAs intention to publish a tender Notice – **Voluntary**
- **Preliminary market engagement notice** - letting potential suppliers know that CA intends to carry out market engagement – **Voluntary** Now must (Note limb (b) provide reasons for not doing so in the tender notice?)
- **PME Notice** can also be published after conducting PME rather than before.
- Administrative burden!

Launching the Procurement

Contract Notice

- **Tender notice** - must contain information (and be accompanied by “associated tender documents”) - **Mandatory** for award of contract under Clause 18
- CA must conduct the procedure as described.
- Tender documents no longer have to be issued at the same time as the tender notice.
- Extent and detail of information to be provided to bidders unclear at the moment

Contract award

Contract Award Notice

- An Assessment Summary (replacing the current standstill letters) and Contract Award Notice is issued before award - Mandatory before entering into a public contract
- Standstill now runs from the contract award notice with a mandatory period of 8 working days.
- Contract Details Notice must be published after award (30 days) – **Mandatory**
- **£5M + copy of contract must be published within 90 days**

New Notices

Pipeline Notice	Procurement Termination Notice	Contract Change Notice	Contract termination notice	Transparency notice	Payments compliance notice
<ul style="list-style-type: none"> Notice about contracts, CA intends to award with a value of over £2m in the next financial year Mandatory, if CA will procure more than £100m under contracts for supply of goods/ services/ works (not including exempt ones) in the coming financial year. 	<ul style="list-style-type: none"> New notice if CA decides not to award a contract (after you have published a tender notice or transparency notice). No reasons required. Mandatory. 	<ul style="list-style-type: none"> New notice to be issued before you modify a public contract (or one which would become a public contract after the change). Mandatory in most cases. 	<ul style="list-style-type: none"> Required where CA wants to terminate a public contract. Mandatory. 	<ul style="list-style-type: none"> Notice where CA intends to make a direct award under Section 40 or 42. This requires to be published before award. Mandatory. 	<ul style="list-style-type: none"> Notice setting out CAs compliance with the payments obligations in Section 63. Published every six months. Mandatory.

KPIs and Contract Performance – Section 50 & 66

- Contracts over £5 million must have 3 Key Performance Indicators (“KPIs”) unless the contract is a framework agreement, concession contract, light touch or performance cannot be assessed.
- Performance against the contracted KPIs must be assessed annually and the results published. Further details expected.
- Negotiate and agree clearly defined and attainable KPIs.
- New provisions relating to contract modifications.
- End of Let and Forget syndrome.

Plenary Session - Discussion, Summary & Close

If you have any questions, please contact:

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