

THE PROCUREMENT ACT:

A DUE DILIGENCE GUIDE FOR PUBLIC SECTOR BUYERS





Transforming Public Sector Procurement

Procurement law in England is about to undergo wide transformation through the Procurement Act 2023 (the Act).

The Act received Royal Assent on October 26, 2023, and is expected to come into force in October 2024. It promises to consolidate previous regulations and prioritise efficiency, transparency, and international compliance.

Considered a significant overhaul of procurement rules in the UK, the Act will bring fundamental changes to the public sector buying structure. It will regulate the whole procurement lifecycle, from pre-award to implementation and beyond. The Act will impact principles, objectives, and procedures to create simpler and more flexible procurement – for both the public sector and its suppliers.

The benefits will include:

- ▶ A more simple and flexible commercial system that better meets the needs of the country, while remaining compliant and mitigating risk.
- ▶ Opening opportunities for new entrants, particularly Small, Medium and Micro Enterprises (SMEs), so that they can more easily compete with larger enterprises.
- ▶ Taking tougher action on poorly performing suppliers and excluding those that pose high risk.
- ▶ Increasing transparency throughout the commercial lifecycle.





What's new in the Act?

Below are some of the notable new rules that public sector buyers need to consider – and they all have one thing in common: the sharing of data. The new regulations aim to streamline the procurement process by requiring upfront submission of core information to a 'central

supplier repository' thus reducing the need to request that information again for subsequent bids. So, one place to host all the due diligence documentation. Furthermore, there's onus on authorities to share information on their policies and decisions back to vendors.

1

A new 'exclusions and debarment' framework will be introduced. Building on the present rules around mandatory and discretionary grounds for exclusion, the act includes a refresh and more extensive framework for exclusion, along with more prescriptive and detailed guidance. A 5 year time limit has been added for mandatory and discretionary grounds and a central debarment list is to be established, allowing a Minister of the Crown to add excluded suppliers for specified durations. Existing public contracts remain unaffected, but new government contracts in England and Wales will be subject to these rules.

2

A central digital platform for suppliers to register will be created. Under the Procurement (Transparency) Regulations within the Act, suppliers must register on a new central digital platform to participate in public sector procurement opportunities. The registration process will involve submitting information about Economic and Financial Standing (EFS), and potential exclusion grounds. Public sector buyers will have access to these details so they can be used for multiple bids and see all opportunities in one place. It will also reduce the administration burden for SMEs and, in theory, accelerate public sector spending with this group.

3

Moving away from cost as a basis for decisions. While contracting authorities have previously been required to award contracts to the 'Most Economically Advantageous Tender' (MEAT), the act removes the focus on 'economic' or 'cost' as a basis for decisions. Instead, authorities should now award to the 'Most Advantageous Tender' (MAT) and can place more weight on other criteria (such as social value), proportionate and related to the subject matter of the contract.



A Spotlight on SMEs

SMEs are the backbone of the UK economy, representing 99% of the Dun & Bradstreet UK universe. The Procurement Act aims to open the market for new businesses and make it easier for SMEs to contract with authorities.

SMEs often foster innovation and diversity, and bring fresh ideas to the market, with many offering specialised expertise and niche solutions. Relying on a diverse supplier base, including SMEs, can enhance the resilience of the public sector's supply chain. Diversification mitigates the risk of over-reliance on a limited number of suppliers, reducing vulnerability to disruptions. Furthermore, SMEs are generally more flexible in their pricing structures, and can offer competitive rates, driving efficiency and value for money in public sector spending.

Despite having a target of around 33% of SMEs in the supply chain, many contracting authorities may not know which of their current or prospective suppliers are SMEs. Dun & Bradstreet is able to help by flagging these businesses within your current supply chain, helping you to analyse gaps, risk and opportunities.

Understanding Economic & Financial Standing (EFS)

The Economic and Financial Standing (EFS) of bidders and suppliers isn't new, but it is a key part of the new central 'supplier register'. By assessing the EFS of third parties, public sector buyers can better understand the risks of supplier financial failure, and in turn avoid the threat of poor quality or disrupted services. Therefore, EFS is important to buyer departments in help with supplier selection.

There are several principles under the guidance. Dun & Bradstreet is well-placed to help public sector buyers make smarter decisions on many of these, with our global data and local expertise.

Below is a summary of key points and EFS requirements, where support with supplier due diligence solutions can be provided:

► **Relevance and Proportionality:** EFS should be proportionate to the contract's subject matter, ensuring financial capacity without unnecessary burden, but protecting taxpayer value. The table on the next page shows the types of contract classification based on size and criticality i.e., Bronze, Silver, or Gold., and the required due diligence for each.

► **Transparency and Objectivity:** EFS assessment must be transparent and objective, relying on predefined metrics and ratios against set thresholds. Potential suppliers can then be aware of their risk classifications. Suppliers can obtain their credit rating and access their credit reports using D&B CreditMonitor

► **Critical Hurdle at Selection Stage:** EFS serves as a critical hurdle to assess potential suppliers' capacity to deliver the contract during the selection stage. Given the change to 'Most Advantageous Tender', this evaluation may go beyond traditional financial and compliance checks, to include non-financial criteria, such as social value. Dun & Bradstreet can support this with their Environmental Social and Governance Ranking.

► **Equal Treatment:** All suppliers, regardless of size, must be treated equally and without discrimination during EFS assessments. SMEs, public service mutuals, or third-sector organisations should not face inadvertent disadvantages, and all suppliers can propose mitigations for identified risks. Dun & Bradstreet scores and ratings are available to support due diligence and selection for businesses of all sizes around the globe.

► **Standardised Metrics and Ratios:** In many cases, assessments can use standardised metrics and ratios, although these should be reviewed for relevance to the specific contract. Additional or alternative metrics may be necessary or desired for more critical, complex works or services, or longer-term contracts. This could be the requirement to understand the ultimate beneficial ownership (UBO) structures, adverse media, politically exposed persons (PEPs), and sanctioned entities. Dun & Bradstreet Risk Analytics Compliance Intelligence can support here.

► **Expertise in Assessment:** Staff with financial backgrounds should conduct EFS assessments, and specialist in-house or external expertise may be involved. Consultation with the Markets, Sourcing & Suppliers team in the Cabinet Office may be necessary to understand systemic risks for suppliers operating across the government. Staff should utilise the Supplier Registration Service, which can be used to complete the Selection Questionnaire, aiming to reducing the burden on both bidders and Contracting Authorities.

The table below shows how the type of assessment required differs by contract type, and how Dun & Bradstreet can support. Our data and solutions offer convenience, keeping the process as streamlined and quick as possible.

CONTRACT LEVEL	DESCRIPTION	ASSESSMENTS	DUN & BRADSTREET SOLUTION
BRONZE (least critical)	Bronze contracts are typically smaller, simpler contracts for non-critical works and services. In these cases, it may be appropriate to carry out a more basic financial assessment.	<p>To keep the assessment proportional, Contracting Authorities may wish to use 'off-the-shelf' financial analyses and risk assessments from a credit score or ratings agency, such as Dun & Bradstreet.</p> <p>High risk thresholds could be set at the level that indicates high risk of default, for example: 1 - 20 for a Dun & Bradstreet failure score. Where 1 is high risk and 100 is the lowest risk of failure.</p> <p>Where a bidder falls below the thresholds set, a more detailed assessment, including ratio analysis, should then be undertaken, with bidder clarification or mitigation as required.</p> <p>Where a Dun & Bradstreet risk indicator is high, additional supplier due diligence checks should be performed.</p>	<p>D&B Finance Analytics</p> <p>Light touch financial health check</p> <p>Anchored by the Dun & Bradstreet D-U-N-S® Number, D&B Finance Analytics includes the metrics shown in the next table as well as predictive and performance-based scores and ratings, and global information to help the public sector make smarter decisions about suppliers, and onboard them more easily, also fulfilling the EFS requirements.</p>
SILVER	Silver contracts are typically contracts for important but not critical works and services. In these cases, a more detailed financial assessment is appropriate and risk thresholds should be set accordingly.	<p>The assessment should use the standard financial metrics and ratios set out in the Government's EFS Guidance document and shown in diagram 2 below.</p> <p>These are all ratios that Dun & Bradstreet can provide as standard from the Finance Analytics platform.</p> <p>For some more complex projects, departments may want to check additional supply risk metrics.</p> <p>Alternatively, if required for automation, we can surface the data through an API integration and call to pull back the relevant data.</p>	<p>D&B Finance Analytics and/or D&B Risk Analytics - Supplier Intelligence</p> <p>Financial and reputational health check</p> <p>Adding to Finance Analytics, Risk Analytics and/or our risk data via API enable departments to monitor an extensive assortment of risk incidents, including those reported in global and regional markets, government and private databases, and corporate information. It also includes ESG rankings.</p>
GOLD (most critical)	Gold contracts are typically larger, longer contracts for complex or critical works and services. In these cases, a very detailed financial assessment is appropriate. Risk thresholds should be set at the same level as for Silver contracts or higher.	<p>Checks as per the Silver category but Contracting Authorities should also consider whether to carry out additional analysis, for example the use of additional financial metrics, ratios and/or trend analysis.</p> <p>Authorities may also wish to carry out our compliance checks to ensure that suppliers do not meet requirements for exclusion i.e. bribery, connected persons, modern slavery, fraud, beneficial ownership etc.</p>	<p>D&B Risk Analytics - Supplier Intelligence or Risk Analytics Compliance Intelligence</p> <p>Enhanced due diligence checks</p> <p>Risk Analytics Supplier Intelligence, and Compliance Intelligence provide a deeper level of supplier analysis and workflow for onboarding checks - both financial and compliance - and ongoing supplier monitoring to support smarter decision making in the long term.</p>

Additionally, suppliers within larger corporate groups should consider conducting due diligence on their own corporate structure to ensure compliance with exclusion grounds under the Act, such as modern slavery offences. The government has committed to providing statutory guidance to help contracting authorities navigate and apply exclusion grounds, with updates expected in due course.

Interpreting standard financial metrics - Risk categories by Sector and Criticality of Procurement.
The following table should be used to determine the level of risk associated with a bidder/supplier following the application of standard financial assessments.

METRIC	Non-critical (Bronze) procurements			Important (Silver) or Critical (Gold) procurements		
	LOW RISK	MEDIUM RISK	HIGH RISK	LOW RISK	MEDIUM RISK	HIGH RISK
Metric 1: Turnover Ratio	>2.0x	1.5-2.0x	<1.5	>2.0x	1.5-2.0x	<1.5
Metric 2: Operating Margin	N/A	N/A	N/A	>10%	5-10%	<5%
Metric 3 (A): Free Cash Flow/Net Debt	N/A	N/A	N/A	>15%	5-15%	<5%
Metric 3 (B): Net Debt/EBITDA	<2.5x	2.5-3.5x	>3.5x	<2.5x	2.5-3.5x	>3.5x
Metric 4: Net Debt + Net Pension Deficit/EBITDA	N/A	N/A	N/A	<4.0x	4.0-5.0x	>5.0x
Metric 5: Net Interest Paid Cover	>4.0x	2.5-4.0x	<2.5x	>4.5x	3.0-4.5x	<3.0x
Metric 6: Acid Ratio	>0.8x	0.7-0.8x	<0.7x	>1.0x	0.8-1.0x	<0.8x



Dun & Bradstreet data, tools, and bespoke analytics support the public sector with all supply and procurement use cases, including meeting the new rules introduced by the Procurement Act 2023.

We help you to uncover risks and relationships among suppliers throughout relationship lifecycle, providing improved oversight into the vendor selection process and post-award monitoring.

What can be an onerous task of supplier onboarding is simplified. Vendors are verified against key data points, and standardised reporting allows for easy analysis. Understand who you're really doing business with and the impact of financial and non-financial risks to your supply chain.

Get in touch.
Email us today:
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