

PA2023.org Network Training

Managing the risk of challenge

9 June 2026

Getting you ready - Training

In²
the bargain

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2026

Some of our current PA2023.org Network Members



Forward membership details: Network PA2023.Org

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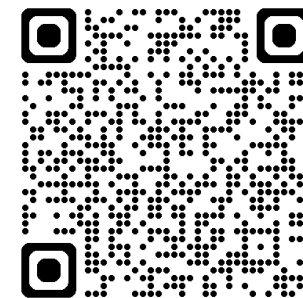
walter.akers@in2thebargain.com or
mohamed.hans@in2thebargain.com

2026 PA2023.org Training

Bite Size

Procurement Act 2023 2-hour bite-size PA2023.org members training programme	
9 June 2026 1 pm to 3 pm	Managing the risk of challenge
16 July 2026 1 pm to 3 pm	Time limits across the Procurement Act 2023
19 August 2026 1 pm to 3 pm	Exempted Contracts Schedule 2
10 September 2026 1 pm to 3 pm	KPIs and Performance Clauses

For details and bookings [Training – In2 the bargain](#)



2026 PA2023.org Training

Practitioner full / half day

Detailed practitioner training full / half day. Attendance is offered at a discounted price to all PA2023.org subscription members

23 June 2026

9:30 am to 1 pm

Publishing Key Notices under the Procurement Act

16 June 2026

9:30 am to 3:45 pm

Getting Started – Introduction to Public Procurement

8 July 2026

9:30 am to 4 pm

Contract Management under the Procurement Act 2023

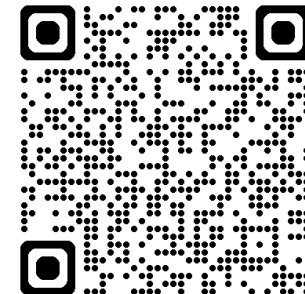
12 August 2026

9:30 am to 3.15 pm

Introduction to NEC4 Contracts

For details and bookings [Training – In2 the bargain](#)

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Technical & news update 9 June 2026

1. [World Cup bank holiday confirmed - Monday 15 June 2026](#)
2. [Annual Report of the Technology and Construction Court 2024-2025](#)
3. [Stronger contracts, lower costs: what we're doing for every school in England](#)
4. [Social Partnership and Public Procurement \(Wales\) Act 2023: information required in annual socially responsible procurement reports | GOV.WALES](#)
5. [NHS England » Independent Patient Choice and Procurement Panel review of a proposed contract award for integrated urgent care service in Cambridgeshire and Peterborough](#)
6. [NHS England » Independent Patient Choice and Procurement Panel review of a proposed contract award for insourced services in Greater Manchester](#)
7. [National Health Service \(Procurement, Slavery and Human Trafficking\) Regulations 2025](#)
8. [Procurement Spend with SMEs Hits Six-Year High](#)
9. [Capita £370M bid 40% under UK.gov estimate for Oracle HR and finance system project, court case reveals](#)

Managing the risk of challenge

The Syllabus – The Legislation

Primary focus of this training	
Procurement Act	Procurement Act 2023 (legislation.gov.uk)
The Procurement Regulations	The Procurement Regulations 2024
The Procurement (Wales) Regulations	The Procurement (Wales) Regulations 2024
Procurement Policy Notes	Procurement policy notes - GOV.UK (www.gov.uk)
Welsh Procurement Policy Notes	Procurement policy notes GOV.WALES
Procurement Act Guidance Documents	Procurement Act 2023 guidance documents - GOV.UK (www.gov.uk)
Welsh Procurement Act Guidance Documents	Procurement Act 2023: guidance documents GOV.WALES

Our focus is not on the following:

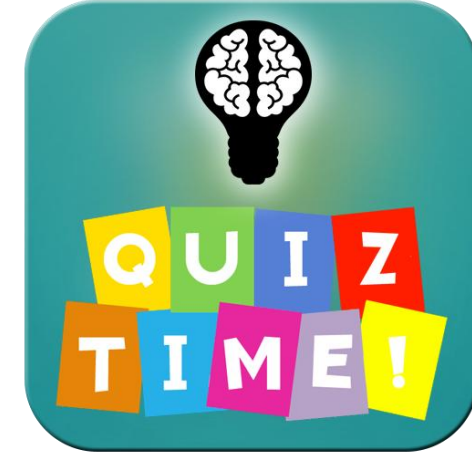
- Public Contracts Regulations 2015 and related pre 24 February 2025 law
- Utility Contracts and Utility Providers, Defence & Security
- The Provider Selection Regime

The screenshot shows the legislation.gov.uk website. At the top left is the Royal Coat of Arms and the text 'legislation.gov.uk'. To the right, it says 'delivered by THE NATIONAL ARCHIVES'. Below this is a navigation bar with links: Home, Browse Legislation, New Legislation, Coronavirus Legislation, Changes To Legislation, English, and Cymraeg. A search bar is present with fields for Title, Year, Number, and Type, and a dropdown menu set to 'All UK Legislation (excluding originating from the EU)'. A blue 'Search' button is to the right. The main heading is 'Procurement Act 2023', with a breadcrumb trail: 'UK Public General Acts > 2023 c. 54 > Table of contents'. Below this is a dark navigation bar with tabs: 'Table of Contents' (active), 'Content', 'Explanatory Notes', and 'More Resources'. To the right of these tabs are 'Plain View' and 'Print Options' buttons. On the left side, there is a 'What Version' section with two buttons: 'Latest available (Revised)' and 'Original (As enacted)'. Below this is a '▼ Opening Options' section with a '▼ More Resources' section. The main content area shows 'Status: This is the original version (as it was originally enacted.)' and a table of contents with items like 'Introductory Text' and 'PART 1 Key definitions'. A blue box highlights the 'Status' text.

Reference

[Act 2023 Part 1](#)

To get the most from this training the slides may include a reference box with links to the specific text part of the Act and other documents.

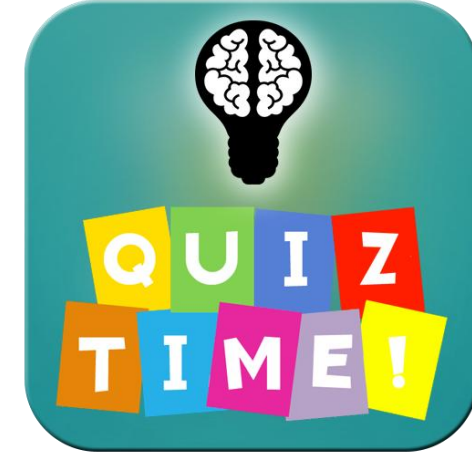


A new Director of Procurement has started at Borchester Council (has significant private sector experience). The Director recently advised the Council that a contract valued at £3 Million was exempt under Schedule 2, Procurement Act 2023 as it falls within a “vertical arrangement”. What options are open to an aggrieved supplier who does not agree with the advice of the Director?

- a) Issue a claim form to stop the award of the contract during the standstill period;
- b) Apply for an injunction to stop Borchester Council entering into the contract;
- c) Send an anonymous complaint to the Public Procurement Review Service;
- d) Only (a) is correct;
- e) Only (b) and (c) are correct;
- f) None of the above options are correct.

Astonish Housing Association (AHA) published a Contract Award Notice at 6.00 pm on 28th May 2026 for a new repairs and maintenance contract. They have not yet entered into the contract with the successful supplier. Today at 11.30 am, AHA received a letter from an aggrieved supplier stating that they are going to challenge the decision to award the contract to Cheap Repairs Limited. They want AHA to extend the standstill period. What can AHA do now?

- a) Continue with the contract award process;
- b) Consider extending the standstill period and republish the CAN;
- c) Find out if a claim form has been formally issued and served to the Court;
- d) Apply to the court to have the automatic suspension lifted;
- e) Serve notice on the aggrieved supplier to serve the claim form and particulars of claim.



PART 9 - Remedies for breach of statutory duty

PART 9 - Remedies for breach of statutory duty	
S.100	Duties under this Act enforceable in civil proceedings
S.101	Automatic suspension of the entry into or modification of contracts
S.102	Interim remedies
S.103	Pre-contractual remedies
S.104	Post-contractual remedies
S.105	Post-contractual remedies: set aside conditions
S.106	Time limits on claims

[PA2023 Guidance – Remedies v2](#)

Remedies for breach of statutory duty – Sec 100

Remedies

- available to United Kingdom or treaty state suppliers
- that suffer, or are at risk of suffering, loss or damage
- as a consequence of a contracting authority failing to comply with their obligations
- under parts 1 to 5, 7 and 8 of the Procurement Act 2023
- enforceable in civil proceedings
- claim brought within prescribed time limits

Any decision by a contracting authority (including procurement decisions) may be open to a Judicial Review (Public Law Remedies). This sits outside the scope of the Procurement Act 2023.

Remedies for breach of statutory duty – Sec 100

Remedies exclude:

- Part 6 - Below-threshold Contracts
- Requirement to have regard to barriers facing SMEs - Sec 13(9)
- Requirement to have regard to procurement policy statements - Sec 14(8)
- Treaty state suppliers: non-discrimination – Sec 90 if the procurement is not a covered procurement
- Debarment decisions made by a Minister of the Crown

A supplier does have the right to appeal the Minister's debarment decisions under section 65 (Debarment decisions: appeals).

Automatic suspension of the entry into or modification of contracts Sec 101

A contracting authority may not enter into a public contract, or modify a public contract or a convertible contract, if during any applicable standstill period—

- (a) proceedings under this Part are commenced in relation to the contract, and
- (b) the contracting authority is notified of that fact.

Applicable standstill period – includes both mandatory and voluntary standstill periods

The effect of sec 101 is to enable the supplier to seek 'pre-contractual remedies' which are remedies that can only apply where the contract has not been entered into or the modification has not been made

The contracting authority can ask the Court to lift or modify the automatic suspension. If it is in the public interest then the Courts may lift the suspension and allow the contract to be awarded / modified. The claimant may then pursue post contractual remedies.

ParkingEye v Velindre University NHS Trust and Cardiff & Vale Health Board

On 22nd December 2025, ParkingEye received an Assessment Summary notifying it that it had not been successful. The winning supplier was **National Parking Control Group (NPCG)**.

On 24th December 2025, Velindre published a Contract Award Notice, starting standstill period (8 working days).

ParkingEye brought a claim under S.100 of PA 2023, alleging a number of breaches of the Act:

- The Tender Notice identified the **wrong Contracting Authority** (Velindre, not Cardiff & Vale);
- The Tender Notice stated the **wrong value** - £100,000, rather than an actual c.£10m - £20m value;
- The Tender Notice wrongly described the contract as a **Services** contract, rather than a **Concession**;
- The Tender Notice mentioned a **Condition of Participation** in respect of “Case Studies or References” which was then absent from the tender process itself;
- Tender evaluation had not been conducted in accordance with the **Evaluation Methodology** described in the tender pack;
- The **Assessment Summary** sent to ParkingEye does not amount to a proper account of the reasons for the scores.
- The applicants’ record-keeping was deficient and unlawful.

Automatic suspension of the entry into or modification of contracts Sec 101

Old American Cyanamid Test	New Test Applied in Parkingeye
<p>The guidelines set out by the House of Lords in the <i>American Cyanamid</i> case require the court to consider the following when deciding whether an interim injunction should be granted:</p> <ul style="list-style-type: none"> • Is there a serious question to be tried? The judge checks if your case is “arguable”- not whether you’re certain to win in the end. If your claim is frivolous or hopeless, you won’t get past this first step. • Would damages be an adequate remedy? The court asks whether money compensation could properly fix the harm you’re claiming - or if only a court order stopping the other party’s actions will do. • What’s the “balance of convenience”? The judge weighs which side would suffer more harm if the injunction is granted or refused. This is often the main battleground-who stands to lose more, and can those losses be compensated later? • Are there any other relevant factors? This could include overall fairness, how quickly each side has acted, or the public interest. 	<p>Section 102 PA23 (2) In considering whether to make an order under subsection (1), the court must have regard to —</p> <ul style="list-style-type: none"> (a) the public interest in, among other things— <ul style="list-style-type: none"> (i) upholding the principle that public contracts should be awarded, and contracts should be modified, in accordance with the law; (ii) avoiding delay in the supply of the goods, services or works provided for in the contract or modification (for example, in respect of defence or security interests or the continuing provision of public services); (b) the interests of suppliers, including whether damages are an adequate remedy for the claimant; (c) any other matters that the court considers appropriate.

[Parkingeye Limited v Velindre University NHS Trust & Anor \[2026\] EWHC 1019 \(TCC\)](#)

ParkingEye v Velindre University NHS Trust and Cardiff & Vale Health

- The challenge was submitted during the standstill period.
- As under the previous legislation, S.101 of PA 2023 provides for an **automatic suspension** – preventing the contract from being entered into.
- **Velindre** and **Cardiff & Vale**, jointly, applied to the High Court to have the suspension lifted.

[Parkingeye Limited v Velindre University NHS Trust & Anor \[2026\] EWHC 1019 \(TCC\)](#)



ParkingEye v Velindre University NHS Trust and Cardiff & Vale Health Board

The court determined:

- Adequacy of damages is now only one matter to be taken into consideration, not a deciding factor.
- Under the PCR 2015, the conclusion that damages would be an adequate remedy would result in the suspension being lifted. Under the old test the public interest aspect might not be considered at all, because the adequacy of damages for the claimant would in many cases resolve the application to lift the suspension. That is no longer the case.
- **All of the elements of the test in Section 102 should have equal weighting.**
- The text of Section 102(2) indicates that the public interest will generally tend in favour of keeping the suspension in place, (although on the facts of particular cases it may weigh differently).
- Section 102(a)(ii) (the public interest in avoiding delay in awarding the contract) is intended to represent serious, maybe exceptional cases, where not awarding the contract would cause demonstrable harm.

ParkingEye v Velindre University NHS Trust and Cardiff & Vale Health Board

- The court held that the question of “public interest” in upholding the principles of the Procurement Act was now of equal importance to any other consideration:

(a) the public interest in, among other things—

(i) upholding the principle that public contracts should be awarded, and contracts should be modified, in accordance with the law;

*“The wording of section 102 falls to be considered in the context of the 2023 Act as a whole. Other than section 102, the most important textual context is perhaps **section 12**, which identifies the objectives of covered procurement.”*

12 Covered procurement: objectives

(1) In carrying out a covered procurement, a contracting authority must have regard to the importance of—

- (a) delivering value for money;
- (b) maximising public benefit;
- (c) sharing information for the purpose of allowing suppliers and others to understand the authority’s procurement policies and decisions;
- (d) acting, and being seen to act, with integrity.

The verdict:

“In my judgment, the statutory suspension and the new test for applications to lift the suspension are clearly intended to ensure that proper weight is given to the public interest in ensuring that public contracts are awarded in accordance with the law and that, accordingly, the courts do not too lightly lift the suspensions.

“I see nothing in the facts of the present case that provides sufficient reason, in respect either of any other aspect of the public interest or of the private interests of third parties, to outweigh the public interest to which the suspension is intended to give effect.

“Accordingly, I shall refuse the applications to lift the suspension.”

the new test is intended to be substantively and not merely formally very different, in both its method and its effect, from the former test”



His Honour, Judge Keyser KC

Key Learning Points

Courts view the new PA23 test as different to the old regime.

Courts may be more willing to keep automatic suspensions in place pending trial (compared to PCR15 era).

Interim measures, contract extensions will be necessary, particularly where the services/works being procured are not materially different to those already being provided by challengers – premium prices?

Pressure to settle litigation to conclude contract award with new supplier.

Practical understanding of Cabinet Office guidance on the PA.

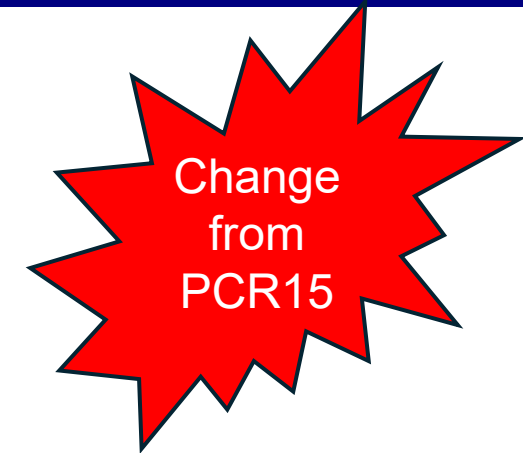
Get the information in your notices correct.

Lifting of the suspension will generally require, on the particular facts of the case, the presence of either a very persuasive countervailing public interest or some overriding matter of private interest

Things are likely to get very interesting in the near future.

Automatic suspension of the entry into or modification of contracts Sec 101

Under the old **PCR15 regulations**, where a claim has been issued before the contract has been entered into (**whether or not the standstill period has expired**) and the contracting authority has become aware of the claim, then an automatic suspension applies and it may not enter into the contract until such time as the suspension has been lifted. Under **PA2023**, the contract may not be entered into if proceedings have been issued **during the standstill period** and the contracting authority has been notified of that fact; but if the standstill period has expired, no automatic suspension will take place even if no contract has been entered into. This is a significant shift from the PCR15 position.



A contracting authority should carefully consider its position before agreeing to extend a standstill period beyond the 8 working days as this will increase the time suppliers have to bring a claim to set aside the contract.

Reference

[Part 9](#)

Remedies

Reference

[Part 9](#)

Before Court is satisfied breach of duty has occurred

Interim remedies
Sec 102

Applied at any time pre contract or post contract award

Court can:

- lift Sec 101 suspension
- suspend any decision made by CA

After Court is satisfied breach of duty has occurred

Pre-contractual remedies
Sec 103

Applied at any time before a contract, contract modification or convertible contract is entered into.

Any order the Court considers appropriate including

- award damages and/or
- setting aside any decision of the contracting authority
- require the CA to do something

Post-contractual remedies
Sec104

Applied after the award of a contract, modification or convertible contract, has been entered into.

Court can

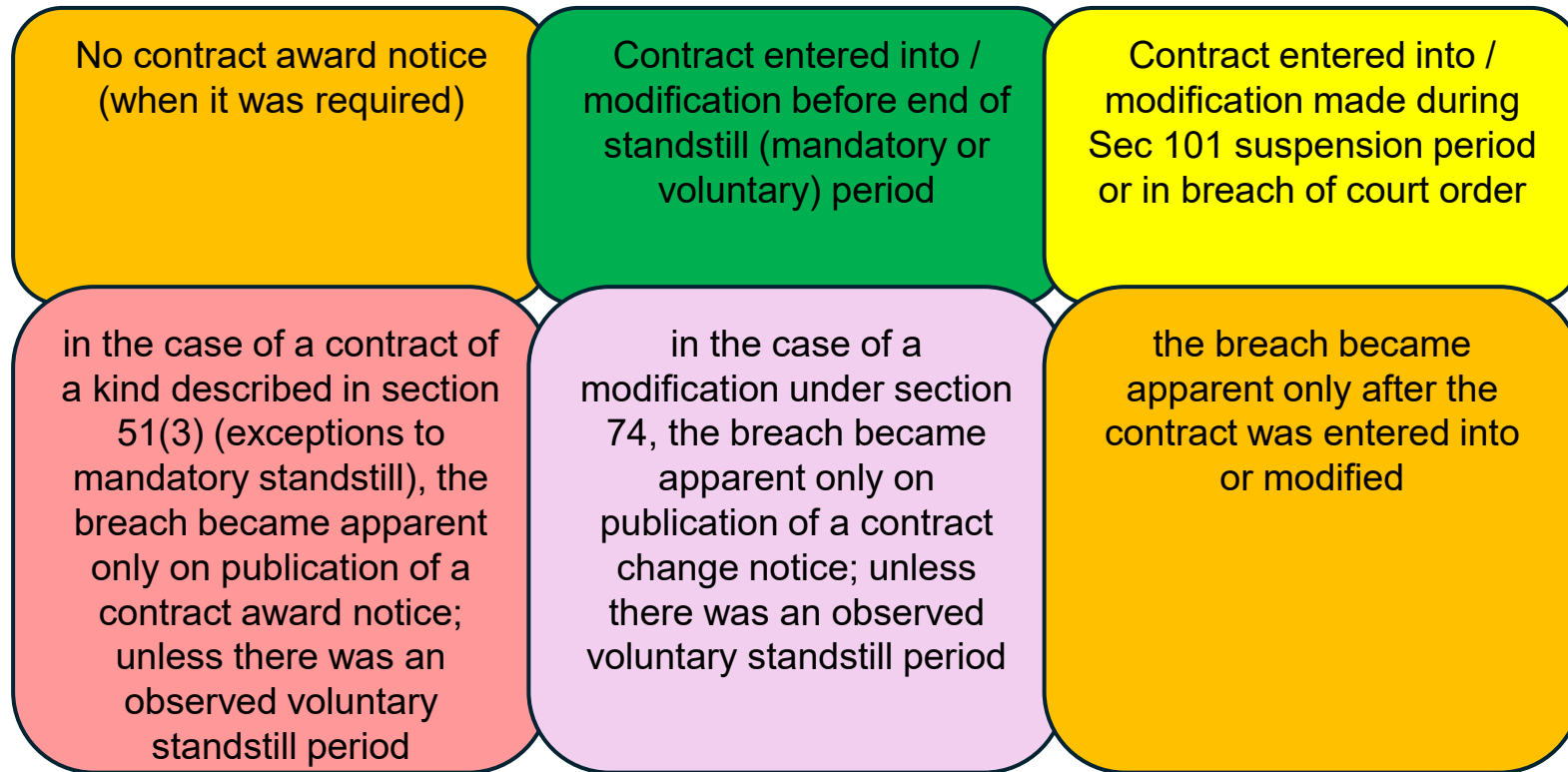
- set aside contract if Sec 105 applies
- Reduce contract term or scope
- award of damages

Post-contractual remedies: set aside conditions Sec 105

Reference

[Part 9](#)

Court **must** set aside the contract (unless there is overriding public interest not to) if:



References in this section to a notice not being published include references to a notice that, though published, did not provide accurate information in respect of the contract as entered into.

Time limits on claims Sec 106

Damages

The time frame in which aggrieved suppliers can bring a claim for damages remains **30 days** from when they first knew, or ought to have known about the circumstances giving rise to the claim.

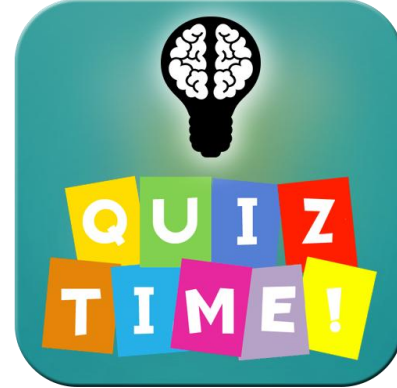
Set aside the contract

- Claim must be brought during standstill period.
- Where there has not been a standstill period, the period for seeking an order setting aside a contract remains the **earlier** of **30 days** from when the aggrieved supplier first knew, or ought to have known about the circumstances giving rise to the claim or **6 months** from the day the contract was entered into or modified.
- If the set-aside proceeding relates to **a modification** for which there was no standstill period or a contract where a section 53 contract details notice was not published, there is a longer period of **3 months** from knowledge or constructive knowledge but still not later than **6 months** from the contract or modification.

Proceedings are commenced when the Court issues a claim form, at the request of the supplier who is bringing the claim.

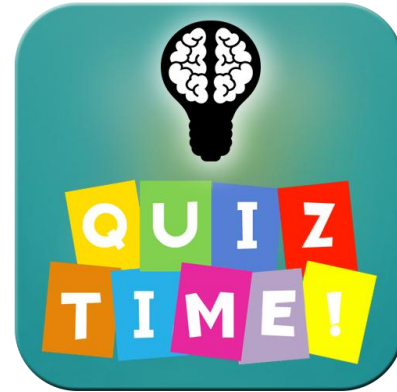
Time limits on claims Sec 106

1. A public contract is entered into on 2nd January. A contract details notice is not published as required by S.53. What is the deadline to commence specified set-aside proceedings?
2. A public contract is entered into on 2nd January. A contract details notice is not published as required by S.53. A supplier gains access to information on 22nd June that indicates that the contract may have been awarded to a supplier that did not submit the most advantageous tender and it may have grounds for a claim for breach of statutory duty.
 - a. How long does the supplier have to commence specified set-aside proceedings?
 - b. How long does the supplier have to claim damages?
3. A public contract is entered into on 2nd January. A contract details notice is not published as required by S.53. A supplier gains access to information on 19 January that indicates that the contract may have been awarded to a supplier that did not submit the most advantageous tender and it may have grounds for a claim for breach of statutory duty.
 - a. How long does the supplier have to commence specified set-aside proceedings?
 - b. How long does the supplier have to claim damages?



Time limits on claims Sec 106

1. A public contract is entered into on 2nd January. A contract details notice is not published as required by S.53. What is the deadline to commence specified set-aside proceedings? **Six months i.e. 1st July.**
2. A public contract is entered into on 2nd January. A contract details notice is not published as required by S.53. A supplier gains access to information on 22nd June that indicates that the contract may have been awarded to a supplier that did not submit the most advantageous tender and it may have grounds for a claim for breach of statutory duty.
 - a. How long does the supplier have to commence specified set-aside proceedings? **Earlier of 30 days from when they knew or six months i.e. 1st July. So only ten days (including the day they received the information).**
 - b. How long does the supplier have to claim damages? **The standard 30 day period to do so applies. i.e 30 days (including the day they received the information) from 22 June**
3. A public contract is entered into on 2nd January. A contract details notice is not published as required by S.53. A supplier gains access to information on 19 January that indicates that the contract may have been awarded to a supplier that did not submit the most advantageous tender and it may have grounds for a claim for breach of statutory duty.
 - a. How long does the supplier have to commence specified set-aside proceedings? **30 days (including the day they received the information) from 19th January**
 - b. How long does the supplier have to claim damages? **30 days (including the day they received the information) from 19th January**



PA2023 Guidance – Remedies v2

The old regulations (Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Utilities Contracts Regulations 2016 and The Defence and Security Public Contracts Regulations 2011) all require claimant economic operators to **serve a claim form** (and particulars of claim) on the contracting authority **within 7 days** of issuing the claim form.

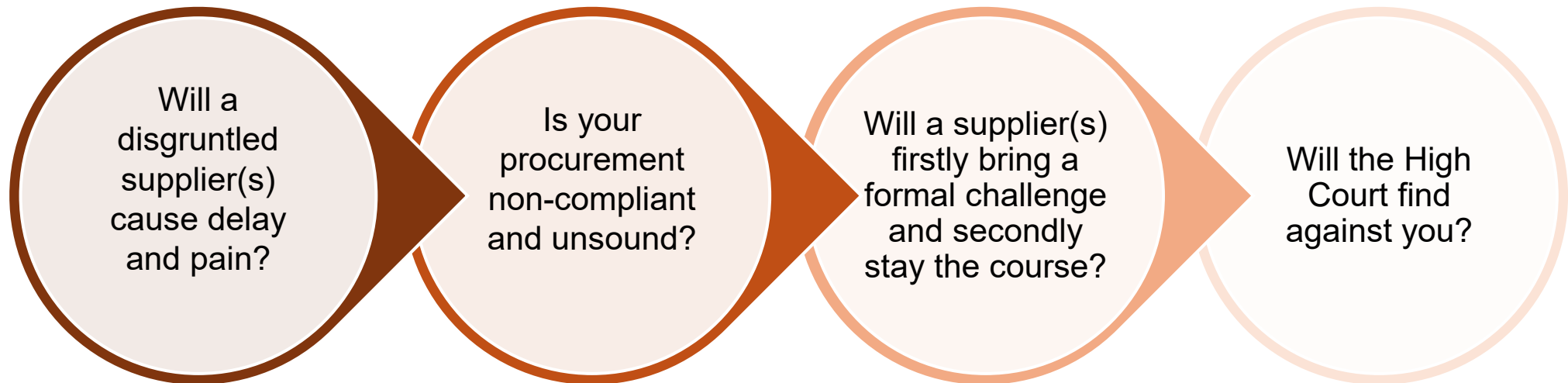
The Procurement Act 2023 contains no such provision and the amended guidance (issued in September 2024) on remedies confirms that the **default provisions of the Civil Procedure Rules will now apply** to service of the claim form in procurement challenges. This means that a claimant supplier (economic operator) must **serve the claim form on the contracting authority within 4 months** of issuing the claim form. Particulars of claim can be served with the claim form or up to 14 days after the service of the claim form, subject to the particulars of claim being served within the 4 month period following issuing the claim form.

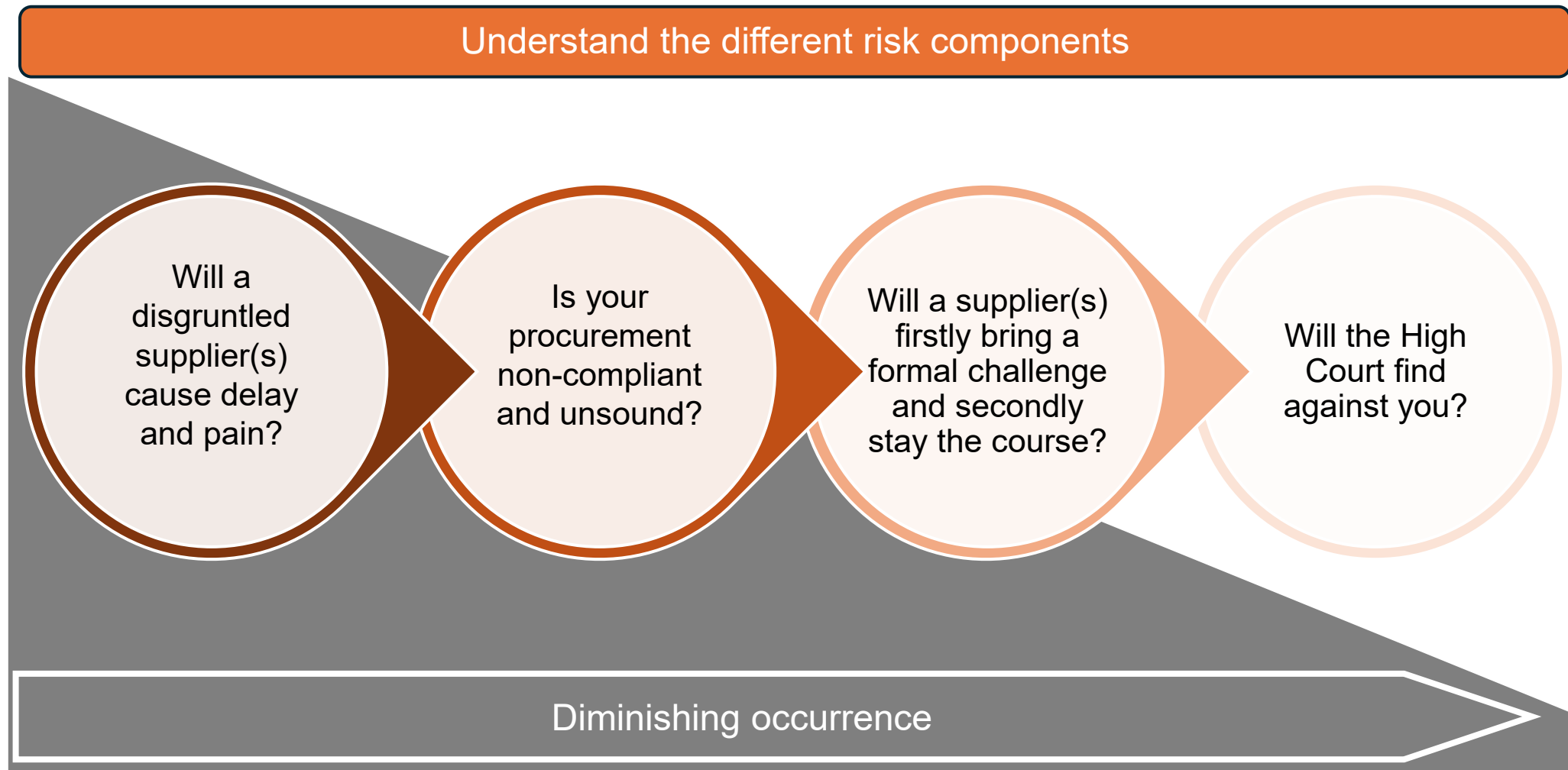
Under the Procurement Act 2023 if a claimant wishes to benefit from an automatic suspension, then it must **notify** the contracting authority during the standstill period (minimum 8 working days commencing on publishing contract award notice) that it has commenced court proceedings. However, **the Act doesn't require a claim form to be served during that standstill period** for a claimant to benefit from an automatic suspension.

Assessing the real risk of legal challenge to your procurement

- Suppliers face significant barriers when bringing a legal challenge
- Time limits are short and the financial cost can be excessive
- Suppliers are generally reluctant to bring formal challenge as they don't want to be placed in an adversarial position with their customers
- In the Annual Report of the Technology and Construction Court 2024 – 2025; 66 procurement claims were recorded for the year. This compares to 70 procurement cases in 2023 – 2024
- The grounds for most challenges raise issues of equal treatment, non-discrimination, transparency, proportionality, manifest error and irrational decisions
- The occurrence and therefore overall risk of a successful legal challenge resulting in an award of damages and / or contract set aside is low

Understand the different risk components





Strategies to reduce the risk of a successful challenge



Strategies to reduce the risk of a successful challenge

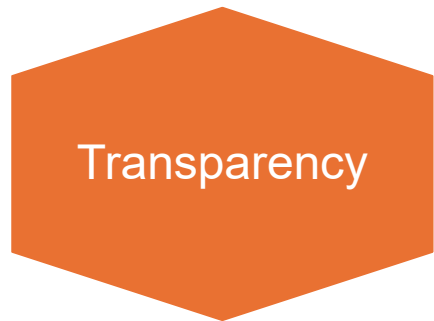


Deal with
complaints
early

- Don't ignore supplier complaints
- Engage with aggrieved suppliers' even if you think they have no valid grounds to challenge
- Your objective is to stop the aggrieved supplier commencing proceedings and the High Court issuing a claim form
- Be empathetic and responsive – cool the emotional temperature
- Share the content of any potential challenge with the correct internal stakeholders as legal advice may be required
- Considered contingencies e.g. what will be the service repercussions as a result of delays? What are the options available if the procurement stalls or isn't completed within a given time? Can extensions, if required during a rerun of the procurement, be accommodated by the existing supplier?

Remember that the Civil Procedure Rules now apply to service of the claim form in procurement challenges. This means that a claimant supplier now has 4 months within to serve the claim form on the contracting authority. The claimant supplier only has to **notify** the contracting authority that they have commenced proceedings, within the Procurement Act 2023 Part 9 time limits.

Strategies to reduce the risk of a successful challenge



- Publish all required notices, on the central digital platform
- Include comprehensive and accurate information in notices
- Publish notices at correct time
- If circumstances change update the notices, e.g. change in tender process, award criteria or assessment methodology
- Robust record keeping throughout the process and specifically about significant decisions
- **Risk Areas:**
 - Market Engagement Notices
 - Direct Award Transparency Notices
 - Change Notices
 - Convertible Contracts Change Notices
 - Modifying a S.19 competitive procedure under S.31
 - Refining award criteria
 - Framework call-off notices not published

Strategies to reduce the risk of a successful challenge

Reference

[Section 106](#)

Time limits for
claim

Section 106 - Time limits on claims

(1) A supplier must commence any **specified set-aside proceedings** before the **earlier** of—

(a) the end of the period of **30 days** beginning with the day on which the supplier first knew, or ought to have known, about the circumstances giving rise to the claim;

(b) the end of the period of **six months** beginning with the day the contract was entered into or modified.

(2) A supplier must commence **any other proceedings** under this Part before the end of the period of **30 days** beginning with the day on which the supplier first knew, or ought to have known, about the circumstances giving rise to the claim.



Publish notices and provide information to suppliers as early as possible..... Start that 30 day clock!

Strategies to reduce the risk of a successful challenge



Suppliers'
equal
opportunity

- Treating all suppliers the same unless a difference between the suppliers justifies different treatment
- Can you justify different treatment?
- Make all information available to all suppliers at the same time
- **Risk areas:**
 - Incumbent supplier advantage
 - Clarifications dealt with promptly and clearly and appropriate response(s) published to all participants at the same time
 - Undisclosed premarket engagement
 - Undisclosed award criteria

Strategies to reduce the risk of a successful challenge



- Observing a standstill period (mandatory or voluntary) reduces the chance that your contract will be set aside
- The standstill offers you a valuable opportunity to resolve complaints before you have entered into the new contract
- Be wary of extending the standstill, as this will extend suppliers time to bring a claim which will suspend contract award
- Calculated the correct period of standstill 'working days'
- The new statutory public interest test for lifting automatic suspension

Many suppliers don't understand how the standstill works – they often think that this is the only time allowed for them bring a claim

Strategies to reduce the risk of a successful challenge

- Conflict Assessments completed at each required stage
- Mitigation
- **Risk Areas:**
 - Undisclosed conflicts
 - Conflict identified but no real mitigation
 - Evaluators & moderator
 - Board members , Trustees and Senior Officers
 - Those not directly involved in procurement process, but still having influence
 - Contract managers
 - Desire to remove an incumbent supplier
 - Desire to exclude a specific supplier



Conflicts of
interest

Strategies to reduce the risk of a successful challenge



Clear
unambiguous
process &
records

- Ensure that your process, notices, award criteria, assessment methodology and records are clear, unambiguous and accurate.
- Classify your procurement correctly and are adhering to the correct obligations (contract type, contract value, above or below-threshold, applicable exemptions, etc)
- Design your award criteria and assessment methodology to differentiate between supplier's tenders. Supplier are more likely to feel aggrieved when the scores are close together.
- All evaluators and moderators need to be appropriately trained

Case study example of ambiguity:

There is no fixed number of Tenderers who may be awarded participation on any of the lots of the Framework Contract and there is no pre-determined score which will ensure success. The most economically advantageous Tender or Tenders which ensure capability, capacity, and sustainability of supply, will only be known after all bids have been evaluated in accordance with the requirements set down within the Procurement Documents.

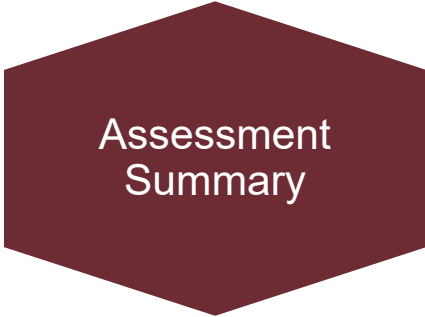
Strategies to reduce the risk of a successful challenge



Follow
published
procedure &
assessment
methodology

- Clearly describe your procurement process in your tender notice and associated tender documents
- Do exactly what you said you would do - follow the published procedure
- If you change your procedure, comply with S.31, update the tender notice and associated documents and reconsider s.54 time limits
- **Risk areas:**
 - Poor record keeping
 - Undisclosed award criteria
 - Evaluation
 - Consensus & moderation
 - Ambiguous marking scheme or award criteria
 - Overly complex procedure
 - Clarifications and errors in tender responses
 - Poor behaviour by evaluators & moderator
 - Framework requirements not followed for call-offs

Strategies to reduce the risk of a successful challenge



Assessment Summary

- Issuing Assessment Summaries is the most common trigger for suppliers to launch a challenge, so take care to get them as accurate and clear as possible
- There is no longer a requirement to include a direct comparison between the successful supplier's assessed tender and the unsuccessful supplier – instead, a contracting authority has to provide a copy of the information that it has provided to the successful supplier explaining how its tender was scored against each criteria
- increased level of detail gives disappointed suppliers more material to scrutinise and contest

Risk area

- Evaluation and moderation records are insufficient or inconsistent with the Assessment Summaries

It is helpful to publish details of contentious matters 30 days before issuing the Assessment Summaries. Suppliers are reluctant to challenge / complain whilst they believe they have a chance of winning the tender and are therefore more likely to wait until the Assessment Summaries confirm the position before acting. However, they will then be out of time!


Strategies to reduce the risk of a successful challenge



Debarment &
Excluded
Suppliers

- Suppliers are more likely to challenge at the point when they are excluded for the procurement process, so be careful to get it right
- Also danger of challenge from other suppliers, when you award contract to a supplier when you had discretion to exclude them
- Must clearly understand when you must / may exclude
- Document all judgements and decisions

Strategies to reduce the risk of a successful challenge



Sec 54
time limits

Set appropriate time limits which are equal to or exceed the minimum periods set out in the regulations

Risk areas:

- Reset time limits when updating notices. e.g. when updating a tender notice & associated documents under S.31

Strategies to reduce the risk of a successful challenge

Reference

[Section 16](#)

Undisclosed
Preliminary
Market
Engagement

Preliminary market engagement – Section 16

(3) In carrying out preliminary market engagement, a contracting authority must take steps to ensure that—

(a) suppliers participating in the preliminary market engagement are **not put at an unfair advantage**, and

(b) **competition** in relation to the award of the public contract is not otherwise **distorted**.

(4) Subsection (5) applies if a contracting authority considers that—

(a) a supplier's participation in preliminary market engagement has **put the supplier at an unfair advantage** in relation to the award of a public contract, and

(b) the advantage cannot be avoided.

(5) The contracting authority must in relation to the award—

(a) treat the supplier as an **excluded supplier** for the purpose of—

(i) assessing tenders under section 19 (competitive award), or

(ii) awarding a contract under section 41 or 43 (direct award), and

(b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.

Strategies to reduce the risk of a successful challenge

Reference

[Sec 44](#)
[Reg 26](#)

Issue
Transparency
Notice early

Transparency notices – Section 44

(1) Before awarding a contract under section 41 or 43 a contracting authority must publish a transparency notice.

(2) A “transparency notice” means a notice setting out—

(a) that a contracting authority intends to award a contract directly, and


(b) any other information specified in regulations under section 95. [Regulation 26]

Regulation 26 does not require the supplier to be identified at the time of publishing the Transparency Notice



Publish notices and provide information to suppliers as early as possible..... Start that 30 day clock!

Strategies to reduce the risk of a successful challenge



Contract
performance
notices

- Suppliers are likely to challenge both the accuracy and fairness of the information published in Contract Performance Notices, particularly where performance metrics are perceived as subjective or not reflective of contextual factors such as changes in project scope, authority delays, or unforeseen events
- You should ensure that performance reporting processes are fair, evidence-based, and consistently applied across contracts. Draft KPIs with clear definitions and agreed measurement methods, maintain contemporaneous records of performance discussions, and consider allowing suppliers to comment on draft performance notices before publication
- Remember if you meet the requirement of S.71 you must publish the notice!



A supplier might ask for KPI or Breach / Poor performance information to be withheld from publication under section 94 on the grounds that it is 'sensitive commercial information' because disclosure of the information "would be likely to prejudice the commercial interests of any person if it were published or otherwise disclosed". Is this allowable?




A supplier might ask for KPI or Breach / Poor performance information to be withheld from publication under section 94 on the grounds that it is 'sensitive commercial information' because disclosure of the information "would be likely to prejudice the commercial interests of any person if it were published or otherwise disclosed". Is this allowable?

It is for the contracting authority to determine based on the public interest test in Section 94. One of the reasons for publishing information about a breach or poor performance is to provide a public record of which suppliers are subject to the discretionary exclusion ground. In order for it to be withheld under section 94(1)(b) there must be an overriding public interest for doing so. There is a high bar for withholding such information due to it generally being in the public interest to release.

Much of the information is published anyway. Court judgements are regularly published. As the KPIs to be measured against must be published, publication of the supplier's performance against these KPIs in contract performance notices is unlikely to constitute 'sensitive commercial information. The published contract and details notice include the KPIs, and the termination notice will tell the public that the contract has come to an end. This information can still be requested by interested parties under the Freedom of Information Act 2000.

Strategies to reduce the risk of a successful challenge



Avoid S.105 set
aside conditions

Post-contractual remedies: set aside conditions Sec 105

1. Publish all required contract award notices
2. Observe the standstill periods
3. Do not enter into a contract or modified during a period of automatic suspension under section 101 or in breach of a court order
4. If a mandatory standstill is not required, observe a voluntary standstill
5. Publish change notices 30 days before making the modification and observe a voluntary standstill for modifications
6. Provide full complete and accurate information in notices

Final thoughts & close



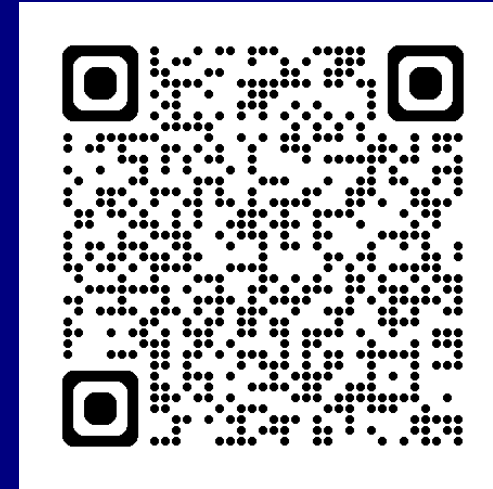
Walter Akers



Mohamed Hans

Thank you for
attending

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3.	Competitive Flexible Procedure Template – (Based on previous Competitive Procedure with Negotiation)
4.	Assessment Summary Template (successful/ unsuccessful)
5.	Conflicts Assessment
6.	Ethical Walls Agreement/ Non-Disclosure Agreement
7.	Section 98 Record
8.	Compendium Publishing PA23 Notices
9.	Standard Contract (Short version)
10.	Standard Contract Services (Long version)
11.	Standard Contract Goods & Services (Long version)
12.	PO Terms and Conditions
13.	Evaluation Chart
14.	Non-Disclosure Agreement (1-way)
15.	Non-Disclosure Agreement (2-way)
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