

# In House with you

## An in-house lawyer's guide to the Procurement Act 2023

### The landscape

**Stewart Morrison, Partner, and Head of Procurement and Supply Chain** at HCR Law, takes us through the key things that in-house counsel need to know about the Procurement Act 2023, which will now come into force on 24 February 2025.

Public procurement has been a hot topic in recent years following the publication of the 'Transforming Public Procurement' green paper in 2020. It remains at the top of the agenda in light of the changes to the regime which will be introduced by the Procurement Act 2023.



### Why is this important for in-house legal teams and general counsel?

At present, a bidder can prevent a contract from being entered outside of the 10-day standstill period so long as the contract has not been executed at the time the contracting authority is notified that a claim has been issued.

However, the new Act suggests that the automatic suspension will only apply if a claim is issued within the new eight-working-day standstill period. It will therefore be even more important to ensure that any potential procurement challenges are dealt with promptly.

The introduction of KPIs is important as it means that winning a public contract will often not be the end of a story. Rather, for contracts with an estimated value of more than £5m, suppliers will be assessed on a yearly basis against certain KPIs in respect of which reports will be published. There will therefore be greater oversight and scrutiny of the performance of public contracts.

The debarment list will be a publicly available list of certain suppliers who have been excluded from public contracts, by virtue of either a discretionary or mandatory exclusion ground. In the context of the introduction of KPIs, it is notable that one of the discretionary exclusion grounds applies where a supplier has not performed a public contract to the satisfaction of the relevant authority.



## What should in-house legal teams be doing to prepare?

Ahead of the commencement of the Procurement Act in February 2025, in-house legal teams should be familiarising themselves with the new legislation and associated guidance which has been published by the government. The Cabinet Office has also produced a series of 'Knowledge Drops' providing guidance on the Act which can be watched online.



## Five key activities in-house legal teams should undertake when bidding for public contracts:

1. Be alive to the limitation period in respect of public procurement challenges which is 30 days from when knowledge of the grounds for challenge arose. Grounds for challenge can arise before the determination of the procurement, and proceedings may need to be issued whilst the procurement is still ongoing
2. If using sub-contractors to perform the contract, or part of it, make sure that they are not on the debarment list
3. If applicable, before tendering, review the KPIs against which you will be assessed if your tender is successful. This is to ensure that you will not run into difficulties when delivering the contract
4. Be mindful of the very short timescale within which a challenge must be made to a contract award and seek external advice as soon as possible if contemplating legal action
5. Be very careful to comply with all the timescales and requirements of the Invitation to Tender as small errors can have significant consequences.

## Contributors to this piece

We would be more than happy to assist by advising on any specific element of the new legislation and to provide training in this regard. Please contact Stewart Morrison.



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