

# UK procurement bill: pursuing simple and accountable procurement

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The UK is pressing ahead with a reform to its government procurement laws that will diverge from the harmonized EU procurement regime that applied in the UK pre-Brexit. The proposals are intended to create a more transparent approach.

Whether a different but simplified process is a casualty of Brexit or a benefit depends on your perspective.

In 2020, the UK government consulted on a plan to reform public procurement after Brexit and the results of that consultation led to the Procurement Bill<sup>1</sup> (the “Bill”) that is currently progressing through the legislative process in the UK Parliament.

The aim of the Bill is to simplify, streamline, and bring transparency to the UK procurement framework by replacing the current four main procurement regulations with a single Act.

## What’s new?

While the new procurement law contains many familiar aspects from the current UK regime, there are also some significant differences.

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The key changes include:

- **Replacing the existing five competitive tendering processes with two new processes.** The first new option is a single stage tendering process without restrictions on who can submit tenders, and the second option will constitute any other competitive tendering procedures that the contracting authority considers appropriate. While option two lets authorities design more bespoke tendering processes, it also runs the risk of allowing tendering processes to become more

complex and inconsistent, and therefore also more time-consuming and expensive. Under the current EU-derived procurement regime, authorities have less flexibility to design their own bid process, but bidders have more certainty as to the type of process that they will need to follow.

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- **Giving authorities more power to exclude suppliers from procurement.** For example, authorities will be able to exclude suppliers for prior poor performance (including failure to meet KPIs) and, in certain circumstances (such as where a supplier has breached the contract and their performance was unsatisfactory), authorities may need to publish a report about contract performance.
- **Allowing debarment.** The UK government has long hankered after a way to debar certain bidders as a way of punishing government contractors for past prior performance on other projects — but that would have been incompatible with EU law. Freed by Brexit, the Bill provides for a new central list of debarred suppliers that will be compiled through contracting authorities giving notification to the relevant Minister, and Ministers may also have powers to launch investigations into whether a supplier should be excluded from bidding on UK government contracts.
- **Increasing transparency to allow for more scrutinization of procurement decisions.** For example, authorities must publish notices and other information at various stages of the procurement process, including details about a supplier’s KPI performance, payments under public contracts, and evaluations of unsuccessful bidders. Furthermore, after a contract valued at over £2 million has been awarded, a copy of the contract must be published.

- **Creating new procurement objectives.** Contracting authorities must bear in mind new objectives when awarding contracts, such as delivering value for money, maximizing public benefit, and acting with integrity.
- **Implementing new rules on direct awards and contract modification.** For instance, before making a direct award, contracting authorities must determine whether a supplier is an excluded supplier, and they can only make direct awards to excluded suppliers in narrow circumstances (e.g., where there is an overriding public interest to do so). Also, a contract can be modified where its purpose could otherwise be achieved through a direct award, and new notification obligations may be triggered upon modification.
- **Altering remedies for suppliers.** Changes to the rules on automatic suspension include reducing the standstill period from ten to eight days (which will make bid protests harder) and introducing a new test for lifting automatic suspensions. The ineffectiveness remedy will be replaced with a new set aside remedy, which is similar to its predecessor but entails new set-aside conditions.

### What's next?

The Bill is currently under review in the House of Commons and is expected to become law during the course of 2023.

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However, contracting authorities and other affected organizations will likely have until early 2024 to comply with these changes, because the Bill will come into force at least six months after it becomes law. Any procurements started before the Bill comes into force will continue to be governed under the current procurement regime.

### Notes

<sup>1</sup> <https://bit.ly/3ZRKSHL>

### About the author



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