

50 Degrees.

Procurement Act: Impact on
the Employability Sector
ERSA February 2024

An overview of 50 Degrees

50 Degrees.

ABOUT US



Operating in the UK,
Ireland, Canada &
the Middle East



25 strong team



Public, Private and VCS
Sectors



Offices in Sheffield
London & Bristol

SECTOR COVERAGE



Education and
Skills



Justice



Immigration



Facilities
Management

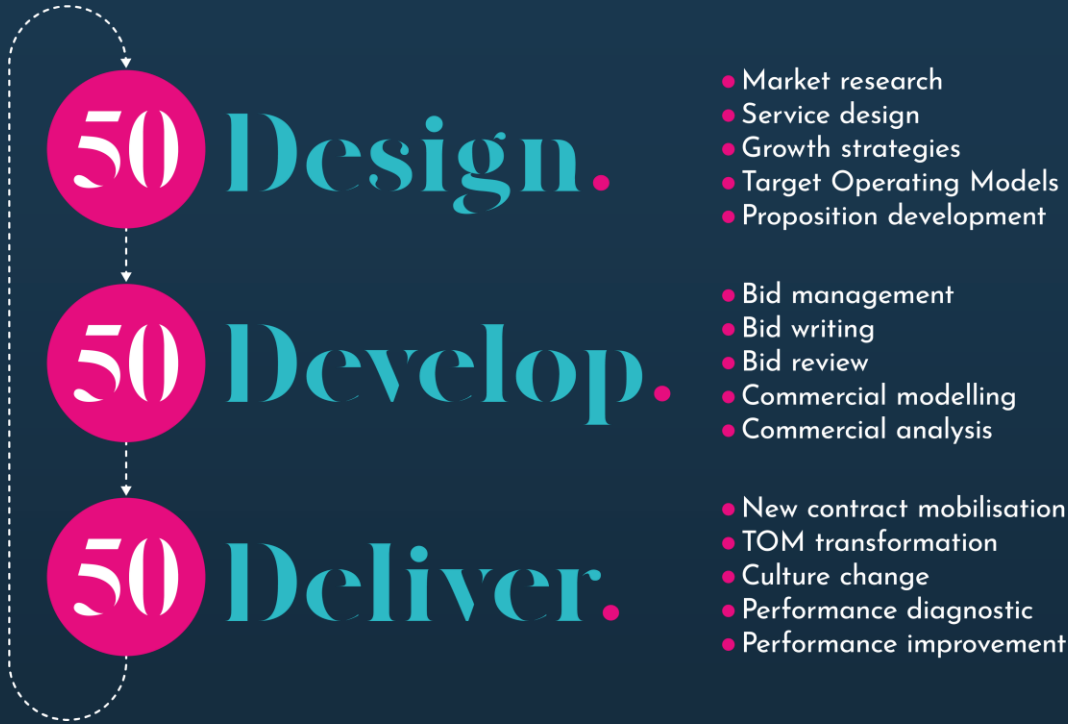


Welfare and
Employment



Health care &
local government

What we do to enable better growth



Transferable expertise and experience

Recent wins



- 🏆 Service System Manager prime contracts - \$500m (Ontario)
- 🏆 Rehabilitation Program for Veterans Leaving the Armed Forces (Veteran Affairs Canada) - \$500m
- 🏆 Restart (DWP, UK) x2 - £600m
- 🏆 National Employment Service (Ireland) - E40m
- 🏆 HMP Lowdham Grange and HMP Altcourse - £600m (prison operations)
- 🏆 Advisory work GM & Lancashire Combined Authorities
- 🏆 Young Offenders Institutes - Youth Education Services - £30m
- 🏆 HMP Parc Education Services - £30m

Relevant experience



- ✓ Social Value
- ✓ Performance Management Systems
- ✓ Scottish procurement (Justice sector)
- ✓ Health & Wellbeing
- ✓ Sustainability and Net Zero
- ✓ Quality Management Systems
- ✓ Secure Services
- ✓ Patient Transport

Overview & Context

- Over **£300 billion** (one in every three pounds) is spent on public procurement in the UK. Outsourced services impact our everyday lives
- UK procurement legislation was previously perceived to be heavily regulated through EU law with **limited flexibility** to incorporate new or localised approaches
- The Government used Brexit as a catalyst to reset public sector procurement strategy (the new Procurement Act will not apply to Scotland)
- The new Procurement Act is designed to **streamline the process, modernise procedures, increase transparency** and provide greater value for money
- The legislative foundations of the Procurement Act are not new and build upon the **previous EU legislative framework**
- Legislation is based upon **four overarching principles** which are value for money, maximalising public benefit, transparency and acting with integrity

Summary of Key Changes

Strategic Policy Intent

- **Change of language:** Contracts now awarded based on Most Advantageous Tender (MAT) as opposed to Most Economically Advantageous Tender (MEAT). This signals a change in the principles underpinning the assessment methodology
- **Transparency:** Contracting Authorities now required to publish contract change notices throughout the duration of the contract
- **Procedural Changes:** Simplifying the routes to market and providing greater flexibility. Streamlining the procurement procedures from seven to three
- **Provider Exclusion:** Poor performance where the supplier has not improved their performance despite been given a structured framework to do so ((this is extended to their supply chain)
- **Performance Indicators:** Contracting Authorities will have to publish a minimum of three Key Performance Indicators for contracts worth over £5 million per year
- **New Digital Platform** to publish contracts and amendments throughout the contract lifecycle

Routes to Market: Changes to Procedures

The current procurement system provides a maximum of seven different procedures. This will be replaced with three specific routes to market

- **Single Stage procedure** without any restrictions permits any organisation to submit a tender
- **Competitive flexible procedure** provides greater autonomy for the contracting authority to choose and design their own procedure (multi-staged process). Contracts can be awarded to the Most Advantageous Contract (MAT)
- **Direct Awards to organisations (eight categories of award)** including market testing/piloting, single suppliers, user choice contracts, no suitable contracts received under a competitive procedure. New requirement for a transparency notice to be published



Routes to Market: Changes to Procedures

- **Frameworks:** Introduction of new “open frameworks” which enables contracting authorities to add new suppliers
- **Dynamic Markets:** Commonly defined as Dynamic Purchasing Systems (DPS) can now be applied to any type of purchase and not purely on “commonly used purchases”

Market Implications

- Potential for Contracting Authorities to reshape the design and structure of procurements to reflect wider strategic objectives
 - Adjust scoring ratios and weightings
 - Greater emphasis upon specific criteria (social value and place shaping initiatives)
 - More use of commercial dialogue and presentations (extra due diligence)
- **Appetite and ambition** will play a future role in determining how much the procurement landscape will change
- Different capacity and capabilities within central and local Government commercial teams
- **Higher cost** associated with greater due diligence and more rigorous procurement processes (staffing resources and legal fees)
- More utilisation of Frameworks and DPS to procure services

Key Performance Indicators

Key Performance Indicators

- Before entering into a public contract with an estimated value of £5 million the contracting authority must set out and publish **at least three KPIs** (linked to contract/service metrics)
- Flexibility to implement **contract modifications** but only if they do not fundamentally change the overall nature of the contract
- Publish contract amendments that impact **performance and value** (this is likely to relate directly to poor performance)
- Develop a **robust contract management framework** to monitor and review KPIs to ensure suppliers are given the opportunity to address under performance

Openness & Transparency: Award Procedures

- Contracting Authorities will need to publish pipeline notices for contracts worth **over £2 million**
- Articulate the terms and conditions for potential exclusion
- Publish direct awards. There is a **high likelihood of potential challenges** especially with regards to higher value Local Government contracts

Market Implications

- **Protracted procurement** and commercial negotiation process to establish and agree KPIs
- **Potential for disputes and litigation** especially around the sharing and publication of KPIs and wider performance information and data
- **Requirement to provide contract references** or performance certificates to highlight/verify previous contract credentials
- **More contract management tools** available to regulate performance and terminate contracts
- Opportunity for providers to **forecast future resourcing** and potential commercial income

Market Exclusion & Implications

Reasons for Exclusion

- Serious contractual misconduct (fraud, gross negligence)
- Poor performance (not meeting the three specific KPIs)
- Public debarment list for serious cases of misconduct (stops providers for bidding for future Government contracts)

Implications

- Dependent on the appetite of the contracting body to implement the new changes
- In the longer-term commissioners are likely to become more confident and bolder once the new Procurement Act has been embedded and legislative parameters established



Implications for the Employability Sector

Central Government Contracts

- Continued use of frameworks to select providers (CAERHS)
- Greater due diligence during the selection process to review assumptions made in bid submission (presentations/competitive dialogue)
- Realignment of scoring weightings. Focus on performance (Target Operating Model), Community Benefit (Social Value) and Local Knowledge (Place Shaped Strategies) and Service Integration

The Emergence of Social Value

- Minimum 10% of quality score
- Time bound, descriptive and measurable commitments
- Specific Missions: [2025-02-11 PPN 002 The social value model \(2\).docx](#)
 - **Kickstart Economic Growth** (Fair Work, Skills for Growth, Resilient and Innovative Supply Chains)
 - **Make Britain a clean energy superpower** (Influence staff and suppliers, sustainable procurement)
 - **Take our Streets Back** (community cohesion, awareness raising and action.)
 - **Break down barriers to opportunity:** Employment and training for those who face barriers to employment
 - **Build an NHS fit for the future:** Increasing productivity through physical and mental wellbeing: in the supply chain and communities in the relevant area



Impact on Sector

- Always underestimated and often the difference between winning and losing a tender opportunity
- Developing meaningful, measurable and impactful commitments that can be delivered within future operating structures
- Suppliers often tend to overcommit and lack the tools to measure effectiveness
- Needs to be buy in at every level of the organisation. Commissioners do monitor and evaluate commitments
- Needs to reflect key outputs from PNN Social Value Model
- This is an area that commissioners scrutinise carefully and ask for clarification during the procurement process

New Digital Platform (Find a Tender)

- Under the Act, procurement notices (in theory), will be published by all contracting authorities in one place on the central digital platform (the existing Find a Tender)
- The Government Commercial Function has published a useful video [A guide for everyone: An overview of the central digital platform, an enhanced Find a Tender service](#)
- Suppliers will be **required to submit core organisational information** as required by the regulations to participate in a procurement competition
- This route to market **will become more mainstreamed** over time and used to publish pipeline notices, invitation to tenders, award notice, performance information and contract termination
- **We would recommend that all suppliers register on Find a Tender**

Public Procurement Notes (PPN)

- Very useful for detailed updates and for turning policy in to practice
[Procurement policy notes - GOV.UK](#)
- **The Procurement Act will evolve** and PNN's will be used to clarify information, provide guidance and practical detail
- PNN's have already been used to update the market on the use of AI and social value
- Given the dynamic nature of the Procurement Act **we would recommend** that suppliers keep abreast of all updates
- We would envisage that social value, performance transparency, AI and route to market will be key areas where further guidance and information will be published



Implications for the Employability Sector

Local Government

- Very **mixed landscape** (different routes to market)
- No standard approach to procurement and **subject to local approaches and strategies**
- Differing levels of **capacity, capability and resources** between Combined/Local Authorities (staffing & programme management)
- **Higher levels of investment** to engage commissioners and demonstrate knowledge and understanding of local areas
- Greater understanding of "**place-based**" solutions

Integrated Care Boards Impact on Local Procurements

- Closer collaboration between **DWP, NHS and Local Government** through policy development, service design and co-commissioning of services (Place based approach to health services)
- Integrating care pathways across local geographies to **generate economies of scale** and value for money (through provider collaboratives)
- **The introduction of the Provider Selection Regime (PSR) in 2023 sets new rules for managing healthcare services in England**
- The PSR is designed to bring **greater flexibility, transparency** to the procurement of healthcare services and harness greater integration and the establishment of more localised collaborations

Overview of PSR

The PSR has introduced three provider selection processes. These are

• **Direct award processes** . Awarding contracts to providers when there is limited or no reason to seek to change from the existing provider; or to assess providers against one another, because:

- the existing provider is the only provider that can deliver the service
- Patient provider choice. Provider numbers not restricted by the authority
- Provider is satisfying contract, likely to satisfy the new contract to a sufficient standard, and contracting arrangements are not changing considerably

• **Most suitable provider process**. Awarding a contract to providers without running a competitive process, the relevant authority can identify the most suitable provider.

• **Competitive process**. This involves running a competitive process to award a contract.

Integrated Care Boards Impact on Local Procurements

- Recommendations: focus on **greater market engagement** (beyond the local supplier base) prior to awarding any contracts
- The PSR will fundamentally change the way services are delivered. E.g., a **move away from tender-based market mechanisms** and commissioners will potentially use other mechanisms to understand the provider landscape and market capacity to deliver services

Integrated Care Systems: Commissioned Health Services

The structure and role of ICS varies across different geographies. There is no clearly defined legislation or policy blueprint that outlines what their functional roles should be

- The role of ICS will evolve over time but in the interim period (over the next 12 months) the main priority is to **embed the ICS structure** into local areas
- ICS within Combined Authorities (GMCA, WMCA and SYCA) have a **more mature approach to governance** and developing strategy due to stronger relationships forged through the devolution process
- The procurement of contracts will not radically change over the next 12-months but Combined Authorities are leading the way in **implementing the PSR**. E.g., GMCA are developing call off frameworks to select providers to deliver services

Current Market Trends

- **Greater use of direct awards** when commissioning work especially around specialist health service provision
- **Maintaining strong operational performance** throughout the duration of the contract is essential
- Commissioners are looking for providers to **demonstrate local knowledge** and experience
- **Prior commissioner engagement** very important when qualifying local opportunities

Impact of Artificial Intelligence (PPN 02/24)

- The Procurement Act will be used as a mechanism to regulate use
- AI will become part of **wider due diligence process** and Government Departments and larger Combined Authorities will conduct greater scrutiny of bids
- Commissioners **are looking for Providers to conduct due diligence** across their own submissions hence the reason for asking about use during AI to draft submissions
- Majority of commissioners **monitoring use and evaluating impact** on market
- Score bids using a **wider range of assessments** (presentations, site visits, stakeholder engagement) to establish robustness
- Attach a **greater weighting to specific questions** (Social Value, local knowledge & understanding, operating model)

Impact of Government

- Strong support for the underlying principles and objectives
- Emphasis upon “make, buy, and sell more in Britain”
- Focus on opening the market to SMEs. Potential to manage performance more closely
- Development of place-based solutions through “deeper devolution”. For example, focus on economic inactivity and reform of the skills system
- More autonomy for Combined/Local Authorities to award contracts through direct awards, framework agreements etc
- Social value will be an integral part of the procurement process