



Contract management and modification under the Procurement Act 2023

**Efficiency North event
3rd December 2025**

**Kieran McGaughey,
Consultant Solicitor**


(Re)introduction...



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(Re)introduction...



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Agenda

- Scene setting: why is contract management important? What has changed under the Act?
- Key Performance Indicators (“KPIs”)
- Contract performance notices
- Modifying contracts
- Contract change notices
- Contract termination notices
- Practical tips on contract management
- Audience Q and A



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Contract management - why does it matter?

- Enables you to monitor whether the supplier is complying with the contract terms (including the terms and conditions, but also the specification and their tender response)
- Managing that performance then helps ensure the outcomes in your specification are achieved. You can address small issues before they become big issues!
- Positive supplier relationship more likely to lead to positive outcomes for your authority

Contract management - why does it matter?

- Increases the chance of having early sight of problems (supplier in financial distress etc)
- Enables you to realise when changes are needed to the contract (*certain rules about this - see later*)
- New legal requirements under the Procurement Act regarding transparency (*which we will look at today*)

Contract management - why does it matter?

- Risk of legal challenge, reputational damage etc if not following the rules. See for instance previously published Value for Money report re Middlesbrough Council

Council failed to comply with procurement law, external auditors say

July 29, 2024

"This contract was also subsequently extended, however no formal approval for this extension was documented."

Where a contract is awarded under the reduced requirements of The Public Contracts Regulations 2015 (commonly referred to as being under the 'Light Touch Regime'), The Public Contracts Regulations 2015 place restrictions on the subsequent modifications which may be made to the contract whilst remaining within the scope of the reduced requirements. Such modifications may include extension of the original contract or a change in the scope of the contract. The Council has been unable to demonstrate that it has controls in place to monitor and assess whether modifications to its contracts made after the initial award fall within these criteria, therefore we consider there to be an increased risk that the Council may have other contract arrangements which are not in accordance with The Public Contracts Regulations 2015.

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Contract management - why does it matter?

- See also Best Value report re Birmingham City Council

Procurement Capability

49. BCC's procurement function comprises a central category management team with procurement professionals federated across the directorates. As a result, the operating model lacks focus and Council-wide strategic control. There is limited consistency in procurement processes and practices across BCC. Procurement governance and risk management is weak.
50. The intervention has highlighted the lack of procurement/contract data, weak governance of disparate procurement activity giving rise to urgent contract extensions, routine waivers, failed procurements and missed opportunities to drive cost efficiencies. BCC is under-utilising its procurement function/approach and missing opportunities to drive cost efficiencies and service improvements. BCC's procurement pipeline lacks clarity creating a re-active, rushed approach to procurement.

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Transitional arrangements...

- Procurements commenced under current rules
- Contracts awarded under current rules

will continue to be governed by **current rules**

- Procurements commenced under the new rules
- Contracts awarded under the new rules

will be governed by **new rules**

Transitional arrangements - worked example

- **Manchester City Council awards £10 million software contract**
- **Awarded in 2022 with a 5-year contract term**
- **In January 2026, Council wants to add additional user licenses which would see contract value increase by £2 million.**
- **The change would need considered against Regulation 72 PCR 2015, **not** the rules in the Procurement Act**

Also....

- Remember: the Procurement Act's rules on **modifications** only apply to **above** threshold contracts
- So for example, those rules won't apply where you are:
Modifying a £100k goods contract to be a £120k goods contract, or
Modifying a £ 2.5 million works contract to be a £ 3 million works contract
- But.. Don't forget your *internal* rules, for **all** contracts

The Procurement Act – what’s changing?

- Change to how procurement is defined:

Section 1, “Key Definitions”

*“procurement” means the award, entry into and **management** of a contract”*

- New rules on publishing contracts
- New KPI setting obligations for contracts over £5 million
- New contract performance notices
- Increased requirement for contract change notices
- New contract termination notices

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Section 12 objectives under the Procurement Act

Objective	Legal obligation
Same treatment	<i>“must”</i>
Delivering value for money	<i>“must have regard to the importance of”</i>
Maximising public benefit	<i>“must have regard to the importance of”</i>
Sharing information for the purpose of allowing suppliers and others to understand the authority’s procurement policies and decisions	<i>“must have regard to the importance of”</i>
Acting, and being seen to act, with integrity	<i>“must have regard to the importance of”</i>
SME barriers to participation	<i>“must have regard to” (and “consider” whether can be removed or reduced)</i>
National Procurement Policy Statement	<i>“must have regard to”</i>

Relevant guidance

Manage

Working with suppliers and managing the contract to ensure successful achievement of the contractual outcomes

- Electronic Invoicing and Payment (Published)
- Payments Compliance Notices (Published)
- Contract Performance Notices (Published)
- Contract Modifications (Published)
- Contract Termination (Published)
- Key Performance Indicators (Published)

[Link: Procurement Act 2023 guidance documents - Manage phase - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

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New obligations around publishing contracts

- Contracts with an estimated value of more than £5 million **must** be published
- Within 90 days from date of entry (180 days if light touch contract)



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Key performance indicators (KPIs)

“Before entering into a public contract with an estimated value of more than £5 million” the Authority **must** set and publish at least three key performance indicators (KPIs) in respect of the contract.

Does not apply in the following scenarios:

- frameworks
- concessions and utilities
- **light touch contracts**
- *“if the contracting authority considers that the supplier’s performance under the contract could not appropriately be assessed by reference to key performance indicators”*

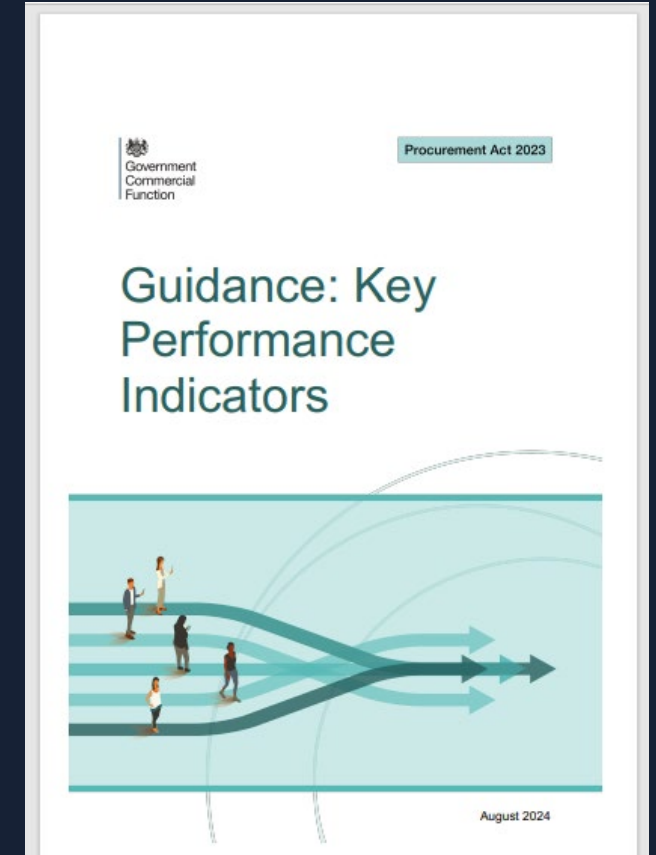


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Key performance indicators (KPIs)

Key take-aways from the guidance:

- Where the rules apply an authority must set **at least 3** KPIs
- **All** KPIs set under the rules must be published (in England this will be achieved by publishing the contract, noting contracts above £5 million must be published)
- The contract details notice must specify **3** KPIs (*a fixed 3, not “at least” 3*)
- The **3** KPIs selected must be those *“most material to performance of the contract obligations at the time the contract details notice is published”*
- Where there are *different* KPIs which are *“most material to performance over the lifetime of the contract”* those must also be published in the contract details notice

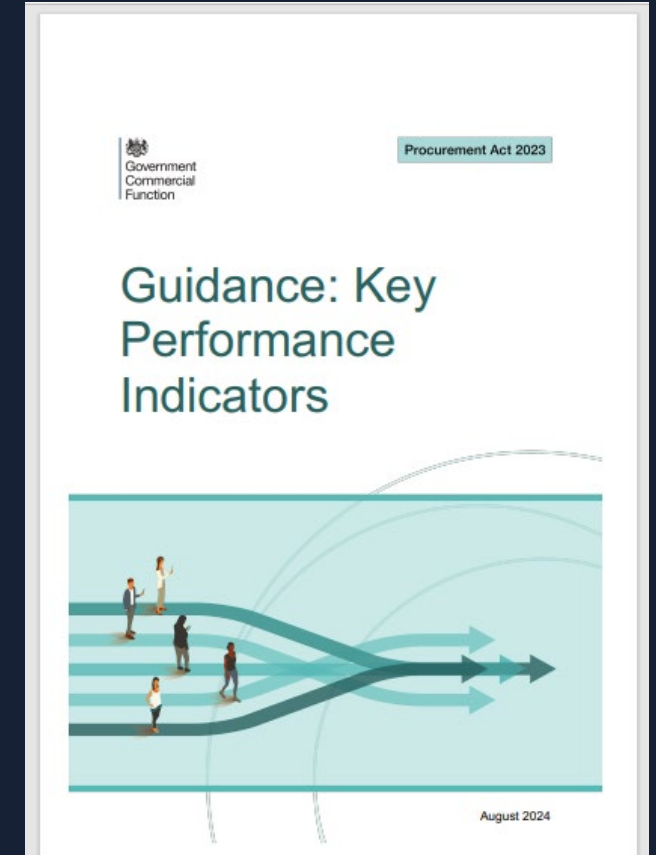


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Key performance indicators (KPIs)

Key take-aways from the guidance:

- Performance must be assessed against **all** KPIs
- However, the contract performance notice (used to publish performance against KPIs) will only deal with **3** KPIs
- Those **3** KPIs can change over time - they will be the KPIs *"most relevant to performance of the contract obligations at the time that the contract performance notice is published"*
- The guidance provides an example of where KPIs may not be appropriate as where the contract is for a one-off delivery of or off-the-shelf goods



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Contract performance notices under the Procurement Act

What is a contract performance notice? The guidance says:

1. A contract performance notice is a notice that is used to publish the information required to be published under section 71 of the Procurement Act 2023 (Act). The contract performance notice fulfils two functions:
 - a. recording the performance of suppliers against key performance indicators (KPIs) where section 52(1) of the Act applies; and
 - b. recording information relating to particular breaches or failure to perform a public contract *except* where the breach results in a contract being terminated in full (in which case a contract termination notice must be published (see paragraph 27 below)).

Contract performance notices under the Procurement Act

	Scenario 1: To assess performance against KPIs	Scenario 2: Breach resulting in partial termination, damages or settlement	Scenario 3: Supplier not performing to the authority's satisfaction and failure to improve
What contracts are caught?	Contracts above £5 million where KPI rules apply	Above threshold contracts	Above threshold contracts
When does the notice need published?	At least once a year, and upon termination	Within 30 days	Within 30 days
Does it apply to light touch contracts?	No (no obligation to set KPIs in the first place under light touch contracts)	No	No

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Contract performance against KPIs – dirty laundry ahead?

In respect of KPIs the available rankings are:

Rating	Description
Good	Performance is meeting or exceeding the KPI
Approaching target	Performance is close to meeting the KPI
Requires improvement	Performance is below the KPI
Inadequate	Performance is significantly below the KPI
Other	Performance cannot be described as good, approaching target, requires improvement or inadequate



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Positive KPIs



Negative KPIs

- Happy staff/contract manager
- Happy contractor
- Happy stakeholders

- Unhappy staff/contract manager
- Unhappy contractor
- Unhappy stakeholders?
- Media attention?
- Further resources needed to manage the fall out

Contract performance notices for KPIs: top tips!

- Set KPIs which are capable of objective measurement
- Specify in the contract which level of performance will constitute a rating of “good” “approaching target” “requires improvement” etc.
- Flag the existence of KPIs in the tender documents – don’t just bury them in a contract schedule
- Inform bidders of the new publication rules within your tender documents
- Monitor performance **from the outset** – by month 11 or 12 it’s often too late to remedy matters in time for a positive rating
- Send the supplier regular notifications detailing KPI performance

Scenario 1:

To assess performance against KPIs

Contract performance notices for breach: top tips!

- Where matters are going downhill, considering reminding the contractor that termination/damages/settlement would see the publication of a notice
- Under the new rules, the *threat* of termination may also become an even stronger tool to compel contractors to perform better
- Keep records of the breach (see Regulation 39 of the Procurement Regulations 2024) as there is lots of information needing published in the notice – including the breach’s impact or consequences, how long it has been going on for etc.
- Aim to avoid ending up here in the first place – tightly monitor performance from the outset.

Scenario 2:

Breach resulting in partial termination, damages or settlement

Contract performance notices where not satisfied: top tips!

- Very similar considerations to publication for breach – see previous slide
- I'd recommend you tie your "satisfaction" to specifics. **Why** are you not satisfied?
Breach of contractual clauses?
Breach of specification?
- Try to make it as objective as possible



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Contract modifications under the Procurement Act

- **Regulation 72 PCR 2015** replaced with new rules - see **Section 74** and **Schedule 8 of the Act**
- **Broadly** similar rules. Possibly **slightly** more flexibility to make changes....
- **Three** types of change allowed:
 1. a **permitted** modification under Schedule 8; or
 2. a **“not substantial”** modification; or
 3. a **below-threshold** modification



Making changes to contracts

Schedule 8 **permitted modifications** include:

- Provided for in the contract
- Urgency and protection of life
- Unforeseen circumstances (*must not increase value by >50%*)
- Materialisation of a known risk (*must not increase value by >50%*)
- Additional goods/works/services where different supplier would cause issues re difference/incompatibility (*same >50% limit as above*)
- Transfer on corporate restructuring

Making changes to contracts

Materialisation of a **known risk**

- Risk, and possibility of modification, must have been set out in the tender notice (or transparency notice)
- Risk must be one that could not be addressed in the original contract
- It must have materialised through no act/omission of authority or supplier
- Authority must consider contract cannot be performed to their satisfaction because the risk has materialised
- Modification must go no further than necessary to remedy that fact
- Must not be in the public interest to award a new contract instead
- Modification subject to 50% cap in increase to contract value (unless a utilities contract)

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Making changes to contracts

Non-substantial modifications:

- increase or decrease the term of the contract by 10 per cent or less of the maximum term provided for on award; and
- don't materially change the scope of the contract (i.e. don't involve the supply of goods, services or works of a kind not already provided for in the contract); and
- don't materially change the economic balance of the contract in favour of the supplier.

e.g. a 5-year contract is modified to add on 5 additional months

Making changes to contracts

Below-threshold modifications:

- Don't increase or decrease estimated value by **>10%** (goods/services) or **>15%** works; **and**
- Have an aggregated value **less** than the threshold amount for the type of contract; **and**
- Do not materially change the scope of the contract (i.e. don't involve the supply of goods, services or works of a kind not already provided for in the contract); **and**
- Are not permitted modifications or “not substantial” modifications

e.g. a £1million software contract is modified to add another £100,000 of services

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Modifying light touch contracts

- No specific rules/limits for light touch modifications (apart from need to have regard to importance of section 12 “objectives”)
- Much greater flexibility than at present
- But remember audit trail to evidence consideration of the new objectives
- And don't forget your own internal rules (for **any** modification, whether light touch or otherwise)

New contract change notice

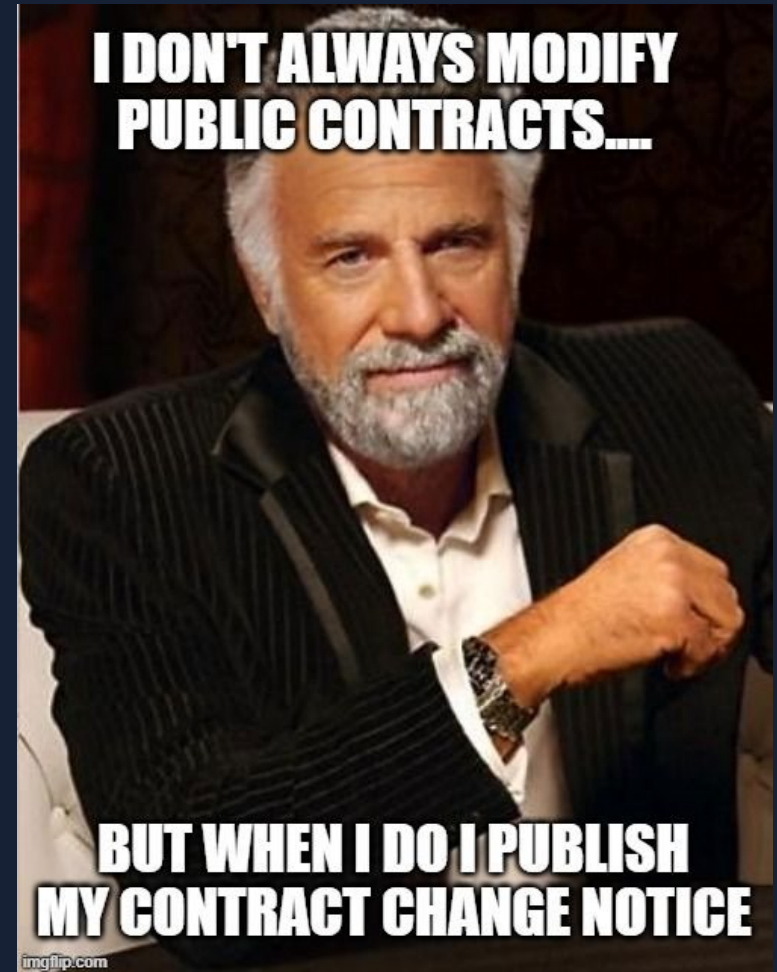
- New **Contract Change Notice** – **mandatory** when an above-threshold modification is made to a contract. No publication is required if the intended modification neither increases nor decreases the contract value by 10% or less (goods or services), or 15% or less (works).



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New contract change notice

- Notice must contain certain details, including **“an explanation of why”** the modification falls within one of the permitted types.
- Ensure appropriate level of detail in the notice (lessons from *Faraday* case?)
- Note the new obligation to publish the contract post-modification (for contracts >£5million) will heighten the risk of any failure to paint a full picture around the change.



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New contract change notice

- Must publish **before** making the change (not **after** as with Regulation 72 PCR 2015)
- **Voluntary** standstill period following publication of CCN
- Possible considerations in whether to have a voluntary standstill period:
 - (i) How quickly is the change needed?
 - (ii) What is the risk of challenge?
 - (iii) Do we want to flush out such risk before committing?
 - (iv) Protection against “set aside” (*see later*)



Worked example: contract performance notices

- In January 2026, Housing North, a contracting authority, award a works contract worth £3.2million
- In July 2026 they intend to amend the contract to add on another 20% of the value

Q. Is a contract change notice needed?

(a) **Yes**

(b) **No**

Worked example: contract modifications

- In January 2026 Housing North awards a contract under the light touch regime
- Total value over the contract term of £10 million
- Following an internal review of needs in summer 2026, Housing North are keen to make several amendments to the contract. These would see the contract value increase to £17million.

Question:

Is this permissible under the Procurement Act?

- Yes
- No

Breaking up is never easy.... The new contract termination notices

- Within 30 days of terminating a public contract, a contracting authority must publish a contract termination notice – **mandatory**
- New requirement under the Act
- Needed even where the contract has simply expired.... : (
- To include “the reasons for terminating” – more dirty laundry from earlier (!)



Remember conflicts of interest during the contract phase also...

- To recap from previous session, new **mandatory** “conflicts assessment” for conflicts of interest
- It must be (i) kept under review and (ii) revised as necessary
- When publishing contract change notice need to confirm conflicts assessment has been prepared and revised



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Remember conflicts of interest during the contract phase also...

Guidance also says to update conflicts assessment when:

- (a) changes to personnel
- (b) changes to the contract (even if a contract change notice isn't required)

24. It is good practice for contracting authorities to set a time to audit their conflicts assessments to confirm they are up to date. In addition to a planned review, the conflicts assessment should be updated when there are key changes in personnel or the contract (for example, where a contract is amended and a contract change notice is not required). This is particularly relevant where, after the contract is entered into, the contracting authority reassigns the responsibility for the contract from a procurement team to a contract management or operations team.

Legal challenges to modifications

- General 30 day time limit remains - Ineffectiveness (cancellation of awarded contract) now called “set aside”
- Modifications, like awards, can be set aside
- Damages claims remain possible
- Traditionally few challenges to modifications (see *James Waste*) but may increase due to greater visibility?



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A tale of two contract managers...

Contract Manager A: David

- Was already overstretched
- Has never received any training on contract management
- Wasn't involved in the original procurement
- Doesn't actually have a copy of the contract
- Avoids engaging with the supplier unless he really has to
- All contact verbal (phones calls etc) - limited record keeping

Contract Manager B: Zara

- Job role takes account of the time needed to manage the contract
- Has received training on effective contract management
- Helped draft the specification, and was an evaluator
- Regularly consults the contract terms (including spec/tender response)
- Meets regularly with the supplier
- Written records exist (emails, meeting minutes etc)

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Top tips...

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Contract management under the Procurement Act: top tips!

- All about relationships – regular dialogue/meetings, honest conversations at an early stage
- Contract manager needs to:
 - have appropriate resources**
 - understand their role**
 - understand the key elements of the contract (including the spec)**



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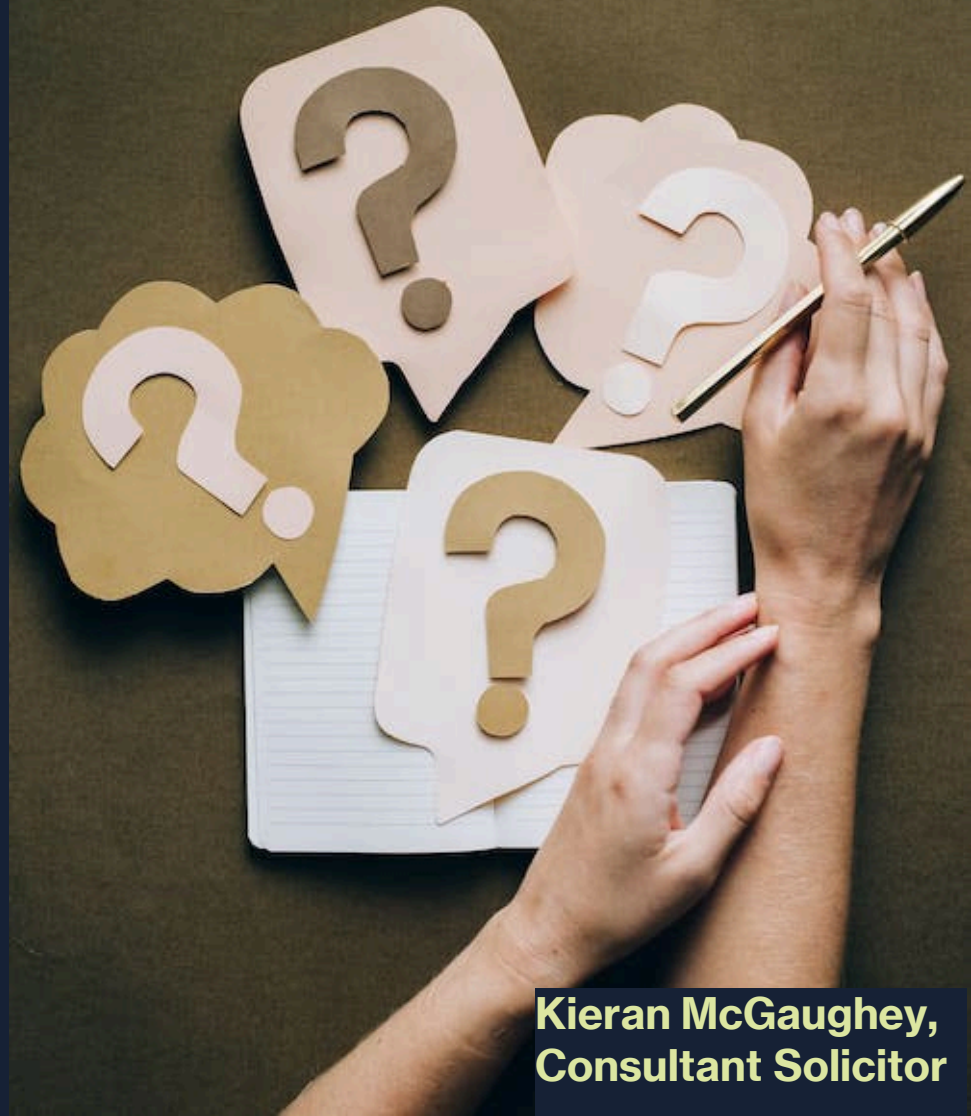
Contract management under the Procurement Act: top tips!

- ✓ Get the right contract manager
- ✓ Get them involved early
- ✓ Training
- ✓ Know the contract
- ✓ Diary management
- ✓ Regular dialogue
- ✓ Build rapport
- ✓ Be assertive!
- ✓ Work the contract!
- ✓ Document changes
- ✓ Seek legal advice

Final thoughts....

- Take contract management seriously – failures much more likely to enter the public domain (particularly on higher value contracts)
- Ensure your internal processes have been updated for the Act
- Consider setting model/template KPIs at your authority. Ensure standard terms and conditions cross-reference KPIs.
- **Training** is a great way to get on top of contract management – train contract managers on how to undertake their role effectively.

**Any
questions?**



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Thank you for listening!

Feel free to keep in touch – you can connect on LinkedIn here:
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