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Public Procurement in the UK: TMT and Outsourcing

Application of the Procurement Act 2023



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Application of the Procurement Act 2023 to TMT and Outsourcing

The Procurement Act 2023 came into force on 24 February 2025, repealing the prior regulations covering public contracts in the UK. Subject to run-off procurements under the previous regime, all UK public sector and utilities procurement is now governed by the Act.

The Act has significant implications for the procurement of TMT and outsourcing contracts across the public and utilities sectors, including digital transformation projects; the adoption of cloud solutions and AI; and other major outsourcing projects.

Key issues include navigating new award procedures, enhanced supplier exclusion and debarment rules, a different approach to standstill and debriefing, and understanding the commercial implications of new transparency and contract management provisions.

The Act applies to all public sector and covered utilities across the UK, with the exception of "devolved Scottish authorities", which remain subject to Scottish public procurement rules.



Coverage and scope

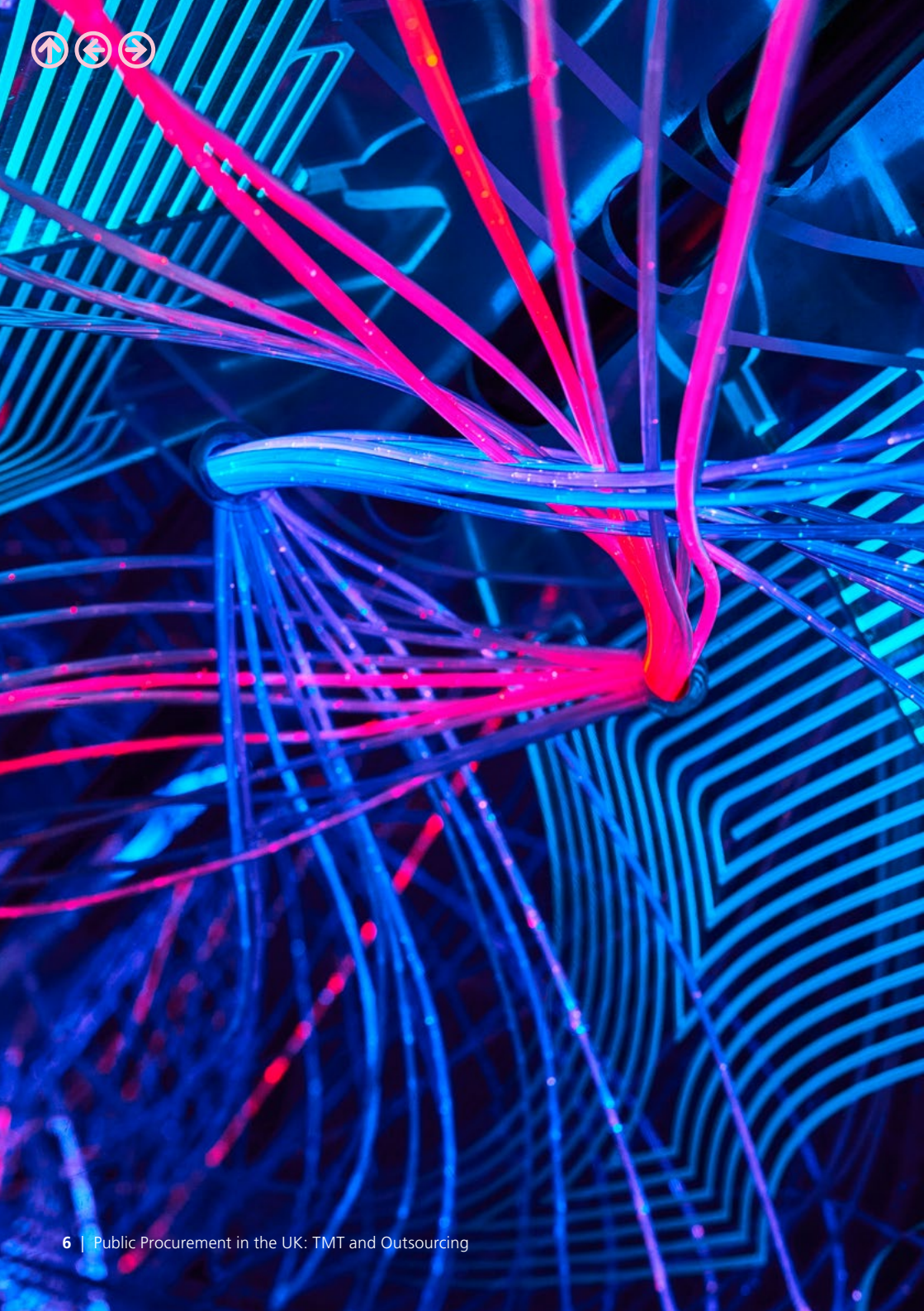
The Act has repealed the previous set of EU-based rules governing procurement in the public and utilities sectors. The new regime applies to all procurement processes commenced on or after 24 February 2025.

Covered contracts include the familiar categories of goods, services and works contracts. Typically, the thresholds are:

- Goods or services contracts
  - for central government authorities: **£139,688**
  - for sub-central government authorities: **£213,477**
- Works contracts: **£5,372,609**
- Concession contracts: **£5,372,609**

Note that different thresholds apply to procurements by defence and security authorities, utilities, and under the "light touch" regime. The full list of thresholds can be found in Schedule 1 to the Act.

The standard form contracts to be used by central government departments, their executive agencies and non-departmental public bodies when purchasing services have been updated to reflect the provisions of the Act. When considering what contract terms will look like under the Act, particularly for central government authorities, it may be useful to look at the new and updated model form contracts: the model services contract, the mid-tier contract and the short form contract.





New transparency requirements

Transparency was a key principle under the old procurement regime. While the principle is not explicitly mentioned in the "principles and objectives" part of the Act (part 2), there are a number of new requirements which relate to transparency: chiefly, the publication of notices. This includes a number of additional forms of notice, such as:

— annual pipeline notices;

— contract details notices (including in some cases the publication of contracts in full);

— contract change notices;

— contract performance notices (including the contracting authority's assessment of the suppliers performance against a published set of KPIs);

— payment compliance notices;

— contract change notices (including in some cases the publication of the modification or settlement in full);

— contract termination notices; and

— procurement termination notices.

This means suppliers will have access to far more information about procurements and public contracts, but it also means heightened risk of suppliers' commercially sensitive information being published. This will add a new dynamic in discussions around contract performance and modification in particular.



Simplified and more flexible contract award procedures

Under the old regime, contracting authorities applied six defined award procedures (open, restricted, negotiated procedure with prior call for competition, innovation partnership, competitive dialogue, and negotiated procedure without prior call for competition).

Under the Act, contracting authorities are able to select from two competitive procedures (open, and the competitive flexible procedure) as well as direct award. The competitive flexible procedure ("**CFP**") gives contracting authorities great freedom to design a process that meets their needs on a case by case basis, meaning it may look different to what suppliers are used to. We are now starting to see procurements being launched under the Act using the CFP for new IT and outsourcing projects.



Grounds for direct awards are largely unchanged

The previous grounds for direct awards (i.e., awards without any form of open competitive tendering) are generally replicated within the Act. In addition, direct awards can now be made where necessary to protect life or public safety during an emergency situation, even where the circumstances leading to that situation could be regarded as foreseeable. This seems intended to enable contracting authorities to respond to extreme situations similar to those which arose during the COVID-19 pandemic.

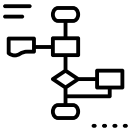
There is now increased transparency around direct awards. When making direct awards under the new regime, authorities have to:

— publish both a "transparency notice" and a "contract award notice"; and

— observe the new eight-working-day standstill period from the publication of the contract award notice;

before the contract can be entered into.





A more flexible approach to framework agreements

The Act has introduced the concepts of "closed" and "open" frameworks. Closed frameworks are essentially frameworks as we knew them under the old rules (with the additional flexibility now for private utilities to have frameworks longer than eight years).

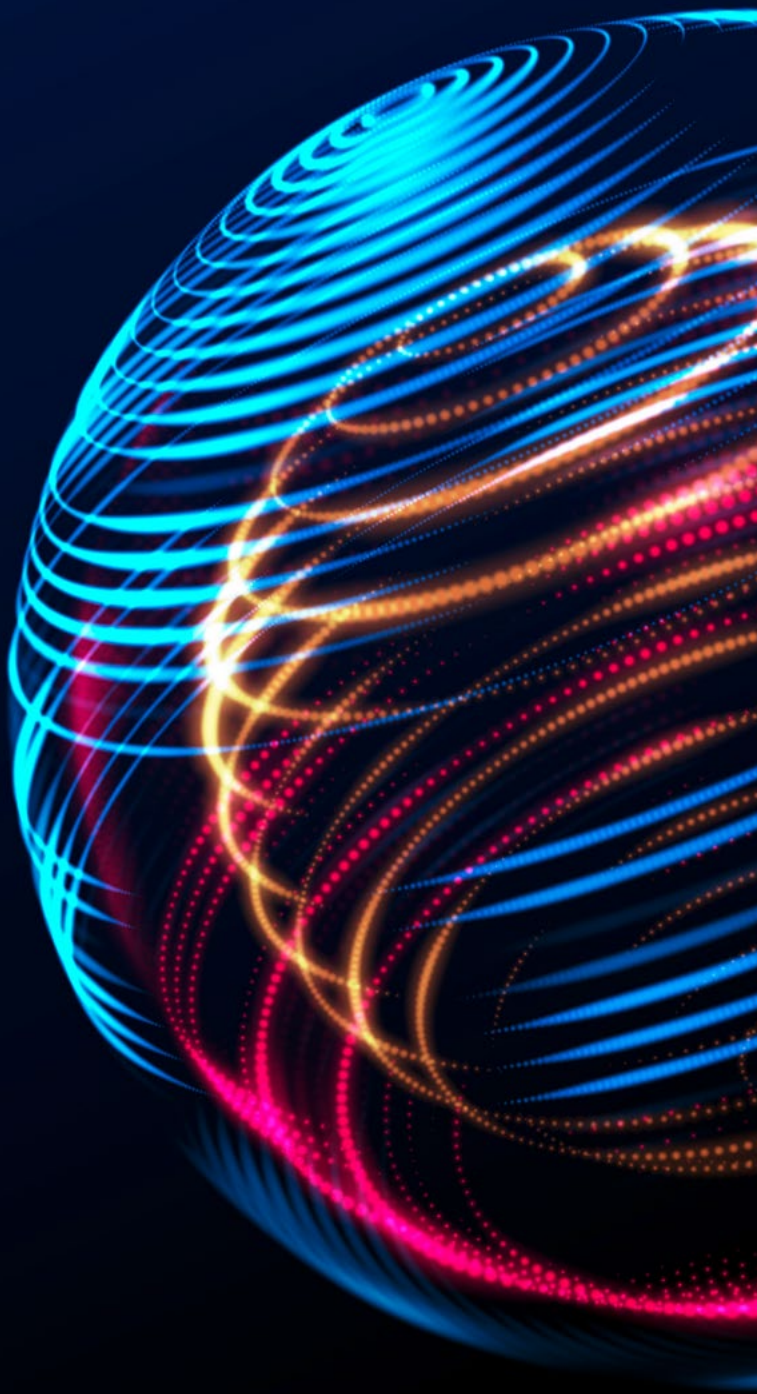
Open frameworks are entirely new. They are defined as a 'scheme of frameworks that provide for the award of successive frameworks on substantially the same terms'. A key feature of these new open frameworks is the requirement to re-open the framework at certain points during their maximum eight-year term (at least every three to five years). Careful thought needs to be given to setting these up and managing these re-openers, at which point commercial and contract terms can be amended and suppliers swapped in and out based on a re-evaluation exercise.

One of the first examples of these was the Ministry of Defence's Digital Decision Accelerators for Defence Open Framework, established in August 2025. Valued at £180 million, this is a new defence and security framework specially designed to encourage the development, and accelerants of, advanced digital capabilities and is to operate as the main delivery mechanism for ASGARD; the British Army's flagship Transformative Capability Initiative.

Also of relevance to the TMT sector, the Government Commercial Agency ("**GCA**") commenced its G-Cloud 15 in August 2026. This is also established as an open framework under the Act, replacing the previous G-Cloud 14. Services that can be procured from G-Cloud 15 include:

- infrastructure as a service (IaaS) and platform as a service (PaaS)
- infrastructure software as a service (I-SaaS)
- software as a service (SaaS)
- cloud support services (additional services)

G-Cloud 15 will run for four years: reopening after 18 months and again after 36 months. G-Cloud 15 is the main procurement route for UK Government procurement of AI and other cloud-based services, calling-off from G-Cloud being an alternative to running standalone procurements.





New dynamic markets

The Act has also introduced a new commercial tool intended to replace qualification systems, which were commonly used for utilities procurement under the old regime. Dynamic markets allow contracting authorities to limit participation in competitive flexible procedures to suppliers that are registered on the market. Suppliers are able to apply to be admitted to the market at any time and authorities can then shortlist suppliers to be invited to tender by issuing tender notices pursuant to the dynamic market.

Fees can be charged to suppliers that are awarded a contract under a dynamic market and, for utilities dynamic markets, in connection with obtaining and maintaining membership of the market.

An early example of a dynamic market established under the Act is the GCA's Space Technology Solutions Dynamic Market, established in July 2025. It provides for the procurement of services including:

— satellite communications;

— unmanned aerial vehicles;

— geospatial and remote sensing;

— space and geospatial data and imagery;

— position, navigation and timing services;

— space command and control; and

— advisory, consultancy, training and academia.

Suppliers can apply to join this dynamic market at any time and to accommodate participation, each tender notice includes a deadline for appointment to the dynamic market relevant to that procurement. This allows suppliers to apply and potentially participate even after a tender is published, provided they meet the appointment deadline.





New provisions on exclusion grounds and debarment

One of the major new changes is the introduction of a public procurement debarment list. This is a centrally maintained list, accessed via gov.uk, which categorises suppliers as "excluded" or as "excludable". The debarment list is in addition to, rather than a replacement of, the requirement for authorities to consider the application of exclusion grounds on a case-by-case basis for each procurement. Contracting authorities **must** prohibit excluded suppliers from competing for contracts and **may** disregard tenders from excludable suppliers.

There are well publicised examples of major government outsourcing contracts having gone wrong; and of demands that suppliers deemed to have acted irresponsibly be debarred from future contracting opportunities. It will be interesting to see how willing the Cabinet Office will be to initiate any debarment investigations under the new regime.

The new debarment regime is linked to a new expanded exclusion regime. The exclusion grounds under the new rules are not dissimilar to those in the old rules. However, additional offences like cartel participation and corporate manslaughter now also give rise to mandatory exclusion grounds. There are also new discretionary exclusion grounds for improper behaviour in relation to a procurement, environmental misconduct, breach of contract and poor contractual performance and threats to national security. On the issue of national security, there appears to be growing concerns with providers linked to hostile regimes abroad being permitted to be awarded public sector contracts.

On the issue of poor contractual performance contracting authorities will have to publish "contract performance notices" for high value contracts procured under the new regime. If the authority considers that the supplier is not performing to its satisfaction, and has been given the opportunity to improve and has failed to do so, then the authority must publish a "poor performance notice", which gives rise to an exclusion ground for future public contracts. There is understandable nervousness across the sector as to how these new rules will be applied.



New provisions on debriefing and standstill

There are also significant changes to the debriefing, standstill and contract award rules. Contracting authorities are required to provide an "assessment summary" to each tenderer providing information about the assessment of their tender and (if different) the most advantageous tender. The assessment summary is broadly equivalent to what was formerly known as a "standstill letter", but providing an assessment summary does not start the standstill period.

The information to be included in the assessment summary is set out in secondary legislation (The Procurement Regulations 2024, regulation 31). This includes the scores of the tenderer to whom the letter is addressed and, if different, the scores of the most advantageous tender, together with an explanation for those scores by reference to the tenders submitted and the evaluation criteria. There is no longer any requirement to provide the "characteristics and relative advantages" of the winning tenderer. The Cabinet Office has published Guidance on Assessment Summaries, as well as a template assessment summary for the most advantageous tender and a template assessment summary for an assessed tender.

Under the Act, authorities must now publish a "contract award notice" and a "contract details notice". It is important to distinguish clearly between these two types of notices and their effects. After providing assessment summaries to all suppliers that submitted assessed tenders, authorities must publish a contract award notice. The contract award notice now triggers the new eight-working-day standstill period, which must be observed before the contract is entered into. The contract details notice is, confusingly, what was previously referred to as a contract award notice and must be published within 30 calendar days after a contract has been entered into.





Position on remedies largely unchanged

The position on both pre-contractual remedies and post-contractual remedies remains largely unchanged. The Act provides clearer rules governing the remedies available when challenging a modification to an existing contract and also provides for a more specific statutory test for lifting of the automatic suspension where legal proceedings are commenced during the standstill period. The strict limitation periods from the previous rules continue to apply, with proceedings having to be commenced within 30 calendar days of being deemed to have been aware of the circumstances giving rise to the claim. There are also a number of changes to terminology that may be confusing to those familiar with the previous remedies regime. For example, the grounds for seeking "declarations of ineffectiveness" now being termed "set aside conditions".

One key change to the remedies regime however, is the deadline for raising proceedings in order to trigger the "automatic suspension" on the contracting authority entering into the contract. Previously, any proceedings raised before the contract was "entered into" (i.e., signed) would impose a suspension, preventing the authority from entering into the contract as proposed. Now, proceedings must be raised within the official standstill period (i.e., eight working days from publication of the contract award notice, unless voluntarily extended by the authority in an updated contract award notice) to have this effect.

The Cabinet Office Guidance on Remedies contains additional guidance on raising proceedings under the Act.

The Act also creates a new authority within the Cabinet Office that will have certain investigation and enforcement powers in relation to public sector procurement activities. However, the new Procurement Review Unit ("**PRU**") cannot provide any remedy to aggrieved bidders.



New provisions on contract management (post-award)

Part 4 of the Act contains a series of provisions on the management of public contracts. These provisions include:

— terms to be implied into public contracts (electronic invoicing, payment terms including terms to be flowed down into sub-contracts, and termination rights);

— assessment of contract performance where authorities are required to set KPIs into public contracts;

— rules on sub-contracting; and

— revised provisions on permitted modifications to public contracts.

The implied termination rights in particular will be a significant risk factor for suppliers to consider. Applied alongside new enhanced exclusion and debarment rules, this will give contracting authorities an automatic right to terminate existing public contracts.

Generally, the approach to modifying contracts remains the same as that under the previous regime, i.e., contracts can only be modified without a new procurement procedure in a certain exhaustive set of circumstances. However, a key change from the current regime is that authorities will now have to publish:

— a "contract change notice" setting out that they intend to modify the contract; and

— the modification or the amended contract (where the relevant thresholds for publication are met).

When considering the public sector (especially central government) approach to contract management, it may be useful to look at the new, updated open book contract management guidance, sourcing playbook and digital, data and technology playbook.



Transitional arrangements

The Cabinet Office has published guidance for transitional arrangements. The guidance sets out how the changeover from the previous regulations to the Act should be managed and effected by authorities.

Key points to note are as follows:

— procurements commenced on or after 24 February 2025 will be governed by the Act;

— procurements commenced before 24 February 2025 will continue to be governed by the old regulations until the contract ends (note this will also extend to the modification of any such contract, even where the modification is made after 24 February 2025); and

— similarly, framework agreements, dynamic purchasing systems and qualification systems that have been established under the UCRs will continue to be governed by the old regulations until such time as they expire or are discontinued (with a sunset provision being applied to dynamic purchasing systems and qualification systems on 23 February 2029, four years after the Act came into effect).



Useful links

Procurement Act 2023

Procurement Regulations 2024

Cabinet Office Guidance Documents

Procurement Pathway

National Procurement Policy Statement

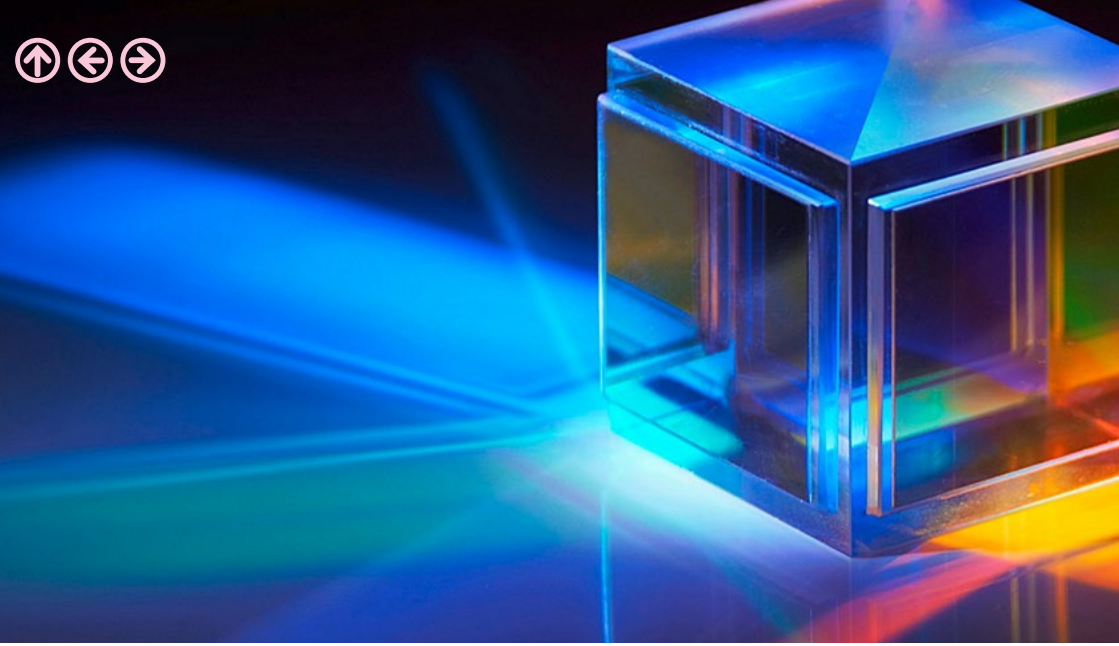
The Sourcing Playbook

Artificial Intelligence Playbook for the UK Government

Guidelines for AI Procurement

The Technology Code of Practice

You can also find more information on our Procurement Cube



How can CMS help?

The CMS procurement team supports TMT and outsourcing clients in navigating the public sector and utilities procurement rules, which for the most part are now covered by the Act and the new regime it has introduced.

Our specialists work with public sector and utilities clients to design and run compliant procurement processes. This includes advising on major IT/telecoms outsourcings, digital transformation programmes and other major outsourcing projects. We have also advised extensively on the procurement of cloud technologies and AI.

We also support clients when bidding on and participating in these procurements, on their engagement with public sector and utilities bodies subject to these rules, and on challenging outcomes that go against them.

We deliver pragmatic, commercially focused solutions that reflect the latest legal developments and sector-specific insights into all forms of TMT and outsourcing arrangements.

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