

Overview & Scrutiny Committee

Wednesday 27 November 2024

6.30 pm

Ground Floor Meeting Room G02A - 160 Tooley Street, London
SE1 2QH

Supplemental Agenda No.1

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| 5. | Overview of the Procurement Act 2023 To receive a briefing from Elaine McLester, Head of Procurement, on the implications of the Procurement Act 2023 due to come into effect from February 2025. | 1 - 24 |

Contact

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Date: 21 November 2024

Procurement Act 2023

Originally scheduled go live date: 28 October 2024

Delayed until 24 February 2025

Procurement Act 2023

The **Procurement Act 2023** establishes a comprehensive legal framework for the procurement of goods, services, and works within the public sector. Its primary aim is to improve transparency, efficiency, and accountability in procurement processes while promoting fair competition. The Act also seeks to reduce corruption and increase public trust in procurement activities.

It offers more flexibility in the routes to going to market but requires much greater publication of information via notices to increase transparency

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Covered Procurements - Financial Thresholds

| Department | Value (inc. VAT) | Value (excl. VAT) |
|-----------------------------|------------------|-------------------|
| Supply and Services | £214,904 | £179,086.67 |
| Works | £5,372,609 | £4,477,174.17 |
| Light Touch Regime Services | £663,540 | £552,950 |
| Concession Contracts | £5,372,609 | £4,477,174.17 |

From 1 January 2024 – 31 Dec 2025. Financial Thresholds are revised every two years.

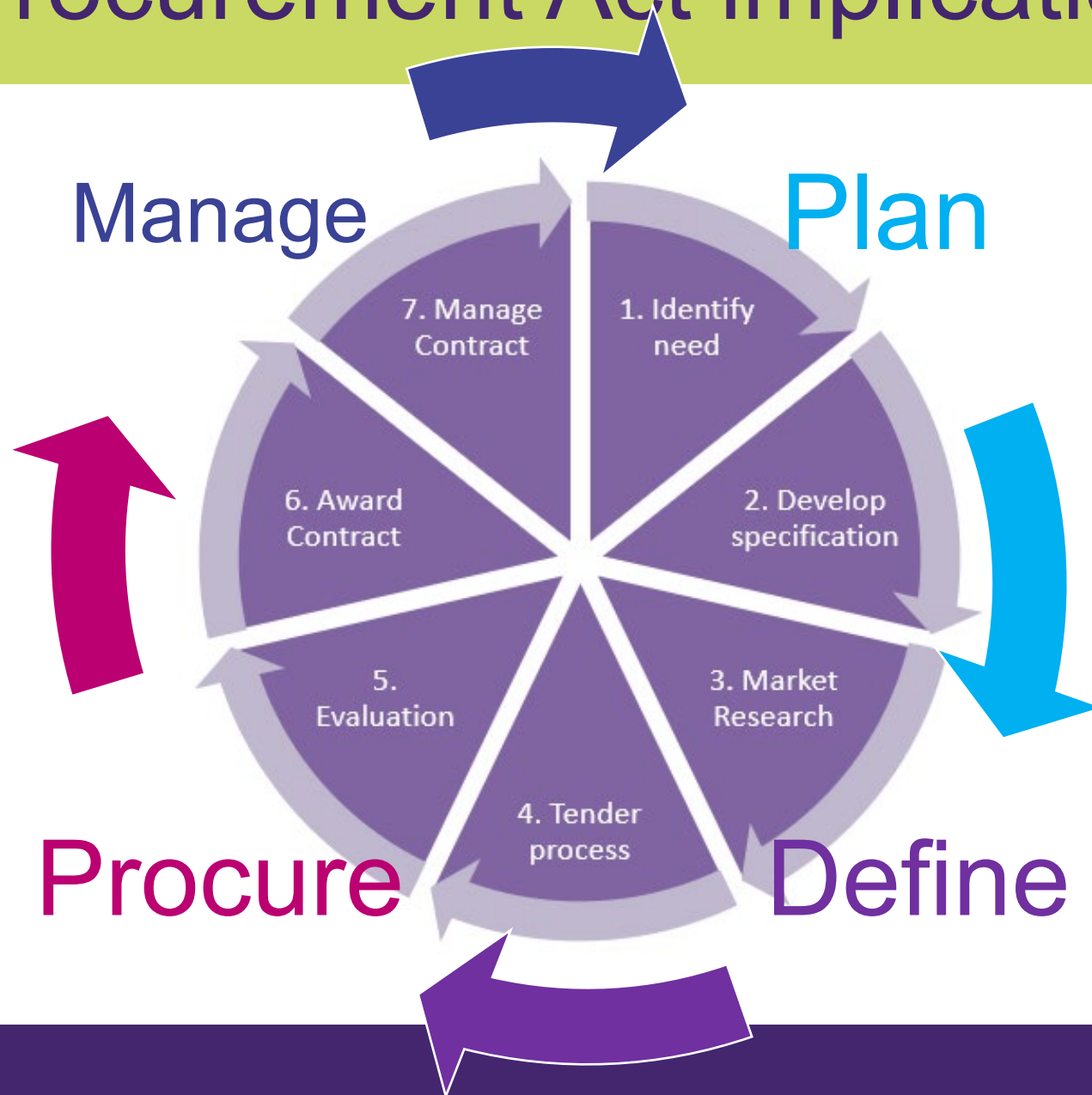
The thresholds for contracts to be fully covered by the Procurement Act remain as current but require a notice to be published for all contracts, regardless of how let over £30k in value.

Legislative landscape

The introduction of the new procurement legislation from 24 February 2025, introduces a new set of regulations but it should be noted that not all new procurements will fall under its regulations for some time.

Procurements that started before 24 February 2025, as well as any using a framework agreement that was let under the Public Contract Regulations (2015) will remain under these regulations.

Procurement Act implications



Procurement regulations to date have covered sections of the Procurement Cycle from Identifying Need to Awarding Contracts.

The Procurement Act also includes obligations around Managing Contracts and the publication of performance details for the first time.

Key Changes

- **Greater transparency - publication of notices and contract information**

From two notices to up to 17 including at the natural end of a contract

- **Publication of a Pipeline of forthcoming tenders**

All those to be let in the next 18-24 months with a value of over £2m

- **Publication of Redacted Contracts**

For contracts over £5m within 90 days of entering into a contract (180 days for Light Touch Regime)

- **Covers contract management as well as procurement**

KPIs have to be published on the notice, annual payment and spend performance needs to be published on the Find a Tender Service website.

- **Covers contract management as well as procurement**

Obligation to manage real and perceived conflicts of interest through out the procurement and contract performance

New Procurement Objectives

New Procurement Objectives and an obligation to consider meeting the National Procurement Policy Statement objectives. These are currently:

- delivering value for money
- maximising public benefit
- sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions and
- acting, and being seen to act, **with integrity**.

With the delay to the implementation of the Act, there has been consultation on amendments to this including around mission-led procurement but remain mostly similar.

New Obligations

- **Consideration of barriers to SMEs (and how these could be changed)**

In carrying out a covered procurement, a contracting authority **must**:

- have regard to the fact that small and medium-sized enterprises may face particular barriers to participation, and
- consider whether such barriers can be removed or reduced

- **Consideration of splitting the contract into Lots**

Option to consider the need to split the tender into smaller lots that may be easily accessible by SMEs

- **Central Digital Platform- central repository for all suppliers to capture their information**
- **Contract Management** KPIs have to be published when inviting tenders for contracts worth £5m+
- At least annually, publication of performance against all KPIs for these contracts

Annual report on payment and spend information to be published (2026 onwards)

Management of Conflicts of Interest – up front and on-going through out the contract life

Pipeline Notice

Previously a voluntary requirement, this is now an annual obligation.

One of the most important task a contracting authorities can do is to provide the market with information about current and future public contract opportunities by publishing a forward-looking procurement pipeline in May each year.

A pipeline notice is a notice setting out specified information about any public contract with an estimated value of more than £2 million in respect of which the contracting authority intends to publish a tender notice or transparency notice during the reporting period.

Procurement Routes

A contracting authority **must** carry out a competitive tendering procedure before awarding a public contract. A competitive tendering procedure is either:

- **Open** - One stage
- **Competitive Flexible** - Flexibility to include stages, down selections and presentations etc but could reflect a two-stage process
- **Open Frameworks** - Subsequent frameworks that reopen every three years and can last up to eight years
- **Dynamic Marketplaces** - Only for over threshold “covered” procurements

The procedures invites flexibility to allow contracting authorities **to design** the procurement process according to considerations specific to the particular contract being procured.

Be mindful of the overriding requirement of proportionality - it should ensure that the process it designs is not unnecessarily complex or burdensome for suppliers.

Evaluation methodology*

The Act replaces:

Most Economic Advantageous Tender (MEAT)

MEAT: allows contracting authorities to place more emphasis on qualitative and other criteria aside from price but not exclude it altogether. (Quality/Price ratio) **(Public Contracts Regulations 2015)**

with

Most Advantageous Tender (MAT)

MAT: Contracting authorities may use non-financial criteria when identifying the successful bidder and ignore price, when appropriate, i.e. pricing needn't be a determining factor in awarding contracts. Instead - economic, ethical, and social responsibility can be the basis for a decision. (100% Quality) **(Procurement Act 2023)**

(*will be referred to as Assessment Methodology)

Contract Management

During the performance of a contract:

- **Management, reporting and publication of performance against the set KPIs within the Contracts**

Notices on FTS to be made within 30 days of the annual review period

- **Publication of Payment information as required under the Procurement Act**
- **Recording formal records and details onto the Contracts Register**
- **Management of the Conflicts of Interests within the contract**
- **Formal amendments and variations to be recorded**

Any variations to be recorded and saved onto the eProcurement system

Modification of Contracts

Greater need to publish amendments will mean more GW3 reports

- **Greater transparency**

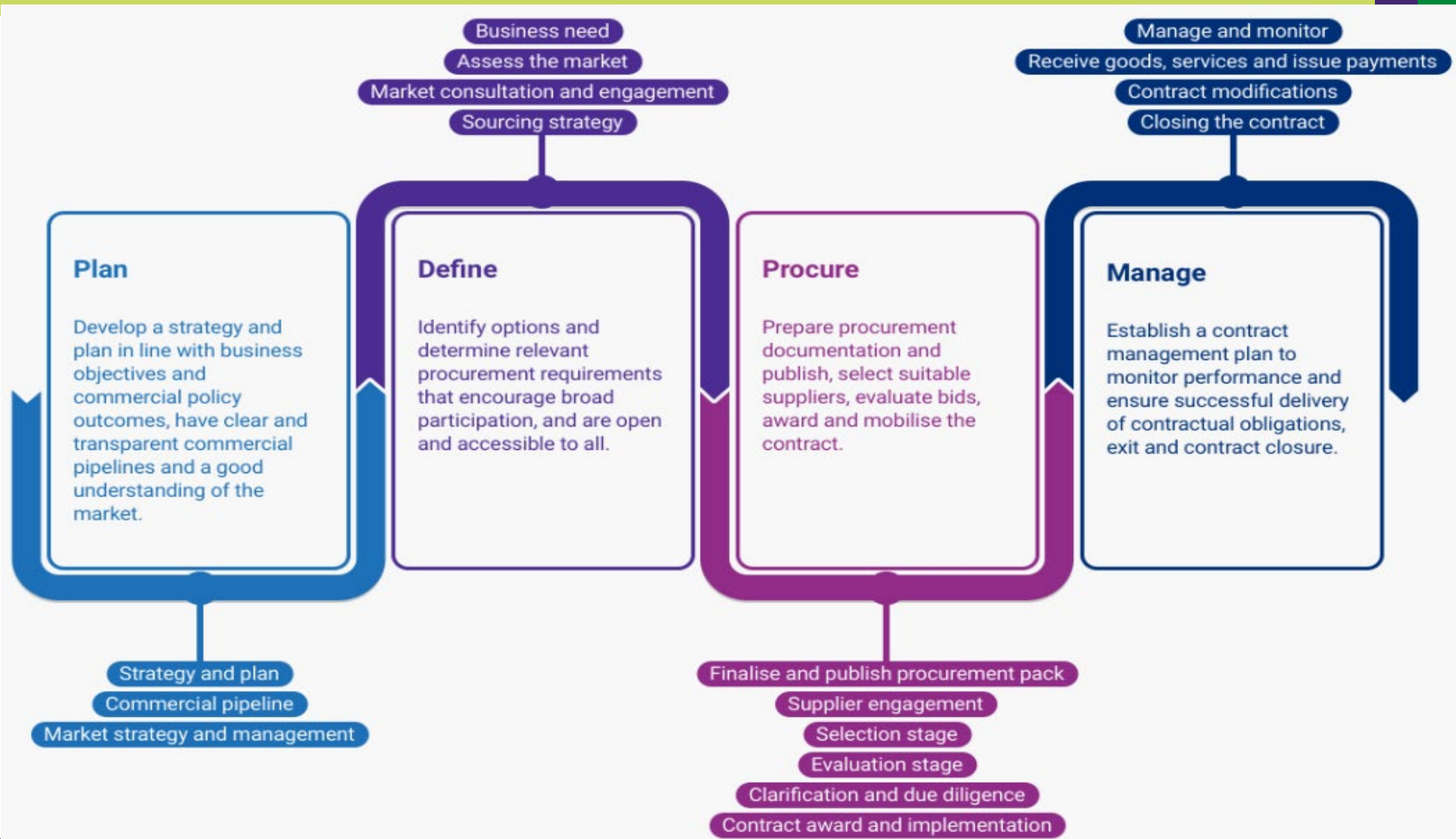
Amendments to contracts to be done up front and recorded via GW3 reports –both for value, duration and scope

- **Greater potential to vary for those contracts let under the Procurement Act than under the current PCR**

Publications of Modification of contract notice are required in FTS

Variations may require a new redacted Contract to be published within 90 days

Planning - Procurement Pathway



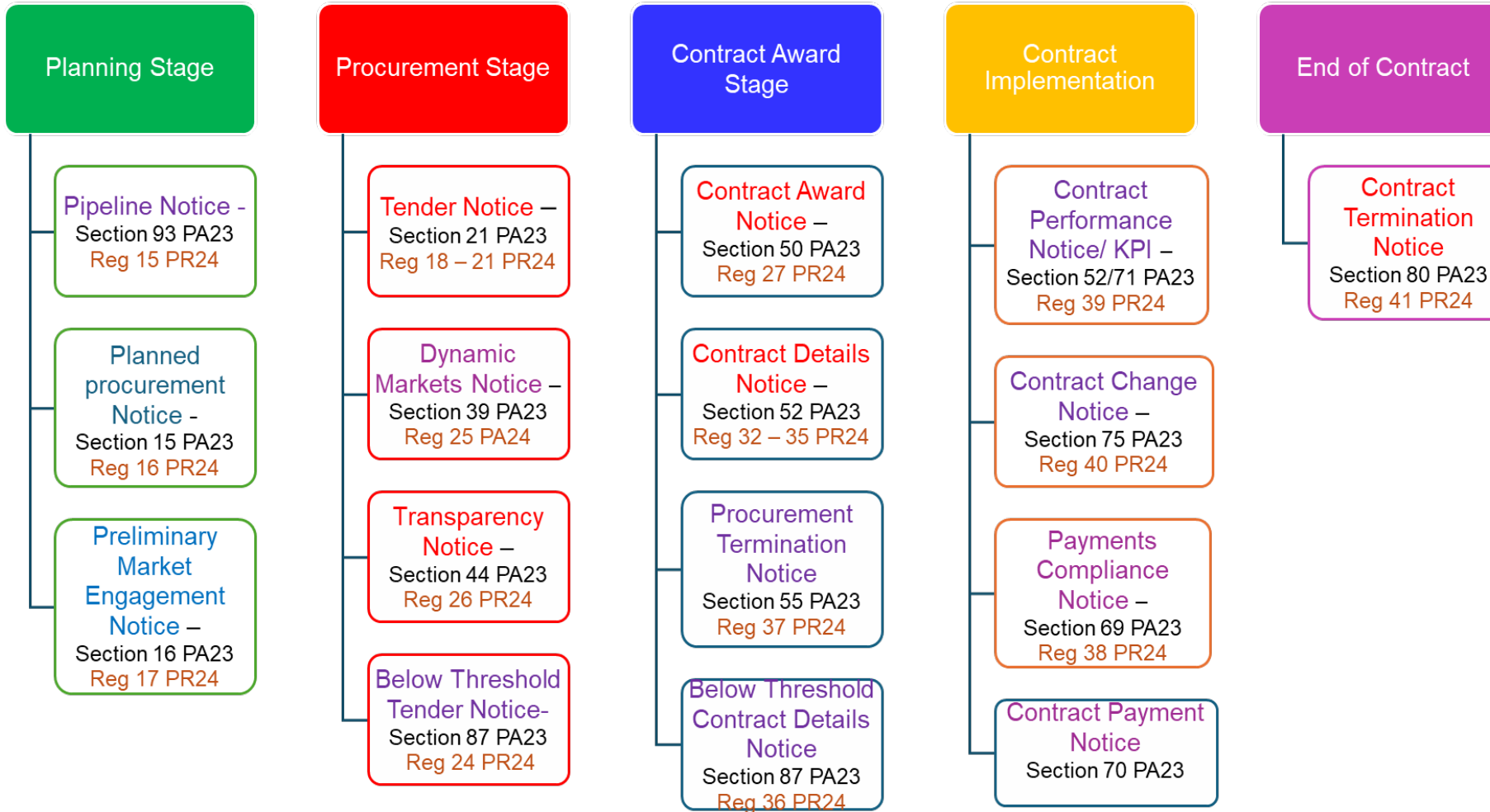
Key Take Aways

- More time will need to plan well in advance in preparation to go to tender and development of documents, planning and content of notices
- Gives greater flexibility around designing procurement processes but requires greater transparency in the publication of notices.
- Need time to include pre-market engagement or to publish justification if don't do this
- All procurement activities over £2m to be registered on the procurement pipeline
- Central digital platform = “new” version of the Find a Tender Service
- The Act will cover ‘whole life cycle’ – into Contract Management and need to actively manage contract performance and variations – including redacted contracts over £5m in value
- New Act offers challenges and opportunities, as well as risks, especially around resource implications

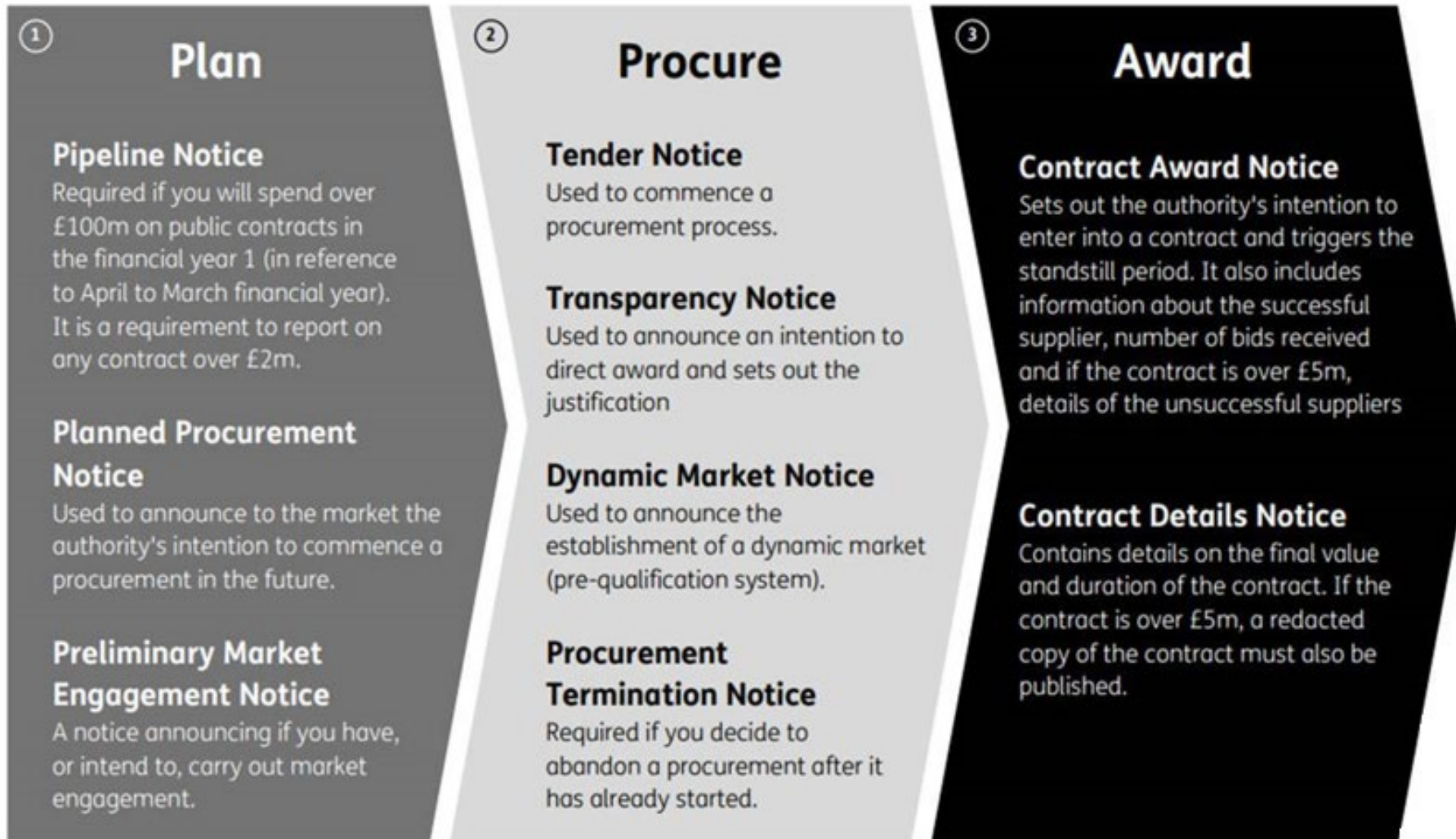
Additional Information

Additional details around notices and terminology changes under the Procurement Act are included for reference

Transparency - Notices



Notices



During Contracts

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Manage: Above threshold fully regulated procurement

Contract Change Notice

Required for contract modifications, certain exemptions apply.

Contract Performance Notice

Used to publish information against the KPIs set in the contract.

Payments Compliance Notice

Used to set out the authority's compliance with payment terms.

Contact Termination Notice

Must be published within 30 days of a contract being terminated.

Manage: Above threshold 'schools exemption' procurement

Contract Change Notice

Required for contract modifications, certain exemptions apply.

Contract Performance Notice

Used to publish information against the KPIs set in the contract.

Contact Termination Notice

Must be published within 30 days of a contract being terminated.

Manage: Above threshold light touch procurement

Payments Compliance Notice

Used to set out the authority's compliance with payment terms.

Contact Termination Notice

Must be published within 30 days of a contract being terminated.

Terminology Changes (1)

| Current Terminology | New Wording |
|---|--|
| “In-scope procurement” | “Covered procurement” - Section 1 (1) (b)/ Section 11 (1) PA23 |
| “Prior Information Notice (PIN)” | “Planned Procurement Notice” – Section 15 (2) PA23 |
| “Contract Notice” | “Tender Notice” – Section 21 (2) PA23 |
| “Contract Award Notice” | “Contract Details Notice” – Section 53 (2) PA23 |
| “Standstill Notice” | “Assessment Summary” – Section 50 (4) PA23 |
| “Selection Criteria” | “Conditions of Participation” – Section 22 (2) PA23 |
| “Most Economically Advantageous Tender” | “Most Advantageous Tender” – Section 19 (2) PA23 |
| “VEAT Notice” | “Transparency Notice” – Section 44 (2) PA23 |
| “Further Competition” | “Competitive Selection Process” Section 46 (10) PA23 |

Terminology Changes (2)

| Current Terminology | New Wording |
|--|--|
| “Central Purchasing Body” | “Centralised Procurement Authority” - Section 1 (4) PA23 |
| “Prompt payment report” (under Reg 113 PCR 2015) | “Payments Compliance Notice” - Section 69 (2) PA23 |
| “Below-Threshold Procurement” | “Regulated Below-Threshold contract” – Section 84 PA23 |
| “Award Decision Notice” | “Contract Award Notice” – Section 50 (4) PA23 |
| “Economic and Financial Standing” | “Legal and Financial Capacity” – Section 22 (1) (a) PA23 |
| “Technical and professional ability” | “ Technical ability ” - Section 22 (1) (a) PA23 , Section 36(1)(b) & Section 85 |
| “Direct Award (under FA, not mini competition)” | “Award Without Competition” – Section 45 (4) PA23 |
| “Dynamic Purchasing System” | “Dynamic Market (in part)”- Sections 34 (8) & 35 (1) PA23 |
| “Evaluation Methodology” | “Assessment Methodology” – Section 23 (3) PA23 |

Terminology Changes (3)

| Current Terminology | New Wording |
|--|---|
| “Modification Notice” | “Contract Change Notice” - Section 75 (3) PA23 |
| “Negotiated procedure without Notice” | “Direct Award” - Section 41 PA23 |
| “Pre-Market Engagement” | “Preliminary Market Engagement” – Section 16 PA23 |
| “Procurement Process/Procedure” | “Competitive Tendering Procedure” – Section 20 (2) PA23 |
| “Qualifying Organisation” | “Public Service Mutual” – Section 33 (6) PA23 |
| “Restricted Procedure/Competitive Dialogue/Competitive Procedure with Negotiation” | “Multi-Staged Procedure” – Para 146 Ex Notes |
| “Selection Stage” | “Participation Period”- Sections 54 (3) PA23 |

Terminology Changes (4)

| Current Terminology | New Wording |
|---|---|
| “Supplier subject to Mandatory Exclusion” | “Excluded Supplier” - Section 57 (1) PA23 |
| “Supplier subject to Discretionary Exclusion” | “Excludable Supplier” - Section 57 (2) PA23 |
| “Tender Stage” | “Tendering Period” – Section 54 (5) PA23 |
| “Teckal/ In-House Contracts” | “Vertical Arrangement” – Schedule 2 PA23 |
| “Hamburg / Collaboration” | “Horizontal Arrangement” – Schedule 2 Part 1 Section 3(2) |
| “ <i>Buyer Profile</i> ” | “Pipeline Notice” – Section 93 (3) PA23 |
| “Invitation to Tender” | “Associated Tender Documents” – Section (4) PA23 |

Procurement Act Terminology

| New Procurement Act Terminology | |
|--|---|
| “Below-Threshold Tender Notice” - Section 87 (5) PA23 | “Special Regime Contract” – Section 10 PA23 |
| “Conflicts Assessment” - Section 83 PA23 | “Treaty State Supplier” – Section 19 (3) PA23 |
| “Contract Termination Notice” – Section 80 PA23 | “Central Digital Platform” – Reg 5(2) PR24 |
| “Convertible Contract” – Section 74 (1) PA23 | “Competitive Flexible Procedure” - Section (20(2)(b) PA23 |
| “Debarment List” – Section 62 PA23 | “Exempted Contract” - Sch 2 PA23 |
| “Dynamic Market Notice” – Schedule 39 PA23 | “National Security Unit for Procurement” |
| “Preliminary Market Engagement Notice”- Sections 17 PA23 | Procurement Review Unit |
| “Procurement Termination Notice” – Section 55 PA23 | “Refining Award Criteria” – Section 24 PA23 |
| “Connected Person”, “Associated Person” “Subcontractor” | “Special Regime Contract” – Section 10 (6) PA23 |
| “Open Framework Agreement” – Section 49 PA23 | “National Security Unit for Procurement” |

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MUNICIPAL YEAR 24/25

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