GOVpd

Understanding the Procurement Act 2023

With: Dr. Paul Wright MCIPS

Housekeeping

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- Slides available after event
- This is not recorded
- Please respect other delegate's confidentiality
- Slides available after the day

Agenda

- 9:30 Welcome and Introductions
- 9:45 Session 1: Context and Objectives
- 10:45 Morning Break

- 11:00 Session 2: Procurement Processes
  Group discussion: Significance of the changes for your organisation.
- 12:30 Lunch Break
- 13:00 Session 3: Identifying opportunities for bidding
- Group discussion: Advantages and disadvantages of the new processes
- 14:15 Afternoon Break
- 14:30 Session 4: Bidding to win business under the Procurement Act 2023
- 15:45 Discussion and Action Planning
- Group discussion
- Final Q&A
- 16:00 Summary and Close

Introductions

- Name
- Organisation (and explanation if not obvious)
- Role
- Experience in Public Procurement
- What you want from the course

Paul Wright

- Originally a Scientist
- Former Contract Manager at ICI (chemicals multi-national)
- Trainer and Consultant since 1998, specialising in public sector since 2010
- Based in Shipley, Bradford

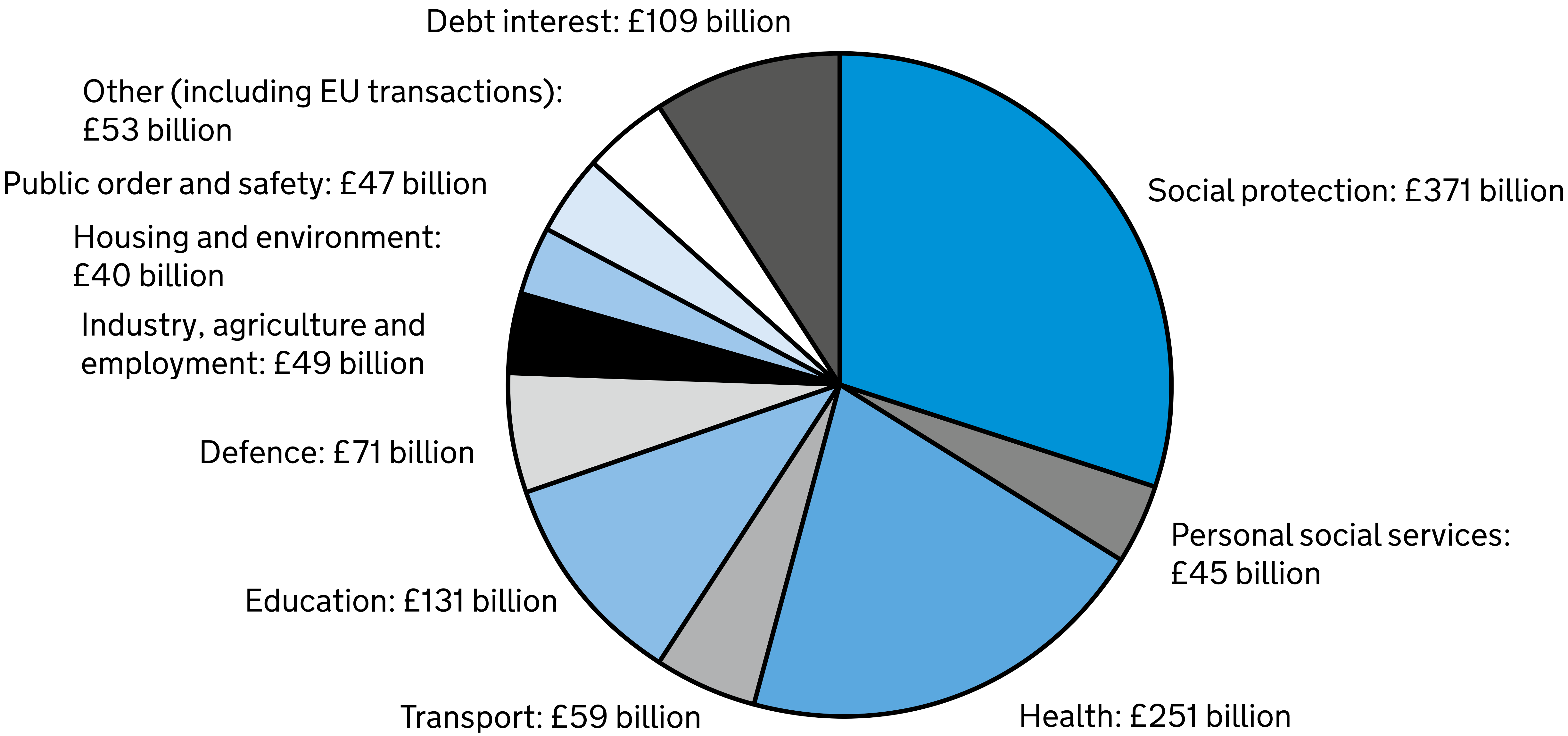
Learning Outcomes

- Understand the key changes introduced by the Procurement Act 2023 and how they differ from PCR2015.
- Learn about new procurement procedures, including the Competitive Flexible Procedure, Direct Awards, and Open Procedure.
- Develop a structured approach to identifying, assessing, and bidding for public sector contracts.
- Understand the criteria for Excluded and Excludable Suppliers and how to ensure compliance.
- Learn how to complete the Procurement Specific Questionnaire (PSQ) accurately and effectively.
- Explore the rules on contract modifications, frameworks, and resolving procurement disputes.
- Understand how to tailor bids to align with the Most Advantageous Tender (MAT) evaluation method.
- Gain insights into the role of social value in procurement and how to incorporate it into bids.
- Stay informed about regulatory compliance, frameworks, and dynamic market opportunities.
- Develop a personalised action plan to enhance success in securing public sector contracts.

1. Context and Objectives

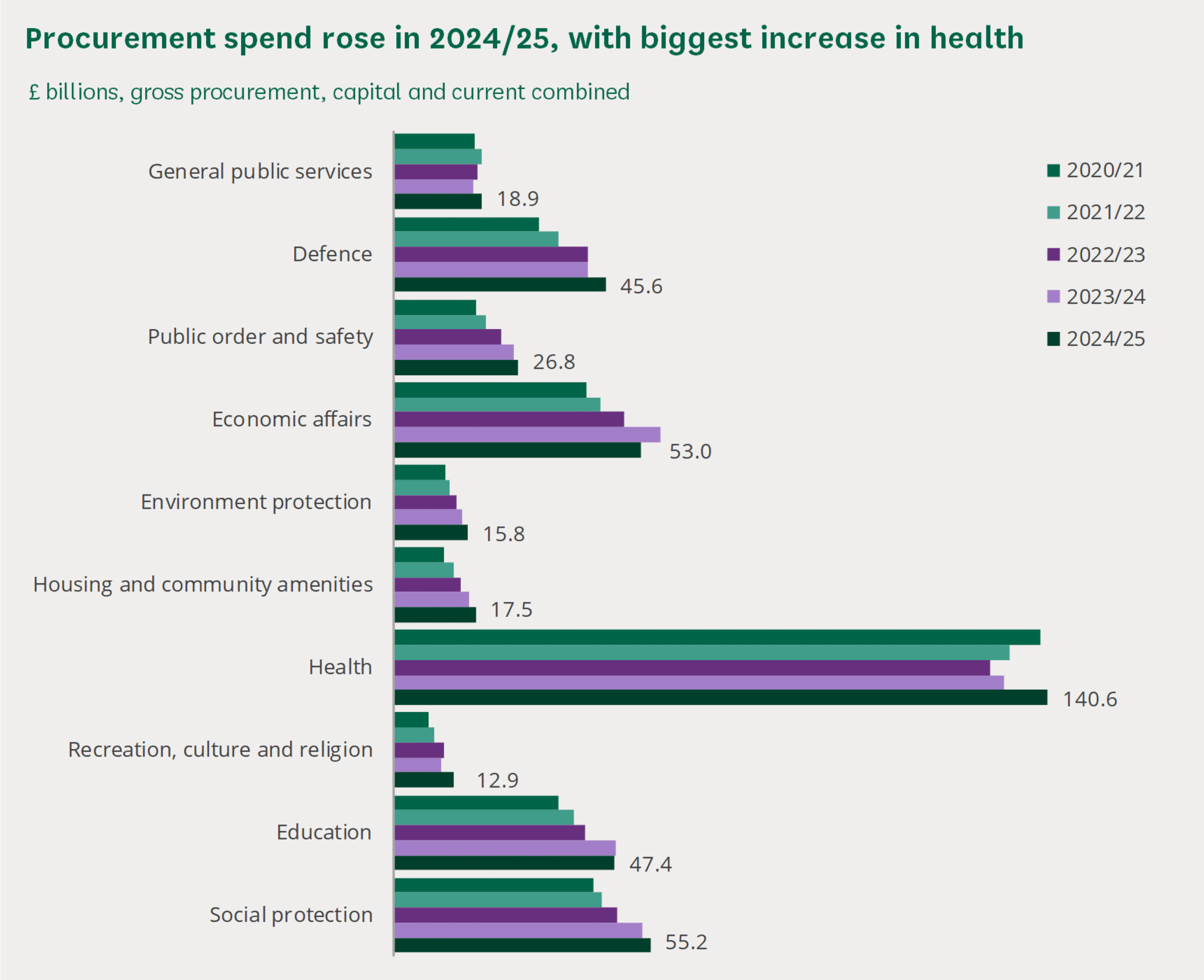
- Session 1: Context and Objectives
    - Public Sector spend – the opportunities
    - Differences with Private Sector Procurement – Exercise/Discussion
    - Principles and Objectives of the Procurement Act 2023
    - National Procurement Policy Statement (NPPS)
    - Scope: Exclusions and exceptions (Scotland, Wales, N.Ireland, NHS, Defence and Security)

Public Sector spending 2024-5



https://www.gov.uk/government/publications/spring-budget-2024/spring-budget-2024-html

UK Public Sector spend £434billion in 2024/5



https://commonslibrary.parliament.uk/research-briefings/cbp-9317/

Discussion – Differences with Private Sector Procurement

- Based on your own experiences (if any) what do you see as the major differences?
- Why do you think is the cause?
- What are the consequences?

Procurement Act 2023

Enacted 26th October 2023 – in place from 24th February 2025

Legislation

- World Trade Organisation Government Procurement Agreement
  - Individual Trade Agreements
- Procurement Act 2023
  - The Procurement Regulations 2024
  - Public Contracts (Scotland) Regulations 2015
- Case Law (to be developed)

Thresholds

Contract Type	Threshold from 1 Jan 2025 to 31 December 2025
Public Works Contracts	£ 5 372 609
Concession Contracts	£ 5 372 609
Public Supply Contracts and public services contracts (Central Government)	£ 139 688
Public Supply Contracts and public services (all other Contracting Authorities)	£ 214 904
Utilities Works Contracts	£ 5 372 609
Utilities Supplies and Services	£ 429 809
Public Service Contracts for social and other services under the Light Touch Regime	£ 663 540
Notifiable contract Central Government	£ 12 000*
Notifiable contract - other Contracting Authority	£ 30 000*

Contract values are inclusive of VAT and include all foreseen or possible additions and extensions.
* Not subject to regular change under WTO GPA

Exempted contracts

- Vertical/In-house arrangements (cf. Teckal arrangements)
- Horizontal arrangements between Contracting Authorities
- Defence and Security contracts with other countries
- Utilities contracts with JVs, affiliated parties

Exceptions and variations

- Light Touch Regime
  - Defined by Common Procurement Vocabulary code (CPV) – mostly Social Care, Health and Educational services
  - Schedule 1
- Defence and Security (special exemptions)
- Schools including Academy Trusts (mostly excluded from scope)
- Utilities including Private Utilities (separate section - #28)
- Scotland (PCR Scotland 2015 mostly)
- Northern Ireland and Wales (separate adjustments reflecting devolved responsibilities)

Light Touch

- Light touch contract threshold £663 540

- Above this value must advertise on CDP (as any Public Contract)
- Below recommended to advertise and have competitive process
- Generally Procurement objectives apply but may Direct Award (user choice)

The ‘light touch’ regime (social, health and other services)

- … some services *as defined by CPV code in Annex XIV* (mainly social and health services) will be subject to a *new* ‘light touch’ regime to reflect their limited cross-border interest (e.g. they relate to legal services in the context of national law) or are sensitive (e.g. services to the person)
- These contracts will only be covered by the directive if their value exceeds £663,540 (a much higher threshold than for other services)
- Contracts below this threshold are assumed to be of no cross-border interest, so no FTS advertising is necessary.
- Beyond the new FTS advertising requirement, the UK’s light-touch regime rules will be very flexible

Differences in LTR procurements

- Award of contracts to be exempted from the general requirements (i.e. open or "competitive flexible")
  - What does "exempted" mean? Not same as direct award provisions – still a procedure to be followed
- More latitude in evaluation – rule that criteria shall be limited to the subject matter of the contract amended to allow for both proximity and the views of receivers of services to be taken into account
- More flexibility on award from frameworks
- More scope to modify a procurement and a contract
- No clarity on exactly what the procedure will look like – seems to be an even lighter touch regime

Light Touch Regime PA23#9

9 Light touch contracts

(1) In this Act, "light touch contract" means a contract wholly or mainly for the supply of services of a kind specified in regulations under subsection (2).

(2) An appropriate authority may by regulations specify services for the purposes of the definition in subsection (1).

(4) In having regard to the nature of services for that purpose, the appropriate authority must, in particular, consider the extent to which—

(a) suppliers from outside the United Kingdom are likely to want to compete for contracts for the supply of the services;

(b) the services are supplied for the benefit of individuals (for example, health or social care services) or the community generally;

(c) proximity between the supplier and the recipient of the services is necessary or expedient for the effective and efficient supply of the services.

(6) In the case of a light touch contract, the reference to the subject-matter of the contract also includes a reference to—

(a) the views of an individual for whose benefit the services are to be supplied (a "service recipient"), or of a person providing care to a service recipient, in relation to—

(i) who should supply the services, and

(ii) how and when they should be supplied;

(b) the different needs of different service recipients;

(c) the importance of proximity between the supplier and service recipients for the effective and efficient supply of the services.

Compare to LTR (PCR2015)

- Procedures shall be at least sufficient to ensure compliance with the principles of transparency and equal treatment
- Obligation to conduct the procurement in conformity with the published proposals – but possible to depart from the script if this doesn't amount to breach of the aforesaid principles
- Time limits simply required to be reasonable and proportionate
- May conduct in a way corresponding to other procedures

Light touch exemptions

Issue/Section	
Transparency Notices S44	Not required for Direct award if user choice
Contract Award Notices S50	Not required for Direct award if user choice
Contract Details notice S53	To be published in 120 days not 30
Contract Change notices S75	Not applicable
Contract Termination notice S80	Not required if direct award user choice
Duty to consider lots	Mandated
Time limits S54	No minimum timescales for notices or duration of tender processes
Modifying procurement	Allowed even if tender process underway – but have regard to procurement objectives

Issue	
Framework maximum term	Not applicable apart from open framework 8 years
Framework requirements	Allowed to award without competition
Frameworks competitive selection	Does not apply
Exclusion grounds	Apply
Standstill	Not required – can have voluntary
Automatic suspension if challenged	Only if a voluntary standstill observed
Modification notices (various)	Does not apply

Private Utilities

Utility activities are activities connected with the provision or operation of networks that provide:

- 1. gas and heat
- 2. electricity
- 3. water
- 4. transport services (rail, tram, bus)
- 5. ports and airports
- 6. extraction of oil and gas and exploration for, or extraction of coal or other solid fuels

Utilities Exemptions

Issue	Exemption
Below threshold Contract (sections 84-88)	Exempt – and no requirement to publish payments more than £30 000
National Procurement Policy Statement	Exempt (no duty to have regard)
Wales Procurement Policy	Exempt (no duty to have regard)
Pipeline Notices (section 93)	Exempt
Exempted contracts	Contracts awarded between joint ventures Contracts awarded to affiliates Contracts for public transport – separate legislation Purchases of water, energy or fuel for production of energy
Key Performance Indicators	Exempt
Contract Details notice	Exempt
Contract change notice	exempt
Procurement Termination notice	Exempt
Electronic communications	Need not be free of charge in utilities dynamic market
Preliminary Market Engagement notices	Exampt
Time limits	No minimum time limits for tender from “pre-selected” supppliers
Frameworks	No maximum term
Dynamic market	MAY charge feed for joining Dynamic Markets
Procurement investigations	Not covered as a relevant contracting authority
Prompt payment	Not an *implied* term of 30 days

Reserved Contracts – Section 32 guidance

- May use a Competitive Flexible Procedure to reserve any procurement to a supported employment provider (disabled or disadvantaged people)
- A supported employment provider is an organisation that operates wholly or partly for the purpose of providing employment, or employment-related support, to disabled or disadvantaged people where at least 30% of the employees of the organisation (or the part of the organisation that will perform the relevant contract) are disabled or disadvantaged (see section 32(4)). A supplier must demonstrate to the contracting authority's satisfaction that it meets both parts of the definition i.e. the organisation's purpose and the 30% workforce requirement.

Principles and Objectives of PA2023

Principles of PA2023	Objective
Delivering Value for Money	Value for Money
Maximising Public Benefit	Additional benefits e.g. efficiency, innovation, Social Value
Sharing information	Public Accountability, competition
Acting with Integrity	Fair competition, public trust

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Principles of PCR2015	**Objective**
Transparency	Public accountability
Equal Treatment	Fair competition, EU principles
Non-discrimination	Fair competition, EU principles
Proportionality	Efficiency, competition

Application of Thresholds

Threshold	Description	Application
<£12 000/£30 000 (inc. VAT)	Unregulated	No competition needed but desirable
>£ 12 000/£30 000	Regulated Below Threshold contract	Publish on FTS if competition
>£ 139 688/£214 904	Public Contract	Publish notices on FTS
> £5 million	Public Contract	Publish additional notices on FTS
> £5 372 609	Public Works Contract	Can use a Conditions of Participation stage above lower threshold (£140k/£215k)
< £ 663 540	Light Touch	Not considered to be of cross-border interest and therefore lower obligation to publish notices, follow PA 2023 rules

Unregulated Below-threshold Contracts

- Unregulated Below-threshold Contracts are procurements which are not covered by the Procurement Act, and can be made with or without going through a tendering process.
- Contracts are not regulated if they are for central government authorities with values of £12,000 or less (including VAT), or wider public sector bodies with values of £30,000 or less (including VAT).

Below Threshold – Regulated and Unregulated

- General principles still apply
  - NPPS (National Procurement Policy Statement
  - Relevant legislation e.g. Bribery Act 2010
  - No assessment of suitability before contract award (i.e. no pre-qualification/Selection)
  - Requirements to consider barriers to SMEs and whether they can be removed or reduced
  - Requirement to publish notices if value over relevant limit (£12k/£30k inc. VAT)
    - Need to publish a below threshold tender notice and contract details on central digital platform
- Increased flexibility subject to local policies and procedures (especially if below £12k/£30k inc. VAT)
  - E.g. award contract without competition
  - Request quotes from known suppliers only
  - Restricted to UK only, or located in a specific county or borough, or SMEs or VCSEs

National Procurement Policy Statement (NPPS)

PA 2023 S13 the National Procurement Policy Statement (NPSS)

- (1) A Minister of the Crown may publish a statement setting out the Government's strategic priorities in relation to procurement.
- (7) A Minister of the Crown must keep the national procurement policy statement under review.
- (8) The national procurement policy statement may be amended or replaced by a subsequent statement, and this section applies in relation to any amended or replacement statement as it applies in relation to the original statement.
- (9) A contracting authority must have regard to the national procurement policy statement.

Why is NPPS important?

- The words “Social Value” are not in the Procurement Act 2023
- But are in the NPPS (and in new PPN 002 (2025))
- Other future government priorities will be laid out through the NPPS

Does it affect me?

- *"The Statement applies to all contracting authorities as defined in section 2 of the Act with the exception of the authorities and contracts set out in section 13(10), as follows: private utilities; contracts awarded under a framework or dynamic market; procurements under devolved Welsh or transferred Northern Irish procurement arrangements; devolved Welsh authorities or transferred Northern Irish authorities"*

9. The policy objectives established in the NPPS are separate from the procurement objectives at section 12 of the Act. Those objectives go to the heart of the purpose of public procurement regulation rather than linking to wider governmental policies to which public procurement can contribute. Contracting authorities must ensure that any attempts to address NPPS priorities do not conflict with the procurement objectives at section 12, for example by treating suppliers (unjustifiably) differently or failing to consider barriers to small and medium-sized enterprises.

10. A breach of this statutory duty is not actionable under Part 9 of the Act (Remedies for breach of statutory duty) but a contracting authority can be held to account for non-compliance through the judicial review process and systemic breaches of this nature could be grounds for a procurement investigation under part 10 of the Act.

What is in the new NPPS? Government Missions

- Kickstart Economic Growth
  - Opportunities for SMEs (PPN 001 (2025))
  - High quality jobs
  - Encouraging Innovation
- Make Britain a Green Energy superpower
  - Accelerating to NetZero
- Take back our streets
- Break down barriers to opportunity
  - Skills gaps
  - Removing barriers to entry for young people and under represented groups
- Build a NHS fit for the future

NPPS: High-Level Requirements on Authorities

- In carrying out a procurement covered by the Act, a contracting authority must have **regard** to the importance of delivering value for money.
- Specifically, this means:

1. Driving economic growth and strengthening supply chains by giving small and medium-sized enterprises (SMEs) and voluntary, community and social enterprises (VCSEs) a fair chance, creating high quality jobs and championing innovation;

2. Delivering social and economic value that supports the Government's mission including by working in partnership across organisational boundaries where appropriate; and

3. Ensuring the right commercial capability and standards are in place to procure and manage contracts effectively and to collaborate with other contracting authorities to deliver best value.

A definition of having regard

Optimising the use of public funds by balancing effectiveness, efficiency and economy over the life-cycle of a product, service or works to achieve the intended outcomes of the procurement, including wider socio-economic and environmental benefits and impacts.

Consultation on future changes

- Deadline 5th September 2025
- https://www.gov.uk/government/consultations/public-procurement-growing-british-industry-jobs-and-skills-consultation-on-further-reforms-to-public-procurement

What does the Contracting Authority need to do?

- *"A contracting authority must have **regard** to the national procurement policy statement"*

- So, have it in mind
- Ideally record how decisions made support (or possibly go against) NPPS
- Track performance against NPPS (e.g. counting tender processes including Social Value provisions)
  - Including SME and VCSE spend against targets

SME and VCSE procurement spend targets

- All Central Government departments including executive agencies and non-departmental bodies must set a 3-year target for direct spend with SMEs (from 1 April 2025) and 2-year target for direct spend with VCSEs (from 1 April 2026 – a year later) and report annually (no later than 30 Sept)
    - Other contracting authorities may choose to do the same
    - Does not apply to NHS, devolved procurement in Scotland, Wales, N Ireland
- Targets must be signed off by relevant Minister (by 31 May 2025)
        - SMEs have fewer than 250 staff, and turnover less than £44m, or balance sheet less than £38m

Lots

- It is now a duty to ***consider*** breaking a Public Contract into lots before a procurement
  - Aim is to encourage SMEs and VCSEs
  - Not required to *actually* break into lots
  - Do not have to explain decision
  - Decision is not challengeable

Public Procurement Notices

- 001 SME and VCSE procurement targets
- 002 Taking account of Social Value in the award of contracts
- 003 The Public Services (Social Value) Act 2012
- 004 Open Book Contract Management
- 005 Reserving below threshold procurements
- 006 Taking account of Carbon Reduction Plans in the procurement of major government contracts
- 007 Contracts with suppliers from Russia and Belarus
- 008 Armed Forces Covenant
- 009 Tackling Modern Slavery in Government Supply Chains
- 010 Procuring Steel in Government Contracts
- 011 The Commercial Playbooks
- 012 Security Classifications Policy
- 013 Using Standard Contracts
- 014 Cyber Essentials Scheme
- 016 Carbon Reduction Contract Schedule
- 017 Improving Transparency of AI use in Procurement
- 018 Taking account of a supplier's approach to payment in major contracts
- 019 Requirements to publish on Contracts Finder
- 020 Guidance on Data Protection Legislation
- 021 Payment spot checks in public sub-contracts

Discussion -Significance of the changes for your organisation.

- What do you think of the new regulations?
- Will they make any difference for you?

2. Procurement Processes

- Required Notices and the Central Digital Platform
- Direct Award
- Open Procedure
- Competitive Flexible Procedures

Central Digital Platform – Find a Tender Service (FTS)

- A new platform with the same name
- Contracts Finder (for lower value contracts) is being wound down
  - No longer a requirement to publish below threshold contracts on CF but on FTS instead
- Sell2Wales, EtendersNI, Public Contracts Scotland continue
- Other portals can act as an interface to FTS e.g. Supply2Gov, Delta esourcing, In-tend

Electronic Procurement – The user journey

Sign In & Registration

1
- **Supplier** registers to use FTS/CFS/SI - uses existing / is allocated ID number
- System auto-populates org data where available.

Supplier Information

2
- Sign In service directly shares org data where available.
- **Supplier** reviews and adds specific org and other common data where required.

Find a Tender

3
- **Supplier** finds a suitable opportunity on FTS and wants to bid.

4
- **Supplier** reviews and confirms common data. Shares directly with Buyer eSender system as part of bidding process.

Buyer eSender System

5
- **Buyer** runs procurement.
- **Buyer** reviews Supplier's common data as part of wider bid pack.
- **Buyer** awards contract to winning supplier.

6
- **Buyer** requires **Supplier** to reconfirm Supplier's common data in case of updates prior to award & publication.

7
- **Buyer** publishes 'Contract Award' notice on FTS, including relevant data from Supplier Information.

The New Procedures

- Direct/open/competitive flexible procedures
- Dynamic Markets
- Frameworks
- Conditions of participation

The New Procedures

- Direct Award
- Open Tender
- Competitive Flexible Procedure

Direct Award grounds

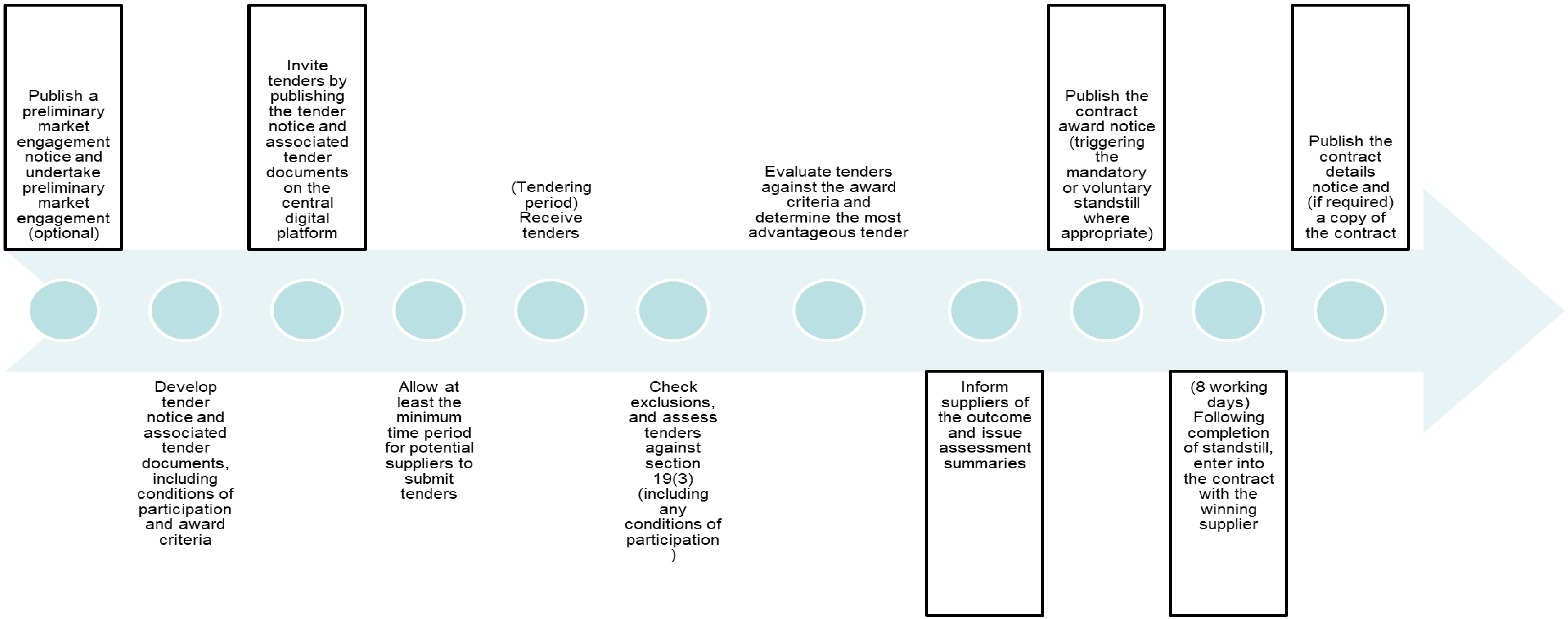
- Requirement is urgent (extreme and unavoidable urgency or necessary to protect live etc.)
- Requirement is specialist (prototypes, development, R&D, single supplier, defence and security, user choice e.g. NHS)
- Other reason
  - E.g. commodity, advantageous terms on insolvency, additional/repeat goods services or works)
- Note: a direct award to an excluded/excludable supplier may be compliant if there is an overriding public interest

Open Tender

- Must be used for competition below relevant threshold

- Simple one-stage process
  - Tender Notice is published
  - Bids are received and evaluated
  - Contract Awarded
  - No Conditions of Participation (Selection questions) used to reduce number of bidders before award – although must check supplier is eligible to win a public sector contract

Open Procedure



Competitive Flexible Procedure

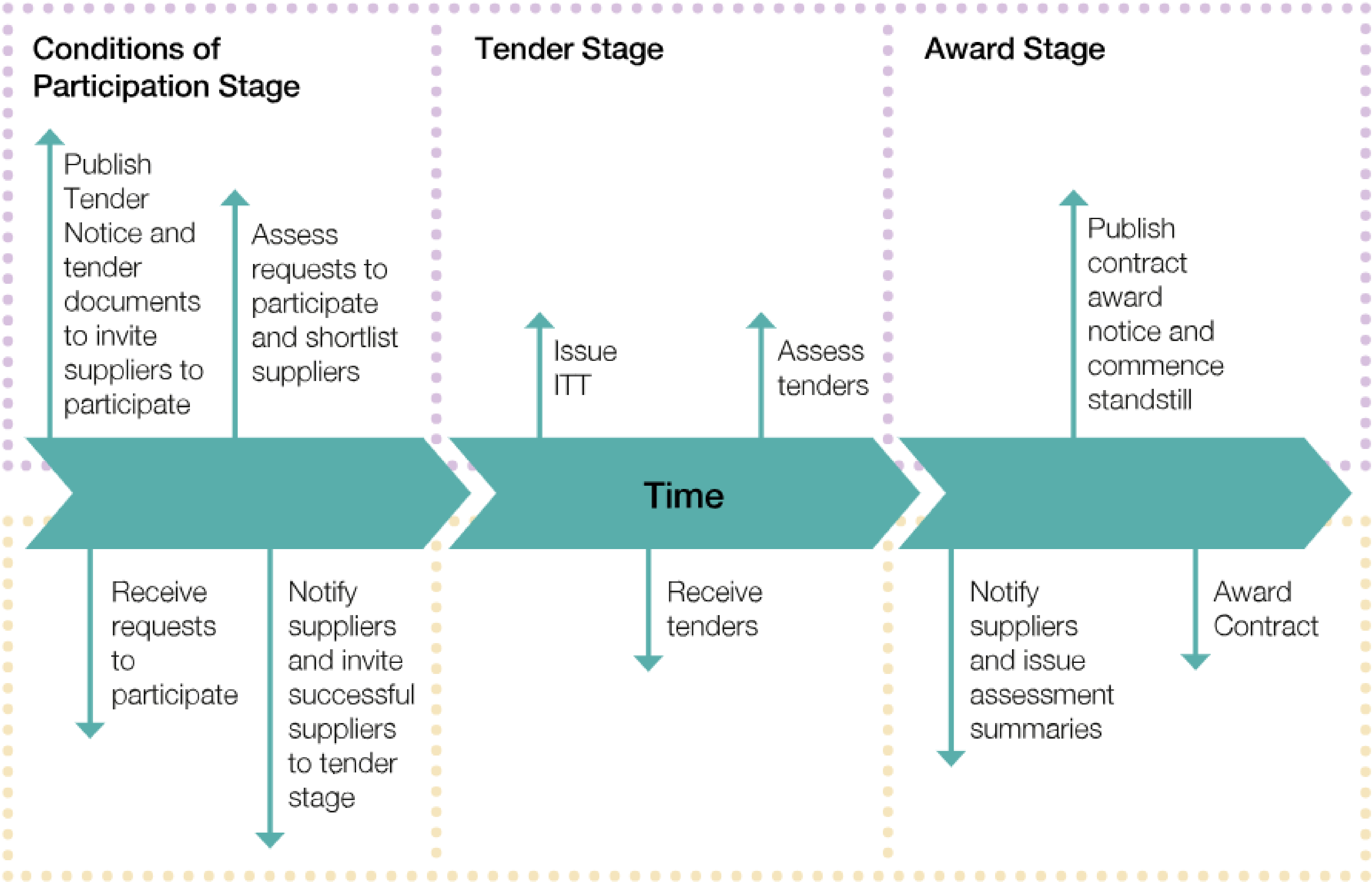
- Only to be used above Threshold
- Replaces the range of multi-stage processes allowed under PCR2015
  - Restricted Tender (SQ+ITT)
  - Competitive Procedure with Negotiation (SQ+ITT+negotiation)
  - Competitive Dialogue (SQ+dialogue+ITT)
  - Innovation Partnership (stage gate process)
  - Design contest (e.g. for architectural designs)
- Can look like any of above, or just use elements

Competitive Flexible Procedure

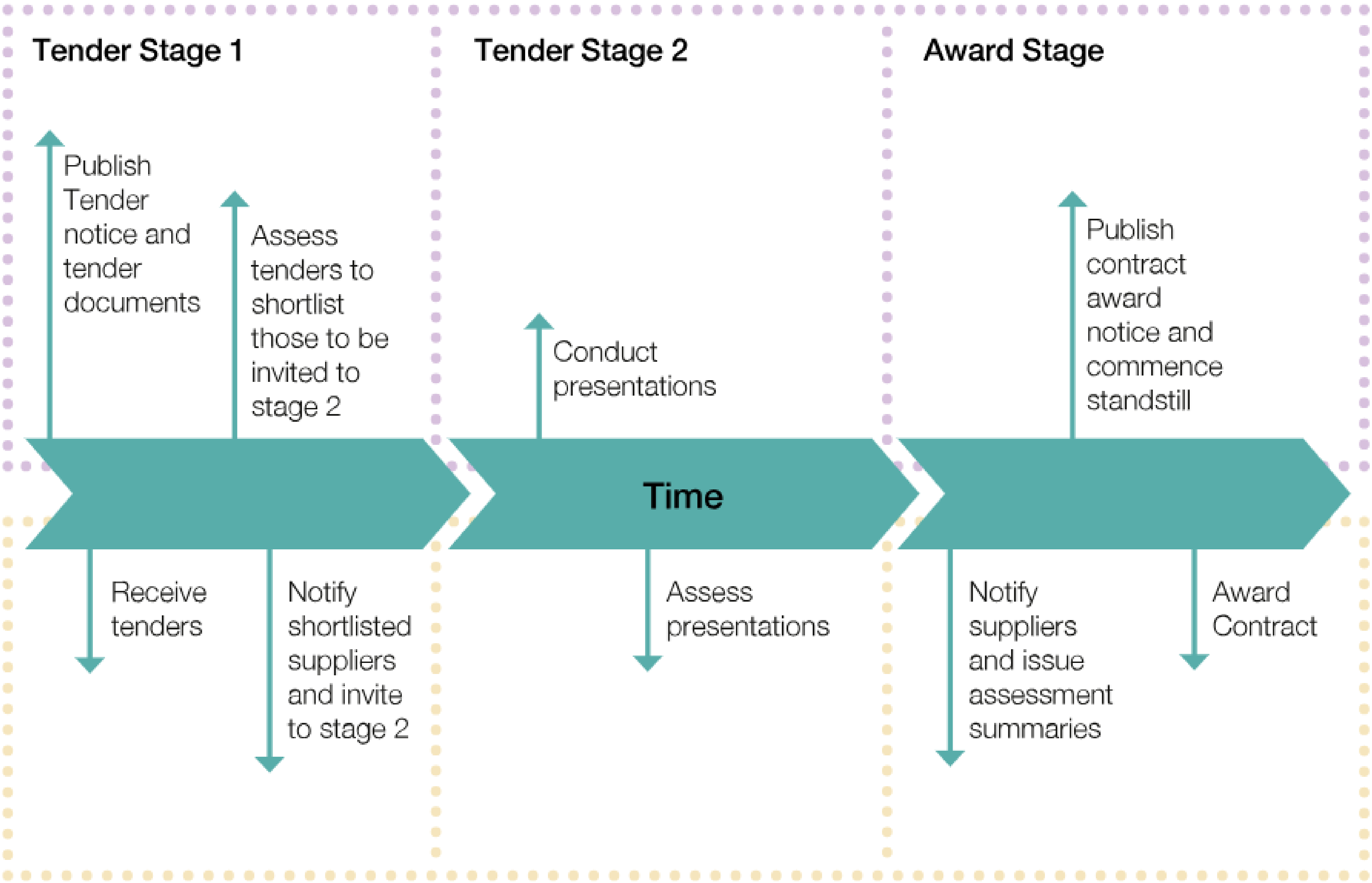
- Can be designed to meet the needs of an individual procurement
- Can include Conditions of Participation stages
- Can include demonstration/presentation/sample stages
- Can use a PSQ
- Can include negotiation
- Can reduce number of bidders in stages
- Can use auctions as part of the bidding process

- Expected that many Contracting Authorities will initially follow processes similar to those available under PCR2015

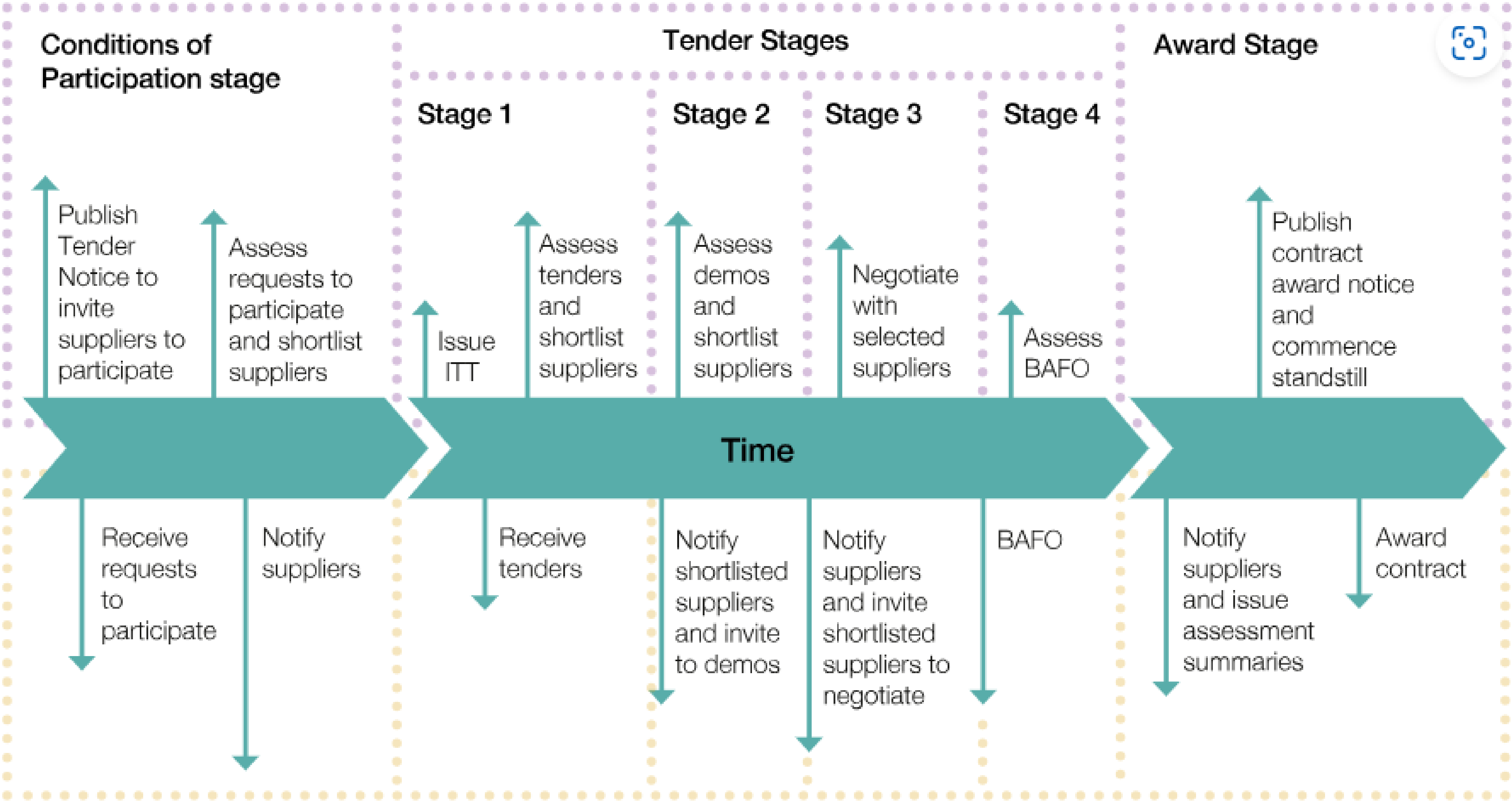
Example CFP – Standard Requirement



Example CFP – Two Stages with a Supplementary Process



Example CFP – Multi-Stage Process



General Considerations for the Competitive Flexible Procedure (CFP)

- Must have regard to the importance of the procurement objectives
- Must heed all publication requirements
- Must take the NPPS into consideration
- Removal or reduction of barriers to participation for SMEs
- In carrying out a procurement, a contracting authority must treat suppliers the same unless a difference between the suppliers justifies different treatment
- If a contracting authority considers that different treatment is justified in a particular case, the authority must take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage

How to choose route?

- *"Implicitly this will operate within the bounds of the provisions of the Bill (such as procurement principles, publication and other requirement applicable to a competitive procedure) but can be designed around what would work best for the specific procurement"* – Explanatory Notes to the Bill
- Proportionality appears to apply both to the choice between open and "other" and to the process designed for the "other" form of procurement
- Proportionality assessed by reference to the nature, complexity and cost of the contract

Procurement Timescales (Calendar Days)

- Open Procedure
  - 25 days min.
  - 10 days if a Planned Procurement Notice has been used
  - 10 days if there is ‘undue urgency’
  - 10 days if you have used ‘pre-selection’
  - NO minimum if you have used ‘pre-selection’ AND have agreement from all suppliers

- Competitive Flexible Procedure
  - The ‘participation’ phase (selection stage) – 25 days min.
  - The ‘tendering’ phase (ITT stage)
    - 25 days min.
    - 10 days if a Planned Procurement Notice has been used
    - 10 days if there is ‘undue urgency’
    - 10 days if you have used ‘pre-selection’
    - NO minimum if you have used ‘pre-selection’ AND have agreement from all suppliers

Discussion -

- What do you think of the new procedures?

- What will be the advantages/disadvantages for your organisation?

3. Identifying Opportunities for bidding

- Required data – The Procurement Specific Questionnaire (PSQ)
  - Excluded and Excludable suppliers
- Modifying Contracts
- Frameworks and Dynamic Markets
- Challenges, Disputes and Termination

Local Authority spend £120Billion 2022/3

Local authority spending, by service type, 2022/23

£ billions, real terms (2024/25 prices), England total

Education services	39.9
Adult Social Care	22.0
Police services	15.7
Children Social Care	13.8
Environmental and regulatory services	6.4
Highways and transport services	5.1
Central services	4.6
Public Health	4.1
Cultural and related services	2.8
Fire and rescue services	2.6
Housing services (GFRA only)	2.4
Planning and development services	2.3
Other services	0.2
Total spending on services	**121.9**

Registering with Find a Tender Service

- You will need a Gov.uk ONE account
  - www.gov.uk one login should get you there…
  - Takes 15 minutes to register
  - You will be allocated a unique ID to use for all government services (you probably have one already)
  - You can then move onto Find a Tender Service https://www.find-tender.service.gov.uk/Search
  - Then set up your profile (buyer or seller) with your Basic Information
  - To bid for opportunities you will use your unique ID and get a Share Code e.g. WrGdWjTb rather than filling in the basic information again (but you DO have to generate a Share Code each time)

As of 21 May 2025

KEY FIGURES

20,000+ suppliers signed up

7,000+ Notices

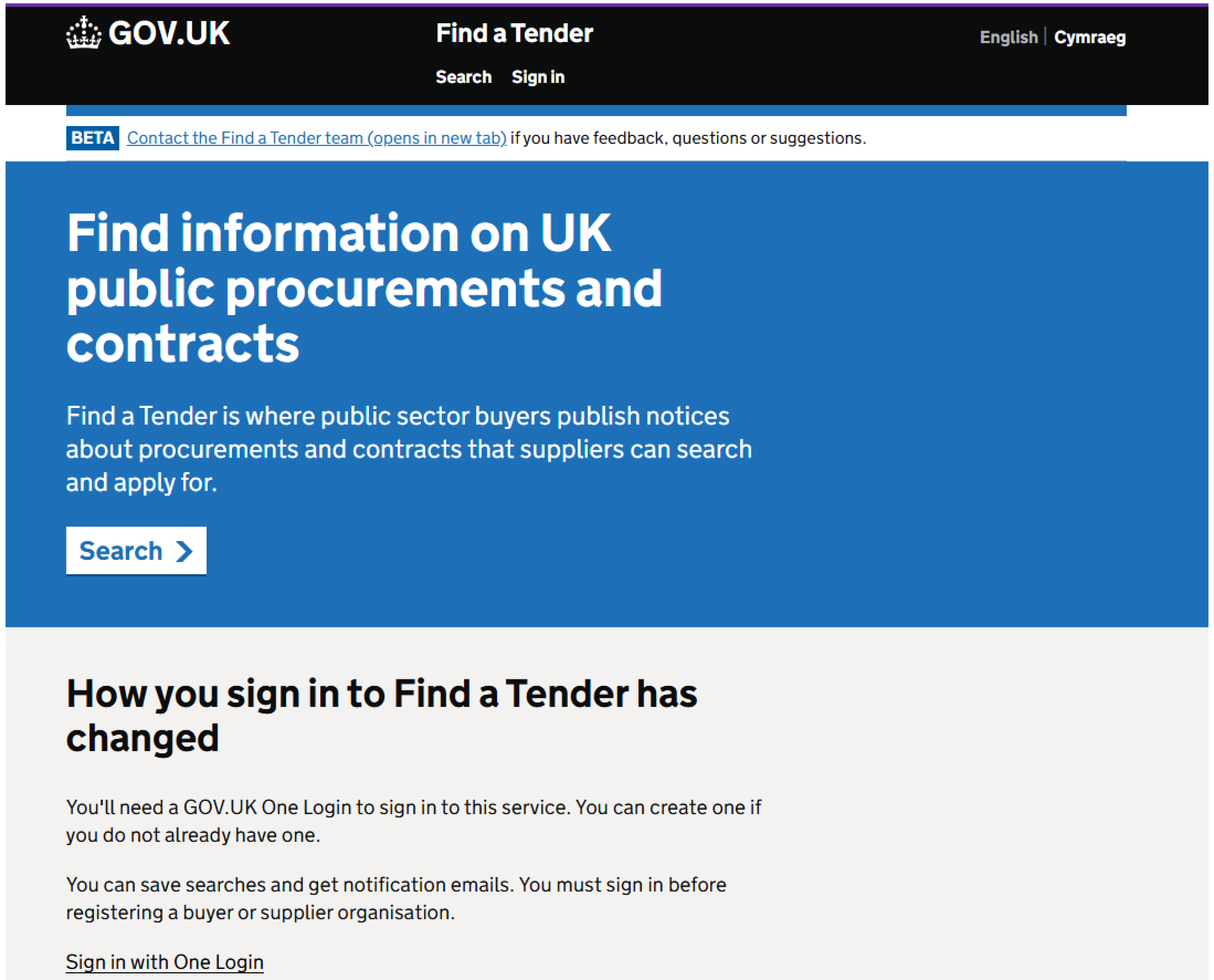
1200 Contracts signed

£100.5bn of opportunity

Out of approx. 5.5 million businesses, and approx. £434bn spend

- ref: CCS, ONS and Commons Library

Find a tender and supplier information



Required Data – Supplier's Basic Information

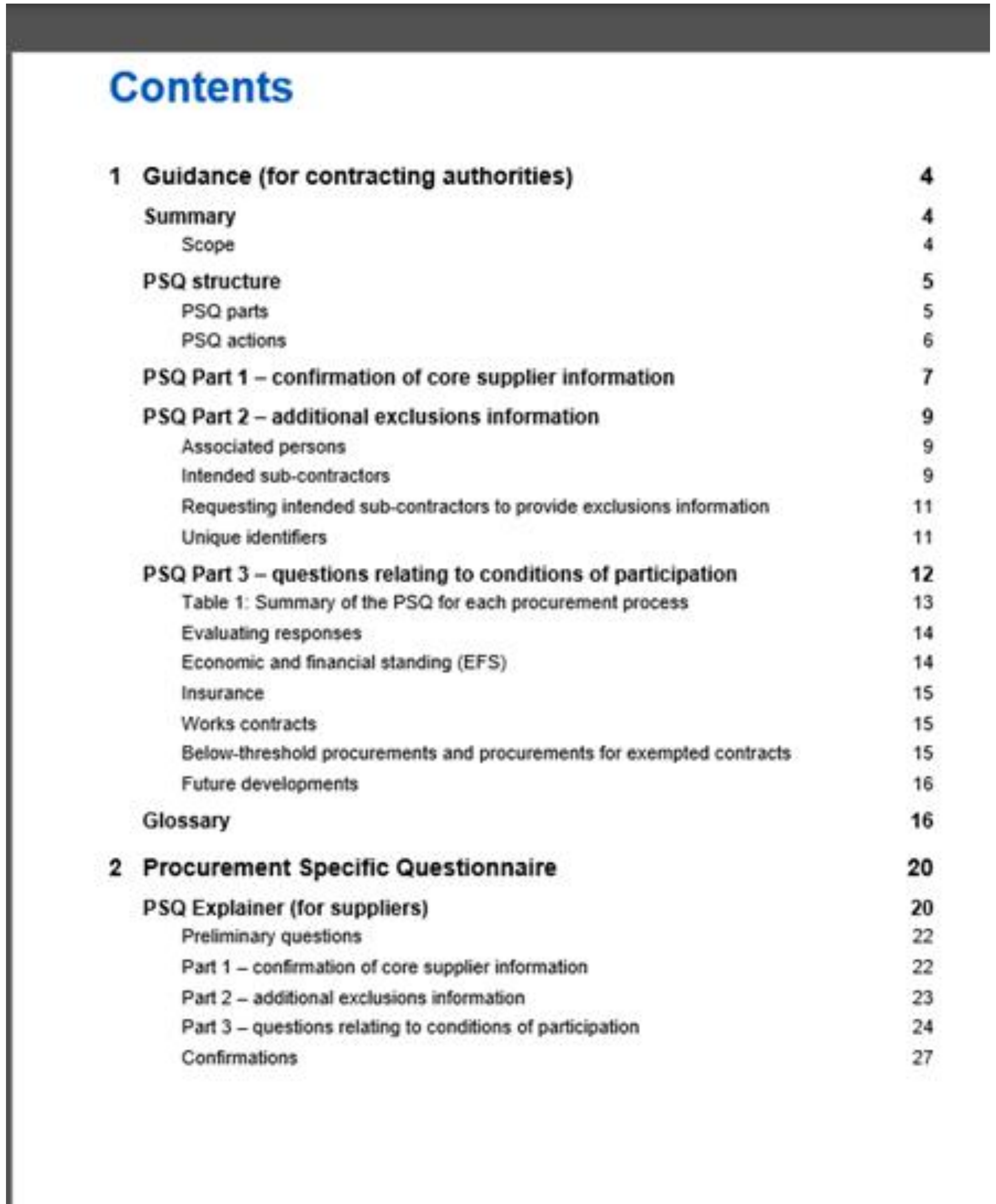
- the supplier's name,
- (b) the unique identifier for the supplier,
- (c) the supplier's registered or principal office address,
- (d) the supplier's contact postal address and email address,
- (e) where the supplier markets its goods, services or works online, the relevant website address,
- (f) the supplier's legal form and the law by which it is governed,
- (g) where the supplier is a company registered under the CA 2006(b), the date when the supplier was registered under that Act,
- (h) where the supplier is not a company registered under the CA 2006—
- (i) any equivalent date to that mentioned in sub-paragraph (g), or
- (ii) where there is no equivalent date, the date the supplier began trading,
- (i) the supplier's VAT registration number (within the meaning of section 5A of the Value Added Tax Act 1994), if applicable,
- (j) details of any relevant qualification or trade assurance held by the supplier, including—
- (i) in the case of a qualification, the name of the person or body which awarded the qualification, the name of the qualification and the date it was awarded, or
- (ii) in the case of a trade assurance, the name of the person or body which awarded the registration, the assurance reference number and the date the assurance was given,&
- (k) whether the supplier is—
- (i) a small and medium-sized enterprise(c),
- (ii) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
- (iii) a supported employment provider, or
- (iv) a public service mutual.

Procurement Specific Questionnaire

- Replaces the old Selection Questionnaire (aka SQ or PPQ or ESPD or RTP…)
- Can **only** be used above Threshold
- May be used as Conditions of Participation (CoP)
- Supplements the Supplier's Basic Information with questions relevant to the particular procurement – usually technical, legal and financial capacity
  - Limits financial questions to basically last 2 years financial accounts in accordance with Part 16 of the Companies Act 2006 or equivalent
- Most likely to be used in Competitive Flexible Procedure

The new Procurement Specific Questionnaire (PSQ)

- **Preliminary Questions:** confirmation of supplier identify and bidding status.
- **Part 1:** Confirmation they are on the CDP and have their core information available.
- **Part 2:** The above information for any person/company suppliers are relying on to meet the minimum criteria. These individuals are verified against the Debarment List and they also have to be registered on the CDP.
- **Part 3** has some standard questions related to financial, legal, and technical areas
- You can add project specific questions
- Use of the PSQ is NOT mandatory and questions can be altered or omitted



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Excluded and Excludable suppliers

SCHEDULE 6

Section 57

Mandatory exclusion grounds

Part 1

Offences

1 A mandatory exclusion ground applies to a supplier if the supplier or a connected person has been convicted of an offence referred to in this Part of this Schedule.

PA2023 Schedule #6 Mandatory Exclusions/Excluded

- Corporate Manslaughter and Corporate Homicide Act 2007
- Terrorism – Counter-Terrorism Act 2008
- Theft, fraud, bribery etc.
- Labour market, slavery and human trafficking offences
- Modern Slavery Act 2015
- Employment Agencies Act 1973 and others
- Immigration Act 2016
- Organised Crime
- Tax offences
- Cartel offences
- Ancillary offenses (aiding, abetting commission of offence)
- Failure to co-operate with an investigation
- Offences committed outside the UK (if were committed in UK)
- National Security

PA 2023 #S7 Discretionary Exclusions/Excludable

- Labour market misconduct
- Environmental misconduct
- Insolvency or bankruptcy
- Potential Competition infringements
- Professional misconduct (as determined by a court, regulator or authority)
- Breach of contract and poor performance (evidenced by early termination, damages or settlements)
- Acting improperly in procurement (gaining unfair advantage)
- National Security

- Different time limits apply now – 5 years rather than 3 years

PA2023 #62. Debarment List

- Ministers of the Crown *may* add excluded suppliers to the debarment list, including information about mandatory or discretionary exclusion and expected end date.
- Suppliers must be given a reasonable opportunity to make representations and provide evidence regarding exclusion (section 58)
- Factors such as steps taken and commitments may be considered.
- Buyers/PRU must notify suppliers when they are excluded and provide information on grounds (and if relevant to appropriate authorities)
- Suppliers can apply for removal from debarment list
- Ministers must keep list under review and *can* remove entries if exclusion ground no longer exist

Procurement Review Unit

- Will have three strands

Conflicts of Interest Register

- The Procurement Act 2023 gives clearer instructions on how and when to undertake conflicts of interest checks, steps to mitigate and makes specific provision for the preparation of a conflicts assessment

- The principal obligation on all contracting authorities is to avoid conflicts of interest of individuals acting in relation to a procurement, including those who influence a decision made by or on behalf of a contracting authority. For example:
  - **ACTUAL CONFLICTS:** CA representatives or senior minister involved in the procurement have a personal, professional, or financial interest in the outcome of the procurement
  - **POTENTIAL CONFLICTS:** A member of the commercial team's spouse is the CEO/Director of a business that is in the process of acquiring ownership of another company. That company has recently submitted a tender.
  - **PERCIEVED CONFLICTS:** If a contracting authority is aware of circumstances that it considers are likely to cause a reasonable person to wrongly believe there to be a conflict or potential conflict of interest (e.g. gifts/hospitality), then this should also be included in the conflicts assessment.

Notices

New Procurement Notices

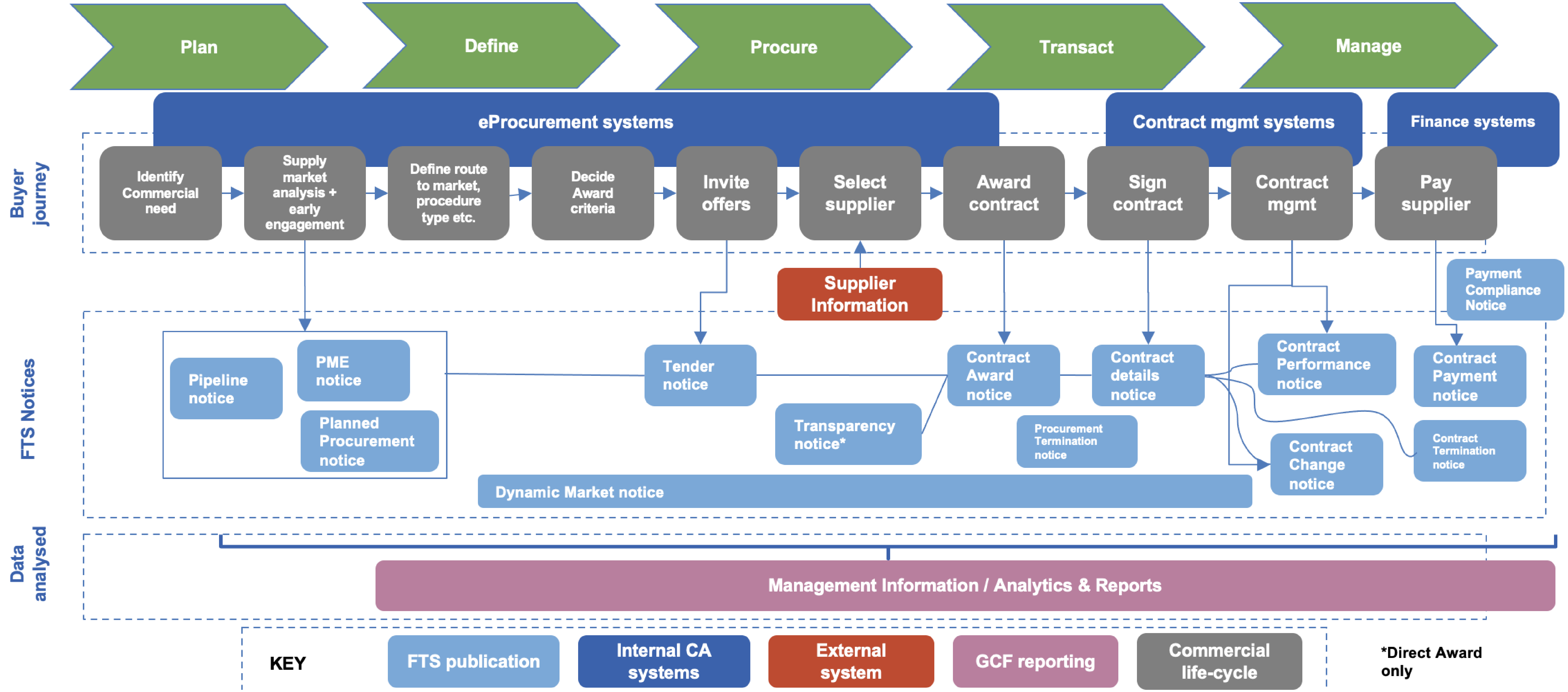
Stage	Notice	Data Gathered	Purpose
Planning	Procurement Pipeline	Information on (potential) future procurements	For potential suppliers to plan future work with the public sector
	Planned Procurement Notice	Further information on procurements soon to commence; information on pre-market engagement events	For potential suppliers to step up their work with the public sector, and see all engagement events that they could attend
	Preliminary Market Engagement Notice		
Tender	Tender Notice	Detailed information on opportunities to bid, including links to the tender site and information on the procedure	Suppliers can view and decide to bid on opportunities
	Procurement Termination Notice		
	Transparency Notice		
	Dynamic Market Notice		
	Below Threshold Contract		

Gov-pd.co.uk | 0330 0947 344 | info@gov-pd.co.uk

New Procurement Notices

Stage	Notice	Data Gathered	Purpose
Contract	Contract Award Notice Contract Detail Below Threshold Contract Detail	Detailed information on the final value, contract duration, extension options commercial tools used, KPIs to be used and the redacted signed contract	Contract & market analysis, better transparency over contract clauses and intended implementation
Implementation	Payment Compliance Notice Contract Change Notice Contract Performance Notice Contract Termination Notice	Comprehensive information on contract management including performance against KPIs, spending through contracts, confirmation of use of options / contract changes and contract expiries / terminations	Provision of important information to understand how well contracts are being managed and how well suppliers are performing. Change and expiry data key to maintaining a comprehensive and up to date register of which contracts are live

Electronic Procurement – System Map



Frameworks and Dynamic Markets

Frameworks

A Framework is a “public contract” between a contracting authority and one or more suppliers. It is a legally binding, overarching contract which establishes a quicker and more flexible way of awarding future contracts for specific works, goods or services to suppliers.

A (closed) framework maximum term is four years, unless:

- there is a commercial decision to make it longer or,
- the framework is a defence and security framework or,
- the framework is a utilities framework, or
- A light touch framework or,
- an open framework (with competition re-opened at regular intervals)

Frameworks

- Can be for multiple authorities, but only those specified in the contract notice
- Can be with a single undertaking or multiple
  - (previous restriction requiring either 1 or 3 or more has been removed)
- If aware of actual or impending over-dependency on one undertaking the contracting authority should design categories of provision in a way that will encourage participation by smaller firms or new entrants

(5) A framework must include the following information—

(a) a description of goods, services or works to be provided under contracts awarded in accordance with the framework;

(b) the price payable, or mechanism for determining the price payable, under such contracts;

(c) the estimated value of the framework;

(d) any selection process to be applied on the award of contracts;

(e) the term of the framework (see section 47);

(f) the contracting authorities entitled to award public contracts in accordance with the framework;

(g) whether the framework is awarded under an open framework (see section 49).

(7) A framework may provide for the charging of fees at a fixed percentage of the estimated value of any contract awarded to the supplier in accordance with the framework.

(9) Subsections (3) to (5) do not apply to a framework that is a light touch contract (see section 9(5)).

2015	Characteristics	PA2023	Characteristics
Standard Framework	Maximum of 4 years, no new entrants after initial competition	Closed Framework	Maximum of 4 years, no new entrants after initial competition
		Open Framework	Re-opened for competition at regular intervals, maximum of 8 years
Dynamic Purchasing System	Open to new entrants at any time	Dynamic Market	Open to new entrants at any time Only for above threshold contracts
		Dynamic Market as Condition of Participation	A tender may require bidders to me members of a particular Dynamic Market

Closed Framework

- Essentially these are the same as frameworks that currently operate under PCR2015

- Must have a competitive selection process
- Notice details for this competitive selection process must include:

  - description of goods, services or works to be provided under contracts awarded in accordance with the framework;
  - the price payable, or mechanism for determining the price payable, under such contracts;
  - the estimated value of the framework;
  - any selection process to be applied on the award of contracts;
  - the term of the framework (4 years max – unless utilities or defence and then it is 8 years)
  - the contracting authorities entitled to award public contracts in accordance with the framework;

PA2023 #49 open frameworks

49 Open frameworks

(1) An "open framework" is a scheme of frameworks that provides for the award of successive frameworks on substantially the same terms.

(2) An open framework must provide—
- (a) for the award of a framework at least once during—
  - (i) the period of three years beginning with the day of the award of the first framework in the scheme, and
  - (ii) each period of five years beginning with the day of the award of the second framework in the scheme;
- (b) for the expiry of one framework on the award of the next (but see subsection (3));
- (c) for the final framework to expire at the end of the period of eight years beginning with the day on which the first framework under the scheme is awarded.

Open Frameworks

- An “open framework” is a scheme of successive frameworks awarded on substantially the same terms
  - Awarded using the Open or Competitive Flexible Procedure
  - Can last up to 8 years compared to 4 for a Closed or single supplier framework
  - Time limit does not apply to light touch frameworks unless open

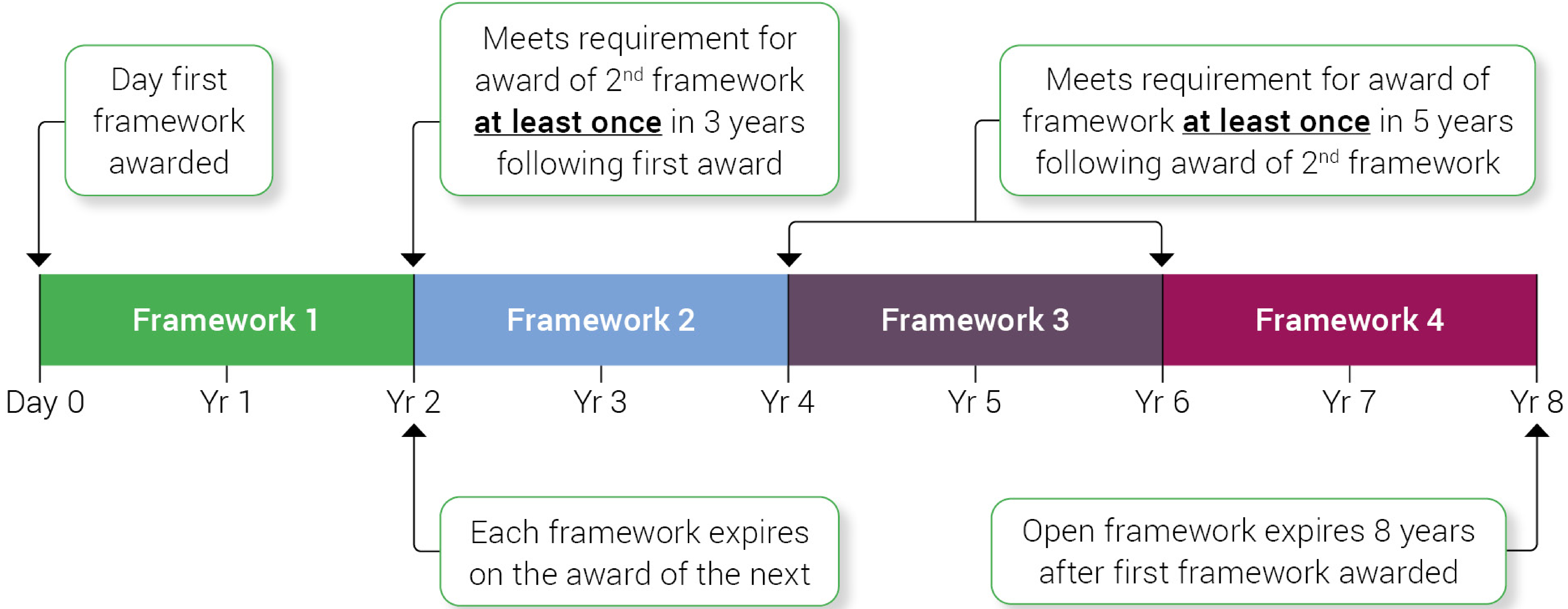
  - Requirement to open up to new suppliers at least once in first 3 years, and once in subsequent 5 years
  - Allowable to open up more times if provided for in framework terms
  - Technically the first framework closes when second one starts, but contracts and procurements can continue across the change.

Open Framework

- An "open framework" is a scheme of frameworks that provides for the award of successive frameworks on substantially the same terms
- What this means is that open frameworks may reopen at set points for new suppliers to join rather than suppliers being locked out for 4 years
- The open framework must award the framework (contract), at least once* during the period of three years beginning with the award of the first framework in the scheme, and at least once during each period of five years beginning with the award of the second framework in the scheme. This means they can run for a maximum of eight years.
- There must be a minimum of 2 suppliers on each iteration of the framework or it will revert to a closed framework 4 years from the tendering competition – can limit number of suppliers on the framework or lot as long as this is defined in the initial tender documents
- The preceding framework will expire with the contracting of the new one and award criteria must stay largely the same across the iterations

* Could do this more often (e.g. have 4 x 2 year frameworks run concurrently) and can add in optional extensions before retendering

Example framework timeline



https://www.bevanbrittan.com/insights/articles/2022/procurement-bill-byte-5-frameworks-and-dynamic-markets/

Open Framework cont.

- Can restrict the number of suppliers on the framework or leave it open
- If only a single supplier is added to the framework it must convert to a closed framework
- Can re-award a supplier a place due to them being on the previous iteration
- Act gives the option to charge fees to suppliers at the point of call off contracts being awarded

Appointing Suppliers on an Open Framework

- Where there is no limit on the number of suppliers, then existing suppliers from a previous framework in the scheme may be re-awarded a place on the framework based on one of the following:.
    - The fact that the supplier has previously been awarded to a framework in the scheme, i.e. be carried forward.
    - A tender relating to an earlier award.
    - A new tender relating to the re-award.
- Where the number of suppliers has been limited, a contracting authority may only re-award to an existing supplier based on either of the following:
    - A tender relating to an earlier award
    - A new tender relating to the re-award

PA2023 #46 Selection on Frameworks

46 Frameworks: competitive selection process

(1) A competitive selection process may provide for conditions of participation only if the contracting authority is satisfied that the conditions are a proportionate means of ensuring that suppliers party to the framework have—

(a) the legal and financial capacity to perform the contract, or

(b) the technical ability to perform the contract.

(3) A condition set under subsection (1)(a) may not—

(a) require the submission of audited annual accounts, except from suppliers who are, or were, required to have the accounts audited in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent;

(b) require insurance relating to the performance of the contract to be in place before the award of the contract.

(8) A competitive selection process may provide for the assessment of proposals, but only by reference to one or more of the award criteria against which tenders were assessed in awarding the framework.

(9) The award criteria may be refined for the purposes of subsection (8).

(11) This section does not apply to a framework that is a light touch contract.

Award on open framework

(4) If there is no limit on the number of suppliers that can be party to a framework under an open framework, a contracting authority may award the framework to an existing supplier by reference to—

  (a) the fact that the supplier has already been awarded a framework under the scheme,

  (b) a tender relating to an earlier award under the scheme, or

  (c) a tender relating to the current award.

(5) Otherwise, a contracting authority may award a framework under an open framework to an existing supplier by reference to—

  (a) a tender relating to an earlier award of a framework under the scheme, or

  (b) a tender relating to the current award.

(9) A reference to an award on substantially the same terms is a reference to an award that could be made by reference to the same tender or transparency notice without substantial modification (see section 31).

(10) A framework under an open framework may not be awarded under section 41 (direct award in special cases) or 43 (switching to direct award).

Framework process

- Contracting authority should invite all undertakings on the framework capable of undertaking the contract to bid for the work
- The time limit should be sufficient to allow preparation of appropriate tenders, taking into account the complexity of the contract
- Award criteria should be those identified in the framework agreement (i.e. not new)
    - If previously stated it may be possible to refine the weightings and terms of contract

#45 Frameworks

- Fees, based on a fixed % of the value of the contracts award, can be charged by the contracting authority – as long as the % is stated in the framework tender documents.
  - Similar to funding of CCS
- no restrictions on what a competitive selection process should look like
  - it could be single stage or multi-stages.
  - Awarded by Competitive Flexible Procedure
- Ability to revisit the conditions of participation at call off stage

(7) A framework may provide for the charging of fees at a fixed percentage of the estimated value of any contract awarded to the supplier in accordance with the framework.

Below-threshold frameworks and contracts

65. The Act does not preclude the establishment of a framework for the award of only below-threshold contracts (referred to in this guidance as a 'below-threshold framework') but it would need to be considered carefully. Because of the prohibition in section 85(1) on contracting authorities restricting the submission of tenders for regulated below-threshold contracts[1] by reference to an assessment of a supplier's suitability to perform the contract, all tenders for the award of the below-threshold framework would have to be considered, with no ability to initially assess suppliers' suitability to perform the contracts to be awarded under the framework.

66. A contracting authority may choose to award a regulated below-threshold contract under a framework that is not a below-threshold framework. As the contract awarded under the framework is a below-threshold contract, this means that:

a. contracting authorities are not obliged to publish any of the notices required for public contracts awarded under frameworks for the contract, though they may voluntarily do so; and

b. where relevant, contracting authorities will need to comply with the rules in Part 6 of the Act on below-threshold contracts (for example, section 87(3) requires a contract details notice if the contract is a notifiable below-threshold contract).

Duration of Call off contracts

- Contracts can carry on beyond end of framework used to establish them
- Otherwise not stated but expected to be proportionate…
- However, if the contracting authority considers the nature of the goods, services or works to be supplied under call off contracts means a longer term is required they can exceed that maximum term.
- If this is the case, the authority must set out the reasons for exceeding the standard term in the Tender Notice or Transparency Notice
- *Suggests* but does not make clear greater flexibility in duration

Problems with frameworks

- Mis-match of anticipated and actual demand
  - Leads to over or under pricing of original bids
  - Can lead to dissatisfied suppliers
- Need to use Award Criteria identified in tender for mini-competitions
  - Requirement may have changed
- Need for mini-competitions adds time and complexity

NHS accredited Frameworks

- NHSE is clamping down on local trusts' use of procurement frameworks, by making it obligatory to buy services through accredited frameworks only.
- All framework procurements will be in scope, though it will not impact procurements that do not use a framework, such as directly awarding low-value contracts to suppliers or going through full competitive tenders.
- The standard contract for 2024-25 directs providers looking to buy through a framework to "purchase the required product or service via an accredited framework," provided that it is available for timely supply through an accredited route.
- However, guidance explains there will be an implementation period until March 2025, during which trusts apparently will still be able to buy through whichever route they favour provided they use an accredited host.
- Until March 2025 trusts will only have to tell NHSE when they buy off the accredited lists – this notification "will help NHS England to further understand framework use across the system".
- From April 2024 trusts not using an accredited host will be "expected to submit to NHS England a justification and explanation as to why"

    - https://www.nhsprocurement.org.uk/news/nhse-approves-20-procurement-framework-hosts-ahead-clampdown

- NHSE published a list of 20 framework hosts (listed below) that were accredited in a "first wave" of the process. Most are either public bodies, collaboratives made up of public bodies, or wholly owned by public bodies, but there are a handful run by private companies.
- Countess of Chester – part of the Countess of Chester Hospital Foundation Trust
- Crown Commercial Solutions – an executive agency of the Cabinet Office
- East of England Collaborative Procurement Hub – a collaboration of NHS organisations
- Eastern Shires Purchasing Unit – a collaboration of local authorities
- Efficiency East Midlands – a non-profit membership organisation made up of public bodies and charities
- HealthTrust Europe – a trusted procurement partner to public and private sector organisations.
- London Procurement Partnership – a collaboration of NHS organisations
- Lexica – a wholly-owned subsidiary of Guy's and St Thomas FT
- NHS Shared Business Services – a joint venture between DHSC and French technology firm Sopra Steria
- NHS Commercial Solutions – a collaboration of NHS organisations
- NHS Arden and GEM CSU – an NHS England commissioning support unit
- NHS Supply Chain – national procurement agency owned by NHS England
- NHS Workforce Alliance – a collaboration of NHS organisations and the Crown Commercial Service
- NHS England – NHS national commissioner
- North of England Commercial Procurement Collaborative – a collaboration of NHS organisations
- North Midlands and Black Country Procurement Group – a collaboration of NHS organisations
- Northumbria NHS Foundation Trust – a provider trust
- Pagabo – a private firm
- QE Facilities – a wholly-owned subsidiary of Gateshead Health FT
- Salisbury FT – a provider trust

Dynamic Markets

Existing Frameworks and DPS

- PCR 2015 Frameworks and DPS continue under those rules until their conclusion
  - Contracts awarded under them also follow those rules until completed
  - So, a contract awarded for 1 year a day before the end of the framework is under the PCR 2015 rules till the end

Dynamic markets

30. A dynamic market is essentially a list of suppliers who have met the 'conditions for membership' of the dynamic market (or part of the dynamic market). Conditions for membership are similar to conditions of participation and are allowed as long as they are a proportionate way of assessing suppliers' legal and financial capacity or technical ability to perform contracts to be awarded by reference to the market. Sections 36(1-5) set out provisions relating to the submission of accounts, insurance, suppliers' qualifications, experience or technical ability, proportionality and evidence, which are similar to those for conditions of participation.

31. Contracting authorities may set conditions of participation, applying section 22, when awarding contracts under a dynamic market.

PA2023 #34 Dynamic Markets

Extended to cover **all** goods, works and services (not just common) for above threshold contracts

- Dynamic Markets are "open" so any new suppliers can apply at any time, similar to DPS.
- No limit on the numbers of suppliers
- Dynamic Markets are not limited to a maximum term of four years, like closed Frameworks.
- Open advertising of opportunities means that suppliers not on the Dynamic Market have the opportunity to join to bid for a particular contract.
- Minimum award time for a contract through a dynamic market is 10 days.
- Excluded, Excludable and debarred suppliers that no long meet the qualification requirements can be removed from a Dynamic Market.
- CFP may require participation in a Dynamic market
- Conditions for membership should be proportionate
- Fees can be charged to suppliers awarded contracts

Dynamic Markets

- Individual Markets can be divided into subcategories such as:
  - Value
  - Geographic location
  - Type of work
- Only **ABOVE** threshold tenders can be called off from a Dynamic Market
- Suppliers can be audited and removed at any point
- Percentage fees on call off contracts can be charged

Dynamic Markets

- In establishing the dynamic market, you **cannot**:
    - require the submission of audited annual accounts, except from suppliers who are, or were, required to have the accounts audited in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent;
    - require insurance relating to the performance of the contract to be in place before the award of the contract.
    - require suppliers to have been awarded a contract by a particular contracting authority,
    - break the rules on technical specifications in section 56, or
    - require particular qualifications without allowing for their equivalents.

Modifying Contracts

Contract Modifications

- Schedule 8
  - If provided for in original contract
  - Urgency and protection of life
  - Unforeseeable circumstances
  - Materialisation of a known risk
  - Additional Goods, Services or works
  - Novation on corporate restructuring

Non-substantial and below-threshold modifications		
1	**Non-substantial** Section 74(1)(b)	Modification is permitted on this ground if it is not a 'substantial modification as defined in section 74(3), i.e. if it does not: • increase or decrease the term of the contract by more than 10% of the maximum term provided for on award; or • materially change the scope of the contract; or • materially change the economic balance of the contract in favour of the supplier.
2	**Below-threshold** Section 74(1)(c) and section 73(4) (meaning of 'below-threshold modification')	Modification is permitted on this ground if it: • does not increase or decrease the estimated value of a goods or services contract by more than 10%, or a works contract by more than than 15%; and • does not materially change the scope of the contract. • cannot be made on the grounds at Schedule 8 or is not a substantial modification (as set out in section 74(3)). Section 74(1)(c) may be used multiple times, but the meaning of a below-threshold modification provides, at section 74(4)(b), that the aggregated value of the changes made on this ground must be less than the threshold applicable to that type of contract.

Known Risk

<table>
<tr>
<td>6</td>
<td>Materialisation of a known risk

Schedule 8, paragraphs 5-7</td>
<td>Modification is permitted on this ground if:

a ‘known risk’ (as defined in Schedule 8, paragraph 6) has materialised which was not caused by any act or omission of the contracting authority or supplier, and as a result the contract cannot be delivered to the contracting authority’s satisfaction; and
it is in the public interest in the circumstances to amend the contract rather than award a new contract; and
it does not increase the estimated value of the contract by more than 50% (unless it is a utilities contract, in which case the 50% cap does not apply); and
it was set out in the tender notice or transparency notice for award of the contract that the contract may require amendment due to the identified risk; and
goes no further than necessary to address the known risk.

When considering the public interest in relation to this type of modification, the contracting authority:

must consider whether a new contract (rather than a modification) could provide more value for money; and
may consider technical and operational matters.

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76 Voluntary standstill period on the modification of contracts

(1) A contracting authority may not modify a public contract or a convertible contract before the end of any standstill period ("a voluntary standstill period") provided for in a contract change notice in respect of the contract.

(2) A voluntary standstill period may not be less than a period of eight working days beginning with the day on which the contract change notice is published.

Challenges, disputes and termination

- One aim of the new legislation (PA2023) is to reduce the risk of challenge

- Under PCR2015 it was possible to challenge for failures in procedure
- Under PA203 the challenge must be based on the consequences of that failure
  - i.e. failure to deliver Value for Money, Public Benefit or to behave with Integrity

Principles rather strict rules

- In the absence of a detailed set of rules, adherence to principles will be the touchstone of the competitive flexible procedure
- Challenge to award decisions in competitive flexible procedure are likely to be based around adherence to principles
- Still need to follow the processes and criteria published
- BUT award criteria MAY be changed during the procurement in some circumstances
  - Before bids received
  - Must be communicated in a notice

Standstill

Contracting authority may not enter into a contract before end of a Mandatory Standstill period of 8 (eight) **working** days

- starts when Contract Award Notice is published

- longer standstill periods are allowed

- Not a significant change from previous 10 calendar days, but clarifies position re: bank holidays etc.

Standstill does not apply if contract

- awarded under a framework

- light touch

- extreme urgency.

2024 Regulations: Assessment Summaries

Are a part of the Contract Award Notice stage and replace standstill letters and contain:

- Name of supplier
- Contact information (including unique identifier from the CPD)
- Award Criteria and assessment methodology in full or a summary that includes a minimum: the title of each criterion, the relative importance of each criterion, and the scores against the scores available
- An explanation of the scores received by reference to information given in the tender documents (broken down into sub-criteria if sub criteria are used)
- Total score and any sub totals if used
- Any further information (e.g. non-compliance)

Remedies

- Part 9 PA 2023
  - Section 100
    - Suppliers who suffer or risk suffering loss or damage due to a breach of duty can bring proceedings
    - If proceedings are initiated during standstill cannot enter contract
      - Court can lift or modify this restriction
      - Court can set aside decisions or actions, award damages
    - Post-contractual remedies can also include setting aside the contract, damages or other appropriate orders
    - May also reduce term of the contract

106. Time limits on claims

- Set aside (and any other) proceedings must commence before 30 days from when supplier first knew or ought to know of circumstances,
- Or the end of the period of six months beginning with the day the contract was entered into or modified – whichever is earlier
- The court *may* extend time limits if there is a good reason to do so.
- Proceedings not permitted after 3 months from date supplier first knew or ought to have known

- Set aside proceedings relate to not publishing contract details or to modifications of a contract

Freedom of Information Act 2000

- *All* information provided to Public Sector bodies *may* be made available to interested parties. This includes commercial information such as prices:
  - These are not normally provided unless ordered by a court
  - Historical data (such as last years prices) are more likely to be deemed appropriate for release without court order
- Intellectual property in the information may still reside with the bidder

Contract Performance Notices

- This can be used in two circumstances:
  - Assessment of KPIs that have been published in a Contract Details Notice
  - As a notice of a breach of public contract or failure to perform
- For KPIs, there will be a new rating scale of **Good, Approaching Target, Requires Improvement, Inadequate or Other** – so we won't see details of the KPIs but get a general idea of performance.
- For the breach or fail to perform instance, the information put in the notice is detailed in Section 71of the Act itself and covers that they are putting in an application of poor performance but must demonstrate that they have given the supplier and opportunity to improve before doing so.
- This is going to be hugely important for suppliers as a single application upheld can mean all other authorities can assess and terminate their contracts and the supplier may also be barred from delivering future contracts by ending up on the debarment list through this process.

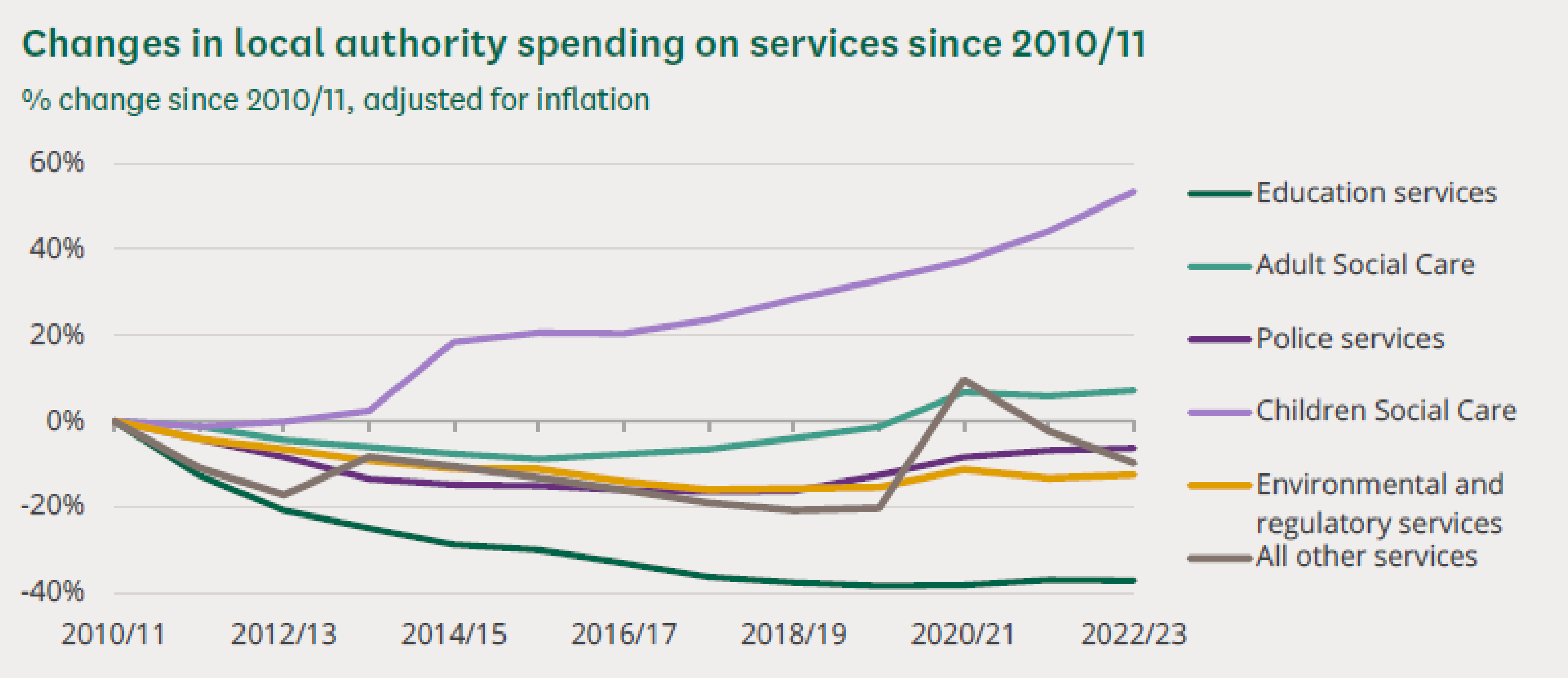
Discussion -Advantages and disadvantages of the new processes

- What do you think are the challenges and opportunities for your organisation?

4. Bidding to win business under PA2023

- Sources of information
- Implications of Most Advantageous Tender
- Below Threshold procurement
- Frameworks and Dynamic Market competitions
- Social Value
- NPSS revisited – Social Value
- Bid evaluation and scoring

Sources of Information



Source: DLUHC, Local authority revenue expenditure and financing data, multiple years

Preliminary Market Engagement

- In the Procurement Act 2023, specific mention is given to premarket engagement
  - 16 (1) Before publishing a tender notice in respect of a public contract, a contracting authority may engage with suppliers and other persons for the purpose of—
  - (a) developing the authority's requirements and approach to the procurement;
  - (b) designing a procedure, conditions of participation or award criteria;
  - (c) preparing the tender notice and associated tender documents;
  - (d) identifying suppliers that may be able to supply the goods, services or works required;
  - (e) identifying likely contractual terms;
  - (f) building capacity among suppliers in relation to the contract being awarded.

Cabinet office update April 2025

- *The central digital platform (i.e. the enhanced Find a Tender service) is up and running with strong and active engagement from both suppliers and contracting authorities. As at 7 April there were 14,437 suppliers, 2,140 contracting authorities, and an impressive 25,546 users registered.*
- *There have been 2,568 notices published on the central digital platform since its inception. These are all in the public domain and searchable here. Remember, the platform will also have older notices on there, so if you are searching for Procurement Act 2023 opportunities - make sure you de-select 'other notice types' in the search column.*
- *One thing we are really encouraged to see is over 700 notices for pre-market engagement being listed.*
- *including some substantial frameworks such as Department for Education's Construction Framework 25; Crown Commercial Service's Estate Management Services 2 and Technology Services 4; NEPO's new NEPRO x Innovation Framework, and Met Police's Next Generation Uniform provision.*

Implications of Most Advantageous Tender

- The basis of evaluation has changed from Most Economically Advantageous Tender (MEAT) to Most Advantageous Tender (MAT).

- Small change but it allows contracting authorities to use more subjective criteria rather than converting all elements of the bid to financial value.
- Likely to be particularly relevant for evaluation of Social Value, but also Technical criteria
- Focus also on Total Cost of Ownership rather than Purchase Price

MEAT to MAT

- **PCR 2015 Contract Award Criteria**
  - 67 (1). Contracting authorities shall base the award of public contracts on the **most economically advantageous tender** assessed from the point of view of the contracting authority
  - (2) that tender shall be identifies on the basis of the price or cost, using a cost-effectiveness approach such as life cycle costing and may include the best price-quality ratio…
- **PA 2023 Award of public contracts following a competitive tendering procedure**
  - (1) A contracting authority may award a public contract to the supplier that submits the **most advantageous tender** in a competitive tendering procedure
  - (2) The "most advantageous tender" is the tender that the contracting authority considers
    - (a) satisfies the contracting authority's requirements, and
    - (b) best satisfies the award criteria…

Social Value PPN 002 (2025)

- Only for Central Government Bodies, executive agencies and non-departmental public bodies
    - As was PPN 06/20 of PCR 2015 – but widely followed
- Minimum of 10% weighting of total score for social value
    - Must be related to the subject matter of the contract
    - Social Value Model must be used
        - Fair work, Skills for Growth, Resilient innovative supply chains, Sustainable procurement, Reduction in crime, Employment training, Opportunities for work, physical and mental wellbeing
- Local employment opportunities advertised in local job centres
- No unnecessary burdens on suppliers (especially SMEs and VCSEs)
- Applies from 1 October 2025
    - Until then can use either PPN 002 (2025)or PPN06/20

NPPS revisited

- The PA2023 has been written to ensure it does not need to be regularly amended
- Application of the act can be amended through secondary legislation, e.g. changing the NPPS

- You can set up e-mails about any changes at https://www.gov.uk/government/publications/national-procurement-policy-statement

Frameworks and Dynamic Market competitions

Re-awarding Open Frameworks with Limited Suppliers

Example – limiting suppliers:

A contracting authority has reopened an open framework after 2 years (Framework 1) and is assessing the tenders for Framework 2. The number of suppliers on the framework is limited to 3.

Supplier A is an existing supplier, awarded a place on Framework 1. They have chosen not to resubmit a tender, and have maintained the assessment scoring from the award of Framework 1. Suppliers B and C are also existing suppliers, but have submitted a new tender to be assessed. Suppliers D and E are new suppliers.

Assessment scores:

	Framework 1 Score	Framework 2 Score
Supplier A	85%	85%
Supplier B	72%	75%
Supplier C	70%	65%
Supplier D	N/A	74%
Supplier E	N/A	70%

Suppliers A, B and D will now be awarded a place on the framework and supplier C would lose their place.

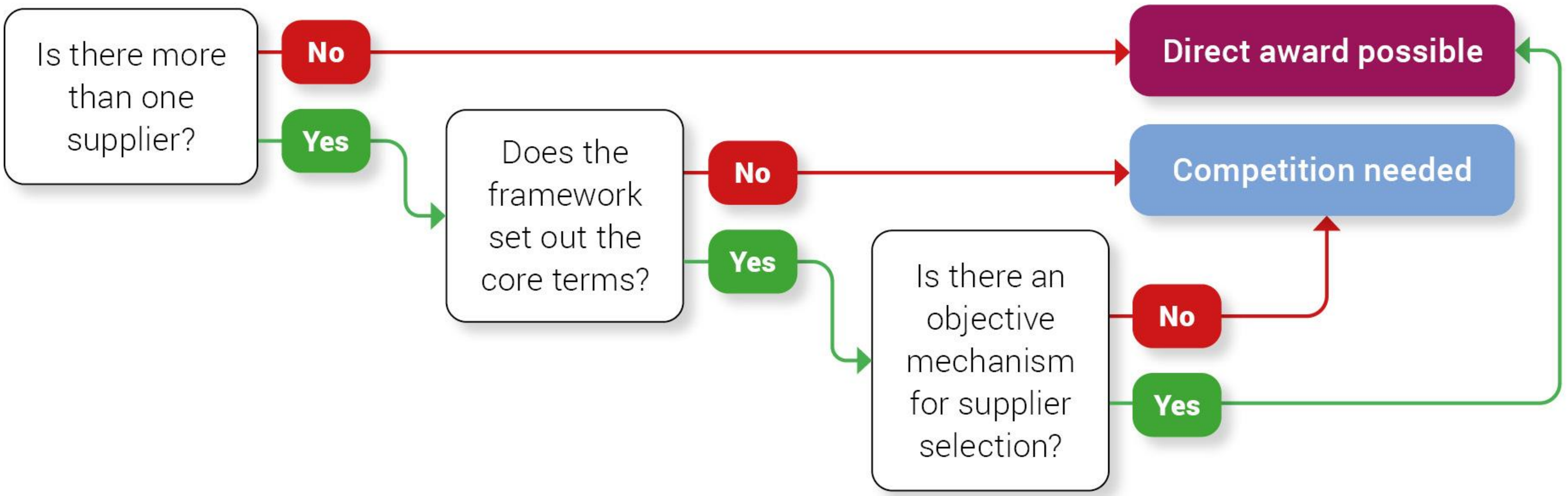
Award under frameworks

- No need for competition if only one party on framework, or framework sets out
  - The core terms of the public contract AND
  - An objective mechanism for supplier selection/conditions of participation
  - i.e. can use Award criteria used to set up the framework without a further mini-competition.

Core terms of frameworks

- contract deliverables,
- warranties,
- charges and pricing mechanism,
- record keeping,
- indemnities,
- termination provisions
- variation mechanisms

- Not an exhaustive list – other core terms may be possible e.g. who can call off from the framework



https://www.bevanbrittan.com/insights/articles/2022/procurement-bill-byte-5-frameworks-and-dynamic-markets/

Objective mechanisms

- Highest ranking based on award criteria
  - With or without a limit on the number or value of contracts that may be awarded
- Taxi rank procedure
  - Next qualified supplier (possibly in order of ranking)
- Mini-competitions not explicitly mentioned, but could be part of an objective mechanism based on clarifying/refining framework award criteria.
  - Process and evaluation methodology must be set out in the framework documents

Conditions of Participation on Frameworks

34. Where permitted in the framework, section 46 allows a contracting authority to also set 'conditions of participation' at the stage of awarding a call-off contract based on a competitive selection process under a framework (see section 46(2)). These are similar to conditions of participation under section 22 in that they are permitted as long as they are a proportionate way of assessing suppliers' legal and financial capacity or their technical ability to perform the relevant contract to be awarded under the framework. Section 46(1-5) sets out provisions relating to the submission of accounts, insurance, suppliers' qualifications, experience or technical ability, proportionality and evidence, which are similar to those for conditions of participation under section 22.

35. A condition of participation for the award of a call-off contract may include a condition that the conditions of participation for award of the framework must be met or may include some or all of the same conditions. It may also include additional conditions that did not apply to the award of the framework, for example, bespoke insurance requirements relevant to the particular call-off contract to be awarded.

Awarding a contract under a framework without competition

1. Assess relevant suppliers in accordance with the framework terms
2. Publish contract award notice
3. Observe any voluntary standstill period – minimum of 8 working days
4. Enter contract
5. Publish contract details notice and contract (if over £5m)
6. Publish relevant notices as appropriate
7. Publish contract termination notice

Below Threshold Procurement

Below Threshold Contracts

1. Publish preliminary market engagement notice and undertake pre-market engagement (optional)
2. Publish below-threshold tender notice on the central digital platform before advertising by any other means
3. Assess tenders
4. Issue feedback where appropriate
5. Publish contract award notice to observe any voluntary standstill period
6. Enter into contract
7. Publish contract details notice
8. Manage contract

Note: No Conditions of Participation/ Selection stage

Reserving Contracts below Threshold

Authorities may consider whether and how to reserve procurements for below threshold contracts.

Authorities may apply the principles outlined but should considered the authorities' relevant legal obligations, including but not limited to the restriction applicable to local authorities and certain other authorities under Section 17 of the Local Government Act, 1988.

Authorities may consider, where appropriate, the following options for the procurement of below threshold contracts:

- Reserve the procurement by supplier location
- Reserve the procurement for Small and Medium sized Enterprises (SMEs) / Voluntary, Community and Social Enterprises (VCSEs)

Reserve the procurement by supplier location

This means being able to run a competition and specify that only suppliers located in a geographical area can bid.

This could be UK-wide to support domestic supply chains and promote resilience and capacity, or where appropriate, by county (metropolitan or non-metropolitan, or by borough for London) to tackle economic inequality and support local recruitment, training, skills and investment.

Authorities should not define by nations of the UK (i.e. England, Scotland, Wales, Northern Ireland) and where a county reservation is to be applied, only a single county (or borough for London) may be reserved.

Bid Evaluation and Scoring

Evaluation Criteria

- Every Tender must contain information on how the bid is scored
  - The more detailed the better
  - Should include both criteria and weightings
  - Information on sub-criteria and weightings should be provided if possible
- There will be “mandatory” requirements and “desirable” requirements
  - Mandatory requirements are things that *must* be there or bid will be eliminated from the evaluation e.g. insurance cover
  - Desirable characteristics are the things that will be scored - Usually not yes/no questions
- These criteria cannot be changed during the procurement (unless the modification is provided for in the initial Tender Notice)

PA2023 #23 Award Criteria

- (1) In this Act, "award criteria" means criteria set in accordance with this section against which tenders may be assessed for the purpose of awarding a public contract undersection 19 (award following competitive tendering procedure).

- (2) In setting award criteria, a contracting authority must be satisfied that they—
    - (a) relate to the subject-matter of the contract,
    - (b) are sufficiently clear, measurable and specific,
    - (c) do not break the rules on technical specifications in section 56, and
    - (d) are a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract.

Award criteria checklist

The award criteria are:

- clear
- measurable
- specific
- not discriminatory (comply with the rules on technical specifications)
- proportionate to the contract
- linked to the subject matter of the contract
- related to the aspects of the specification or required outcomes
- headline detail published in the tender notice with further detail in associated tender documents
- accompanied by details of their relative importance
- accompanied by the assessment methodology
- accompanied by a statement setting out the intent to refine the award criteria (where applicable)

- (3) In setting award criteria, a contracting authority must—
  - (a) describe how tenders are to be assessed by reference to them and, in particular, specify whether failure to meet one or more criteria would disqualify a tender(the "assessment methodology"), and
  - (b) if there is more than one criterion, indicate their relative importance by—
    - (i) weighting each as representing a percentage of total importance,
    - (ii) ranking them in order of importance, or
    - (iii) describing it in another way.

- (4) In setting award criteria for the assessment of tenders by reference to lots, a contracting authority—
  - (a) may limit the number of lots that may be awarded to any one supplier, and
  - (b) in doing so, must provide an objective mechanism for supplier selection in circumstances where a supplier would otherwise exceed the limit.
- (5) In subsection (2), the reference to the subject-matter of a contract includes a reference to—
  - (a) the goods, services or works to be supplied under the contract, including in respect of any aspect of their production, trading or other stage in their life-cycle;
  - (b) how or when those goods, services or works are to be supplied;
  - (c) the qualifications, experience, ability, management or organisation of staff where those factors are likely to make a material difference to the quality of goods, services or works being supplied;
  - (d) price, other costs or value for money in all the circumstances.

Technical Evaluation

Technical and quality evaluation is one of the most important stages which ensures that:

- The contract award decision is objective and uses the disclosed criteria
- The decision making process is fair, transparent and auditable
- Your Organisation can demonstrate value for money in the tender process

Social Value Scoring

- The minimum 10% Award Criteria for Central Government is meant to be large enough to influence who wins the contract
- Many other Contracting Authorities have adopted the approach
- Many use a higher level than 10% (some as high as 30%)

- Scoring should be on the elements identified by the government in the Social Value model
    - Fair work, Skills for Growth, Resilient innovative supply chains, Sustainable procurement, Reduction in crime, Employment training, Opportunities for work, physical and mental wellbeing
    - It is recommended to focus on one or two elements in each procurement

What to put in your proposal?

- Think about what you do that matches the requirements – ideally making it relevant to the specific contract
    - Fair work, Skills for Growth, Resilient innovative supply chains, Sustainable procurement, Reduction in crime, Employment training, Opportunities for work, physical and mental wellbeing
- Preparing some general background and case studies may help you to respond quickly
- Make your case for your own approach – there is flexibility in scoring, and it no longer has to be evaluated in purely economic terms (MAT not MEAT)

Scoring Mechanisms

- The most common method is to evaluate Technical, Commercial and Social Value factors separately
    - Often using a system of scoring out of 5 or 10 for a number of criteria
    - Then weighting according to the scheme set out in the Tender Notice
    - Unusually low bids may be discarded only after an investigation before awarding the contract

Ratio Evaluation

The basic principle to calculate a tender's value for money is to divide, quite literally, value by money.

In other words, the quality score gets divided by a tender's price offer

Tender	Quality Score/100	Price	Quality/Price Score
A	50	£10.00	5.0
B	**66**	**£12.00**	**5.5**
C	60	£15.00	4.0
D	75	£15.00	5.0

Evaluation key points - typical

Rating	Percentage score	Term	Description
5	100%	Excellent	Exceptional response; good evidence of significant value add.
4	75%	Good	Good response; good evidence of value add.
3 (pass)	50%	Acceptable (may include minor reservations)	Acceptable response, subject to minor reservations; no or only limited evidence of value add.
2	25%	Poor (may include major reservations)	Poor response subject to major reservations, regardless of evidence of value add.
1	0%	Unacceptable	Response overall fails to meet the requirement.

GCF Procurement Evaluation Series: Key points and common pitfalls in evaluation
Evaluation Guidance Note
Note also: Bromcom v United Learning Trust

Discussion – Action Planning

- What are you going to do now?
- What are you going to change?
- Do the new rules increase opportunities for your organisation?

Questions

- Thank You

END

TLAs – Three Letter Acronyms

- PCR – Public Contract Regulations
- LTR – Light Touch Regime
- FTS – Find a Tender Service
- ITT – Invitation to Tender
- SQ – Selection Questionnaire (PQQ)
- PQQ – Pre-Qualification Questionnaire
- WTO GPA – World Trade Organisation Government Procurement Agreement
- PPN – Public Policy Note
- MEAT – Most Economically Advantageous Tender
- MAT – Most Advantageous Tender
- VfM - Value for Money

feedback

- https://share-eu1.hsforms.com/1lIncZJsjToGwKS14O-n2_A2e6swi