

Procurement Act 2023



Overview

- PA23 introduces new procurement regime
- Consolidating the following under 1 Act:
 - Public contracts
 - Concession contracts
 - Utilities contract
 - Defence and Security
- Comes into effect 24th February 2024
- Must have regard to National Procurement Policy Statement



Act Objectives

Procurement Objectives from the Act

- Delivering Value for Money
- Maximising public benefits
- Sharing information
- Acting, and being seen to act, with integrity
- Must also treat suppliers the same, and have regard to barriers to SMEs and whether barriers can be removed or reduced
- The old regulations still apply for existing contracts.

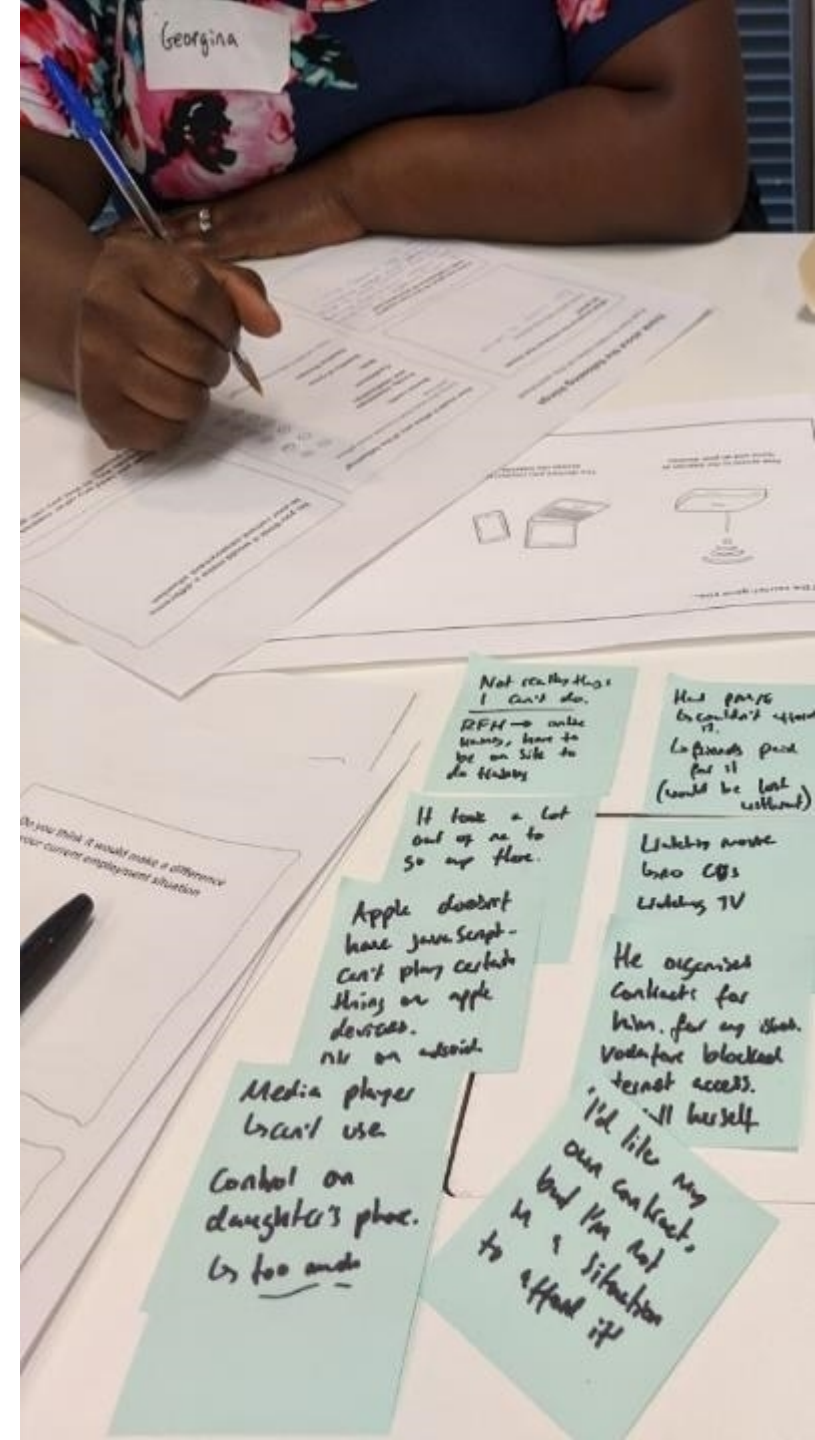


What will be different

- Procurement 'Objectives' replace 'Principles'
- New procurement language
- New express transparency duties
- New Central Digital Platform (includes supplier registration)
- New Procurement routes to market
- New conditions of participation requirements and rules on exclusion of suppliers
- New central debarment list for excluded suppliers
- MAT not MEAT – Most ~~Economical~~ Advantageous Tender
- New conflicts assessment (and enhanced conflicts obligations)
- New procurement oversight review unit – PRU
- New contract management requirements

What stays the same

- Contracting authorities covered
- Types of contracts covered
- Value thresholds (updates every 2 years)
- Exempted contracts
- Route to challenge and remedies (30-day time limit for starting a challenge remains)
- Minimum time limits to run a procurement process largely unchanged
- Implied terms to apply all contracts procured under PA23, including electronic and prompt payment, and right to terminate.



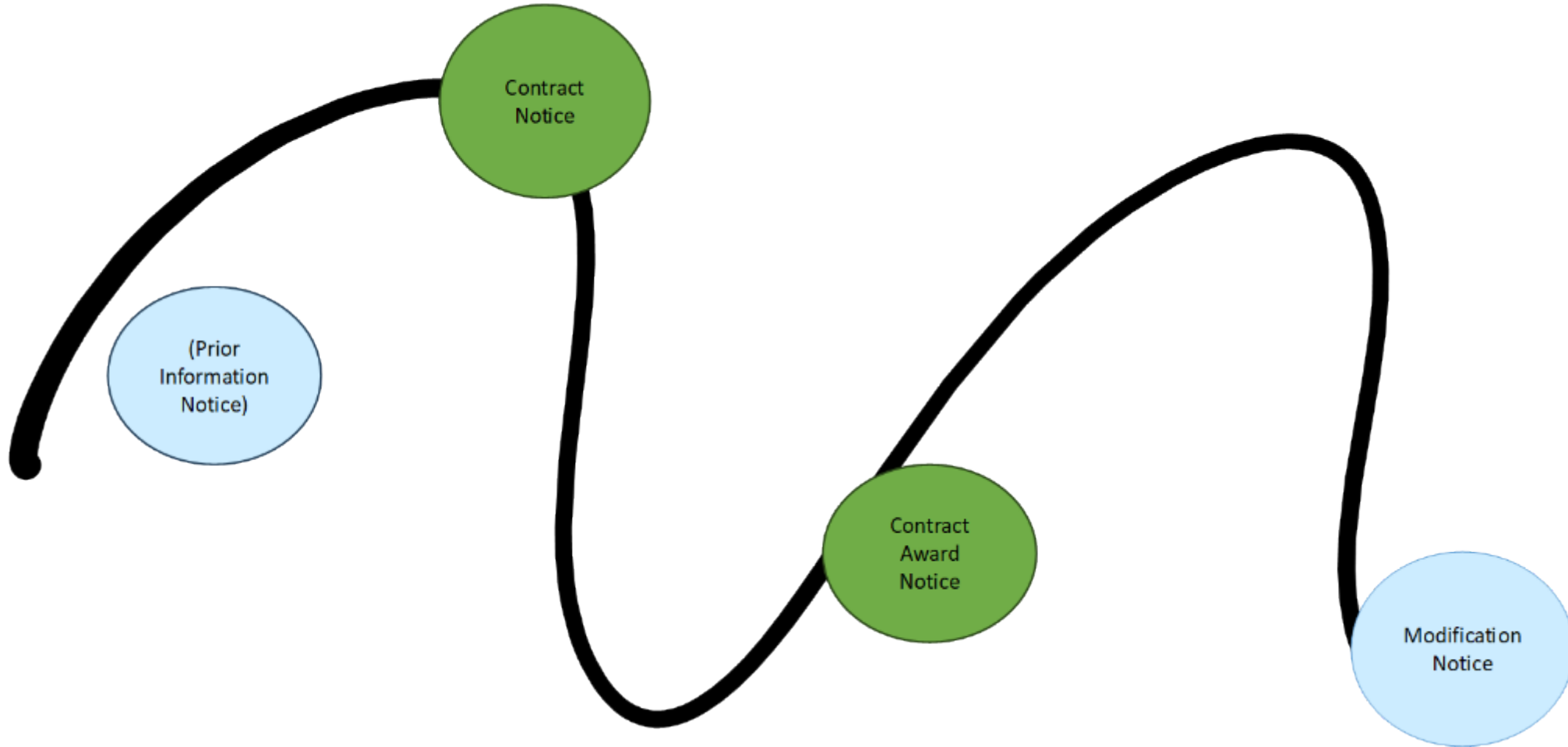
Key Procurement Highlights

- Ability to modify a process / refine during tender
- Direct Award – ability to switch where no suitable tenders
- Potential to have longer frameworks where justified
- Standstill Letter to Assessment Summary
- Payment Compliance – must publish compliance every 6 months
- Publishing Contracts – over £5m spend
- Duty to consider Lots



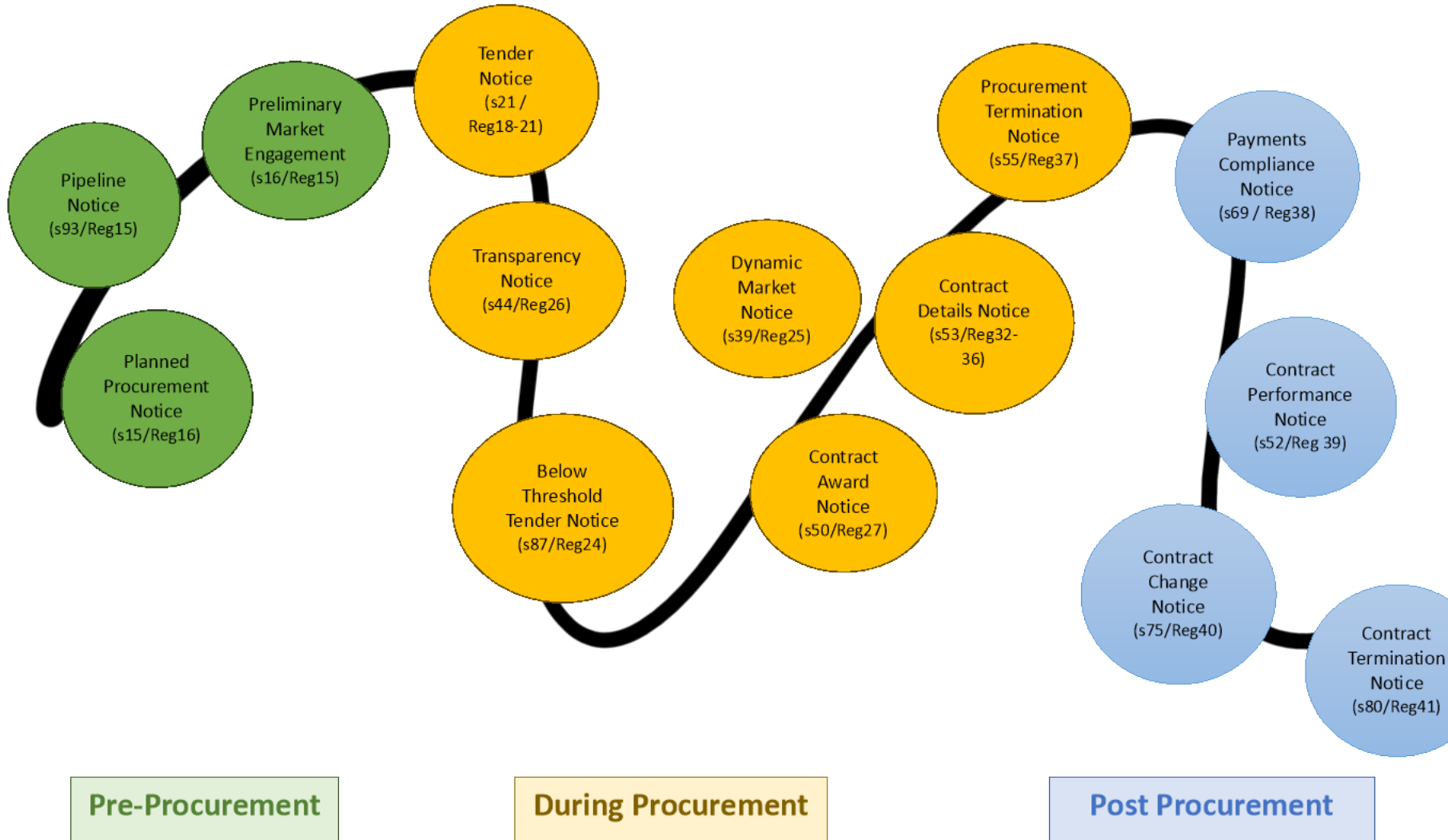
Transparency

Notices under the PCR 2015



Transparency

Notices under PA23



Procurement Pipeline

We must publish a procurement pipeline

- Details of all planned contracts valued £2m+
- Reporting period is 18 months from 01 April
- Must be published within 56 days of 01 April every year



Transparency

Preliminary Market Engagement

- Must publish a notice if conducting PME
- Before the tender notice
- Prior involvement / unfair advantages = exclusion

Key Performance Indicators

- Must set at least 3 KPI's (for over £5m)
- Must publish at least once a year.
- Must publish assessment of performance on termination of contract



Transparency

Poor Performance

- Must publish a notice if supplier is not performing / not improved
- Must publish a notice if supplier is in breach resulting in termination, damages, settlement

Debarment List

- Centrally held list
- Supplier can't participate
- Exclusion applies to individual & sub-contractors



Transparency

Publishing Contracts

- Must publish copy of contracts worth over £5m

Contract Modifications

- Must publish notice of intention before modifying where contract increases/decreases:
 - Contract value by more than 10% / 15% (works)
 - Contract term by more than 10%
- Must allow standstill period of at least 8 working days before making modifications
- Must publish copy of modification within 90 days



Central Digital Platform

An online platform that replaces current notices publication means

- Includes supplier registration and selection questionnaire
- ‘Tell us once’ approach

Below threshold

- Must have regard for SME’s
- For ‘notifiable below-threshold contract’, must publish a below threshold tender notice before advertising the procurement opportunity on other platforms.

A “notifiable below threshold contract” is a regulated below threshold contract with an estimated value that equals or exceeds (incl. VAT) £30,000.

