

TechUK

Preparing for the Procurement Act 2023

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Agenda



Introductions / Implementation update

Procurement Act 2023 – key changes for technology suppliers

Supplier – focussed scenarios

Q&A

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Introductions

Implementation update



Key facts

£14bn

estimated minimum UK public sector annual spend on digital programmes and technology, based on independent estimates

6,000

people in the commercial function who support a range of commercial activity, including digital

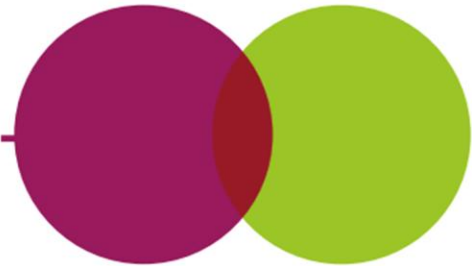
28,000

people working on the digital and data areas in government

120	people in the Crown Commercial Service who have a digital commercial focus
4	people in the Central Digital and Data Office recently dedicated to digital commercial activity
15	people in the Government Commercial Function focused on government's 19 strategic digital suppliers
£3 billion	increases in cost to reset programmes and operate legacy systems for longer than planned, in five digital change programmes we have looked at
£9 billion	annual value of digital procurement through Crown Commercial Service frameworks in 2022-23



National Audit Office



INSIGHT

Government's approach to technology suppliers: addressing the challenges

Department for Science, Innovation & Technology, and Cabinet Office

SESSION 2024-25
16 JANUARY 2025
HC 543

Timeline to implementation

Now -
watch
government
webinar* aimed
at suppliers

Now –
register on
Supplier
Information
Service

**Go Live
24 February
2025****

**First Authority
Pipeline Notices
due end of May
2025**

1 October 2025
Possible
implementation
date for “delayed
provisions”

* [A webinar for suppliers and other interested parties: How to get ready for 24 February 2025 - YouTube](#)

** Some provisions of the Act will come into force later than this date – more on this later

Transitional rules

Contracts

- Any contract where the procurement was “commenced” before 24 February 2025 remains regulated by the Public Contracts Regulations 2015
 - including any modifications made to that contract on or after 24 February 2025

Call-off Contracts under FWs or DPS

- Any call-off contract where the procurement of the framework agreement or DPS was “commenced” before 24 February 2025 remains under the PCR 2015
 - including call-offs made on or after 24 February 2025
 - including modifications made on or after 24 February 2025
 - DPS procured under PCR 2015 will be deemed to terminate on 23 February 2029 if not already terminated earlier

Provisions delayed beyond 24 February 2025?

- Payments Compliance Notices - the obligation to **report** on prompt payment (section 69)
- Contract Payments Notice – the obligation to **report** information about payments >£30k under public contracts (section 70)
 - Contract Performance Notices – the obligation to **report** on KPIs and poor performance/breach in a Contract Performance Notice (section 71)

Procurement Act 2023 – key changes for technology suppliers



Key changes for technology suppliers

Supplier
Information
Service

Competitive
Flexible
Procedure

Greater
transparency of
opportunities and
competitor contracts

Open
Frameworks

Standstill and
award provisions

Contract changes

Contract
Management

Exclusions and
Debarment

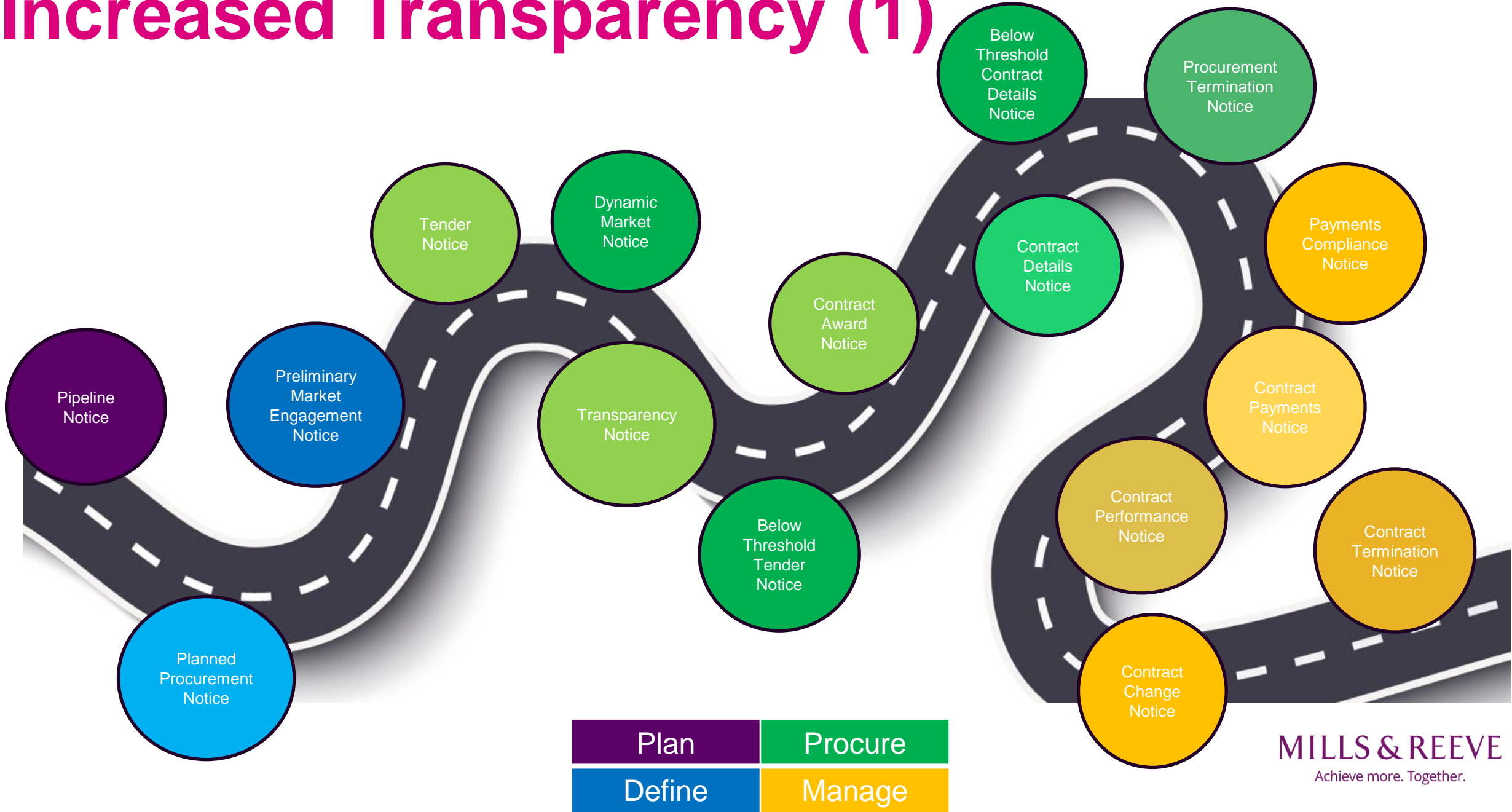
Supplier information service

- Part of the Central Digital Platform
- Unique ID on registration
- You will need to upload:
 - Basic information
 - Economic and financial standing information
 - Connected persons information
 - Exclusion grounds information
- The authority is obliged to prompt you to update at the start of a new procurement

Competitive Flexible Procedure

- Replaces the restricted, competitive dialogue and competitive with negotiation procedures
 - Open procedure remains
- Modular approach
- Bespoke to each procurement
 - Authority may consult on it in preliminary market engagement
 - Details of the process being used should be in the tender notice or associated documents
- Can include selection and award stages as well as one or more “reduction of numbers” stages

Increased Transparency (1)



Increased Transparency (2)

- Pipeline Notice
 - Contract opportunities > £2m in the financial year
- Transparency Notice
 - The authority has made a direct award without competition
- Contract Award Notice
 - Alerts the whole market that the standstill period is commencing
- Contract Details Notice
 - Notification that the contract has been awarded, if over >£5m KPIs will be published as part of the publication of the contract itself (redacted)

Increased Transparency (3)

- Procurement Termination Notice
 - The authority has abandoned a procurement
- Payments Compliance and Contract Payments Notices
 - Has the authority complied with prompt payment obligations?
 - What is spend over £30k under the contract?
- Contract Performance Notice
 - Report on performance against published KPIs
 - Report on unremedied poor supplier performance or supplier breach
- Termination Notice
 - The contract has expired or terminated (include the reason for termination)

Open Frameworks

- G-Cloud and other CCS frameworks may adopt the model
- Potential benefits
 - 8-year overall term
 - saves bidding costs for each framework iteration
 - some room for manoeuvre with each refresh (but not “substantial” change)

Open Frameworks

Not one FW, but several successive frameworks on “substantially the same terms”

Run a procurement process for first framework

Must award second framework within three years of the first

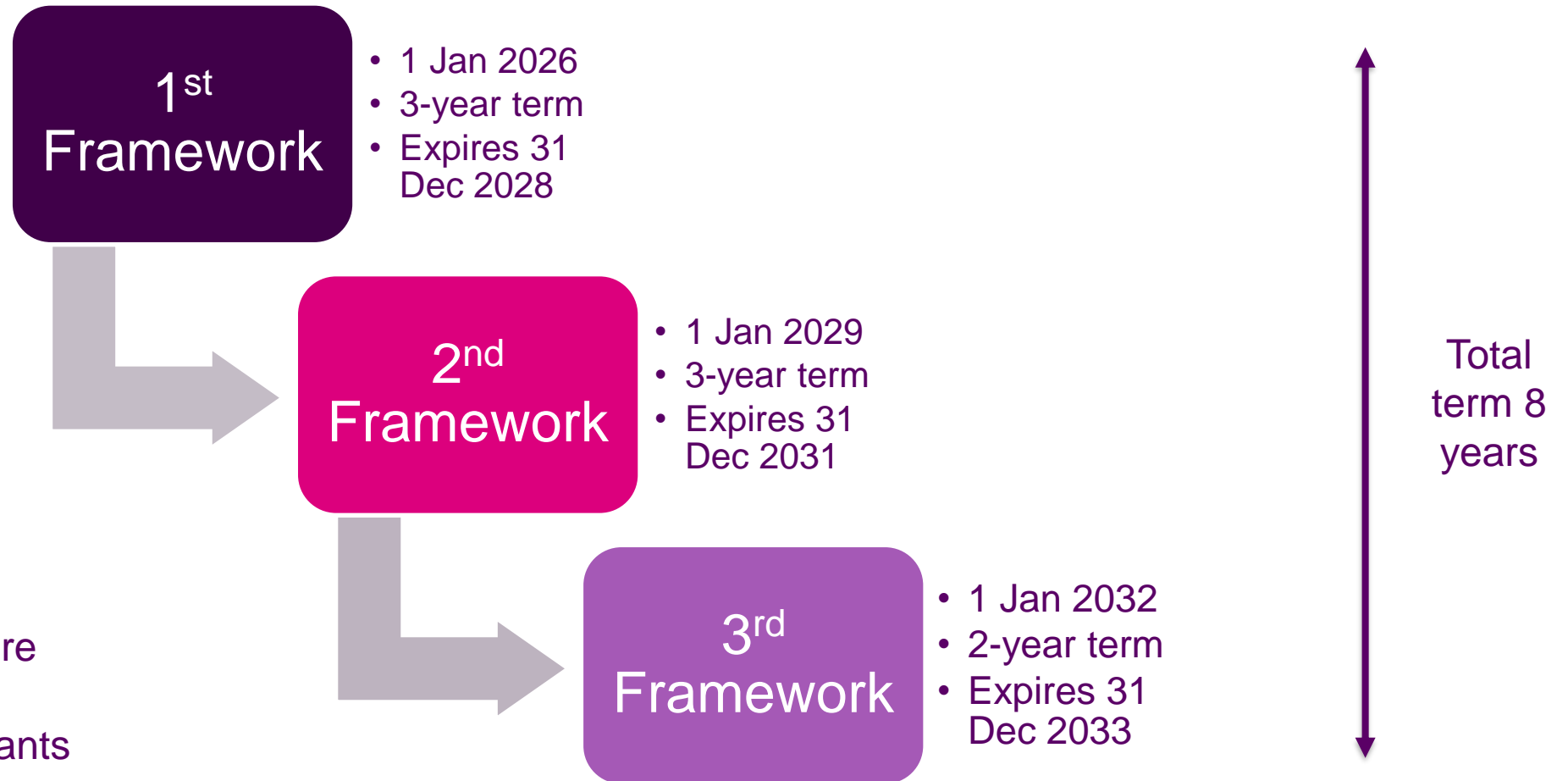
Must award a third framework within five years of the second

All subject to **maximum** term of 8 years from commencement of first framework

May have limited or unlimited number of suppliers

“Substantially the same terms”?

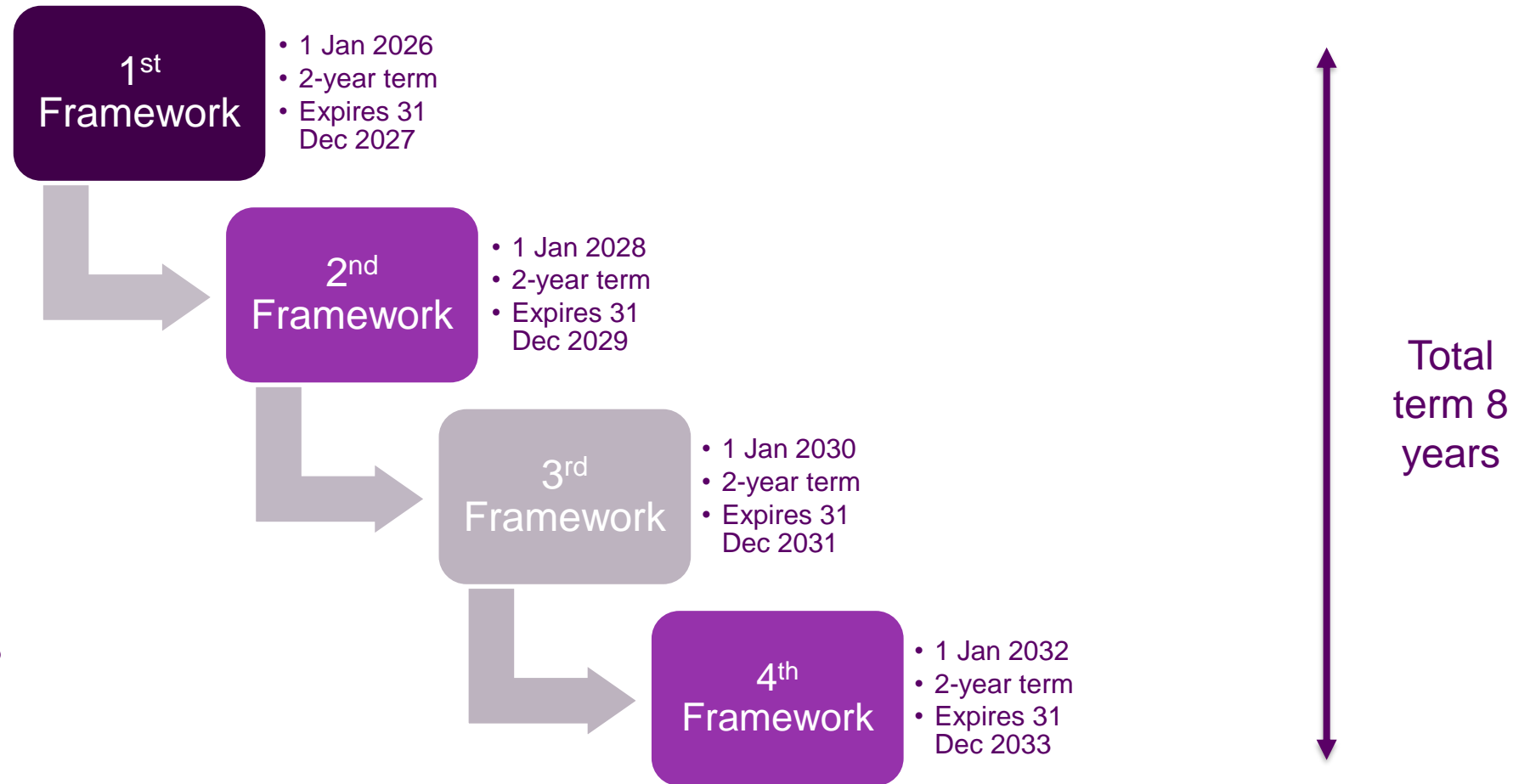
Maximum term, minimum refresh



Minimum refresh:

- Most suitable for more static markets
- With fewer new entrants
- Or, where low administrative burden is desired

Maximum term, more frequent refresh



Why would an authority refresh more frequently?

- Faster moving market
- New entrants
- But n.b. administrative burden

Tendering in an Open Framework

- Initial Tender Notice should set out how the scheme will operate
- Supplier's choice to
 - Submit a new tender at each “refresh”
 - Or ask the authority to re-consider the original tender
- Limited suppliers?
 - If a new supplier scores better on the “refresh” evaluation, an existing supplier may lose its place on the open framework

Standstill and Award

- Assessment summaries replace standstill letters
- Standstill period commenced by publication of Contract Award Notice
- Period is eight working days
- Auto-suspension remedy only available during the eight-day standstill period (not any time up to contract signature as currently)

Contract changes

- The “permitted grounds” remain much the same as currently
- Contract Change Notices
 - required in advance of making the change
 - for all changes unless increase/decrease:
 - in **value** is less than 10% (for goods/services)
 - in contract **term** is less than 10 per cent or less of the maximum term provided for on award
- Authority may choose to hold a voluntary standstill period
- Increased transparency around contract changes may lead authorities to a more risk averse stance (e.g. contract extensions)

Contract management

- If the contract is over £5m, at least three KPIs must be set, published and reported on using standard “ratings”, at least annually
 - use market engagement to steer authorities towards acceptable KPIs?
- If a supplier
 - breaches a contract leading to settlement, termination or partial termination or damages; or
 - fails to remedy performance the Authority considers be to be poor, the Authority is obligated to report publicly within 30 days, via a Contract Performance Notice

Exclusions and debarment

- Mandatory and discretionary exclusion grounds largely similar
 - new “unremedied poor performance” ground sets a lower bar
- Self-cleaning regime remains
- Excluded/excludable supplier “status” leads to:
 - Authority right to terminate which is implied into all public contracts to which that supplier is a party (however - Authority duties under the s12 objectives)
 - Supplier obligation to declare excluded/excludable status via the Supplier Information Service
 - Referral to Debarment Review Service
- Exclusion criteria also apply to:
 - your connected persons (not replaceable)
 - your associated persons (replaceable)
 - your subcontractors (replaceable)

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Supplier-focussed scenarios



Central Digital Platform

- Lightfoot Limited is looking to break into the health sector with its new “Lightfoot” app.
- This promotes agile and collaborative working between clinicians across an NHS Trust customer.
- How can the Central Digital Platform help?

What technologies are NHS Trusts buying in this space?

Who is currently supplying it to them?

How well are they performing their contracts?

When will those contracts expire and potentially come up for retender?

Which NHS Trusts are planning to spend money on this technology this financial year?

What routes to procuring these technologies do NHS Trusts usually take? Is there a dynamic market we should apply to?

Central Digital Platform – actions for tech suppliers

- Watch the recently issued supplier-focussed webinar [A webinar for suppliers and other interested parties: How to get ready for 24 February 2025 - YouTube](#)
- Ensure you are registered if you are planning to take part in new procurements soon – the link will remain www.find-tender.service.gov.uk/ but the site will update on 24 February
- Establish internal process to analyse available information and act on it as required
- Likely to be third party subscription tools for market / sector analysis once platform is fully operational

Competitive Flexible Procedure in practice

Potential to contribute to process design via PME

Demos of software expressly permitted by the Act

Unfamiliarity with the process

Can't necessarily use "one we prepared earlier" when submitting tender

Potentially greater flexibility to negotiate at preferred bidder stage

Specific provisions on variation limit ability to modify process in flight

- Lightfoot Limited is bidding for a software development contract.
- The Authority is running the procurement using a bespoke competitive flexible procedure, designed for this procurement.
- What does this mean for Lightfoot?

The “CFP” – actions for tech suppliers

- Read-in to government guidance and templates on the CFP [Guidance - Competitive Tendering Procedures FINAL.pdf](#) ([publishing.service.gov.uk](#)) (the “[stages list](#)” is helpful in explaining when an authority might use particular modules)
- Internal workstreams to design a CFP(s) which would work well for you as a technology supplier
- Consider how output could best be shared with authorities (e.g. in preliminary market engagement)
- Careful reviews of procurement documentation – not all CFPs are the same

Contract Management

- Lightfoot has a £6m IT contract with Newtown Borough Council. There are three published KPIs, around response times, downtime and upgrades.
- The Council publishes a Contract Performance Notice:
 - assessing performance against the KPIs as “inadequate”; and
 - stating that Lightfoot is failing to perform to its satisfaction despite being asked to improve
- Lightfoot is taken by surprise:
 - this contract has been difficult to perform well - as the Council has not allowed the required access to the system nor provided the required reports
 - it is not aware of being put on notice to improve
- What are the consequences for Lightfoot?

s71(5) notice is a discretionary exclusion ground; on publication, Lightfoot becomes an “excludable supplier”

Excludable supplier status triggers implied right for customers to terminate any public contract with Lightfoot

30-day limitation period begins if Lightfoot wants to challenge the notice

Rules on self-cleaning

Contract Management – actions/mitigations

- Contract drafting
 - agree KPIs that work for you
 - make sure the contract has clear escalation/remedial provisions
 - proactive management of authority responsibilities
 - make sure the contract addresses the implied termination right risk
- Performance disputes
 - respond promptly to authority communications around performance and remedial action
 - keep records of proactive steps taken
 - use the remedial provisions to require the authority to perform

Contract Management – actions/mitigations

- Contract Performance Notice
 - take **very** seriously
 - if anticipated, request a draft from the authority prior to publication
 - seek prompt legal advice around
 - merits of a challenge to its publication
 - how to respond to the publishing authority
 - what leverage the contract provides
 - consider formal court challenge within 30-day limitation period
 - contact other customers
 - provide reassurance especially where their contract is going well
 - give “your side of the story” and have a pre-prepared narrative for other bids

Contract Changes

Contract Change Notice needed even where variation is included in the contract

Authority may elect to hold a voluntary standstill period*

Greater transparency of extensions and variations

Transparency requirements may make customers more cautious

Competitors may “track” the contract’s unique ID especially if expecting a retender opportunity

Need to plan ahead around potential extensions

- Lightfoot has a £60m 5+1-year patient records contract with an NHS Trust.
- The project has been complex; and a further 18 months’ work is needed, taking value to £78m.
- Can the extension be made?

*automatic suspension of the right to sign the variation is possible (if a competitor starts a formal claim in the standstill period)

Contract Changes – actions/mitigations

- Contract drafting
 - ensure any potential variations/extensions are “unambiguously provided for in the contract”
 - plan around the whole life of the IT system
- Contract Change Notices
 - are not required where increase/decrease in value/term is <10%
 - can the variation be structured to avoid the publication requirement?
 - requirement is simply to publish the notice “before” modifying a public contract; get organised to sign as soon as the notice is published (assuming no voluntary standstill period is being held)

More information

Mills & Reeve's Procurement Portal web site:

- www.procurementportal.com / www.procurementact.com

Cabinet Office guidance:

- www.gov.uk/government/collections/transforming-public-procurement

The Procurement Act 2023:

- www.legislation.gov.uk/ukpga/2023/54/contents

January 2025 National Audit Office report on the Government's approach to technology suppliers – addressing the challenges:

- [Government's approach to technology suppliers: addressing the challenges](#)

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Q&A



Thank you

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