

Procurement Route Options

Procurement procedures	Description	Appropriate for this project?
Open (RECOMMENDED)	Single stage process, all documentation sent out to all bidders who express an interest. Bidders submit SQ and tender together and there is no opportunity to negotiation or dialogue. Risk for bidders is that they have to submit a tender, not knowing if they will pass the SQ stage and so could be un-attractive to the market.	<p>Potential – All 5 suppliers who submitted a response to the soft market testing indicated they were likely to bid for this tender (subject to appropriate risk transfer).</p> <p>In an open tender, this would create significant work for the project team to evaluate all the tenders.</p>
Restricted	The procedure is designed as a two-step process. While a shortlist of bidders (at least five) may be invited to tender (following the supplier qualification (SQ) stage), there is only one round of bids and no mechanism for dialogue, negotiation or de-selecting after pre-qualification. Ideally the Council would want to negotiate price / risk with selected bidders to ensure best value.	<p>Potential – this two stage process reduces the risk as set out above. However, there is a risk that in a complex service, as leisure is, where the Council is trying to balance risk and financial reward, a best value contract will not be gained with no opportunity to negotiate at any stage with bidders.</p>
Competitive procedure with negotiation (CPN)	<p>This allows greater flexibility and may be a three-step process. The process permits (but does not require) negotiation to take place between the Council and bidders.</p> <p>Bidders are pre-selected at SQ and requested to submit initial tenders. The ITT specifies the areas open to negotiation. Following submission of initial tenders, the Council can accept one or go through to negotiation and then ask bidders to submit revised tenders. The Council can accept one of the revised tenders or ask for a final</p>	<p>Potential – This process allows for an initial and revised tender stage, which enables negotiation with top scoring bidders.</p> <p>However, there is the option to award directly after the initial tenders.</p>

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	<p>tender. The procedure should be justified and can be used when (for example.)</p> <ul style="list-style-type: none"> • A 'ready-made' solution does not exist • The Council requires 'innovative' solutions • The contract requires negotiation due to the specific nature, complexity, or legal or financial make-up of the contract it the risks attached to it. <p>It is a competitive process where negotiations are carried out with bidders left in the process following the SQ stage.</p> <p>Minimum bidders – 3</p>	
<p>Competitive dialogue procedure (CDP)</p>	<p>This is the procedure reserved for the most complex of procurements and allows stages of dialogue between the Council and bidders to determine a solution.</p> <p>The key feature of the competitive dialogue process is that it allows the Council to enter into dialogue with bidders to develop solutions to meet its needs.</p> <p>Dialogue usually consists of meetings with each bidder to focus on the different aspects of the procurement which relate to the price and risk of the bidder's solution.</p> <p>Therefore, there is a SQ stage, then bidders are invited to tender and they will have an opportunity to feed into aspects of the services specification. The Council can then make amendments to the ITT before initial tenders are submitted.</p>	<p>Unlikely - Project unlikely to be complex enough to require CD.</p> <p>These procedures can be very time consuming for bidders and the Council.</p>

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	<p>The Council may de-select bidders following evaluation of initial tenders, then enter into further dialogue to submit detailed solutions. Further dialogue with selected bidders at this stage occurs and then Final tenders are submitted once dialogue is closed.</p> <p>Further the Council can 'optimise' final tenders and negotiate with preferred tenderers. (Unlike the CPN procedure).</p>	
Concession	<p>A services concession contract is where the supplier is offered the opportunity to exploit the service included in the contract together with a payment provided that 'the award of the contract shall involve the transfer to the concessionaire of an operating risk in exploiting the service encompassing demand risk' and 'the part of the risk transferred to the concessionaire shall involve real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire shall not be merely nominal or negligible' – i.e. the opportunity associated with the management of the leisure centres, and that the risks associated with this are also transferred to the contractor.</p> <p>Comes under the Concession contract regulations 2016 (CCR 2016) – where operational risk is transferred to the contractor and payment is based wholly or in part on the contractor's right to exploit the service. Common example is a car park concession.</p> <p>The process is quite flexible – no set procedures to follow and the design of the most appropriate procurement process is left to the Council. There are</p>	<p>Unlikely, as it not believed sufficient risk transferred to the operator.</p>

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	<p>however a number of principles that have to be followed. (E.g. transparent, avoid distorting competition, etc)</p> <p>The risk of using a Concession approach, is having a heavy services specification / contract in which the Council share a degree of risk in which case it could be considered a services contract.</p>	
Light Touch regime	<p>There are no set procedures to adhere to in a light touch regime, but Councils need to ensure that bidders are treated equally and in practice the Council can adapt one of the above procedures on a voluntary basis and structure the tender as it wishes, considering the overall nature of the contract.</p> <p>The documentation issues should set out the process being used so bidders understand how the tender will be managed.</p>	No - Legal advice is that leisure services do not fall under this regime.

The most typical leisure contract procurements include dialogue / negotiation. The pros and cons of the Restricted, Open and CPN procedures are set out in the table below. The concession / light touch regime may follow either of the processes.

OPEN PROCEDURE	
PROS	CONS
<ul style="list-style-type: none"> • Is a 1 stage process. • Can be completed in a timely manner. • Suitable where this is a clearly defined specification / contract and little / no investment required in the centres. 	<ul style="list-style-type: none"> • A one step process, with a busy market, may deter some (potentially strongest) suppliers from tendering, if they know everyone who passes the SQ will have their tender evaluated. • With no negotiation, although the Council can clarify responses, risk that tenders received are all not suitable / affordable, or the investment proposals received, the Council doesn't like.

RESTRICTED PROCEDURE**PROS**

- Is a 2 stage (not 3 stage) process.
- Can be completed in a timely manner.
- Suitable where this is a clearly defined specification / contract and little / no investment required in the centres.

CONS

- Regulations state that the shortlist may not be less than 5 (provided 5 such organisations can meet the minimum requirements). This could be resource heavy (given response to SMT).
- Negotiation is not permitted, although the Council can clarify responses.
- With no negotiation, the risk that tenders received are all not suitable / affordable, or investment proposals received which the Council doesn't like.

COMPETITIVE PROCEDURE WITH NEGOTIATION**PROS**

- Includes options to allow the Council to tailor its procurement to meet its needs
- Opportunity to accept initial tenders without any negotiation if the right to do this has been reserved in the contract notice.
- A "fail safe" procedure if the Council is uncertain as to whether negotiations are needed.
- If the Council so chooses negotiation/amendment is permitted to all elements of the tenders except for the award criteria or minimum requirements of the Council.

CONS

- Following submission of final tenders no negotiation or clarification of tender submissions is permitted: preferred bidder negotiations are expressly prohibited.
- Can take longer to complete than restricted / open process