

DELIVERY & PROCUREMENT METHODS


November 2021

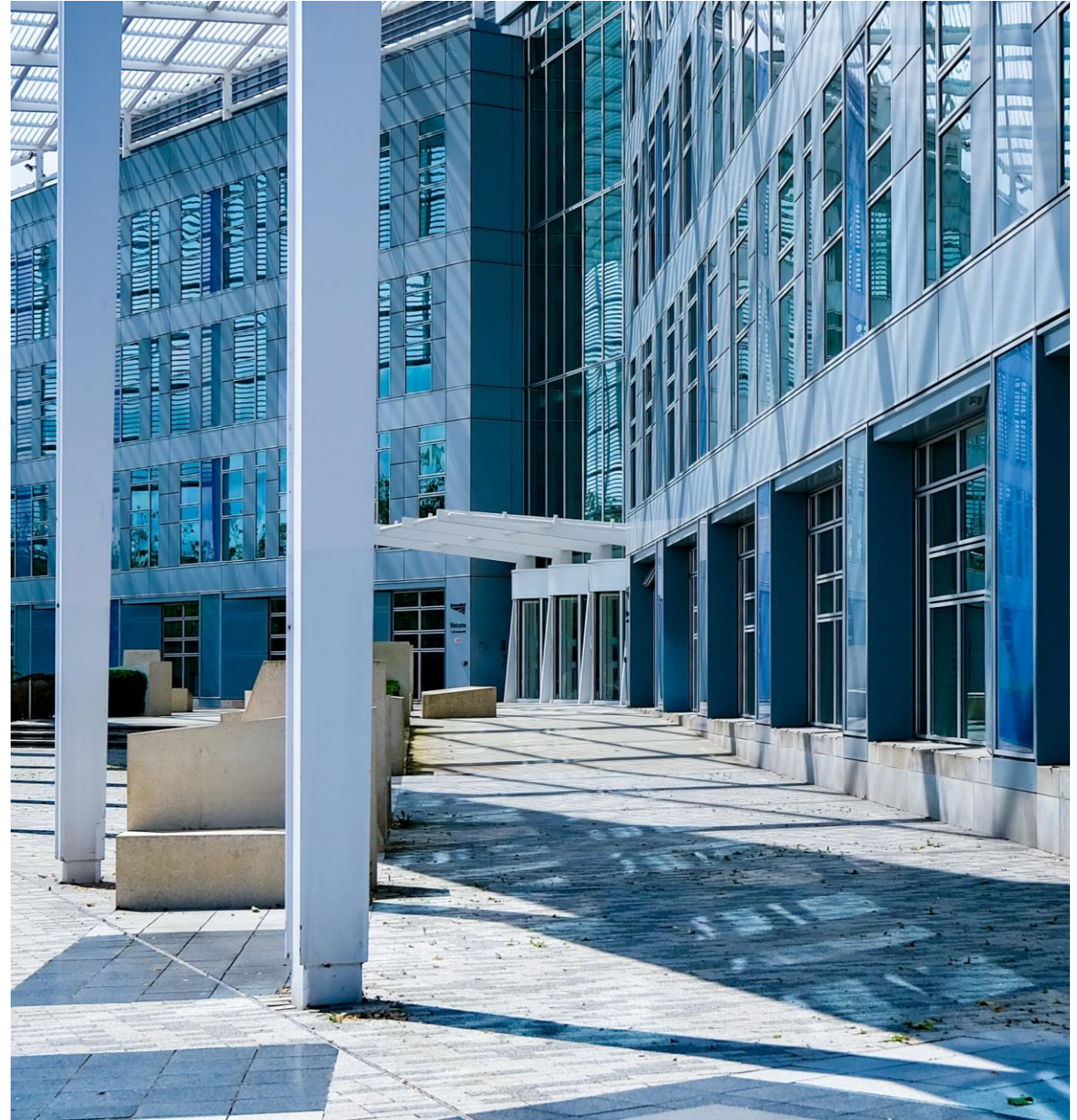
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INTRODUCTION

Introduction

We evaluated both Delivery and Procurement Methods against the needs of the Towns, based on their Town Investment Plan, to narrow down and identify the options for that can be used. This document is purely informative and does not constitute advice. The options evaluated in this guidance are outlined below:

Delivery Methods:

We considered the creation of a company to deliver the project and the options explored were:

- 1) Company Limited by Shares
- 2) Community Interest Company
- 3) Community Benefit Society

Procurement Methods:

We considered the procurement methods to appoint a contractor under the direct contracting arrangement and these were:

- 1) Direct appointment
- 2) Open procedure
- 3) Restricted procedure
- 4) Competitive dialogue
- 5) Competitive procedures with negotiations

DELIVERY METHODS

Delivery Methods

The following slides outline various delivery methods than can be utilised, as well as a comparison table between the methods.

Company limited by Shares (CLS)

A newly created entity which has its own legal identity. Key characteristics include:

- Shareholder liability limited to the amount of capital contribution
- Often used for Council trading companies
- Separate governance arrangements should be put into place
- Increasingly being used as it enables entities to have both commercial and social objectives
- Attractive to private investors, thus easier access to finance comparatively
- Doesn't have the same degree of regulatory requirements as that of a CIC

Community Interest Company (CIC)

This is a specific model which includes a number of obligations in addition to those of a company limited by shares. These include:

- Tighter regulation, but is more free to operate commercially than a charity
- Must satisfy a 'Community Interest Test' to determine if business is being carried out for the community's benefit
- Asset lock - this restricts assets from being transferred from the CIC. It is designed to ensure that the assets are used for the community's benefit
- Cap on dividend and interest payments
- More appropriate to use than a charity if the project will rely on trading income rather than grants

Community Benefit Society (CBS)

Typically a company limited by guarantee and has its own legal identity. Qualities of this type of enterprise include:

- Business is set up with social objectives
- Each member's liability is written into the governing instruments
- Regulated by the Companies Act
- Assets can be protected with an asset lock ensuring that the CBS behaves more commercially

Company Models Comparison Table

	CLS	CIC*	CBS	Key considerations
Purpose	<ul style="list-style-type: none"> Established for trading purposes 	<ul style="list-style-type: none"> Can be established for any lawful purpose as long as it's activities are for a social purpose 	<ul style="list-style-type: none"> Established for trading purposes but must have social objectives 	<ul style="list-style-type: none"> Can you define SMART social objectives for the project? We note that high level outputs and outcomes have been provided in the TIP but these need further detail in the business case. How do the aims of the project look when considering the community interest test of a CIC? The definition of community interest in the 'Community Interest Test' which applies to CICs is wider than the equivalent 'Public Benefit Test' which applies for charities. From the project description in your submitted TIP, some of the aims may not qualify for charitable status and legitimately be pursued via a CIC.
Key features	<ul style="list-style-type: none"> Teckal exemptions limit trade outside the Council owner 	<ul style="list-style-type: none"> Community interest test Asset lock Dividends cap 	<ul style="list-style-type: none"> Asset lock and ethos is 'charitable' in nature Profits must be reinvested back into the business 	<ul style="list-style-type: none"> Profits must be re-invested into the company and must go beyond Towns Fund objectives. Will key stakeholders accept to forego profits such that they are reinvested into the business? Are the other stakeholder community groups eligible for distributable returns? If so, are they willing to forego profits too? Need to apply for asset lock and identify the assets which are intended to be withheld in the company. Must focus on delivering sufficient housing given there is increasing demand and a current lack of supply. Must also focus on addressing employment gap and non-housing schemes such as lived work units. Building(s) must be re-purposed to align more closely with the desired "feel" of the place.
Regulation	<ul style="list-style-type: none"> Must register with Cos' House and comply with Cos' Act 	<ul style="list-style-type: none"> Obligations to file annual CIC report with accounts 	<ul style="list-style-type: none"> Must register with Companies House and comply with Companies Act 	<ul style="list-style-type: none"> When creating the board, it must be remembered that this is a delivery vehicle and not a political vehicle. Project must be delivered in accordance with current planning and conservation policies as the identified site is considered to be a preservation area. Transactions should be transparent and properly recorded. Memorandum of Articles should be drawn up. Council given the Section 151 officer must be comfortable with this.

**NB CICs and Companies Limited by Guarantees (CLGs) are separate entities, whereby an entity cannot adopt both. The Council should seek legal advice for further clarification.*

Company Models Comparison Table

	CLS	CIC	CBS	Key considerations
Tax (NB all models are subject to corporate tax if entity is deemed as trading)	<ul style="list-style-type: none"> Potential for 'ALMO' status allowing the entity to be exempt from corporate tax 	<ul style="list-style-type: none"> Cannot apply for charitable status Potential for 'ALMO' status 	<ul style="list-style-type: none"> Possible tax benefits if an exempt charity if proceeds are wholly applied for charitable purposes Potential for 'ALMO' status if not an exempt charity 	<ul style="list-style-type: none"> We understand that this will be a development company, not an income generating vehicle. There are fewer restrictions on trading activities than a charity faces meaning they can also take a more commercial approach to achieving their ends. A draft financial case (model) will be required to demonstrate the projected returns be over the next 5 to 10 years to reflect both creating the asset and operating it.
Benefits	<ul style="list-style-type: none"> No limits to dividends paid Limited liability for shareholders Easier to attract investors Directors can be paid 	<ul style="list-style-type: none"> Reassurance that it supports a community purpose Limited liability Directors paid – but regulated 	<ul style="list-style-type: none"> Non-profit aim is its main objective Limited liability for shareholders Easier to attract investors Easy to merge with other CBS Certain tax exemptions and reliefs 	<ul style="list-style-type: none"> Access to finance - some donors will only give to charities or CICs, because of the protections these vehicles provide that funds will be used for stated purposes. We understand that members have agreed to work on a voluntary basis and without pay. For CIC's the founders of a community interest company can retain control over the business while being appointed and paid fairly for their work as directors of the company. Recruited individuals must have experience in delivering and overseeing construction and supply chain management as well as managing costs effectively. It may be easier to attract additional high calibre individuals to the CIC through the offer of a measure of control alongside a salary set at a market rate. Individuals may be headhunted and roles can be put out to advert, although there is a risk for the latter of not attracting high enough calibre people. If the CIC is wound up, typically the Regulator will look to distribute the residual assets to the asset-locked body (or bodies). Legal advice should be sought for further detail on the rules for winding-up a company.

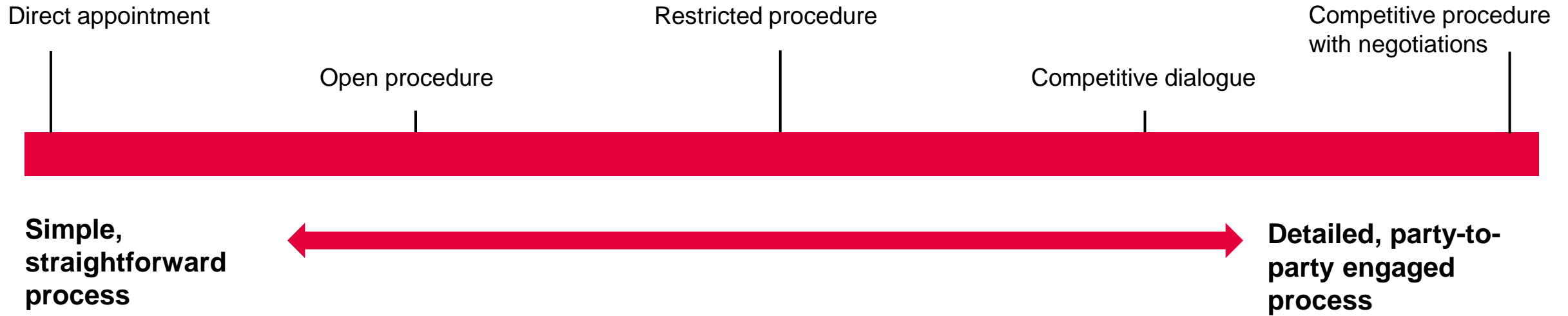
Company Models Comparison Table

	CLS	CIC	CBS	Key considerations
Disadvantages	<ul style="list-style-type: none"> • More responsibility for directors • Assets not protected by asset lock • Cannot generally raise donations or aid, need to self-finance or through private investment 	<ul style="list-style-type: none"> • More responsibility for directors • Must comply with regulator requirements • CIC restrictions make external investment difficult 	<ul style="list-style-type: none"> • More expensive to create than a company limited by shares • More responsibility for directors • Dividends withdrawn are limited • Cannot generally raise donations or aid, need to self-finance or through private investment 	<ul style="list-style-type: none"> • A consultation on the delivery vehicle selected would help understand if this impacts the 'natural' support of the public. There is a perception point to consider in regards to how the local public views a CIC and whether this impacts on the level of support (financial or non-financial) that the local public would give to the entity. • The CIC and CBS models are specifically identified with social enterprise. For some this social, communal element of their endeavours is something they want to emphasise. The ability to distinguish from a traditional charitable status may be seen as a virtue and more in keeping with a sense of purpose. • Over time, social enterprises can achieve a higher profile, as well as an independent, distinct voice within the third sector.

PROCUREMENT

Procurement Types

The following slides outline various procurement methods that can be utilised.



We note that the UK exit from the European Union is likely to impact on the procedures required and should be noted, with specific procurement/legal advice sourced when needed.

Open procedure

These are usually used where there is likely to be limited interest in an opportunity. Interested parties in the contract will be invited to tender in order to ensure maximum competition (and therefore value for money).

- The contract is advertised by the public body. Suppliers should note interest in the contract to view the Invitation To Tender (ITT) and any associated documents.
- Public bodies must make available online unrestricted and full direct access, free of charge, to the procurement documents from the date of publication of contract notice.

DOCUMENTS INCLUDED:

- European Single Procurement Document (ESPD)
- Instructions to tenderers (e.g. timetable, submission deadline, e-tendering process) and background and overview of the tendering and evaluation process
- Terms and conditions of the contract which will apply to any resulting contract with the principal supplier
- Specification & technical and response requirements
- Quality / technical questionnaire
- Pricing schedule
- Application form of tender and acceptance of T&Cs

Restricted procedure

These are usually used where there are likely to be many suppliers interested in the opportunity.

- Buyers using the restricted procedure can limit the number of suppliers to invite to tender to those with the best capacity and capability to meet the contract requirements.
- The procedure has two distinct stages:

1. Selection stage

Requires suppliers to complete an ESPD allowing bidders to self-declare that they meet the relevant selection and exclusion criteria

2. Award stage

Suppliers shortlisted at the selection stage will be issued with the Invitation to Tender documents, with a minimum of 5 companies / consortia invited to tender

Competitive dialogue procedure and competitive procedure with negotiation

Similarities:

- the needs of the public body cannot be met without adaptation of readily available solutions;
- the works, supplies or services required include design or innovative solutions;
- a contract cannot be awarded without prior negotiation due to the nature or complexity of the works, suppliers or services;
- the technical specifications cannot be established sufficiently by the public body; and
- the public body has already used the open or restricted procurement procedure but only received irregular or unacceptable tenders.

Competitive dialogue procedure and competitive procedure with negotiation continued

Differences:

Competitive Dialogue

- the contract notice will make it clear that the competitive procedure with negotiation is being used;
- any supplier may make a request to participate (this must be accompanied by an ESPD);
- following assessment of the submitted ESPDs, the buyer will invite suppliers that meet the selection criteria to the initial tender phase;
- this can be followed by several rounds of negotiation in order for the public body to seek approved offers; and
- this may result in a new/revised tender being issued, which will lead to a contract award.

Competitive dialogue with negotiation

- the contract notice will make it clear that the competitive dialogue procedure is being used and will also set out the award criteria which the public body will apply during the dialogue stage;
- any supplier may make a request to participate (this must be accompanied by an ESPD);
- following assessment of the submitted ESPDs, the buyer will conduct a dialogue with the suppliers which meet the selection criteria. This is to develop more suitable alternative solution(s) capable of meeting the requirements;
- on the basis of this dialogue the buyer will select suppliers to invite to tender.

Competitive dialogue – key stages

Prior Information Notice & Dispatch Contract Notice
(subject to OJEU requirements)

Request to participate must be accompanied by an ESPD

Pre Qualification Questionnaire (PQQ)

Invitation to Participate in Dialogue (ITPD)

Additional dialogue sessions

Invitation to Submit Final Tenders (ISFT)

Winner determined and contract awarded

Summary Of Procurement Options

Option	Description	When we expect the option to be used
Direct appointment	Public entity procures direct from a 'supplier' without any formal competition.	<ul style="list-style-type: none"> the value of the purchased goods or services is very low and is on an as-required basis it is not practical to aggregate separate orders for the goods or services the cost of seeking quotes or tenders would be out of proportion to the value of the benefits likely to be obtained or impractical in the circumstances
Open procedure	Public entity procures 'supplier' with a short competition with limited ability for 'suppliers' to ask clarifications.	<ul style="list-style-type: none"> for simple procurements where the requirement is straightforward most commonly used in practice for the purchase of goods where the requirement can be clearly defined and the buyer is seeking the least expensive supplier as there is no "pre-qualification" of bidders, anyone can submit a tender and so many suppliers will bid.
Restricted procedure	Public entity procures 'supplier' with a competition where limited clarifications and dialogue are allowed but only prior to submission.	<ul style="list-style-type: none"> suitable when the procurer wants to "pre-qualify" suppliers based on their financial standing and technical or professional capability so as to narrow the number permitted to submit bids. where this option is appropriate, procurer should be able to specify the entire requirement such that bidders will be able to deliver a fully priced bid without the need for any negotiations following receipt of the bid.
Competitive dialogue	<p>Public entity procures 'supplier' with a competition where clarifications and dialogue are allowed pre-submission of the final bid.</p> <p>No amendments allowed after the final bid (only modifications to reflect unknowns which are consistent across all bidders).</p>	<ul style="list-style-type: none"> competitive dialogue may be highly beneficial for organisations in circumstances where greater flexibility is needed suitable when a detailed competition is required where procurers need to engage with suppliers due to the complexity/nature of the services being sourced
Competitive procedure with negotiations	<p>As above but further negotiation may be allowed post submission until final project is agreed.</p> <p>Public procurement rules state that this procedure should only be used where competitive dialogue is not appropriate.</p>	<ul style="list-style-type: none"> for procuring services or supplies that require adaptation or design inputs, the use of the competitive procedure with negotiation is likely to be of value in cases of complex purchases, such as sophisticated products, intellectual services or major information and communication technology tools, the procurer may have to start a dialogue with the bidders in order to guarantee the satisfactory outcome, where modification of the requirement is developed alongside the procurement process

Qualitative Factor Considerations

The following slides outline factors that should be evaluated and their respective considerations.

Qualitative factor	Considerations
What is the requirement for confidentiality?	<p>Will information be in the public domain?</p> <p>What is the likelihood of FOI request/press interest?</p>
What is the speed of procurement process and the timing of when the operators are required?	<p>What is the administration process?</p> <p>What is the approvals process?</p> <p>Does it meet EU procurement rules and regulations?</p> <p>How do you ensure outcome is robust to avoid the risk of the wrong outcome?</p> <p>Is due diligence carried out around final solution from the operator?</p> <p>Does the operator have a track record to deliver?</p>
Breadth of the operator market that stakeholders wish to explore to drive value	<p>How do we ensure the best value is achieved?</p> <p>What solutions are affordable in the short, medium and long term?</p> <p>What consideration is there of established funders versus new entrants?</p> <p>How the operator/development partner operates and its practices?</p> <p>What number of stages required to approach the entire market accordingly and timing impact?</p>

Qualitative Factors Continued

Qualitative factor	Considerations
What are the costs associated?	<p>Are there any external advisers?</p> <p>What is the administration process?</p> <p>What is the profit model that the operator/development partner is looking to use?</p>
Is there public interest?	<p>Are there any potential criticisms of the approach and reaction from local politicians?</p> <p>Is there interest from members of the council?</p> <p>What social benefit does the operator/development partner bring?</p> <p>Is there wider praise/criticism the public may have of the selected operator/development partner?</p>

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