MILLS & REEVE

Procurement Portal

Choice of procedure decision tool

This tool is intended to provide an indication of the appropriate selection procedure to use for a procurement based on five general questions. It assumes that the procurement has not yet been commenced and therefore that it will be regulated by the Public Contracts Regulations 2015 ("**PCR 2015**"). Decisions made after using this tool should be verified using the criteria in Regulations 26 to 32 of the PCR 2015.

If your procurement is valued at over £615,278 (correct as at the date of this document but subject to change in January 2020) and is for any of the health, social and other services listed in Schedule 3 of the PCR 2015, these will be covered by the so-called "Light Touch" regime set out at Regulation 74 onwards. In particular, although the contract must be advertised in accordance with Regulation 75, there is no requirement to follow one of the procurement processes set out in this tool. Instead, the principles set out at Regulation 76 should be observed in the design of the procurement process.

Please note that the scope of the tool does not cover the use of the Innovation Partnership process set out at Regulation 31 of the PCR 2015. If your requirement is for the *research and development* of an innovative product, service or works that cannot be supplied by the current market, you should also check Regulation 31 to see if this would be the most appropriate route.

The tool also assumes that the procurement is for a contract that exceeds the relevant value thresholds set out at Regulation 6 of the PCR 2015. If this is not the case, you should be aware of Regulation 111 which in general prohibits the use of a selection (SQ) stage in under-threshold procurements.

Q1: Are you certain that only one supplier can meet the requirement for technical reasons, artistic reasons (e.g. a sculpture) or reasons connected with protecting exclusive rights (e.g. patent protection)?
This can only be used in very rare circumstances. In most cases it will not be possible to know with certainty that there is only one supplier. You should ensure that the requirement is set objectively based on outputs, and not by reference to a supplier tool. "Technical reasons" as used here is very narrow.

→ **Yes** →

A: Negotiated procedure without notice ([Regulation 32](#))
This can only be used in very limited circumstances and taking legal advice on its use is strongly recommended. A note justifying its use must be retained for use in the [Regulation 84 report](#).

↓ **No**

Q2: Is the requirement extremely urgent and unforeseeable?
This can only be used in very rare circumstances where strictly necessary e.g. emergency purchase of blankets following a flood. The requirement should be unforeseeable and the urgency should not have arisen as a result of your actions or delay. It must be essential that the procurement is concluded in less than the timeframe for the accelerated restricted procedure.

→ **Yes** →

↓ **No**

Q3: Do you need to "pre-qualify" bidders?
Are you happy to receive a bid from anyone, or do you need to know about the financial standing and technical and/or professional capability of the suppliers before you would accept a bid from them?

→ **No** →

A: Open procedure ([Regulation 27](#))

↓ **Yes**

Q4: Can you fully define the requirement now?
Will you be able to prepare an invitation to tender which will allow bidders to prepare a fully priced and binding offer in response?

→ **Yes** →

A: Restricted procedure ([Regulation 28](#))

↓ **No**

Q5: Are you in one of the situations listed in [Regulation 26(4)](#)?:
- it is not possible to adapt readily available solutions; or
- the requirement includes design/innovative solutions; or
- the contract cannot be awarded without prior negotiation due to its complexity or legal / risk profile; or
- it is not possible to define the technical specification with precision; or
- an open/restricted procedure has already been run but only irregular/unacceptable tenders were received.

→ **No** →

A: Consider working up the requirement such that the restricted procedure is possible, perhaps using some pre-procurement market engagement (in accordance with [Regulations 40](#) and [41](#))

↓ **Yes**

A: Competitive dialogue ([Regulation 30](#)) **or Competitive with negotiation** ([Regulation 29](#))

This assumes the open and restricted procedures are not suitable for the procurement. A note justifying the use of the competitive dialogue/competitive with negotiation procedure must be retained for use in the [Regulation 84 report](#). Note that the competitive with negotiation process does not include the ability to negotiate with the preferred bidder following submission of final tenders. The competitive dialogue process does permit this, provided the safeguards in [Regulation 30(20)](#) are observed. It is possible, by indication in the OJEU notice, to reserve the right not to negotiate in the competitive with negotiation process. Sub-central contracting authorities have the flexibility to shorten the prescribed timescales for the competitive with negotiation process by agreement with bidders ([Regulation 29(7)](#)). This option is not available for competitive dialogue.