

## Restricted procurement procedure vs Competitive procedure with negotiation

Oxfordshire County Council is seeking to procure a new highway maintenance contract to commence on April 1<sup>st</sup> 2025 and is currently determining the most appropriate procurement route to take to enable best value for the council and ensure the specifications issued are met. Initial preferences were to adopt the 'restricted procedure' approach, however engagement with Bevan Brittan and feedback from the industry event held in July has raised 'competitive procedure with negotiation' as an alternative approach which should be considered. This approach is congruent with the way forward agreed by Cabinet in March 2023.

This short report will assess the benefits and disbenefits of both approaches and will seek to provide a recommendation as to the most appropriate route to be taken forwards.

### Restricted procedure procurement

Benefit	Disbenefit
<ul style="list-style-type: none"> <li>• Suited to procurement where the organisation is able to specify its entire requirements and bidders can submit fully priced bids without the need for any negotiation.</li> <li>• A more streamlined and 'quick' process for appointing a supplier as seeks to reduce number of bidders to be evaluated.</li> <li>• Useful when there are many suppliers in the market.</li> </ul>	<ul style="list-style-type: none"> <li>• Market engagement suggested additional engagement which the 'restricted' approach is less able to accommodate because engagement is limited to tender clarifications.</li> <li>• No opportunity to discuss and/ or refine bids to ensure specification interpretations are correct and to discuss bidders' proposals before submission of final tender If there is specification ambiguity this could be carried into the contract.</li> </ul>

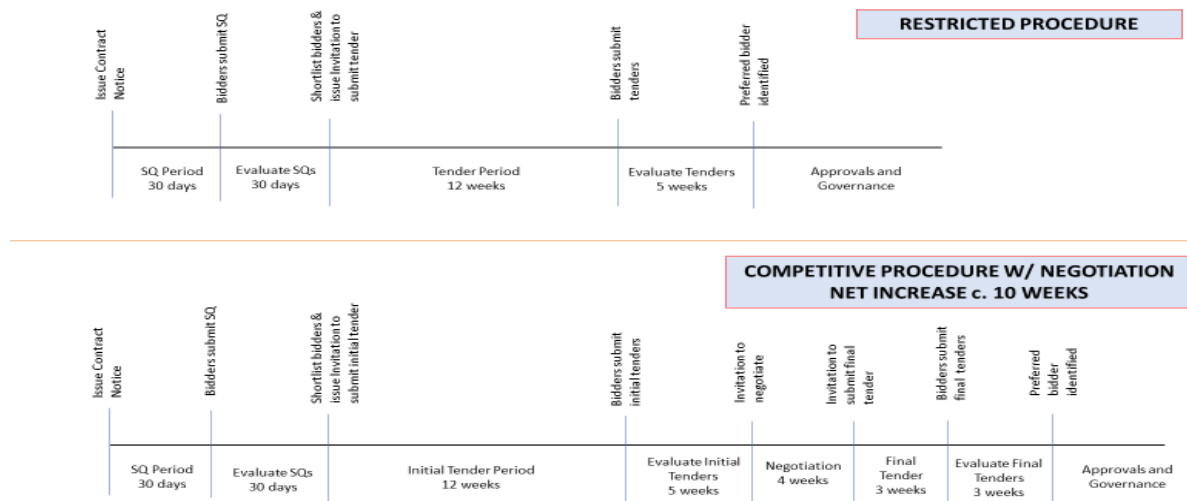
### Competitive procedure with negotiation

Benefit	Disbenefit
<ul style="list-style-type: none"> <li>• Enables the Council to discuss the tenders (except the final tender) with the tenderers with the aim of improving the content of the tenders thereby proving confidence that the proposals meet the requirements and remove ambiguities</li> <li>• Can cut straight to award if negotiation is not required following initial bids</li> <li>• Can improved performance, as the supplier and Council can</li> </ul>	<ul style="list-style-type: none"> <li>• Can't negotiate detailed final terms with winning bidder once selected</li> <li>• A longer and potentially more costly procurement as it introduces additional stages to the procurement process. (see timelines below)</li> <li>• Lack of transparency – negotiating can be less transparent than a competitive procedure, as negotiating is done behind closed</li> </ul>

define expectations <ul style="list-style-type: none"> <li>• Can increase value, through the addition of features or services at the negotiation point.</li> </ul>	doors.
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\*Timescales for each procurement approach can be found below.

### Procurement timescales review



The timescale for the Competitive Procedure with Negotiation is likely to be approximately 10 weeks longer than the Restricted Procedure due to the additional steps of negotiation, the submission of final tenders and the evaluation of final tenders. However, the use of the Competitive Procedure with Negotiation may reduce the risk of further programme overruns due:

- The option to shortlist 3 bidders compared to 5 bidders under the Restricted Procure thereby reducing client evaluation periods
- A reduced risk of bidder requests to extend the tender period
- A reduced risk of delays to the final contract execution as ambiguities will have been resolved.

### Areas for discussion

Throughout the work to date the following areas, whilst the service have a good grasp on what they would like to see the new contract offer further discussions with the industry surrounding (but not limited to) the following points would help ensure the contract delivers as expected.

- Depots – maintenance, upgrades, wider investments
- Innovation and its importance in the contract
- Wider service improvements/ enhancements
- Winter services
- Councils climate agenda and how providers would actively support

- Design support for maintenance activities

## **Recommendation**

Whilst each approach has its own range of benefits applicable to this procurement there are still a number of factors which, whilst Oxfordshire County Council is clear on their main requirements, would benefit from further discussion and engagement with prospective bidders on to ensure the contract truly meets and can deliver on service needs in the best possible way. The council can specify the areas for negotiation. Also as industry is keen to further engage to prevent any assumptions surrounding specifications to be made it is recommended that Oxfordshire County Council proceeds using the '**competitive procedure with negotiation**' approach. Under the Public Contracts Regulations 2015, the Council is permitted to use the competitive procedure with negotiation where an authority is unable to fully define how to meet their needs technically and/or cannot specify the legal or financial requirements of the contract. Despite having slightly longer timescales this approach can still be comfortably accommodated within the overall programme.