

# LEVI Support Body



## Routes to Market

### 1. Version Management

Authors	Doc. Version	Date of Change	Changes
John Valentine	1.4	-	First public version
Sagar Mody	1.5	24/09/24	Change to the commencement date of the Procurement Act 2023

#### NOTICE

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## Introduction

It is important to prepare and plan your approach to procurement using the right **procurement principles** to support your selection of the most appropriate electric vehicle infrastructure (EVI) supplier or service provider(s).

Once the best **commercial arrangement** for the service has been decided, procurement plays a vital role in helping to test and evaluate suppliers, their proposed solutions and achieve best value for service.

There are a range of ways in which the buyer can engage service providers – these are called ‘routes to market’.

This article offers an understanding of the procurement routes to market available to local authorities (LAs).

### Warning:

It is important to note that any procurement procedure including the use of any framework, or dynamic purchasing system (DPS) carries risks that are the responsibility of the contracting authority. Buyers are strongly advised to seek legal advice before selecting a procurement route and initiating any procurement process.

## 2. Route to Market Options

There are a range of common routes to market which are available to local authorities to procure EVI contracts. These options include:

- Dynamic purchasing systems (DPS);
- Framework agreements;
- Open and restricted procedures:
- Competitive procedure with negotiation: and
- Competitive dialogue:

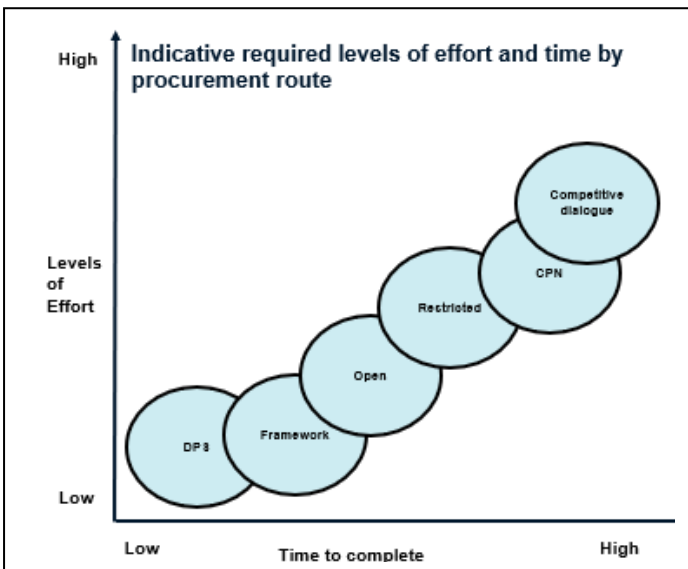
1. **DPS:** This is a procurement tool to purchase commonly used goods, works or services. It allows for a pool of pre-qualified suppliers which offer similar solutions to compete for contracts. It also remains open for new suppliers to join at anytime during its duration, as long as they meet the specified selection criteria. This is why it is referred-to as ‘dynamic’.
2. **Framework:** Framework agreements are pre-established contracts between one or more contracting authorities and one or more suppliers. They establish the terms and conditions that will apply to subsequent contracts awarded during the framework period. Once established the framework remains closed to new suppliers for its duration.
3. **Open tender:** An open tender process allows any interested supplier to submit a tender response through a single stage. The open procedure does not permit negotiation or dialogue with the bidders.
4. **Restricted:** In a restricted tender process, the procurement is conducted in two stages: selection and award. During the selection stage, interested suppliers submit expressions of interest and are evaluated against pre-agreed criteria (called the standard selection questionnaire). Then, only shortlisted suppliers are invited to participate in the second stage, where they submit

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detailed tender proposals for evaluation. This process is similar to the open tender process but involves a separate of the supplier selection, and contract evaluation and award stages. The restricted procedure does not permit negotiation or dialogue with the bidders.

- Competitive procedure with negotiation:** Allows for negotiation with shortlisted bidders. This is ideal for where minimum requirements can be specified but negotiations with bidders are needed to improve initial tenders.
- Competitive dialogue:** The competitive dialogue procedure allows for discussions between the contracting authority and the bidders to discuss any aspect of the procurement, e.g. the service requirements or proposed solution. Competitive dialogue is useful to test assumptions and solutions.



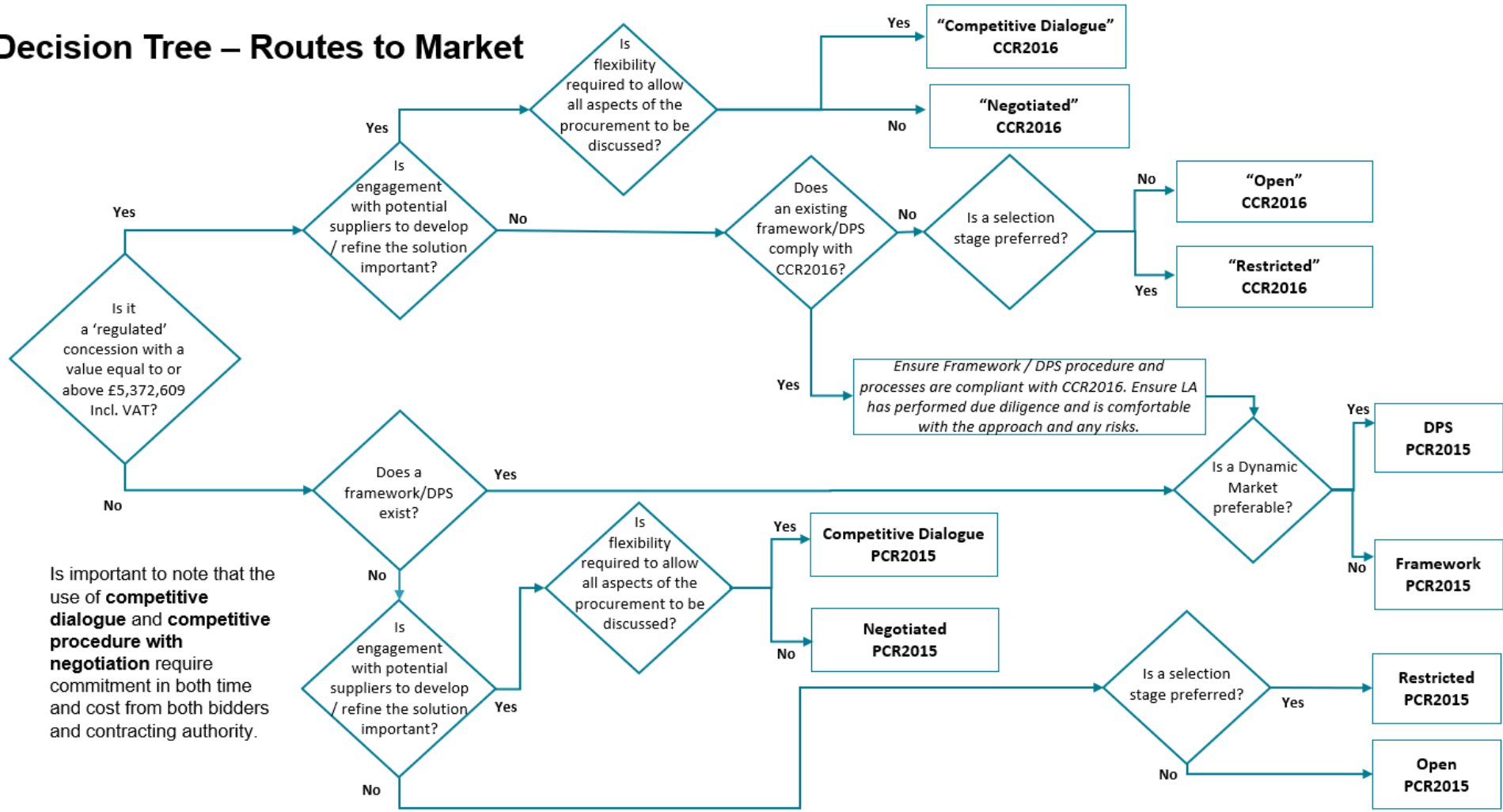
Both negotiation and competitive dialogue offer benefits in relation to flexibility and quality of solutions, however it is important to recognise that both procedures are complex, demand substantial planning, time, resource, and effort to achieve success. Contracting authorities should factor these practical considerations in when selecting the procedure as well as the impact on bidders. Negotiation and competitive dialogue involve detailed discussions and potentially multiple rounds of submissions, which can be resource intensive.

## 2.1. What options exist for concession contracts?

A **concession** contract is a sub-set of the **public-private commercial partnership commercial arrangement**. The Concessions Contract Regulation (CCR) 2016 (Reg. 30) grants contracting authorities the flexibility to determine and organise the procedure for selecting a concessionaire, provided it aligns with the principles outlined in CCR 2016. If a local authority has determined that their requirement qualifies as a **regulated**<sup>1</sup> concession contract), the next step is to consider the most suitable procurement route. What is possible via each of the potential routes will vary in this situation:

<sup>1</sup> **Regulated Concession Contract:** a contract that meets the threshold (currently valued at £5,372,609 or more, including VAT) for the application of the CCR2016. Regulation 9, CCR 2016 sets out the threshold amount and methods for calculating the estimated value of concession contracts.

# Decision Tree – Routes to Market



Is important to note that the use of **competitive dialogue** and **competitive procedure with negotiation** require commitment in both time and cost from both bidders and contracting authority.

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For concession contracts below the threshold of £5,372,609 (including VAT), local authorities can use any DPS or framework, as well as the open and restricted procedures, provided they are suitable for achieving the relevant funding objectives and are consistent with PCR 2015 requirements.

## \*Important Note on the Procurement Act 2023:

Local authorities should note that current legislation (e.g., CCR 2016) will remain in force until the Procurement Act 2023 comes into force on 24 February 2025. Current legislation will continue to govern any procurements initiated prior to the change (e.g. where a contract notice has been published under existing legislation).

Contracts, DPS and frameworks awarded under current legislation will continue to be available beyond February 2025 until they expire or until 2029. Contracts awarded under the current legislation will also require management under the current regime.

Any new procurement falling within the scope and thresholds of the new regulations (from 24 February 2025) will have to abide by the new Procurement Act 2023 - [Procurement Act 2023 Knowledge Drop for contracting authorities: Collection \(HTML\) - GOV.UK \(www.gov.uk\)](#).

Additionally, according to the provisions of the Procurement Act 2023, any new dynamic markets or frameworks established under this legislation will prohibit the award of concession contracts, except for those that are also utilities contracts awarded through dynamic markets.

For more detailed information on the Procurement Act 2023 and its implications for concession contracts, please refer to the following resource: [Guidance - Concession Contracts \(HTML\) - GOV.UK \(www.gov.uk\)](#)

For further information on public procurement please visit, [Transforming Public Procurement - GOV.UK \(www.gov.uk\)](#).

## 2.2. Specific considerations for regulated concession contracts?

When designing the approach under CCR 2016, contracting authorities should also consider the following, noting that legal advice should also be obtained ahead of undertaking a procurement:

Requirement	Explanation	Approach
Publish concession notice (above threshold and for competitive procurements only)	Electronically published e.g., via Find a Tender Service	A minimum of 30 days is allowed from the publication of the concession notice for the receipt of applications (whether this includes tenders)
Threshold	Concession contracts which are valued at equal to or greater than £5,372,609 including VAT are regulated under the Concession Contract Regulations (CCR) 2016.	See <a href="#">Valuing a Contract - National EV Insight &amp; Support   Delivered by Cenex</a>

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Procurement procedures	The CCR 2016 does not stipulate different procurement procedures (e.g., similar to open, restricted procedures under PCR 2015) that a contracting authority must follow. Instead, the CCR 2016, Reg 37 lays down principles to follow when designing and carrying out a procurement.	If adopting a procedure similar to open or restricted under PCR 2015, as a minimum adopt the principles as laid out in regulation 37, CCR 2016.
Award	The award of a concession contract must be based on objective criteria that identify an overall economic advantage for the contracting authority. This can include social, environmental and innovative requirements provided they relate to the subject matter of the contract.	Ensure that the concession notice clearly outlines the award criterion.
Standstill	A standstill period is required in the same way as a under PCR 2015. The standstill period is 10 calendar days if the information has been provided by electronic means.	Ensure that the standstill period is applied.

### 3. Key Takeaways:

- Local authorities are strongly advised to seek legal advice and conduct their own due diligence before selecting any procurement route and initiating a procurement process.
- If local authorities are opting for a concession contract as their commercial arrangement and considering the use of a DPS or framework, they are advised to engage with the framework or DPS provider to understand if their processes for awarding contracts comply with the relevant regulations. In addition, local authorities will need to clarify this with their own legal teams. If the contract value meets the threshold for CCR 2016, then local authorities must ensure the DPS or framework is compliant with CCR 2016 requirements.
- Local authorities should ensure that any procedure they follow for regulated concession contracts adheres to the principles and requirements as outlined in CCR 2016.
- Contracts, DPS and frameworks awarded under current legislation will continue to be available beyond February 2025 until they expire or until 2029. Contracts awarded under the current legislation will also require management under the current regime. Any new procurement falling within the scope and thresholds of the new regulations (from 24 February 2025) will have to abide by the new Procurement Act 2023.

### 4. Key Considerations:

- *Selecting the right procurement route is essential for optimising project outcomes, minimising risks, ensuring compliance and meeting stakeholder expectations.*