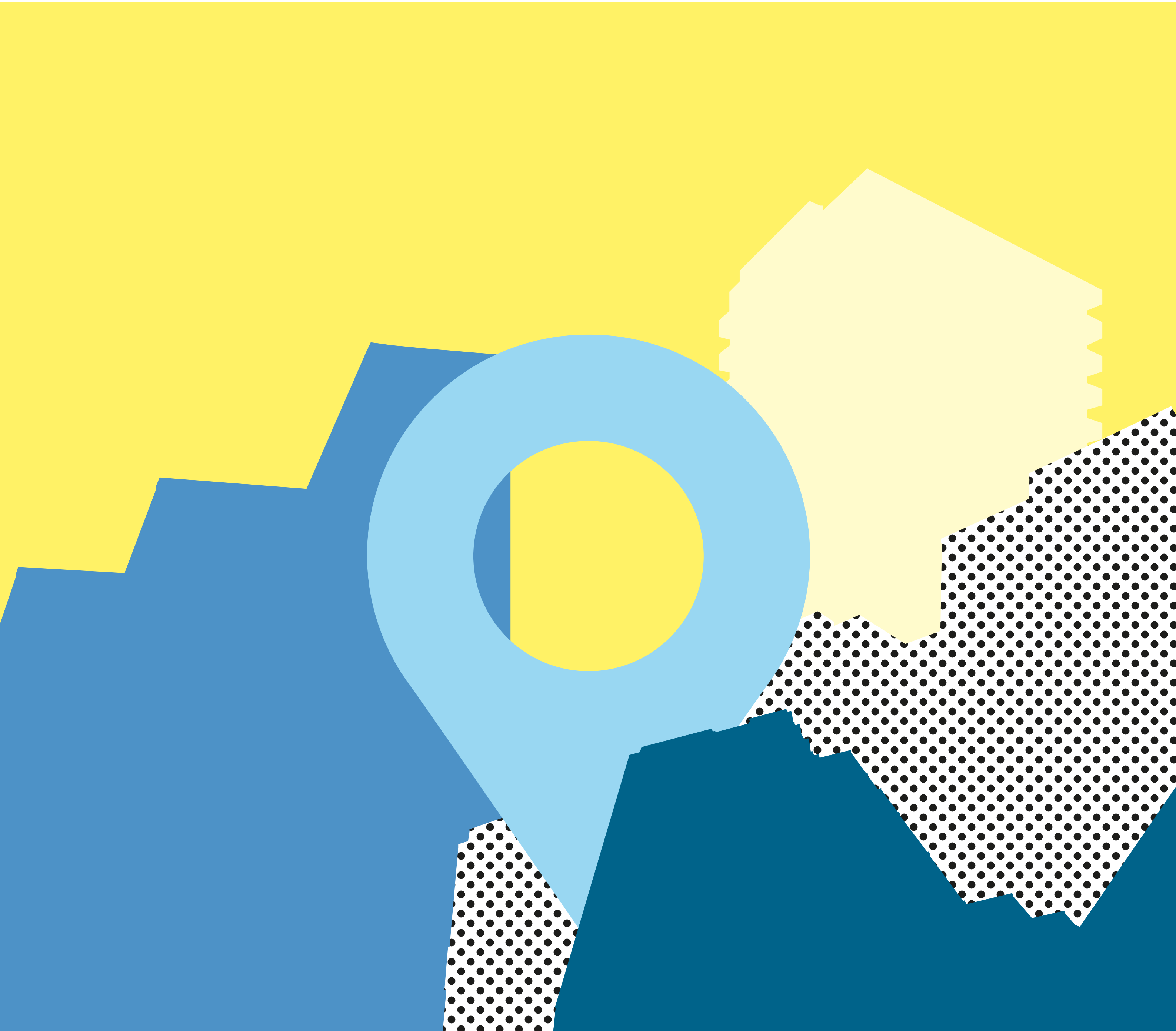
MAYOR OF LONDON

GN4

London Development Toolkit

Guidance Note 4

Setting a brief and managing a procurement



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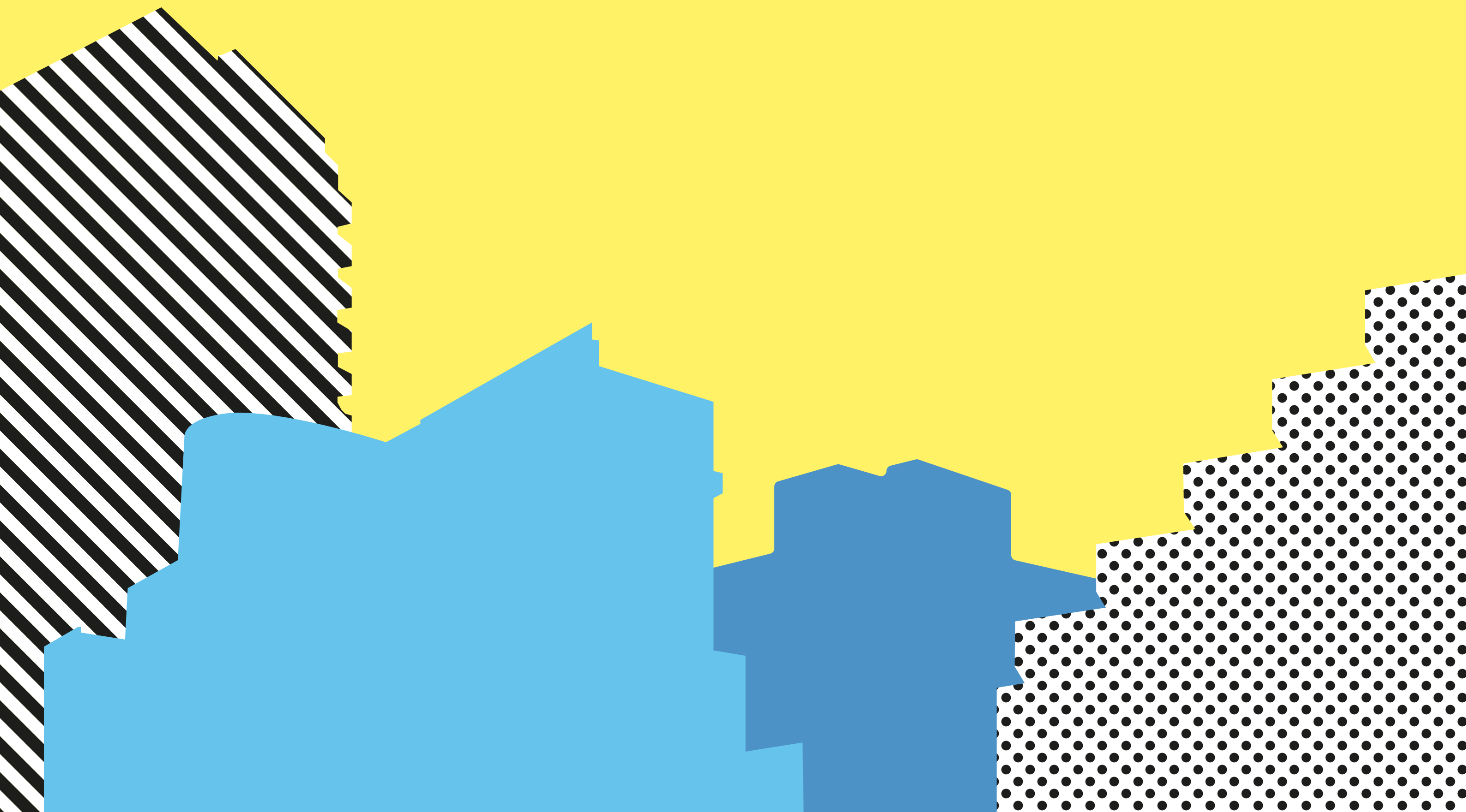

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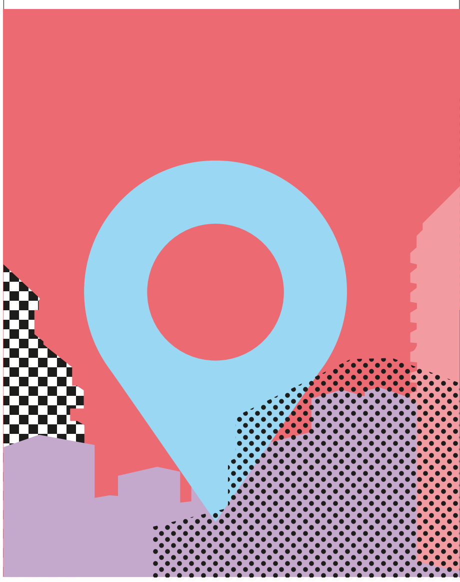

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Introduction

This guidance note explores the key stages of a typical competitive procurement process to select a developer partner; and how to prepare for, manage and deliver each stage effectively.

It provides guidance on setting a project brief for developers, and what to include within it.

It assumes the contract being awarded is a public contract and needs to be procured under the Procurement Act 2023 (PA23). Some forms of delivery structure do not need to be procured under the PA23, as they are exempted contracts. This is explored further in guidance note 2: partnership and delivery structures; and guidance note 3: procurement strategy.

It follows the principles, requirements and language of the PA23, exploring the new regulations and flexibilities in the PA23 and associated guidance, which came into force in February 2025.

At this point, the landowner has completed feasibility work, resulting in a clearly defined opportunity, a robust set of objectives and a compelling vision for the site.

The landowner has also decided upon a delivery structure for the project and has established which procurement procedure it will use to select a developer partner.

The objectives, vision, delivery structure and procurement strategy have been tested with the market and the landowner is now ready to procure a developer partner.

Guidance is included on setting award criteria that can be used at different stages of the process to test developers' legal and financial capacity and technical ability; and to draw out how they will address the landowner's vision and objectives.

It explores evaluation methodologies that can be used to support analysis and scoring of developers' responses and identify the most advantageous tender.

It provides guidance on engaging with developers – through dialogue, negotiation and feedback.

Procurement is a collaborative exercise requiring commercial, legal and specialist input and expertise. The importance of having the right team, advice and resources is explored in this guidance.

This guidance note does not constitute commercial or legal advice. Landowners should take their own advice when planning development on their land.

Procurement is a collaborative exercise requiring commercial, legal and specialist input and expertise. The importance of having the right team, advice and resources is explored in this guidance.

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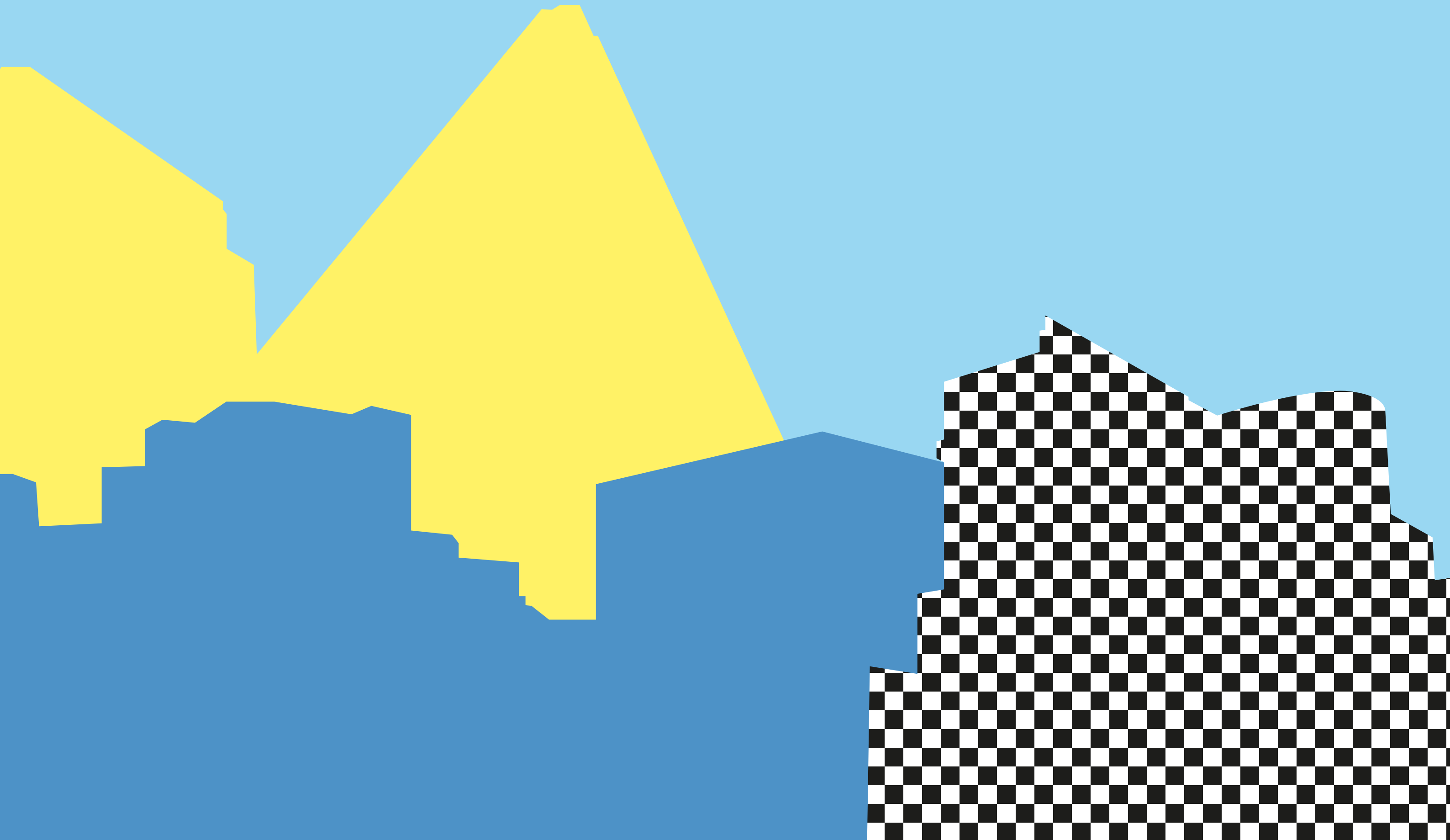
1 Procurement procedures

As explored in guidance note 3: procurement strategy, the PA23 provides three types of procurement procedure that contracting authorities (in this context the public landowner) can adopt to award a contract:



- **direct award –** where a contract is awarded directly to the supplier (in this context, the developer) of the contracting authority's choosing, without a competitive tendering procedure
- **open procedure –** a single-stage procedure whereby any interested supplier can submit a tender, and the contracting authority will decide whom to award the contract to on the basis of that tender
- **competitive flexible procedure –** any other competitive tendering procedure.

The competitive flexible tendering procedure is likely to be most appropriate when procuring a developer partner, and gives landowners significant latitude to design new and creative processes to meet their needs. Guidance note 3: procurement strategy, explores flexibilities when designing a procedure.

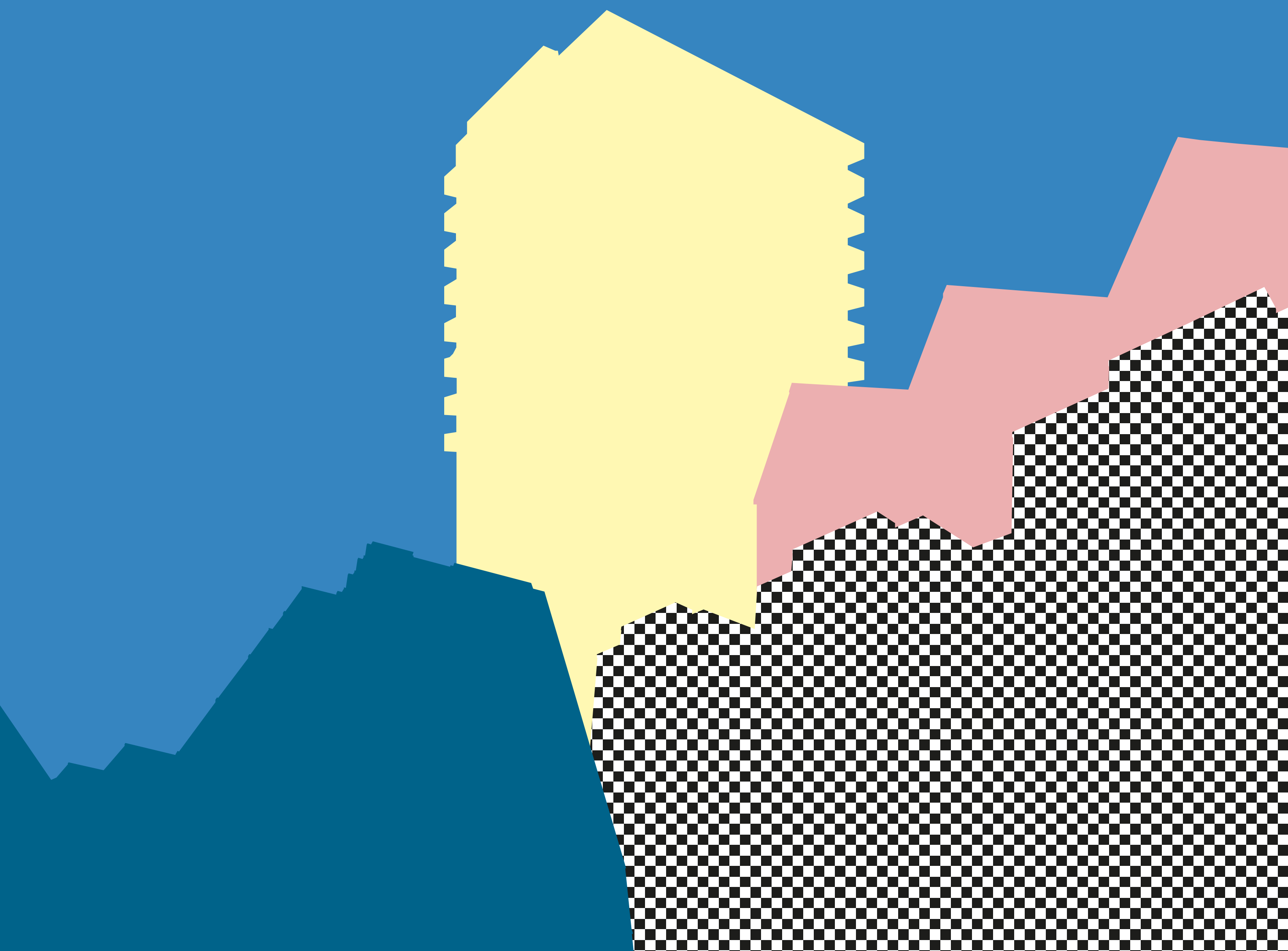
> The competitive flexible tendering procedure is likely to be most appropriate when procuring a developer partner, and gives landowners significant latitude to design new and creative processes to meet their needs.

This guidance note takes a deeper dive into the stages that are likely be included in a typical competitive flexible procedure. It focuses on the practicalities when procuring a developer partner, following the chronology below:

1. **planning and resourcing**
2. **beginning a procurement, issuing a tender notice and project brief**
3. **limiting participants through a participation stage and exclusions**
4. **inviting tenders**
5. **dialogue and negotiation**
6. **evaluating tenders**
7. **assessment summaries and contract award.**

2 Planning and resourcing

Procurement is complex. To ensure a smooth, effective process, landowners must carefully plan and resource their procurements. This is important to comply with the PA23; engage the market; and secure the best possible outcomes from the process.



Preparing a detailed programme before beginning a procurement will enable landowners to plot out the process, and ensure sufficient time is allocated to the various activities. Below are some key considerations to factor into procurement planning.

Assembling a team and budget

Different experts will be required to support the procurement at different stages. The nature of the project and the landowner's requirements will determine what advice is required. However, it is likely that a landowner will need legal advice (procurement and property/transactional advice); commercial procurement advice; and development and valuation advice. It may also need design advice, engineering advice or environmental/sustainability advice, depending on the project.

Whether sourced in-house or externally, it is important to ensure advisers are available to support the procurement exercise when required. This may involve formulating the tender notice, project brief, associated documents and award criteria. They will also be required when evaluating tenders.

When sourcing advice externally, sufficient time should be built into the programme to procure the advisers (if applicable) and secure a budget for their advice. These advisers may need to be procured in accordance with the PA23. Landowners should check for any conflicts of interest.

PA23 notices

The PA23 requires public landowners to publish a range of notices in relation to its procurement activities. See guidance note 3: procurement strategy, for further details.

It requires certain landowners to publish a pipeline notice of upcoming procurements; and provides the option to publish a planned procurement notice, similar to the prior information notice under the previous regulations, signalling the intention to begin a procurement. These notices are intended to give advance information to the market, enabling it to prepare for participation.

A tender notice must then be published on the government's central digital platform[1] to commence a competitive tendering procedure. Sufficient time needs to be allowed to prepare this notice, and any associated documents, before the procurement begins.

1. Central Digital Platform - factsheet

Chapter 2 explores the tender notice in more detail. In a developer partner procurement, it is likely that a large amount of information will need to be shared as part of the tender notice and associated documents. The landowner must allow time to produce, coordinate and publish these; and ensure the pack is consistent, clear and accessible. Undue delays and large gaps between procurement stages are to be avoided, so this preparation is important.

Time periods

The programme should include appropriate time periods for bidding developers to prepare their responses at various stages. Consideration should be given to:

- the complexity of the requirements and contract
- the need for any site visits, inspections, preparation for dialogue or negotiations
- any need for sub-contracting
- the importance of avoiding unnecessary delay.

The PA23 sets a minimum response period of 25 days for the participation stage. The exception to this is in the case of a light-touch contract, or a state of urgency (unlikely in developer procurements).

The minimum response period for the tendering stage under the PA23 depends on the circumstances, but is between 10 and 35 days. It can be agreed[2] with those selected at the participation stage.

In most developer procurements, a period longer than the statutory minimum is likely to be appropriate. Developers will likely need to engage with a large amount of information; appoint a project team; and prepare detailed responses, drawing on a range of expertise.

Clarifications

Participating developers may submit clarification questions during a procurement, particularly during the participation and tender stages. This can be intensive, and the landowner needs to provide prompt responses and maintain accurate records of all communication. It can be useful to include clarification windows during the participation and tender stages, during which bidding developers can submit questions.

Evaluation stage

Evaluation is a critical and intensive stage in a procurement process. An evaluation plan will help the landowner to prepare for this stage. It should do the following:

- Identify an evaluation panel with the required level of competence and expertise.

2. Non-central government authorities only.

- Ensure time is included to brief evaluators on the project, the award criteria and assessment methodology. Evaluators should be involved in, or consulted on, the preparation of award criteria. This will ensure they understand how the most advantageous tender will be identified and that the elements they would expect participating developers to cover are incorporated into the criteria.
- Ensure evaluators' time is booked early to evaluate the bids, allowing enough time for tenders to be analysed robustly.
- Schedule moderation sessions with evaluators and a facilitator.
- Allow time to prepare and issue assessment summaries, and then the contract award notice.
- Include a standstill period and ensure a point of contact is available to respond to any queries from participating developers.

Governance

It is likely that public sector landowners will require internal approval(s) to dispose of land or enter a development contract. Any internal approvals or decisions required during a procurement should be understood at the outset and factored into the programme; and adequate time given to prepare any recommendation reports and risk assessments, brief decision makers, and attend any decision-making forums.

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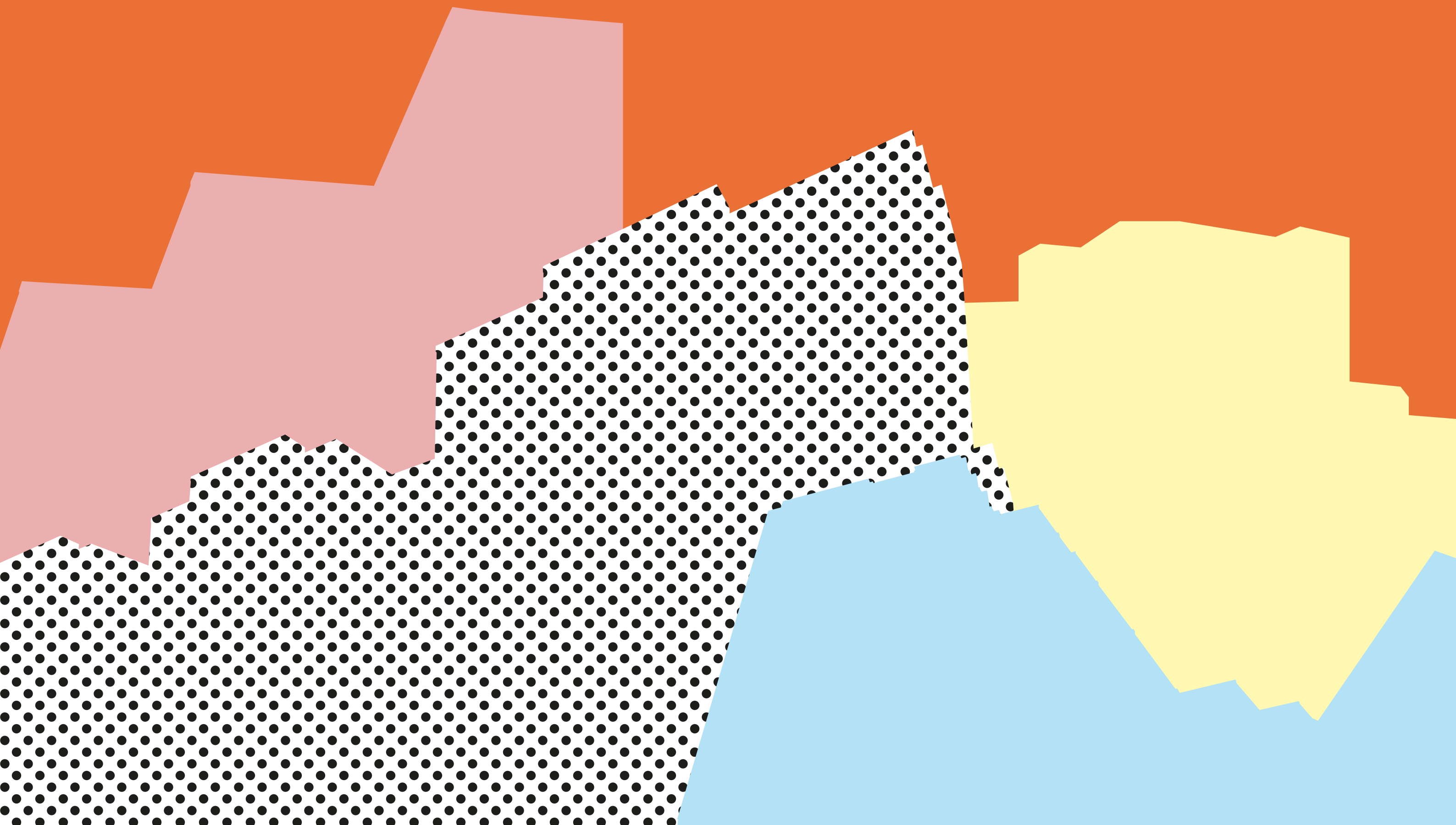
3 Beginning a procurement – issuing the tender notice



Tender notice

Under the PA23 a tender notice must be published on the central digital platform to commence a competitive tendering procedure.

The tender notice invites developers to participate in a procurement. It can include or reference "associated tender documents", which landowners can publish at the outset or during the procedure to supplement the information in the tender notice, providing more detail about the procurement. Best practice is to publish all relevant detail on the procurement procedure upfront, when the procurement begins.

Between them, the tender notice and associated documents must be clear and sufficiently detailed to allow developers to understand the procedure, the process and the landowner's requirements; and enable developers to decide whether to participate. It is best practice to provide as much information as possible as early as possible, so that the opportunity and the landowner's requirements are clear.

> Best practice is to publish all relevant detail on the procurement procedure upfront, when the procurement begins.

The PA23, the Procurement Regulations 2024 and associated guidance specify what must be included in a tender notice and any associated tender documents[3]. For developer partner procurements, this is likely to include:

- technical specifications – in the form of a project brief setting out the opportunity, the landowner's vision and objectives, commercial terms and the services/works required (see chapter 4)
- details of the procedure and its stages, including any opportunities for negotiation
- any conditions of participation in the procedure
- when there is a participation stage to limit the number of developers progressing to subsequent tender stage(s), the criteria which the landowner will use to select developers to participate further
- the award criteria, i.e., the criteria against which tenders will be assessed
- the assessment methodology for evaluating tender responses
- details of how and when to submit responses and how to contact the landowner
- consideration of "lots".

3. Guidance: Competitive Tendering Procedures

Updates and modifications

The tender notice and associated tender documents must include sufficient detail and information to define the opportunity clearly, and allow developers to prepare their tenders, before tenders are invited.

As noted, best practice is to publish all relevant detail upfront, when the procurement begins.

The PA23 provides some flexibility that enables landowners to change aspects of their procurement processes as they are running. This may be helpful when elements of a project remain unresolved before the procurement is launched. This is explored in more detail in guidance note 3: procurement strategy.

The PA23 also includes a flexibility known as "materialisation of known risk". This relates to project risks that, whilst known at the procurement planning stage, cannot be predicted in terms of likelihood, extent or impact on the performance of the contract. The PA23 allows the landowner to flag this risk in the Tender Notice and/or associated documents. If the risk later materialises, the PA23 contains a ground via which the landowner can make necessary contract changes to accommodate and deal with this risk. This too is explored in more detail in guidance note 3: procurement strategy.

Lots

Using "lots" means splitting a larger single procurement opportunity into smaller components, which are then awarded to different suppliers under separate contracts. This aims to reduce risk in the supply chain; diversify the market; and reduce barriers to small and medium-sized enterprises (SMEs) participating in public procurement.

The PA23 requires landowners to consider using lots when procuring goods, works and services. This is for the landowner to decide. Details must be included in the tender notice (including, where a landowner decides not to use lots, its reasons for not doing so)[4].

> The PA23 requires landowners to consider using lots when procuring goods, works and services. This is for the landowner to decide.

4. Guidance: Lots

Advertising the opportunity

Beyond publication on the central digital platform, landowners should consider preparing a communication strategy for the project, considering who the target market is and where/how to reach them. Many developers will be aware of the opportunity if pre-market engagement was undertaken.

This could be done through advertising online and via social media, and through a press release. Landowners could also consider hosting a launch event, or using trade events/conferences, to draw interest in the project and highlight the opportunity.

Messaging should be positive and convey the landowner's aspirations for the project – including their placemaking, social value and sustainability goals.

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4 Project brief

In a developer partner procurement, the technical specification is likely to comprise a project brief setting out the opportunity; the landowner's vision and objectives; commercial terms; and the services and/or works required.

These will have been established during the project feasibility stage when the landowner's vision, objectives, preferred delivery structure and procurement strategy will have been produced.

The project brief is the landowner's opportunity to clearly articulate its aspirations from the outset. This can help the landowner to meet not only its project specific goals, but also wider organisational goals, e.g., environmental or social value goals.

Landowners should be mindful that, under the PA23, the technical specification should not unnecessarily limit competition and suppliers should be treated the same (unless a difference between them justifies different treatment, in which case reasonable steps must be taken to prevent any unfair advantage or disadvantage).

The project brief needs to convey key information on the site, the opportunity and the landowner's requirements. It could include the following sections.

Introduction

The project brief should begin with an aspirational and concise introduction to the project and the landowner's vision for the development. For significant projects, it will be useful to include a message or foreword from senior leaders or politicians to introduce the vision for the project and highlight its strategic importance.

The landowner's vision, objectives and minimum requirements

The project brief is a key opportunity to set out a positive, compelling vision and a clear set of objectives for the development of the site.

Guidance note 1: project feasibility and objectives, provides guidance on developing a multilayered vision in collaboration with stakeholders; and testing and developing this through early design and feasibility work.

> The project brief ought to form a compelling prospectus that clearly articulates the landowner's vision for the project; and aims to generate market interest in the opportunity. It ought to be succinct, clear and attractively produced.

The vision will be accompanied by a set or concise landowner objectives or minimum requirements. These are the landowner's development, design, social value, commercial and other requirements that it is seeking to achieve through the development of the site. They should be objective and might be fixed or provide some scope for flexibility. They might include:

- parameters for the type of development the landowner wants to deliver: these might be broad (e.g. residential-led development, optimising the use of the site), or specific (e.g. at least 250 new homes, 50 per cent of which are affordable), or a mix
- any relevant phasing requirements: this is likely important in estate regeneration projects or where land will be assembled in tranches
- any key milestones that must be achieved
- any specific design approach/codes/standards to be achieved or adopted
- any specific environmental or sustainability objectives or standards
- details of any social value or equality and diversity requirements or initiatives to be delivered through the project
- key commercial terms and delivery structure

A description of the site and place

Guidance note 1: project feasibility and objectives, provides guidance on analysing a site, the results of which can be incorporated into the project brief.

This could include key details such as:

- physical features – site area, redline, boundary conditions, access, egress, topography, existing buildings, features, uses and trees
- analysis of place – urban design context, connections, proximity to local services and infrastructure, surrounding development and uses, historic context, any planned changes or regeneration
- analysis of local social and economic context – demographics, communities, culture, inequalities, businesses, barriers to growth or opportunities
- technical analysis – ground and geotechnical conditions, services and utilities, flood risk, environmental issues, ecology

It might be appropriate to share existing surveys, reports or design studies held by the landowner, either at the outset or during the procurement. This will help developers to better understand the site and any potential opportunities or risks.

Planning context

The project brief should include an overview of key planning matters affecting the site. These might include:

- planning history
- current and emerging local, regional and national planning policy, e.g., Local Plan, London Plan
- any site allocations, designating the land for a certain use
- designations or restrictions such as listed buildings, conservation areas, tree preservation orders, article 4 orders
- reference to any relevant supplementary planning documents or guidance
- details of any pre-app discussions held with the local planning authority
- details of any arrangements for bidding developers to discuss their proposals with the local planning authority.

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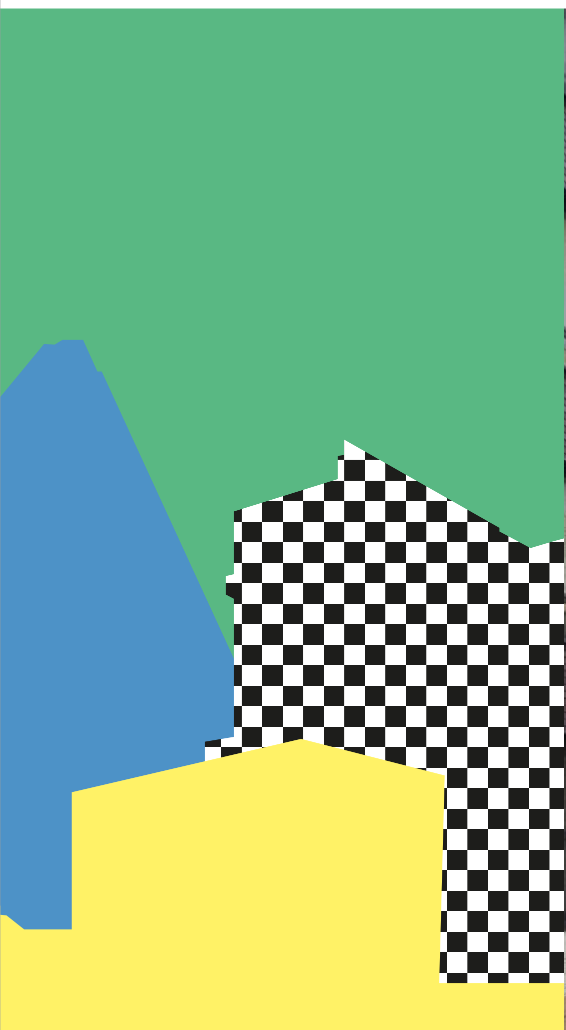

Legal/title matters

Developers should undertake their own due diligence on a site's title. However, the project brief might usefully include a summary of any important legal or title matters affecting the site, such as:

- how the site is owned by the landowner, either freehold or leasehold. If leasehold, how long the unexpired term is and key terms of the lease
- any underleases or sub-leases of the site (whole and part) and if/how they can be terminated early to facilitate sale or development
- details of any land owned by or let to a third party, that will need to be assembled to enable development
- rights benefiting the site, e.g., access and egress over neighbouring land; rights to use conduits crossing neighbouring land; rights of light and air
- rights burdening the land, e.g., neighbouring land has right of access or egress over the site, rights to use conduits crossing the site (which could impact on development and may need to be diverted or stopped up)
- any easements or wayleaves, e.g., an electricity supplier might have a right to access and maintain a substation on the site
- any positive covenants applying to the site, e.g., an obligation to maintain a boundary wall
- any restrictive covenants applying to the site, e.g., prohibitions on certain uses on the site
- financial charges on the land.

The role of the developer partner

The project brief needs to clearly define the role, skills and qualities of the developer partner and its consultant team required for the project. This will depend on the delivery structure for the project. Guidance note 2: partnership and delivery structures, explores the key forms of delivery structure and the developer's role in each.

The developer's tasks and activities might include:

- securing funding
- land assembly
- remediation/ enabling works
- masterplanning and design development
- stakeholder and community engagement
- securing planning and other consent(s)
- construction
- delivering community and social value initiatives
- sales
- estate management.

The landowner might be responsible for some aspects of these activities or the landowner and developer may need to work together. The division of roles and responsibilities needs to be clear at the outset.

The type of developer team required, and its skills, experience and qualities, should also be set out in the project brief. It is key to get the right development partner, and the project brief should be positive and stretching. It should describe what qualities an ideal development partner would have.

Landowners might seek partners with a strong track record in:

- working in a similar regeneration/planning context on similar types of projects
- working effectively with public landowners and awareness of their governance structures
- stakeholder engagement
- leading and managing high-quality design teams to secure planning consent
- delivering quality projects on site that are well managed when completed
- delivering impactful community and social value benefits in the local areas in which they work

The brief should also set out the landowner's expectations around the developer's consultant team. An appropriate and high-quality consultant team is critical in driving a project forward, and so it is important to consider what kind of team would be the best fit. The landowner might require the team to have certain expertise or skills; or may require them to demonstrate how they have delivered design quality in their other projects. The landowner may require some consultants to be retained throughout the life of the project.

"The type of developer team required, and its skills, experience and qualities, should also be set out in the project brief. It is key to get the right development partner, and the project brief should be positive and stretching. It should describe what qualities an ideal development partner would have."

The project brief is also an opportunity to set out the landowner's project requirements regarding equality and diversity. Landowners are encouraged to seek developer partners who champion and proactively improve equality and diversity within their own workforce, and strive to secure this in their supply chains and through their operations.

The GLA has published a process note intended to help commissioning authorities maximise social value, and equality and diversity benefits, in their procurement of design services.[5] Whilst focused on procuring design teams for projects, the principles in the process note could be adapted and applied when procuring developer partners.

"The project brief is also an opportunity to set out the landowner's project requirements regarding equality and diversity. Landowners are encouraged to seek developer partners who champion and proactively improve equality and diversity within their own workforce, and strive to secure this in their supply chains and through their operations."

Delivery structure and working in partnership

Guidance note 2: partnership and delivery structures, explores the different models and structures that landowners might adopt when seeking to dispose of and/or develop their land with a developer partner.

At this stage, the landowner will have chosen its preferred structure and this should be communicated clearly in the project brief. The key commercial terms for the transaction should be set out, including the heads of terms for the contract and the financial arrangements (e.g., how and when the land will be paid for, equity arrangements or how project income will be shared).

It will also be sensible to set out any expectations on how the landowner and developer will be expected to work together, including some initial thinking around governance arrangements.

This should include a design quality management protocol; a tool that links the design related activities and outputs to the RIBA stages; and details of relevant contractual matters and the responsible party for each stage.

5. Procuring Social Value and EDI – Process Note

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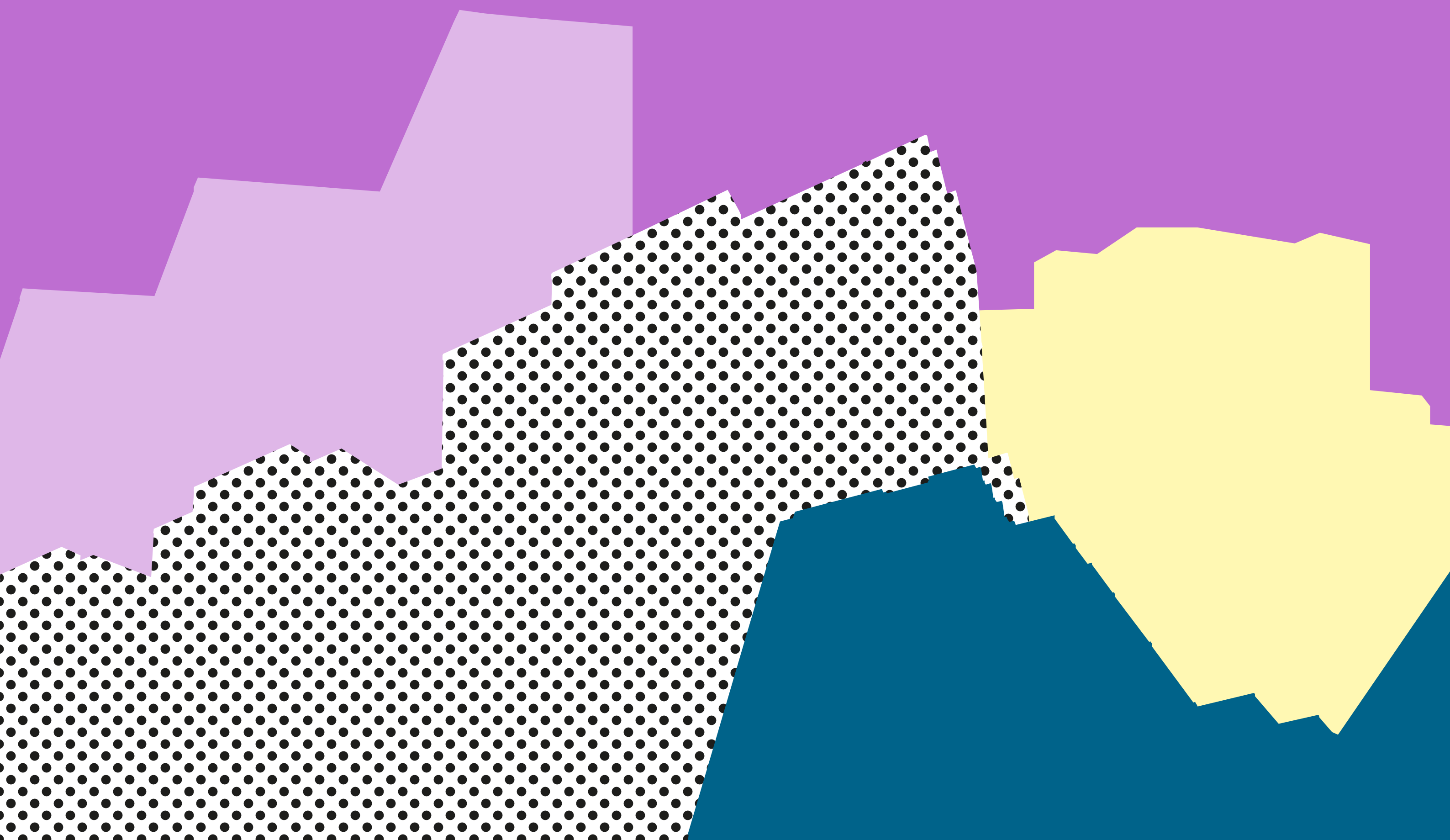
5 Conditions of participation, participation stage and exclusions



Conditions of participation

Under the PA23, in a competitive tendering procedure landowners can set conditions of participation, which participating developers must satisfy to be awarded a contract. These are separate to exclusion grounds, which are explored later in this chapter.

The PA23 and associated guidance are clear that the conditions of participation must only relate to developers' legal and financial capacity, or technical ability, to perform the contract. They must be proportionate to the nature, complexity and cost of the contract. Within these parameters, landowners are free to draft and set appropriate conditions of participation and decide how these will be assessed.

Conditions of participation must be considered carefully, as participating developers will need to meet all conditions to progress in a procurement and be awarded a contract. The approach and criteria must be set out clearly in the tender notice or associated documents.

> The PA23 is clear that the conditions of participation must only relate to developers' legal and financial capacity, or technical ability, to perform the contract.

Participation stage

In a competitive flexible procedure, the conditions of participation can be used to limit the number of developers progressing to the next stage of a procurement. This is known as the 'participation stage' and is similar to the selection stage under the previous regulations.

In these circumstances, landowners set objective criteria (testing legal and financial capacity, or technical ability, to perform the contract) and score responses. The highest-scoring developers progress to the next stage of the procurement. Within this, there could be some criteria that developers must 'pass', or reach a threshold score, to progress in the procurement.

Developer partner procurements are complex, so there will likely be a participation stage to ensure only the most suitable developers are invited to tender. This will keep the administration of the procurement manageable, and keep participating developers motivated.

It is for the landowner to decide how many developers it would like to progress through to subsequent stages – this will need to be determined on a project-by-project basis. Landowners will want a good level of competition, but not so much that it deters bidders or becomes unmanageable.

On the next page is some guidance on financial and technical criteria.

Financial capacity

Participating developers can be asked questions in relation to their finances, to ensure they have capacity to undertake a contract. This might include meeting certain financial criteria, thresholds or ratios. Government has produced a list of optional questions which landowners could consider.

The questions need to be considered on a project-by-project basis to ensure they are relevant. Any minimum financial conditions of participation should be clear and proportionate; and the threshold to satisfy each condition should be transparent.

Landowners should also be mindful that developers may not be able to provide evidence of unconditional, project-specific funding during a procurement process. However, they may be asked to evidence potential or conditional funding source(s).

Landowners may also seek further information and/or stipulate any requirements that it may properly require in respect of financial security to ensure that a developer (if appointed) is capable of funding the contract. This may require provision of a parent company guarantee or a performance bond, at the point the contract is entered.

Landowners will likely need support from financial or accounting experts (either in-house or externally sourced) when drafting questions relating to financial standing and evaluating developer responses.

Technical ability

Participating developers can be asked about their technical capability to deliver a project. This might include questions on:

- relevant experience and contract examples – seeking examples of completed projects that demonstrate their ability to deliver similar projects
- experience/examples of working in similar partnership arrangements
- experience/examples of securing planning consents for similar projects
- experience/examples of working with particular technologies or construction approaches (e.g., modern methods of construction) or delivering to certain design standards
- experience/examples of working in partnership with local stakeholders and communities e.g., co-design
- their experience of successfully managing completed development
- their environmental, social and governance policies or sustainability strategy, and performance under them
- their equal opportunities; or equality, diversity and inclusion policies and practices
- their skills and apprentices policies and strategies

6. Procurement Specific Questionnaire

- health and safety – testing their ability to manage relevant health and safety risks, or requiring certain accreditations
- their supply chain management practices and policies, including preventing modern slavery.

Again, any questions must be proportionate to the opportunity. They should also be specific and relevant to the project and seek to test developers' capabilities and experience in delivering the things that are critical to the project's success.

Questions must be non-discriminatory. For example, they must allow for equivalents if requiring particular qualifications; and only refer to UK standards where the relevant standard adopts an internationally recognised equivalent (or where no such equivalent exists).

Landowners should clearly set out how developers should respond, e.g., by completing a template, noting any word limits for responses. The appropriate number of questions at participation stage, and the response requirements for each, will depend on the project. Landowners should be mindful that this is the first stage in a longer process; and that the tender stage will assess developers' detailed proposals for the project.

The deadline to submit responses should be made clear in the tender notice.

“The appropriate number of questions at participation stage, and the response requirements for each, will depend on the project. Landowners should be mindful that this is the first stage in a longer process; and that the tender stage will assess developers' detailed proposals for the project.”

Evaluation at participation stage

How responses will be assessed and scored should be clearly stated in the tender notice/associated documents, including any scoring methodologies, thresholds and pass/fail criteria. Assessment methodologies and the evaluation of responses at tender stage is explored in **chapter 8**. The same principles for evaluation can be applied at participation stage.

At participation stage, unsuccessful developers should, when they are notified of the outcome, be given details of why they were not shortlisted. It is for landowners to determine an appropriate level of detail to share with unsuccessful developers. As a minimum, however, this should clearly explain why the developer has not been successful by reference to the scoring criteria. For example, where a developer has been unsuccessful on the basis of scores awarded, this feedback would likely include their scores and the reasons for them; it may look similar in structure to the feedback given at tender stage.

Small and medium-sized enterprises

SMEs can bring new perspectives, ideas and ways of working and can help to diversify the market. When setting conditions of participation, landowners should bear in mind the PA23's objective to remove barriers faced by SMEs, that stop them participating in public procurements; and avoid setting any unnecessary hurdles that might exclude them. These include, for example:

- asking for a significant track record or multiple previous contract examples – this may exclude SMEs who might otherwise have suitable proposals for a site; this experience may be necessary for some projects, but should be carefully considered
- financial criteria should be set at a proportionate level so as not to create unnecessary hurdles
- landowners must not request audited accounts from developers who are not required to have their accounts audited under the Companies Act 2006; alternative evidence can be requested to assess their financial capacity
- landowners may allow certain conditions of participation to be satisfied later in the procurement before contract award, e.g., certain accreditations.

“When setting conditions of participation, landowners should bear in mind the PA23's objective to remove barriers faced by SMEs, that stop them participating in public procurements; and avoid setting any unnecessary hurdles that might exclude them.”

Relying on others

Developers may need or prefer to participate in a procurement in partnership with other entities in order to meet the conditions of participation (known as "associated persons" under the PA23). They may form a consortium or appoint sub-developer(s) or have another entity guarantee their performance, e.g., a parent company.

Landowners must be satisfied that appropriate legal arrangements are/will be in place between the bidding developer and any such entities. Government guidance on conditions of participation provides more detail.[7]

The landowner must also check whether such entities are excluded or excludable.

Exclusions

In competitive tendering procedures landowners must check whether any participating developers (or their associated persons or connected persons) are "excluded" or "excludable" suppliers:

- "Associated persons" means a person/entity that the developer is relying on to satisfy the conditions of participation, but does not include any guarantors.
- "Connected persons" is defined in Schedule 6 of the PA23; it includes those with significant control or

7. Guidance: Conditions of Participation

© Carey London, St Ann's development, GLA-Peabody influence over the developer, and its parent, subsidiary and predecessor companies.

- “Excluded” suppliers are those who have been convicted of an offence listed in the PA23 (mandatory exclusion grounds)[8]. These suppliers must be excluded from participating in the procurement, although suppliers are able to “self-clean” in certain circumstances[9].
- “Excludable” suppliers are those meeting any of the discretionary exclusion grounds[10] in the PA23. The landowner can exclude these suppliers from participating, but is not obliged to do so.

In a competitive flexible procedure, this check must be done before allowing a developer to participate in a procedure – so, where there is a participation stage, when requests to participate are received. As a general rule, the checks should be completed as early as possible.

Government has published detailed guidance[11] on exclusions and a procurement-specific questionnaire[12] to support contracting authorities in this exercise. The government intends to maintain a centralised bank of supplier responses on the central digital platform where, eventually, landowners will be able to check individual suppliers’ information easily.

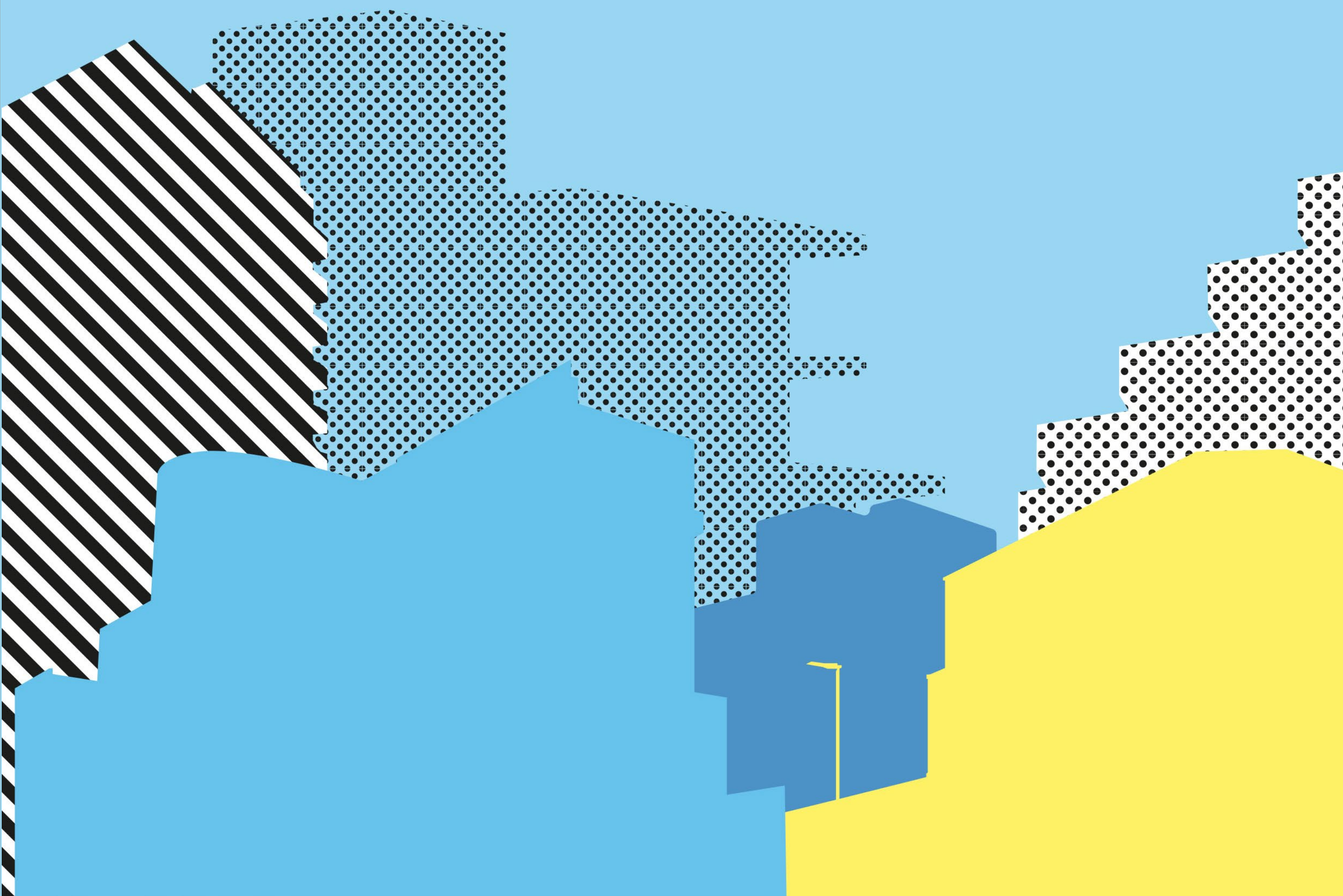
If a developer becomes an excluded supplier during a procedure, it must be excluded at that point, subject again to rules around self-cleaning. Similarly, it may be excluded if it becomes excludable during the procedure. This means a check should be completed at the beginning of a procedure, and again before final tenders are assessed. This check could be run again at appropriate points in a multi-phased procedure. Checks should also be run again on any connected or associated persons. Before a developer is excluded on the basis of an associated person or sub-contractor, they must be given an opportunity to replace the associated person or sub-contractor.

Under the PA23, landowners must report excluded or excludable developers (including any connected persons or associated persons) to government’s procurement review unit where, following Ministerial review, they may be added to a centrally published debarment list. When a developer is on this list, it must be excluded (or may be excluded where they are on the list for a discretionary exclusion ground). As such, landowners must check whether participating developers are on the debarment list at the earliest possible stage.

8. Procurement Act 2023, schedule 6
9. Procurement Act 2023, section 58
10. Procurement Act 2023, schedule 7
11. Guidance: Exclusions
12. (PA 2023) Procurement specific questionnaire – standard template

6 Inviting tenders

In a competitive flexible procedure, there will be at least one tendering stage when participating developers will prepare and submit their tenders – i.e., their proposals for the project.



For example:

- In a simple two-stage procedure, developers shortlisted through the participation stage are issued an 'invitation to tender', inviting them to submit final tenders by a specified deadline.
- In a multi-stage procedure, following an initial participation stage, shortlisted developers could be invited to submit initial or outline tenders. These would be assessed, and the landowner may then enter a dialogue, or negotiate, with all the tendering developers (or a shortlist of them) before inviting final tenders.

Some options and considerations when designing a procedure can be found in guidance note 3: procurement strategy. Government guidance on competitive tendering procedures also provides example procedures in its annexures[13].

Regardless of the procedure, the process and stages should be set out clearly in the tender notice at the outset. The landowner must give developers sufficient time to prepare their tenders, factoring in the complexity of the requirements. In developer partner procurements, this is likely to be longer than the statutory minimum period in the PA23 (which mandates between 10 and 35 days). However, shorter periods may be appropriate where a tendering stage is only updating or refining certain aspects of a developer's proposal, e.g., in multi-stage procurements.

Award criteria

Key to the tendering stage are the award criteria, which tenders are assessed against. Landowners have the discretion to define their own award criteria. These should be set out in the tender notice and/or any associated tender documents, such as an invitation to tender.

The PA23 and government guidance stipulate that the award criteria must: relate to the subject matter of the contract; be clear, measurable and specific; and be proportionate to the nature, cost and complexity of the contract. As with conditions of participation, there are also strict limitations around asking for specific qualifications and standards.

Regard should be had to the PA23's objectives including maximising public benefit, delivering value for money and removing barriers for SMEs to participate.

Effective award criteria should meet the following:

- They are clear, unambiguous and succinct.
- They are cognisant of the level of resource and cost imposed on developers in responding to them. Criteria and response requirements should be proportionate to the scale and nature of the opportunity, otherwise they risk putting bidders off.

13. Guidance: Competitive Tendering Procedures

- They should not lead a developer to give a particular response; but should be clear on what is required. This includes any minimum requirements they must commit to in their approach to the project.
- They are limited to topics of most importance to the project. Criteria should aim to draw out how the developer will address project-specific issues and requirements; and avoid inviting generic responses. It is, however, recognised that landowners may use their projects to help address wider organisational goals, e.g., tackling climate change.
- They should clarify the level of detail expected in responses, without being unnecessarily onerous. Page or word limits should be set out, with clarity on whether images are included/ excluded from the page limits. Any specific formatting requirements should also be clear, e.g., programmes in Gannt chart format. This is particularly important in the context of design criteria, where landowners should be clear on the expected level of design detail. Reference to RIBA stages, plan types, scales and the medium of visualisations can all assist.
- They are capable of being responded to effectively, within any word/page limits.
- They are developed with the input of subject-matter experts and policy leads. For example, award criteria testing design proposals should be prepared with architecture, urban design and planning experts. Ideally the same experts will go on to evaluate developer responses.

In a developer partner procurement, it is likely that the landowner will require participating developers to prepare a detailed, single proposal for the project; and will ask developers to frame their proposals around a number of award criteria. Proposals could be delivered through a single tender stage or developed/refined through multiple tender stages.

The award criteria will likely be a mix of quality, project management and financial criteria (see below). They should be specific to the site and project but can also include wider criteria, e.g., criteria seeking to address the landowner's wider policies on social value, climate change and so on.

> The PA23 and government guidance stipulate that the award criteria must: relate to the subject matter of the contract; be clear, measurable and specific; and be proportionate to the nature, cost and complexity of the contract.

Landowners also have discretion to include criteria that benefit others, e.g., social value criteria supporting local stakeholders, community groups and residents, where these are relevant to the subject matter of the contract.

There may be instances where developers are asked to prepare variant proposals on certain elements – for example, a proposal assuming 50 per cent affordable housing, and a variant proposal assuming 60 per cent affordable housing.

Landowners should flag any minimum requirements or assumptions that developers are required to adopt in their proposals, e.g. tenure mix, milestones, specific quality or design parameters, or any grant or funding available.

Where requirements are pass/fail, the criteria should be clearly outlined in the documents as well as the consequences of failing each relevant question. If failure (either of one question or a combination of questions) will result in exclusion from the process, this must be stated explicitly. The use of pass/fail questions must be proportionate and should be used with caution where failure is intended to result in exclusion; if the pass threshold is too high, this may result in a significant number of bidders being excluded from the procurement.

Quality award criteria

Quality award criteria relate to the end product: the completed development, and what it delivers. They might require the developer to prepare and provide:

- a site and wider analysis of the local area, in terms of physical features and urban design
- a masterplan or design proposal for the project, demonstrating how the layout, massing, height, access, circulation, architecture, landscaping and materials respond to the context and the landowner's vision and objectives for the site. Careful consideration needs to be given to the specifics of this requirement, in terms of both the cost/ resource implications for bidding developers and how far plans/ designs are progressed at this early stage, where the community and other stakeholders are unlikely to be engaged
- an analysis of the local economic, environmental and social context, and how the proposals will respond to this or address specific issues
- a sustainability and energy strategy demonstrating how the proposals meet any particular standards or objectives set by the landowner
- proposals or measures for delivering specific equality and diversity outcomes or social value benefits through the proposed development
- a long-term management strategy for the completed development – including managing building safety.

Project management award criteria

Project management award criteria relate to the process of delivering the development. This category of criteria might include:

- a land assembly strategy
- a strategy for securing any planning or other consent(s) required, including a planning policy analysis; programme; engagement strategy; and risk analysis
- a strategy for engaging relevant stakeholders in the development process
- details of the proposed project team, roles, responsibilities and plans for retaining consistency through the development process
- proposals for project governance and decision making
- a programme for the delivery of the project, including the pre-construction, construction and post-construction phases
- an analysis of key risks across the life of project as well as appropriate mitigations
- comments on the proposed form of contract or heads of terms, either confirming acceptance of terms or being clear where they would propose amendments.

As noted earlier, the GLA has published a process note intended to help commissioning authorities maximise social value, and equality and diversity benefits, in their procurement of design services, which could be considered and adapted when procuring developer partners.

“Project management award criteria relate to the process of delivering the development.”

Financial award criteria

The financial award criteria relate to how the costs, value and income generated by the development will be shared between the landowner and developer. The financial criteria for a given project will depend on the type of delivery structure that the landowner is seeking to procure – but some key approaches are set out below. Guidance note 2: partnership and delivery structures, sets out factors for landowners to consider when selecting an appropriate delivery structure.

Guaranteed land payments

Where the chosen structure envisages the landowner taking a fixed land payment, the financial criteria might require developers to offer a guaranteed minimum land payment, or perhaps an indicative offer that is crystalised when planning consent is secured.

Landowners might require developers to make the payments on fixed date(s) or allow them to determine the payment date(s) – perhaps with staged, deferred payments, or a combination of the two. The landowner may require some form of security for any deferred payments, e.g., a guarantee or withholding the land interests or completion certificates until payment has been received.

Overage

In addition to a guaranteed land payment, landowners may seek overage to secure a share of any future uplift in the project. This can include:

- planning overage – if a developer eventually secures planning consent for more saleable development than envisaged at tender stage, they could be required to offer a fixed payment to the landowner per additional square foot achieved
- sales overage – where developers are required to share any project income above a fixed threshold with the landowner
- profit overage – where developers share any profit above a hurdle level.

The landowner may set the overage mechanism or leave it to developers to propose a mechanism. It should be noted that any open approach must be capable of objective assessment, on a fair basis, between different bidder proposals. Landowners can choose to assess/score any overage proposals at their discretion.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Financial award criteria for a joint venture (JV) structure

In a JV context, returns to the landowner may not be fixed, so evaluation of commercial and financial submissions is more reliant on future projections.

Developers are typically asked to submit appraisal models (potentially in a prescribed format) that estimate future cashflows – including the investment required from, and potential return to, the landowner.

As this is only a projection, financial and commercial criteria for JVs may also include assessment of some key assumptions within the model. These are likely to be fixed for the life of the JV. These may include, for example, the target profit rate or any fees to be charged by the development partner.

Testing assumptions

Landowners will want to be confident that financial offers (both fixed and projected) are robust and realistic, particularly where payments or income are deferred. To test this, developers could be asked to submit a detailed development appraisal or financial model as described. Such an appraisal will include the figures and assumptions they have adopted in arriving at their financial offer.

They could also be asked to complete a financial summary template that captures key information on cost, values, rates and return assumptions; and facilitates like-for-like comparison of offers. Example templates can be found at **Appendix 1**.

Developers can be asked to submit evidence to support their assumptions, where appropriate (e.g. comparable sales evidence), and then scored by the extent to which their assumptions are demonstrably supported by the available evidence. Applying a 'robustness' score in this way acts as a check against a bidder submitting an unrealistically high commercial offer, enabling it to score highest in a procurement even if that offer is unrealistic.

Securing funding

Landowners will need assurance that tendering developers have the funding required to deliver the proposed project. At tender stage, developers could be asked to provide a funding strategy which covers the following:

- the level of funding required
- the anticipated peak debt/funding exposure
- proposed method of funding, e.g., debt and/or equity and proposed funding sources
- any evidence of funding (e.g., a letter from the funder, if available at this stage) or confirmation of ability to fund internally, subject to detailed approval (e.g., a letter from the chief finance officer)

- identification of any conditions that may be applied to the funding and an explanation of how the conditions will be satisfied
- proposals for guaranteeing deferred payments and overage.

Weighting of award criteria

The relative importance of the award criteria must be made clear. Each criterion should be given a weighting. The more important criteria for the project are given higher percentage weightings than the less important criteria.

The balance of weighting between quality, project management and financial criteria needs to be considered carefully, and tailored to what the landowner deems to be most important in the project, reflecting its objectives and vision for the project.

Quality versus project management criteria

Landowners should carefully consider the balance of weighting across the quality and project management criteria, as described earlier in this chapter. These criteria tend to be grouped together and labelled as 'quality' criteria. In reality, quality criteria concern the end product (the completed development) and the project management criteria relate to the process of delivering development (e.g., securing planning consent, project team, governance, programme, etc).

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Ensuring the developer has the right skills and experience to deliver a project is very important. However, sufficient focus and weighting ought to be given to the quality of the development and place being delivered, as this will be the lasting legacy of the project.

Quality versus financial criteria

Similarly, careful consideration needs to be given to the balance between quality and financial criteria. Quite often, a single financial criterion (e.g., the minimum guaranteed land value) can have the single highest weighting of all criteria – even where the quality and project management criteria combined have a larger overall weighting.

Where this is the case, a particularly strong financial offer could mean that the contract is awarded to that developer – even if it doesn't perform particularly well relative to others under the quality and project management criteria. Rebalancing the weightings could address this, as could applying threshold minimum scores to important quality criteria.

Number of award criteria

Landowners should also be mindful that having multiple, low-weighted criteria can be ineffective. This is because they become diluted, and will have little bearing on the outcome of the assessment. Having fewer, concise, distinct and carefully weighted criteria, which focus on the landowner's key objectives for the project, will usually drive better outcomes.

The proposed weightings and assessment methodology should be tested with a range of dummy scenarios to ensure that, in practice, they deliver the outcomes that will meet the landowner's objectives.

Refining the award criteria

Best practice is to set out full and detailed award criteria at the beginning of a procurement.

However, the PA23 enables landowners to refine the award criteria during a competitive flexible procedure[14]. This may be helpful in procedures with multiple stages, or where all of the detail isn't known at the outset. This is permitted where this possibility is flagged in the original tender notice, and only before the tenders to which the criteria apply are invited.

Permitted refinements are not defined in the PA23. However, government guidance indicates that adding sub-criteria related to existing award criteria is possible. Other possibilities include adding more detail to existing criteria; and changing the weighting of the criteria, if the tender notice originally set out a range for that criteria.

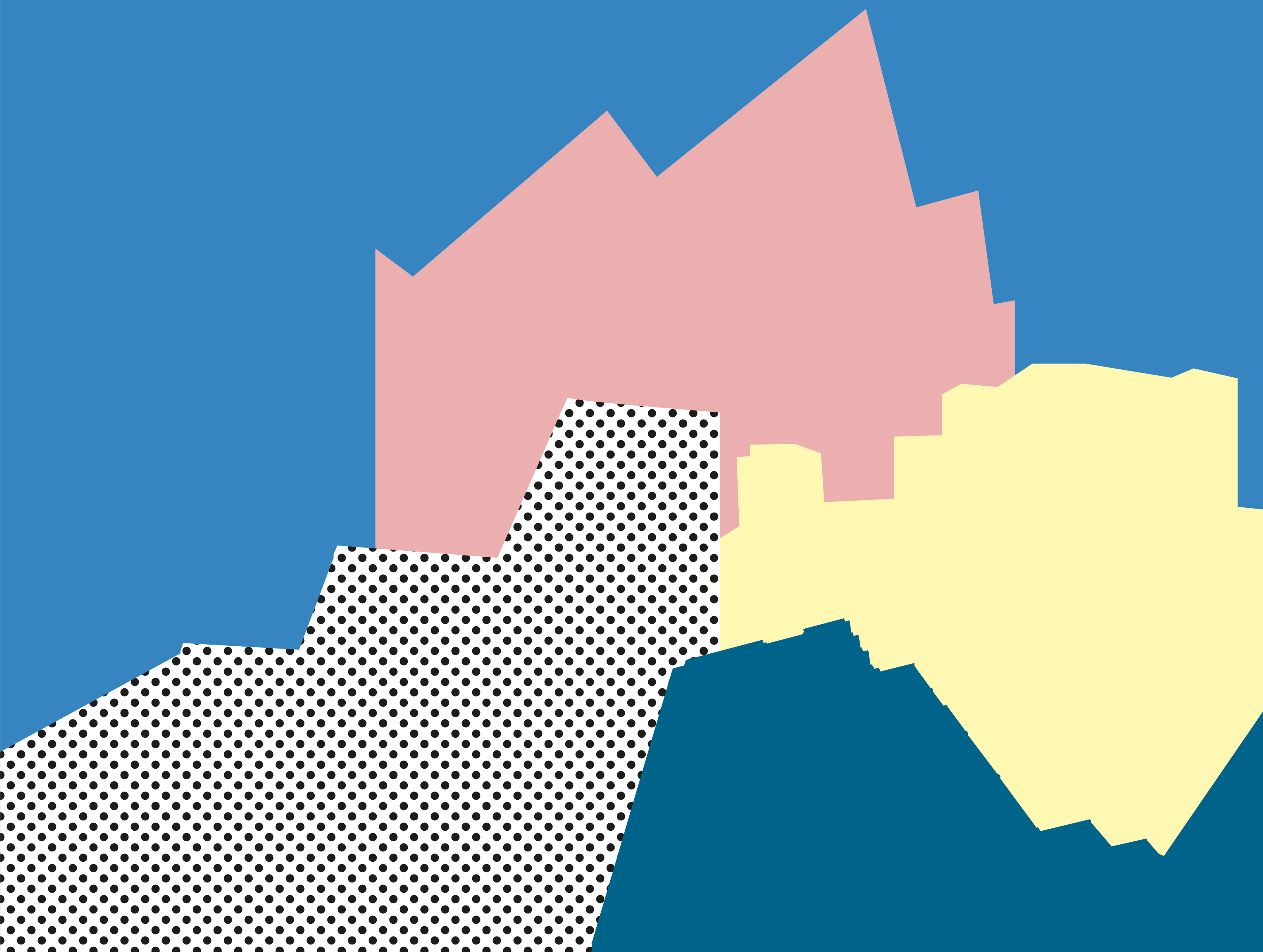
Adding new award criteria, and adding or removing pass/fail tests, are not permitted.

The tender notice and any associated tender documents must be amended and re-published to show the changes made.

14. Guidance: Assessing Competitive Tenders

7 Dialogue and negotiation

The PA23 allows landowners to include dialogue or negotiation processes with participating developers during a competitive flexible procedure. If it is included, it is usually done after tenders are received, as tenders provide the basis for discussion.



Landowners might invite initial tenders, hold dialogue/negotiations and then invite final tenders.

As per government guidance[15], in this context 'dialogue' means discussion between the landowner and developers about any aspect of the project and its procurement. 'Negotiation' means the discussion between the parties with a view to improving subsequent tenders.

For complex projects, dialogue or negotiation can be valuable because they allow for developers' proposals to be discussed, tested, risk-assessed, developed and refined to best suit the project and the landowner's requirements. It can stimulate new ideas and approaches that may not otherwise have come to light.

Landowners may, for example, negotiate or dialogue on key design features; principles and specification; contractual and commercial terms; land value and overage offers; timings and milestone dates; and the nature of proposals to enhance environmental sustainability and social value.

Key considerations

Landowners should be mindful of the following when considering the use of dialogue or negotiation during procurement:

- **Proportionality –** does the scale, nature or complexity of the project warrant the use of negotiation/dialogue? It is a time-consuming and costly exercise that should be used sparingly, where there is a clear business case for it and where it can drive value.
- **Planning –** in planning dialogue or negotiation, landowners should identify the specific areas it wishes to cover, restricting this to areas of particular complexity or risk within the project.
- **Treating suppliers the same –** landowners must ensure this principle is upheld in all of its procurement activity. In negotiation, this means ensuring that developers are given the same information and opportunities. However, this does not require landowners to negotiate exactly the same points with each developer, as that will depend on the progress and conduct of each negotiation.
- **Transparency –** the timing, purpose and details of any negotiation session should be set out in the tender notice/associated documents and minutes must be taken. There is more on this below.

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Managing dialogue and negotiation

Dialogue and negotiation need to be carefully managed, and held through set, formal sessions. An agenda for the sessions needs to be issued in advance, so that all parties are aware of and prepared for the topics to be discussed.

Wherever possible, any materials to be used to support the discussion should be shared in advance, to allow developers to consider their responses and make the most effective use of the time in the session itself. Depending on the session, materials could include design sketches, programmes, resource plans, draft planning and engagement strategies, development appraisals or evidence supporting viability assumptions.

It is also important to have a strong chairperson for the sessions and ensure the right representatives from the landowner's organisation are present. Those with the authority to negotiate on the landowner's behalf should attend. The same attendees from the landowner side should attend each session (and if not the same people, individuals with an equivalent level of seniority and knowledge).

Landowners might also include appropriately skilled and experienced internal subject-matter experts or external advisers in particular sessions, if not participating in the entire process. For example, there may be a benefit to including, in some or all sessions, the expertise of lawyers; commercial advisers; design officers; economic development or social value practitioners; or finance officers.

Having the right experts in the room to knowledgeably agree or challenge points is essential. Generally, the aim is to resolve and progress issues and negotiations within the engagement session and minimise any need to take away points and revert later.

All engagement sessions must be minuted for future reference. This also supports the clarifications process and promotes transparency. Landowners should remember that any minutes will be disclosable in the event of a procurement challenge, and must therefore be retained and accurately reflect the negotiations.

Whenever a landowner makes a material clarification of its position, preferences or instructions, unless they are specific or commercially sensitive to one party, such clarifications should be shared with all developers participating in the procurement. A structured and coordinated approach to clarifications and robust meeting notes will support this.

8 Evaluating tenders

Most advantageous tender

In a competitive tendering procedure, the PA23 stipulates that the landowner may only award a contract to the developer that submits the most advantageous tender (MAT). The MAT is the tender that satisfies the landowner's requirements, and best satisfies the award criteria when assessed against the landowner's assessment methodology[16].

The MAT replaces contract award based on the most economically advantageous tender, as was required under previous legislation. In practice, they both allow tenders to be assessed against a range of award criteria. However, the use of MAT emphasises that contract award can be based on a range of criteria and needn't be focused solely on the financial elements.

In a developer procurement the MAT will be the highest-scoring developer at final tender stage who has passed or met any thresholds applied.

Public landowners should be cognisant of their obligations for achieving best value/ best consideration (see further details later in this chapter).

Evaluating responses to quality and project management award criteria

Developer responses to the quality and project management award criteria should be assessed using a predetermined assessment methodology, set out in the tender notice or associated tender documents.

The assessment methodology will be a scoring system where developers' responses to each of the criteria are given a score from a scale. Examples include:

- a simple scoring scale of 1, 2, 3, 4 or 5, with 1 representing a very poor response, 3 representing a satisfactory response and 5 representing an outstanding response
- a geared scale of 1, 4, 9, 16 and 25, with 25 being the highest possible score; this methodology particularly rewards very good and outstanding responses.

What is required to achieve each score must be carefully defined with clear distinction between each score.

The definition of each score could be different for each award criteria. This allows the landowner to apply a tailored approach, and set out what is required to achieve each score for each of the award criteria.

16. Guidance: Assessing Competitive Tenders

It is good practice to run some dummy scenarios to 'test' the methodology before committing to it, particularly where geared scoring is being used. This will help to ensure it functions in a way which achieves the landowner's objectives.

Evaluating financial offers

Like-for-like analysis and discounting

Before evaluating guaranteed land payment offers, it is important to ensure they are being considered on a like-for-like basis. For example, two developers offer £1m for the land. One offers to pay this on contract exchange; the other offers to pay £250k on contract exchange and £750k two years afterwards. The deferred payment (£750k) should be discounted to reflect the net present value (NPV) of the payment. This is based on the time-value concept of money being worth more today than it is tomorrow.

The discount rate to apply is a question for each individual landowner. The appropriate rate will depend on the landowner's own relative preference for money upfront versus more money later. The higher the discount rate, the more developers are incentivised to offer returns sooner, though this may be at the expense of the overall absolute return.

In determining a rate, landowners should consider the opportunity cost of capital, i.e., what rate they could hypothetically have secured if making an alternative investment. Its internal cost of capital, and prevailing market rates, could also inform a discount rate.

Sensitivity analysis of different discount rates and receipt timings can assist landowners in determining a preferred rate.

An NPV calculator is included at **Appendix 2**.

Scoring minimum guaranteed land payments

Once the NPV of each offer has been calculated, there are two main ways to evaluate and score minimum guaranteed land offers.

Score relative to the mean – e.g., there are 10 marks available. The mean offer across all tenders is £1m, and is awarded 5 marks. Each financial offer is allocated a score based on their percentage relationship to this average. Offers above the average receive a score above 5, and those below the average receiving a score below 5. Below is an example of how this might work.

Example relative to mean methodology

FINANCIAL OFFER RELATIVE TO MEAN	PROPORTION OF SCORE AWARDED
-90% to 100% or less	0%
-80% to 89.9%	5%
-70% to 79.9%	10%
-60% to 69.9%	15%
-50% to 59.9%	20%
-40% to 49.9%	25%
-30% to 39.9%	30%
-20 to 29.9%	35%
-10% to 19.9%	40%
-1% to 9.9%	45%
Mean	**50%**
+1% to 9.9%	55%
+10% to 19.9%	60%
+20% to 29.9%	65%
+30% to 39.9%	70%
+40% to 49.9%	75%
+50% to 59.9%	80%
+60% to 69.9%	85%
+70% to 79.9%	90%
+80% to 89.9%	95%
+90% to 100% or above	100%

Available marks = 10

Mean across all bidders = £10m

Developer's offer = £12m (20% over)

Proportion of available score awarded = 65%

Score = 65% of 10 = 6.5

Score relative to highest offer – alternatively, the highest offer is awarded the highest possible score, and other offers are scored proportionally. For example, there are 10 marks available. Developer A offers £2m. Developer B offers £1m. Developer A scores 10. Developer B scores 5.

Landowners are cautioned against using this approach, because it means the highest offer will be awarded full marks for the financial criteria. This places significant emphasis on the financial offer, particularly if the quality criteria aren't assessed in the same way. A developer could make the highest financial offer, score poorly on the quality elements and still score highest overall. This may not address the landowner's objectives for the project.

Evaluation methodologies should be unambiguous, and made clear in the tender notice or associated tender documents. Worked examples are useful to help illustrate how the methodology works.

Evaluating other financial models

As noted, in more complex structures and JVs, developers are typically asked to submit appraisal models that estimate future cashflows – including the investment from, and potential return to, the landowner. This cashflow can then be assessed by measuring the return on investment it generates for the landowner – for example the internal rate of return or NPV it represents.

As this is only a projection, financial and commercial criteria for JVs may also include assessment of some key assumptions within the model that are likely to be fixed for the life of the JV. This may include, for example, the target profit rate or any fees to be charged by the development partner.

Generally, financial metrics are scored on a relative basis with the highest rate of landowner return, and lowest fees, scoring highest.

Testing assumptions

Landowners will want to be confident that financial offers are robust and realistic. Developers could be required to submit a development appraisal or financial model that shows how they have arrived at their financial offer or proposal. Landowners and/or their advisers should interrogate the assumptions made to ensure that offers are robust and achievable. Key assumptions to interrogate might include:

- gross development value of:
  - — residential development, on a £ per square m/ft basis and per unit basis, broken down by tenure
  - — residential rental values/ yields, if applicable
  - — non-residential development, on a £ per square m/ft basis, broken down by use class
  - — non-residential rental values/yields, and value of any incentives, if applicable

  - car parking
  - any grant income
- development costs
  - land acquisition costs
  - planning fees
  - Community Infrastructure Levy/S106 costs
  - professional fees, project management fees and any development management fees
  - build costs
  - infrastructure costs
  - abnormal costs broken down
  - contingency
  - finance cost and interest rate assumptions
  - overheads
  - marketing and legal costs
- developer profit: the percentage development return (expressed as profit on gross development value or profit on cost), potentially per tenure/use

Landowners may wish to score the robustness of the assumptions underpinning the financial offer separately to scoring the offer itself.

Alternatively, key assumptions could be red/amber/green (RAG) rated, with an overall RAG rating applied.

Any such assessment will need to be objective, to ensure scoring reflects how well-evidenced/ justified the assumptions are.

Developers might be required to achieve a certain score or rating to 'pass'; or the score for the financial offer could be amended, depending on the RAG rating. For example, the financial offer score could be reduced where the assumptions are rated 'red'.

The evaluation approach must be explicit in the tender notice and/or associated documents.

Developer presentations

To aid understanding of tenders, developers could be asked to present their proposals to the landowner and its evaluators. This can provide a valuable opportunity to better understand all or certain aspects of a tender, and meet the developer and its team. This is particularly important for longer-term and complex projects whose success will, in part, rely on good relationships and communication between the parties involved.

Developer presentations can be useful, but will introduce an element of risk. This is particularly the case if the presentations themselves are evaluated – but also where the presentations are for information only, as they may impact how evaluators view the written tender submission. As such, the requirement for, and purpose of, any presentations should be made clear in the tender notice or associated tender documents and landowners should ensure all bidders are treated the same.

Evaluation panels and moderation

Tenders should be evaluated and scored by reference to the assessment methodology set out in the tender notice/ associated documents. Evaluation should be undertaken by appropriately qualified subject-matter experts. Checks should be carried out to ensure they do not have any conflicts of interest.

Evaluators should be familiar with the site and the landowner's vision/objectives and briefed on the award criteria and evaluation process. Ideally, they will have helped to formulate the award criteria earlier in the process.

It might be appropriate for different individuals to evaluate different parts of tenders. For example, design experts could evaluate masterplan and design proposals, planners could review the planning strategy, etc. These experts could be internal staff or appointed external advisers.

It will be commercially sensible to check each tender as a whole for consistency. For example, where a developer proposes a particularly high-cost design specification, the associated high cost should be reflected in the developer's financial appraisal and assumptions. This will help to identify any inconsistencies between the quality and financial elements of the tender. Landowners may wish to have a mechanism for addressing this during evaluation, otherwise there is limited recourse.

Tenders should be evaluated on their own merits and not by comparison to other tenders. Tenders should be assessed by the evaluators individually and then evaluators will come together, in moderation sessions, to agree a final score for each criterion for each tender. These sessions should:

- include all evaluators and be facilitated by an experienced procurement professional
- give all evaluators the opportunity to discuss their rationale for each of their scores
- encourage discussion and agree a final score for each criterion, with reasons for the scores carefully recorded, noting when and why evaluators move away from their original individual scores by reference to the scoring criteria.

When the final score for an award criterion is agreed, any weighting will then be applied to give a final weighted score for that criterion. Final weighted scores for all criteria would then be added together to give a final overall score for the tender. The tender with the highest overall score, which also satisfies requirements set by the landowner (e.g., meets threshold scores), is the MAT.

Outcome of the evaluation – best value and best consideration

Following evaluation, it may become clear that the MAT does not represent the highest financial offer for the land.

It is important to note that public landowners will need to meet statutory requirements such as evidencing best value and best consideration.

All public bodies are required to meet **best value principles**[17] and should take advice on how to approach disposals, taking into account its functions and powers as a public body.

Most local authorities and other types of public body, such as the GLA or Mayoral Development Corporations, have a requirement to ensure any disposal of their land is at **best consideration** reasonably obtainable in the market (333ZC of the GLA Act or Section 123(2) of the 1972 Local Government Act). Where this is the case, and the MAT is not the tender offering the highest financial

17. Best value standards and intervention: a statutory guide for best value authorities

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return to the landowner, an exercise must be undertaken to ensure the principles of best consideration are met, otherwise the landowner will need to apply to government for a specific consent to the disposal.

What is the 'best consideration reasonably obtainable'?

Government circular 06/03 (Appendix 1)[18] sets out the required approach to establishing best consideration for land. A Red Book valuation should be undertaken by a qualified surveyor. This will assess the optimum value of the land, in the open market, that could be expected to be achieved in an open sale with no specific requirements attached to it (the 'unrestricted value' of the land). The circular advises this is done before the land is marketed. The MAT financial offer must be compared against this 'unrestricted value'.

There is a 'general consent' in place that provides some flexibility for a public landowner to dispose of land at less than best consideration (e.g., up to £2m below the unrestricted value). Landowners should check if this applies to them; and if so, what their consent allows. The conditions attached to this allowance are set out in the general consent, but would usually include justifications based on the deal meeting the functions or objectives of the landowner, such as social value.

The application of the general consent will also likely require the disposal undervalue to be assessed against the provisions of the Subsidy Control Act. This is to ensure it doesn't result in an unlawful subsidy being awarded. Any disposal at an undervalue – whether falling within the general consent parameters, or approved by government by a special consent (see below) – will need to be supported with subsidy advice. This should be provided by the landowner's lawyers.

Where the difference between the unrestricted offer and the tender offer exceeds the financial limitations in the general consent, an application must be made to government for a specific consent. The circular provides guidance on what needs to be included in the application (see section 10 of the circular 06/03).

Where such an application is necessary, landowners should take legal advice on how to structure the development contract, so that the disposal is not committed to before the government's special consent is provided. Similarly, internal governance and award letters would need to note the requirement for special consent, and reserve the landowner's commitment to the disposal until the special consent is obtained.

18. MHCLG (2018 to 2021), Disposal of land for less than the best consideration that can reasonably be obtained: circular 06/2003, 4 August 2003

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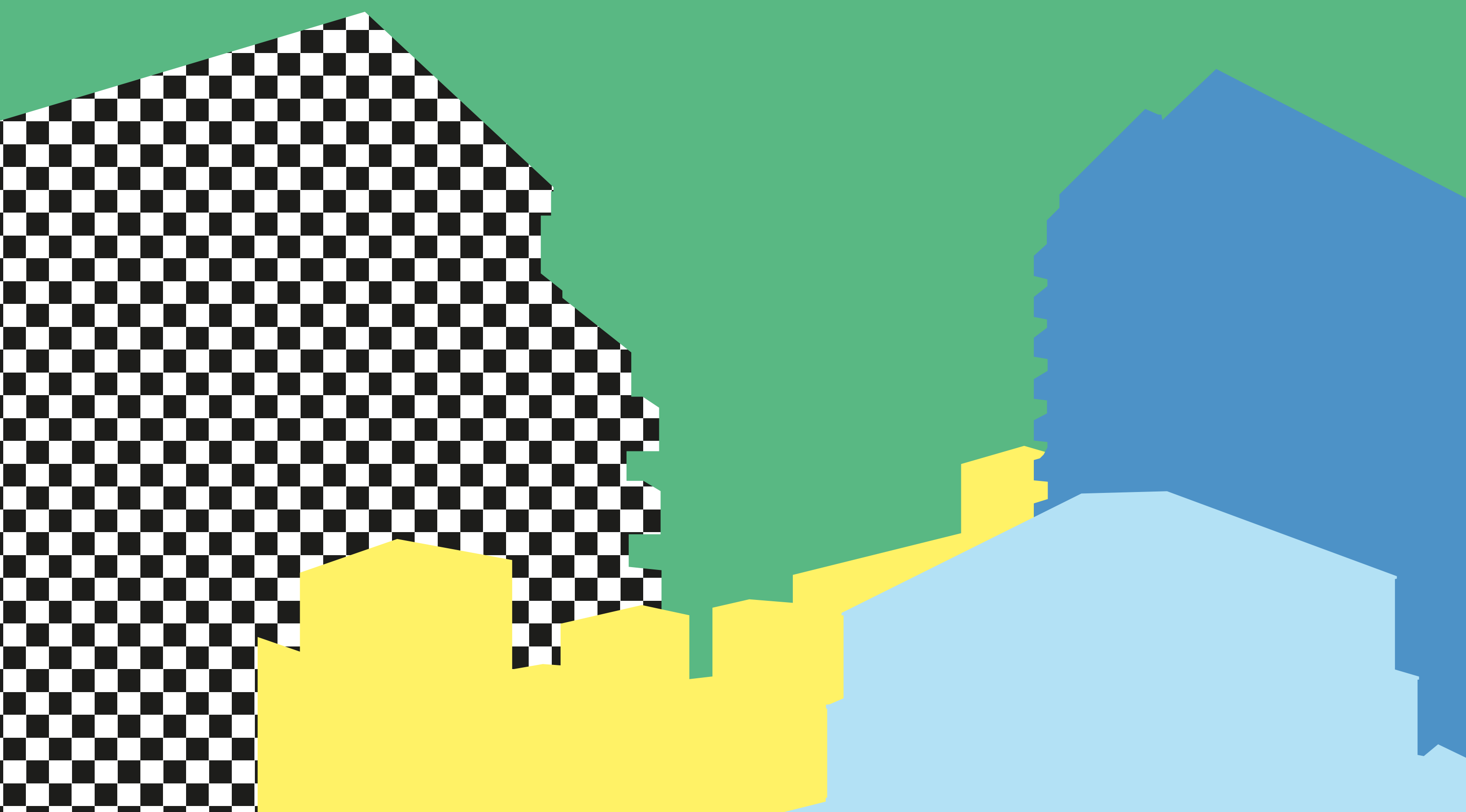
9 Assessment summaries and contract award

Under the PA23, when the MAT has been identified, the landowner is required to provide an assessment summary to each developer who submitted an assessed tender.



It must then publish a contract award notice on the central digital platform. This begins the mandatory standstill period. In practice, landowners will want to minimise the period between sending assessment summaries and publishing the contract award notice.

Assessment summaries

An assessment summary will allow a developer to understand why its tender was or wasn't successful, similar to standstill letters under previous legislation. Such summaries are to be provided to developers who submitted an 'assessed tender', defined in the PA23 as a tender submitted and assessed to determine the MAT (and was not disregarded, for example due to not achieving a 'pass' on a pass/fail criterion).

In a competitive flexible procedure, there might be multiple assessment stages – but the MAT is only determined in the final tender stage. Government guidance advises landowners to use the same feedback structure for developers who are unsuccessful in earlier rounds, providing an appropriate level of detail to explain any scores and the reasons for exclusion.[19]

Developers should receive their assessment summaries at the same time as each other, so they learn the outcome of the procurement at the same time.

19.Cabinet Office, Guidance: Assessment Summaries, updated July 2025

What to include in an assessment summary

- The recipient developer's name, address, email address and unique identifier.
- A summary of the award criteria and reference to where they can be accessed in full.
- The score awarded to their responses to each award criterion and their total score.
- An explanation for each score given, detailing why it was awarded, making reference to relevant information in the tender. The level of detail is to be determined by the landowner; but the developer should be able to understand why it was awarded a particular score. It will usually be required to refer to the detail of the award criteria and scoring definitions; and explain how/where the developer has or has not addressed

> An assessment summary will allow a developer to understand why its tender was or wasn't successful, similar to standstill letters under previous legislation.

them in the tender. Guidance also states that it will be best practice to explain why a higher score wasn't achieved for each criterion, although this is not mandatory.

- An explanation of why a developer did or did not achieve a pass for any pass/fail or threshold score award criteria. Where a developer does not achieve a pass, or meet a threshold, the landowner need not continue evaluating the rest of the tender; but it should provide explanations for any scores awarded before this point.
- Any other detail or information that the landowner thinks is appropriate, e.g., how a developer might improve future tenders – although the provision of further information (and the associated risks and benefits) should always be carefully considered prior to release.

In an important change from previous legislation, landowners are no longer required to explain the characteristics and relative advantages of the successful tender. They do, however, need to provide the successful developer's assessment summary to unsuccessful developers (redacted where required for confidentiality or commercial sensitivity) so they can draw their own comparisons.

The government has published an assessment summary template.[20]

20. Government Commercial Function: Procurement Pathway, (PA 2023) Assessment summary: assessed tender – standard template

Contract award notice

This notice sets out that the landowner plans to enter a contract with a developer. It must be published on the central digital platform after the assessment summaries are issued.

In practice, it is likely the landowner would, in effect, issue the assessment summaries and contract award notice at the same time.

The Procurement Regulations[21] 2024 and government guidance[22] set out what needs to be included in a contract award notice. Key requirements are summarised below:

- the title of the procurement and contract subject matter
- the developer to whom the contract will be awarded, and whether they're a consortium
- details of any associated and connected persons
- date the assessment summaries were sent to participating developers
- the estimated value of the contract
- total number of tenders submitted and the name of the developers who weren't successful

21. Legislation.gov.uk, The Procurement Regulations 2024 (draft)
22. Cabinet Office, Guidance: Contract Award Notices and Standstill, updated 29 July 2025

- details of the type of procurement procedure used, e.g., competitive flexible procedure
- the standstill period end date
- the estimated date for the contract to be entered.

Standstill period

A standstill period is generally required in procurement procedures, with some limited exemptions set out in government guidance. Publication of the contract award notice triggers the standstill period – the minimum time between publishing the notice and entering the contract. During this period, a contract must not be entered. The standstill period must be at least eight working days. It allows participating developers to raise any concerns, or potentially issue a legal challenge to the award decision, before the contract is signed. Issue of a challenge during the standstill period triggers an automatic suspension - this prevents the landowner from entering a contract until a court removes the suspension, the challenge is resolved, or the parties agree to lift the suspension.

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Appendices

Templates and tools