Negotiated Procedure without Prior Publication

A Negotiated Procedure without Prior Publication (NPwPP) should only be used in very exceptional circumstances.

Quickfire Guide

Quickfire Guide

When to Use a Negotiated Procedure without Prior Publication

These exceptions should be limited to cases where publishing a call for competition e.g. **Contract Notice**, has been unsuccessful, is not possible or would take too long in an extreme emergency.

A contract notice can be regarded as unsuccessful where:

- no bids have been received
- no suitable bids have been received
- no requests to participate have been received
- no suitable requests to participate to a previous Open or Restricted tender exercises were received.

A tender submission shall be considered not to be suitable where:

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  - it is irrelevant to the contract, being basically incapable (without major changes) of meeting your Organisation's needs and requirements as specified in your procurement document
  - the bidder has been or would have been excluded or where it does not meet your **selection criteria**.

- For your NPwPP you cannot substantially alter the conditions of the contract from those in your previously advertised tender exercise.

It is not possible to publish a Contract Notice where it is known that the supplies or services can only be provided by a particular supplier for any of the following reasons:

- The procurement aim is the creation or purchase of a unique work of art or artistic performance

- Competition is absent for technical reasons. (This applies only if competition has not been reduced artificially and no reasonable alternative or substitute exists)

- The protection of exclusive rights, including intellectual property rights. (This applies only if competition has not been reduced artificially and no reasonable alternative or substitute exists)

- where it is necessary for reasons of extreme urgency.

    - This can only apply if the urgency is a result of unforeseeable events and not caused by your Organisation, for example, emergency weather situations affecting the public. In such cases, the time limits for the Open or Restricted Procedure or Competitive Procedure with Negotiation cannot be complied with – they are too long.

You must justify the use of this procedure. It can only be used in situations which have not been created by your Organisation.

Organisations relying on this procedure should provide reasons why there are no reasonable alternatives or substitutes, for example, could you use alternative distribution channels outside the UK or consider functionally comparable supplies and services?

Where the exclusive situation is due to technical reasons, these must be rigorously defined and justified on a case-by-case basis. Technical reasons may also derive from specific interoperability requirements e.g. ICT requirements, which must be fulfilled in order to ensure the functioning of the supplies or services to be procured.

Please Note

In all cases "days" are calendar days and not working days. The final day must however be a working day in Scotland.

Negotiated Procedure without Prior Publication Steps and Timescales

Open or close

1. When fixing any time limits you must take account of the complexity of the contract. A Contract Notice will not be published in this procedure. The only Procurement Documents which may be published would be a Voluntary Ex-Ante Transparency (VEAT) Notice. Your Organisation can use a VEAT Notice to protect itself by sending it via **Public Contracts Scotland** prior to entering the contract.
2. It is still mandatory to publish a Contract Award Notice with this procedure.

Negotiated Procedure without Prior Publication for Goods

Open or close

This procedure can be used for goods:

- where the goods are manufactured purely for research, experimentation, study or development purposes. This does not include quantity production to establish commercial viability or to recover research and development costs. Note this should not be abused to allow a single supplier to be approached e.g. to design an item which must subsequently be purchased as a result of proprietary rights;
- where a change in supplier(s) would mean your Organisation would have compatibility issues or disproportionate technical difficulties. In such cases you can use NPwPP to buy additional deliveries from the original supplier. This is for replacing or increasing supplies or installations. In this case, the contract or recurrent contract length must not exceed three years other than in exceptional circumstances;
- for supplies quoted and purchased on a commodity market;

- for the purchase of supplies on particularly advantageous terms. This can be from either a supplier definitively winding up its business activities, or the liquidator in:
    - an insolvency procedure;
    - an arrangement with creditors; or
    - a similar procedure under national laws or regulations.

Negotiated Procedure without Prior Publication for Services

Open or close

Negotiated Procedure without Prior Publication can be used for services:

- where the contract concerned follows a design contest (see below) organised in accordance with the **Public Contracts (Scotland) Regulations 2015.** The contract concerned is to be awarded as part of the design contest to the winner or winners. if there is more than one winner of the design contest, all of them must be invited to participate in the negotiation; or
- in instances when all of the following apply:
    - for new services consisting of repetitive similar services performed by the supplier already awarded the original contract. In such cases the services must:
        - conform with the basic project for which the original contract was awarded
        - the original award included the extent of possible additional services and the conditions under which they would be awarded.
    - When the possible use of this procedure was disclosed in the **Procurement Documents**. Also the total estimated cost of subsequent services was taken into consideration by your Organisation when applying the **thresholds** in relation to the original contract; and
    - Not more than three years have elapsed following the conclusion of the original contract.

Design Contest

Special rules apply to the award of service contracts through a design contest. A design contest, in this context, means a procedure in which a service contract is to be awarded to the company or person submitting the winning design. In summary:

- Design contests are procedures for obtaining plans or designs, which involve a jury. The jury is autonomous in making its decisions, and can offer prizes or payments, which may lead to the award of a services contract.
- The rules apply to contests which are expected to lead to public service contracts, the value of which, including the value of any prizes or payments for the contest, means that

they would otherwise be subject to the regulations.

Where the rules of the contest require a services contract to be awarded to one of the successful contestants, the negotiated procedure can be used without a call for competition, provided all the successful contestants are invited to negotiate. Some examples can be found under **Glasgow Design Competitions**.

Care and Support Services

Open or close

For many care and support services contracts, an Organisation may use the procurement procedures, tools and techniques of its choosing. You should follow a procurement procedure, as a matter of best practice, that is proportionate to the value of the contract and to take account of some fundamental considerations (for example, the principles of procurement and fair work practices).

When doing so, you may choose to adapt or streamline the Negotiated Procedure without Prior Publication described in the **Public Contract (Scotland) Regulations 2015**. If you do so, you are not obliged to follow the detailed procedural requirements set out in those Regulations. You should therefore not refer to the Regulations in the tender documentation issued to participants, as this may create an expectation that the detailed procedural requirements will be followed. In all cases, you should ensure that the procurement process is described accurately and clearly, and then adhered to.

Principles of Procurement

Open or close

The activities at this stage must be carried out in a carefully managed manner that supports the **Principles of Procurement**.