



Leisure services delivery guidance

October 2021

Acknowledgements

Lead Authors

SLC (The Sport, Leisure and Culture Consultancy)

Pinsent Masons LLP

Consultees

Local Government Association (LGA)

Chief Cultural and Leisure Officers Association (CLOA)

Community Leisure UK (CLUK)

The Activity Alliance

Swim England

English Federation of Disability Sport

Wheelpower

Parkwood Leisure

Places Leisure

Fusion Lifestyle

Serco Leisure

GLL (Better)

1 Life

SLM (Everyone Active)

Freedom Leisure

Southwark Council

North Kesteven District Council

London Borough of Barnet

Watford Borough Council

Test Valley Borough Council

South Devon and Hams Council

The Royal Society for the Prevention of Accidents

Plymouth City Council

Erewash Borough Council

FMG Consulting

Max Associates

The Sports Consultancy

Strategic Leisure

4Global

Knight Kavanagh & Page (KKP)

QMP Ltd

Quest NBS Board

The Leisure Database Company

Grant Thornton

Walker Morris

Blake Morgan

Eversheds LLP

Womble Bond Dickinson LLP

Trowers and Hamblins

Devonshires LLP

Sharpe Pritchard

Winkworth Sherwood LLP

Foreword

1. Sport England recognise the significant contribution and investment into communities made by local authorities through the provision of physical activity, sport and wellbeing opportunities and their contribution towards local strategic outcomes. The amalgamation of this commitment together with service delivery partners makes this sector a major contributor nationally to the Government's Sporting Future Strategy and an essential stakeholder in Sport England's new 10-year strategy 'Uniting the Movement.'
2. Sport England has long been an advocate of best practice and a source of advice and guidance in the physical activity, sport and wellbeing sector, providing toolkits and guidance in areas such as strategic planning, design guidance, governance and asset transfer as well as providing capital investment.
3. We have seen an increasing number of requests for assistance and guidance on leisure service delivery and we appreciate the challenges to achieving local outcomes for communities whilst balancing pressures on finance and resources.
4. This guidance is produced (primarily) to support the local authority sector to deliver effective and efficient leisure service delivery functions which make a major contribution towards local strategic outcomes. It seeks to facilitate increased community engagement with physical activity, ultimately reducing inactivity in local communities through the provision of sustainable services.
5. The guidance has evolved from the original Sport England Leisure Procurement Toolkit. In response to sector consultation, it now provides broader support to achieve effective delivery across a range of service delivery approaches.
6. The guidance is focused on implementation and should follow a period of planning an approach which will optimise the impact of your investment in physical activity, sport and wellbeing and contribute towards wider local strategic outcomes.
7. The impact of Covid-19 has been devastating for communities and means the importance of providing an active environment which supports physical and mental wellbeing has never been more evident. Investing time and resources into tackling the key challenges of the next decade are the cornerstones of Sport England's new long-term strategy, Uniting the Movement. Helping grassroots physical activity and sport recover from the social and economic effects of the coronavirus pandemic is a key opportunity.
8. We have provided supplementary guidance within this document to assist local authorities with addressing the significant issues caused by the pandemic. This recognises that there'll be instances where local authorities have to respond swiftly. It could be supporting their leisure operator partner through lockdown and recovery, changes to social distancing restrictions impacting on the service or their leisure

operator partner becoming insolvent requiring the local authority to find alternative management arrangements quickly. We have also updated the Leisure Operating Contract template to reflect learning from the Coronavirus pandemic and its impact on leisure contracts.

9. Sport England's [Strategic Outcomes Planning Guidance](#) (the pre-cursor to this guidance) has been developed to support local authorities in the strategic planning phase. Local authorities can utilise the guidance to help to develop a clearer understanding of the role physical activity, sport and wellbeing can play in contributing to local outcomes prior to choosing an implementation route. This will support and encourage an informed and balanced approach that helps to achieve both social and financial outcomes, based on evidence and a clear strategic approach to physical activity, sport and wellbeing to support local priorities.

10. The Strategic Outcomes Planning Guidance has four key elements:

- Outcomes: Identification/ development of cross sector local strategic outcomes
- Insight: Identifying a 'current state position' to inform a needs analysis to identify where a local authority wants to be in the future
- Interventions: Review of options and interventions that will have the greatest impact on the objectives and the greatest contribution to local strategic outcomes
- Commitment: Securing commitment to deliver the vision and strategic approach.

11. The Leisure Services Delivery Guidance is designed to assist local authorities whichever service delivery model it selects.





12. This guidance has been developed through broad and extensive consultation with the sector, including contributions from the Local Government Association, Chief Cultural and Leisure Officers Association, local authorities, Community Leisure UK, leisure operator partners, Association of Colleges, National Governing Bodies of Sport, The Activity Alliance, leisure consultants and legal advisers.
13. It also seeks to support local authorities and public bodies such as schools and colleges in maximising the potential of their facilities, services and partnerships to deliver meaningful physical activity, sport and wellbeing interventions, achieving a sensible balance between financial and social objectives.
14. As you may be aware, Sport England undertake the role of client for the operation of the National Sports Centres at Bisham Abbey, Lilleshall and Plas y Brenin. The contracts were let in 2011 on a 15-year term. The basis for the original Toolkit guidance was the learning from the competitive dialogue process undertaken on that procurement. Our client team have been working with the two organisations (one of which is a Trust) awarded the contracts to establish best practice partnership working, monitoring and reporting mechanisms. They have hosted many visits to the National Centres from client organisations to discuss the overall philosophy, relationship management and implementation of contract monitoring. Should you wish to visit, please contact the National Centres Team on **03458 508 508** or info@sportengland.org.
15. I hope you find the documents a useful tool to support your thinking, decision making and implementation. It is a complex and continually evolving area and we will endeavour to update the documents on a regular basis. Your feedback is important in helping us to improve the material.

Kevin Mills – Director of Capital Investment, Sport England.

Contents

1	Introduction and overview	10
1.1	Introduction	11
1.2	What has changed from the previous Leisure Procurement Toolkit Guidance?	14
1.3	Further support	15
2	Strategic Outcomes Planning Guidance	16
2.1	Introduction	17
2.2	Impact monitoring	19
2.3	Planning cycle	19
3	Key considerations for delivering services through the Covid-19 Pandemic	20
3.1	Introduction	21
3.2	Procurement policy note – supplier relief due to Covid-19	22
3.3	Sport England support for local authorities and operators during lockdown and recovery	23
3.4	Lockdown resolution for leisure contracts	23
3.5	Recovery phase resolution for leisure contracts	25
3.6	Operator partner insolvency or contract termination	27
3.7	Reviewing and resetting contract arrangements	31
3.8	Government support funding for physical activity, sport and wellbeing services through Covid-19	36
4	Leisure Management Approaches and Options Appraisal	37
4.1	Introduction	38
4.2	Why Carry Out a Management Options Appraisal?	39
4.3	Best Value and Social Value	40
4.4	Key Drivers for Exploring Options	40
4.5	Client and Management Arrangement Considerations	42
4.6	Management Approaches Overview	42
4.7	Defining the Scope of Services for a Management Options Appraisal	52
4.8	Comparing the Relative Advantages and Disadvantages of Management Options	53
4.9	Undertaking a Management Options Appraisal	55
4.10	Options Appraisal Project Team and Evaluation Panel	55

4.11	Setting Evaluation Criteria and Weightings	56
4.12	Financial Modelling	58
4.13	Assessment of Non-Financial Implications	59
4.14	Carrying out Analysis of the Options	59
4.15	Carrying out Evaluation of the Options	59
4.16	Management Options Appraisal Checklist	61
5	Key Considerations for Capital Projects	64
5.1	Sources of Capital Funding	65
5.2	VAT	69
5.3	Considerations for Procuring New Build Projects	69
6	Strategic Delivery Through Competitive Procurement	81
6.1	Introduction	82
6.2	Project Team and Resources	83
6.3	Procurement Strategy	87
6.4	Procurement Approach or Route	102
6.5	Market Engagement	110
6.6	Signing Off the Procurement Strategy and Member Engagement	114
6.7	Procurement Strategy Checklist	115
6.8	Procurement Documentation	116
6.9	Supplier Selection Questionnaire (SSQ)	118
6.10	Invitation to Tender (ITT) Document	124
6.11	Services specification	128
6.12	DBOM Facilities Requirement and Technical Specification	131
6.13	Performance and Payment Mechanism (PPM)	132
6.14	Legal Contract	134
6.15	Data Room	136
6.16	Evaluation Frameworks and Approaches	139
6.17	Evaluating Commercial Proposals (Price)	142
6.18	Evaluating the Quality of Proposed Solutions	145
6.19	Evaluation of Tenders	150
6.20	Contract award and mobilisation	162
6.21	Light Touch Regime	163
6.22	Open Procedure Guidance	163
6.23	Restricted Procedure Process Guidance	167
6.24	Competitive Procedure with Negotiation (CPN) Process Guidance	170
6.25	Competitive Dialogue Process Guidance	174
6.26	Concession Contracts	178

7	Direct Delivery Through an In-House Management Model	182
7.1	Introduction	183
7.2	Commissioning through the In-House management model	184
7.3	Financial Resources	185
7.4	Services specification for the In-House management model	185
7.5	Commissioning Approach	188
8	Continuation Of Delivery Through an Existing Local NPDO	189
8.1	Introduction	190
8.2	Commissioning through a Local NPDO Trust	191
8.3	Financial Resources	191
8.4	Risk Transfer	191
8.5	Services specification for a Local NPDO Trust	195
8.6	Legal Contract	198
9	Direct Commissioning through A Local Authority Trading Company	200
9.1	Introduction	201
9.2	Commissioning through a Local Authority Trading Company (LATC)	202
9.3	Financial Resources	202
9.4	Risk Transfer	202
9.5	Services specification for a LATC	207
9.6	Legal Contract	210
10	Delivery Through Other Approaches	212
10.1	Community Asset Transfer	213
10.2	Long Lease	216

11	Mobilisation of new management arrangements	218
11.1	Introduction	219
11.2	Contractual Matters	220
11.3	Mobilisation Plan	221
11.4	Staffing	224
11.5	Customer Data	226
11.6	Buildings and Equipment	227
11.7	Communications Strategy	228
11.8	Service Plans	229
11.9	Governance Arrangements	229
11.10	Handover/Financial Reconciliation	230
11.11	Contract and Partnership Management	231
12	Client services management and monitoring	233
12.1	Introduction	234
12.2	Performance Management Monitoring (KPI's)	236
12.3	Service Compliance Monitoring	237
12.4	Asset Management Monitoring	237
12.5	Quality Monitoring	238
12.6	Social Value Impact	239
12.7	Audits	239
12.8	Risk Management	240
12.9	Review of strategic outcomes	240
12.10	Contract Variations (for Externalised Services)	240
12.11	Active Communities Monitoring	241
12.12	Annual and Quarterly Service Monitoring reporting	241
12.13	Client Services Management and Monitoring Resources	241
13	Considerations for contract variations and extensions	243
13.1	Introduction	244
13.2	Contract Extensions	245
13.3	Optional Contract Extension Period	245
13.4	Unplanned Closure of Facilities or Services in the Contract	246
13.5	Mid-Contract Investment Opportunities	247
13.6	Changes to the services specification	248
14	Appendices	250



1 Introduction and overview

1.1 Introduction

1.1.1 The key objectives of this guidance are as follows:

- To support local authorities to develop leisure service delivery arrangements which contribute towards the delivery of desired local outcomes in a financially sustainable manner through a range of management approaches.
- To aid in optimising the partnerships between a local authority and its leisure service delivery partner(s) through the development of a clear services specification, monitoring and evaluation and governance arrangements to ensure visibility and transparency, regardless of the management model in place, be it in house, a local NDPO trust, Local Authority Trading Company, an outsourced Operator or other arrangement.

- To provide guidance on capital investment options and the delivery of these.
- To encourage real partnerships and collaboration based on a sustainable management approach that enables the relationship to continue to understand and reflect the needs of the community in supporting active communities.
- To provide a clear step by step approach once a local authority has decided on the management approach it wishes to implement, without unwanted information getting in the way.

1.1.2 Within each of the sections there will be detailed guidance to address the issues specific to that service delivery mechanism. So, for instance, the section on procurement retains the purpose of aiming to reduce time and cost within the procurement process for clients and potential partners.





1.1.3 We encourage local authorities prior to using this guidance, to read and work through Sport England's [Strategic Outcomes Planning Guidance](#).

1.1.4 Once a local authority is clear about what it wishes to deliver through its leisure facilities, outreach services and interventions, this guidance will support it in translating strategic plans into effective service delivery arrangements for implementation.

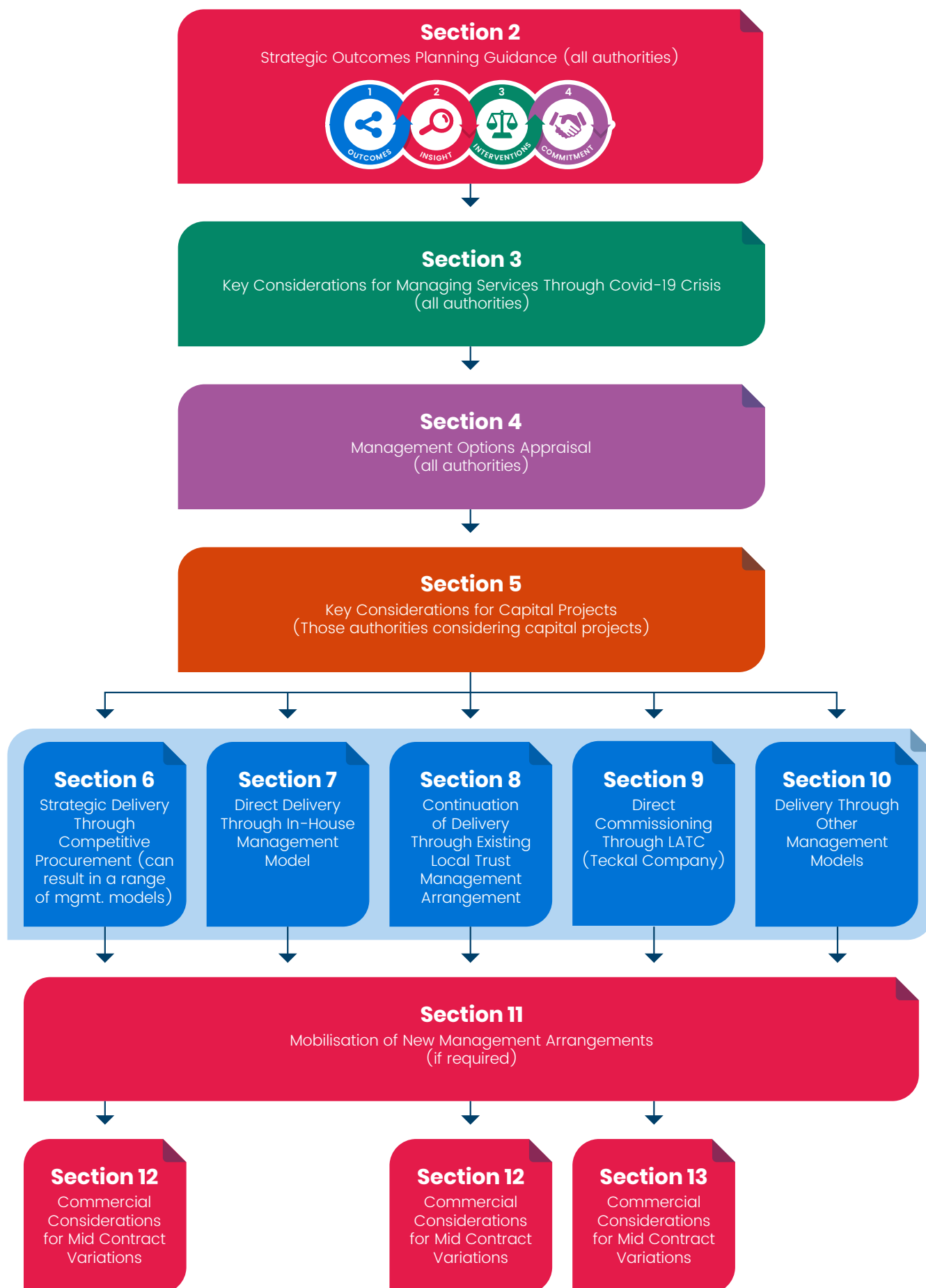
1.1.5 Following identification of a preferred management approach(es), the guidance will support the local authority in planning implementation with a view to optimising the balance of financial and social return on investment.

1.1.6 There is a clear step by step approach which guides users through strategic planning, the selection of a management

approach and the implementation of the chosen approach contained within the guidance as shown in [Figure 1.1](#).

1.1.7 This document won't replace the need for specialist legal and consulting advisors but will support their optimal use to ensure that they are deployed as effectively as possible enabling them to add value in key areas.

Figure 1.1: Outline of Leisure Services Delivery Guidance



1.2 What has changed from the previous Leisure Procurement Toolkit Guidance?

- 1.2.1 This guidance is designed to accommodate different delivery models and local authorities using it may not need to read and use all of its contents. This is illustrated in [Figure 1.1](#) which demonstrates how local authorities can navigate their way through the guidance after Section 4 (and 5 if applicable), depending on which approach is selected as part of a Management Options Appraisal process.
- 1.2.2 The previous Sport England Leisure Procurement Toolkit (2016) provided guidance for local authorities looking to outsource and deliver new facility developments. Following sector feedback, this guidance now provides support for all the core management models, high-level guidance on construction procurement options where facility investment is involved, and implementation support. It also includes guidance on carrying out a management options appraisal.
- 1.2.3 The guidance will in many cases need to be supplemented by specialist consultancy and legal support for a local authority from organisations who have the requisite experience to support what can often be a complex and challenging process.
- 1.2.4 The guidance includes the core standard documentation to support common approaches highlighted below and, where appropriate, seeks to provide templates for local authorities to use to refine and

bespoke their services specifications and performance management model to meet local needs and strategic requirements.

- 1.2.5 The templates have been provided based on current best practice and it is recommended that local authorities review and refine all core templated documentation to meet their specific needs.

Existing partnership with a Local Charitable Not for Profit Distributing Organisation (NPDO)

- 1.2.6 Many local authorities will already have a long-term lease or management agreement in place with a Local Charitable NPDO.
- 1.2.7 To ensure that partnerships remain positive and focused on sustainable joint working and transparency, this guidance can be used to support local authorities and their operator partner in reviewing their current arrangements and seeking to agree a more effective way of working together to support strategic objectives and the contribution of the service towards strategic outcomes. This can often be linked to investment from the local authority.

Existing procured partnership with a Leisure Operator

- 1.2.8 Similarly, the guidance provides high-level support to local authorities and their leisure operator partners on how to vary an existing outsourced contract to achieve better strategic alignment, sustainability and encourage positive partnership working.



In-house

- 1.2.9 For local authorities who have chosen to operate their services in-house (or bring them back in-house) the guidance provides support to ensure that the operational team can fully align their services through a detailed services specification and performance and monitoring regime to meet the local authority's strategic priorities and outcomes.

Local Authority Trading Company

- 1.2.10 For local authorities who have chosen to operate their services through a Local Authority Trading Company (or establish a new Local Authority Trading Company) the guidance provides high-level support to ensure that the operational team can fully align their services through a detailed services specification and performance and monitoring regime to the local authority's strategic priorities and outcomes.

Other management approaches

- 1.2.11 The guidance also provides some high-level guidance on less frequently used management approaches such as Joint Ventures, Concession Contracts, Asset Transfers and Long Leases.

1.3 Further support

- 1.3.1 Local authorities and commissioning bodies are encouraged to seek additional specialist consultancy and legal support and seek peer support.



2 Strategic Outcomes Planning Guidance



2.1 Introduction

2.1.1 Local authorities are encouraged to undertake a needs-based approach to the strategic planning of physical activity, sport and wellbeing services prior to implementation. Sport England's [Strategic Outcomes Planning Guidance](#) (SOPG) provides a clear, step by step process to support a local authority in ensuring it can optimise the impact of its investment in physical activity, sport and wellbeing and contribute towards wider local strategic outcomes.

2.1.2 Bringing this thinking, insight and analysis together into a coherent vision, supported by a strategic approach to physical activity, sport and wellbeing to support wider local strategic outcomes presents a significant opportunity to target investment and support where it can have the biggest impact.

2.1.3 The impact of Covid-19 has been devastating for communities and means the importance of providing an active environment which supports physical and mental wellbeing has never been more evident. There has never been a more pressing need to secure a sustainable future for local authority physical activity, sport and wellbeing facilities and services. This will in many cases require significant reviews of current provision and the outcomes delivered.

2.1.4 There is no perfect starting point for a local authority to revisit its approach and Sport England's SOPG seeks to provide support and signpost where additional help or advice can be found (including that from Sport England) at whatever stage a local authority is at, for example:

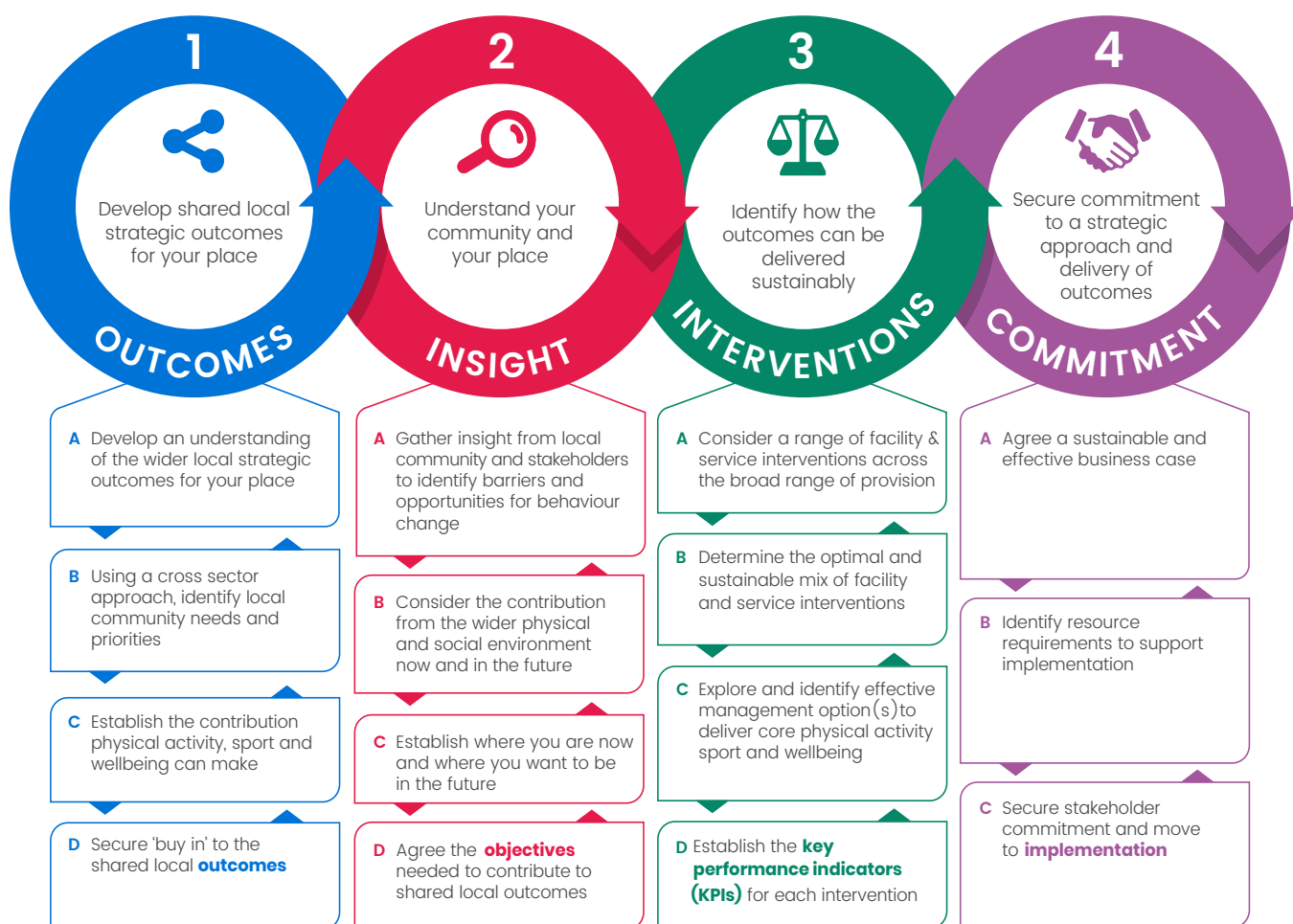
- At the beginning of any process for commissioning services to deliver or use sport or physical activity to contribute to achieving wider outcomes
- When considering changes to the delivery of services
- Following a change in political administration
- When considering the need for new indoor physical activity, sport and wellbeing facilities or community facilities
- When challenging the impact physical activity, sport and wellbeing facilities and services have on the delivery of local outcomes and the wider needs of the community they serve.

2.1.5 This will enable the local authority to:

- a. Develop shared local strategic outcomes for your place
- b. Understand your community and your place
- c. Identify how the strategic outcomes can be delivered sustainably
- d. Secure commitment to the strategic approach and delivery of outcomes.

2.1.6 The Strategic Outcomes Planning Model is shown in Figure 2.1.

Figure 2.1: Strategic Outcomes Planning Model



2.1.7 [The full guidance can be found on our website.](#)

2.1.8 The SOPG can assist local authorities in making decisions that lead to clear alignment of strategic priorities, optimal investments, financial and social outcomes and ultimately increased physical activity participation rates.

2.1.9 A key element of the SOPG is to support the linking of local strategic outcomes through to performance management of physical activity, sport and wellbeing services. Recording the right data, consistently and coherently, is critical and a key enabler to:

- Supporting delivery of strategic objectives
- Demonstrating a contribution to local strategic outcomes
- Evidencing the impact of physical activity, sport and wellbeing across a plan.

2.1.10 Modern physical activity, sport and wellbeing services can make the biggest impact on the health and wellbeing of communities when data is being collected and used proactively.

2.2 Impact monitoring

- 2.2.1 During the planning phase, local authorities are encouraged to consider how they are going to measure the effectiveness of physical activity, sport and wellbeing services.
- 2.2.2 Alongside the operational/facilities management measurements – the anchor points for a physical activity, sport and wellbeing service – Sport England recommends six data pillars relating to service delivery which can add real value. These can be found in [Appendix 12 Impact Monitoring Guidance](#).
- 2.2.3 This data provides an essential understanding of who is using the service, how often and their experience to form the building blocks for more sophisticated analysis, including a measure of the social value of physical activity, sport and wellbeing services.
- 2.2.4 Sport England's Moving Communities platform provides a dashboard view of this data for the local authority and service delivery provider, with built in filtering and comparisons to national averages.
- 2.2.5 The analysis of this data will also provide a detailed view of performance to support delivery of strategic objectives and contribution towards local strategic outcomes in line with the Strategic Outcomes Planning Guidance.

2.3 Planning cycle

- 2.3.1 As part of the planning cycle, local authorities are encouraged to start planning their approach at least 2–3 years before any major milestone such as the end of an operating contract or lease. Some local authorities have commenced this strategic phase five years prior to the actual mobilisation date – particularly when facility investment or service transformation is involved. Sport England may be able to assist local authorities through this stage.
- 2.3.2 With contract to lease periods often ranging from 10 and 20 years respectively, this offers a major opportunity to secure a sustainable and meaningful future for physical activity, sport and wellbeing services in a local area. Undertaking a robust strategic approach, supported by the Strategic Outcomes Planning Guidance is an important planning phase prior to entering implementation stages utilising the Leisure Services Delivery Guidance.



3 Key considerations for delivering services through the Covid-19 Pandemic



3.1 Introduction

- 3.1.1 The Covid-19 pandemic has presented significant challenges for the delivery of physical activity, sport and wellbeing services. This specific guidance has been added to the Leisure Services Delivery Guidance to assist local authorities to determine a way through the immediate challenges threatening services and to be in a position to reopen and recover as restrictions are lifted.
- 3.1.2 Sport England continues to work closely with the Department of Culture, Media and Sports and sector bodies including the Local Government Association, Chief Cultural and Leisure Officers Association, Association for Public Service Excellence, Community Leisure UK and UKActive to support physical activity, sport and wellbeing services.
- 3.1.3 Covid-19 has had an unprecedented financial impact, leading to significant financial distress across local authorities, leisure trusts and private operator partners. Local authorities need to be mindful **that revenue reductions will make the operation of leisure centres more expensive in the medium term**. This will be the case whether services are delivered in house or through a management contract and needs to be considered as part of local authorities' medium-term financial strategies.
- 3.1.4 Two specific scenarios have emerged and need to be considered; a) the lockdown period where all services are closed and; b) the recovery period where services may be able to reopen but with differing levels of social distancing and other restrictions.
- 3.1.5 Local authority physical activity, sport and wellbeing services, and operator partners, will require financial support through lockdown and recovery due to the services generating substantially lower levels of income than pre-Covid-19, regardless of the financial position of the contract. A local authority with a pre-Covid-19 contract requiring the operator partner to pay a management fee is faced with the situation of not only losing the management fee but also potentially needing to provide additional funding to support a deficit position.
- 3.1.6 In order to resolve these extraordinary issues, Sport England advocate a collaborative, partnership approach between the local authority and its operator partner. Early engagement with senior leaders from each party is critical. In parallel, a review of the contractual arrangements should be undertaken to explore and establish the contractual position for the service to help guide discussions.
- 3.1.7 All parties should work together through the lockdown and recovery periods to understand the continued and fast-changing impact on services, possible mitigation measures and to establish what all parties can do to arrive at an agreed solution which will enable the reopening of valuable services as restrictions are lifted.
- 3.1.8 In moving through the recovery period, local authorities may wish to review and reset their services and management agreement or may be coming towards the end of their contract.

- 3.1.9 This section contains guidance on:
- Agreeing a financial resolution during a lockdown period
 - Developing a recovery plan and provisional management fee with the operator partner through the recovery period
 - Key considerations for considering new management arrangements in the event that a local authority loses its operator partner due to contract termination or insolvency
 - Use of emergency procurement powers
 - Procuring services during the Covid-19 crisis
 - Contract extension during the Covid-19 crisis
 - Government support funding for physical activity, sport and wellbeing services through Covid-19.

3.2 Procurement policy note – supplier relief due to Covid-19

- 3.2.1 [Procurement Policy Note \(PPN\) 02/20](#) sets out information and guidance for public bodies on payment of their suppliers to ensure service continuity during and after the current Covid-19 pandemic. Contracting authorities must act to ensure suppliers at risk are in a position to resume normal contract delivery once the pandemic is over.

- 3.2.2 All contracting authorities should:
- Urgently review their contract portfolio and inform suppliers who they believe are at risk that they will continue to be paid as normal (even if service delivery is disrupted or temporarily suspended).
 - Put in place the most appropriate payment measures to support supplier cash flow; this might include a range of approaches such as forward ordering, payment in advance/prepayment, interim payments and payment on order (not receipt).
 - If the contract involves payment by results then payment should be on the basis of previous invoices, for example the average monthly payment over the previous three months.
 - To qualify, suppliers should agree to act on an open book basis and make cost data available to the contracting authority during this period. They should continue to pay employees and flow down funding to their sub-contractors.
 - Ensure invoices submitted by suppliers are paid immediately on receipt (reconciliation can take place in slower time) in order to maintain cash flow in the supply chain and protect jobs.

- 3.2.3 The PPN is applicable to all contracting authorities, including central government departments, executive agencies, non-departmental public bodies, local authorities, NHS bodies and the wider public sector (excluding Devolved Administrations). Together these are referred to in this PPN as 'contracting authorities'. This PPN covers goods, services and works contracts being delivered in the UK.

3.3 Sport England support for local authorities and operator partners during lockdown and recovery

- 3.3.1 Sport England is keen to assist local authorities and partners through lockdown and recovery. In addition to this guidance, specialist consultancy support is available to local authorities to help respond to the challenges presented by Covid-19. This support can be used flexibly based on the needs of each local authority.

3.4 Lockdown resolution for leisure contracts

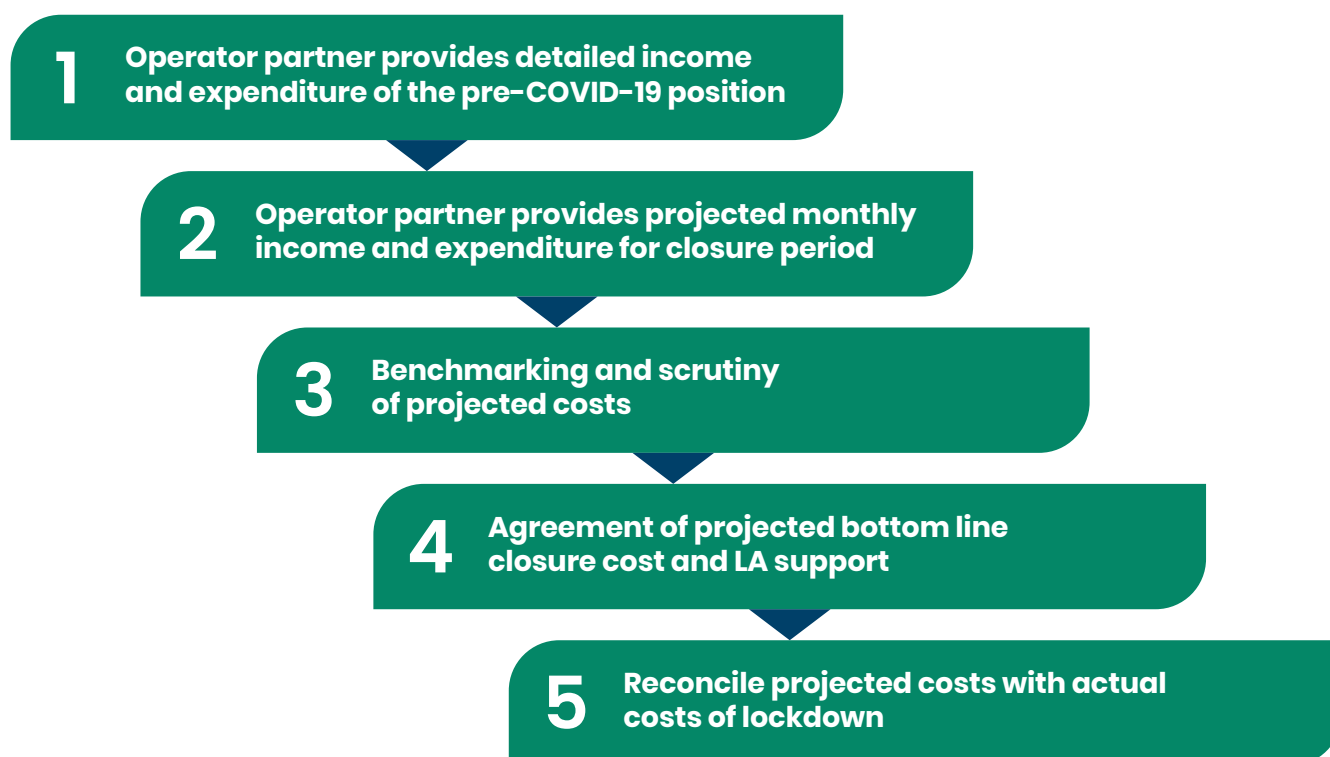
- 3.4.1 Closure of all leisure facilities during lockdown has reduced income virtually to zero, due to most of the revenue being generated from facility usage. While closed, additional financial assistance will be required to meet the ongoing costs of operating the service which are no longer covered by income generation. Sport England advocate a collaborative approach with a focus on reducing costs and protecting the facilities and services during lockdown. Local authorities

should explore and establish the contractual arrangements of their own services to understand where risks and responsibilities sit to help guide discussions.

- 3.4.2 Some leisure contracts will have change in law clauses which can apply to exceptional events such as Covid-19 and would normally be resolved through the loss of income clauses. This normally means that the local authority carries the risk on any general change in law, such as facility closure due to Covid-19.
- 3.4.3 Whilst each local authority should be guided by its own contractual position, Sport England advocate that an open book approach is adopted which is focused on the additional cost of the service as opposed to loss of income or profit. The level of financial assistance required should be mitigated as much as possible through cost reduction and utilisation of all available Central Government support and relief such as the Job Retention Scheme (furlough).
- 3.4.4 The process is summarised in [Figure 3.1](#)



Figure 3.1: Lockdown financial support process



3.4.5 The objective of this approach will be to agree a “bottom line” cost or deficit for the services during lockdown which will form the basis of financial support from the local authority.

3.4.6 The local authority should request monthly projected income and expenditure for the service whilst on lockdown including all operator partner support charges. This should clearly highlight expected savings including staff furlough, reduced consumption of utilities and operational cost savings, and supporting commentary explaining what costs need to be retained and why.

3.4.7 This will provide a “bottom line” cost which is the anticipated level of additional funding needed to run the service during the lockdown period and which will form the basis of the financial settlement. During this time local authorities

and their operator partner will need to consider how management fees and retained profit payments are dealt with. Where Local and Central Government relief has been accessed it has been accepted practice that any profit or surplus is not included within the costs retained during lockdown to protect the public service, i.e. the operator partner does not retain a profit during this period.

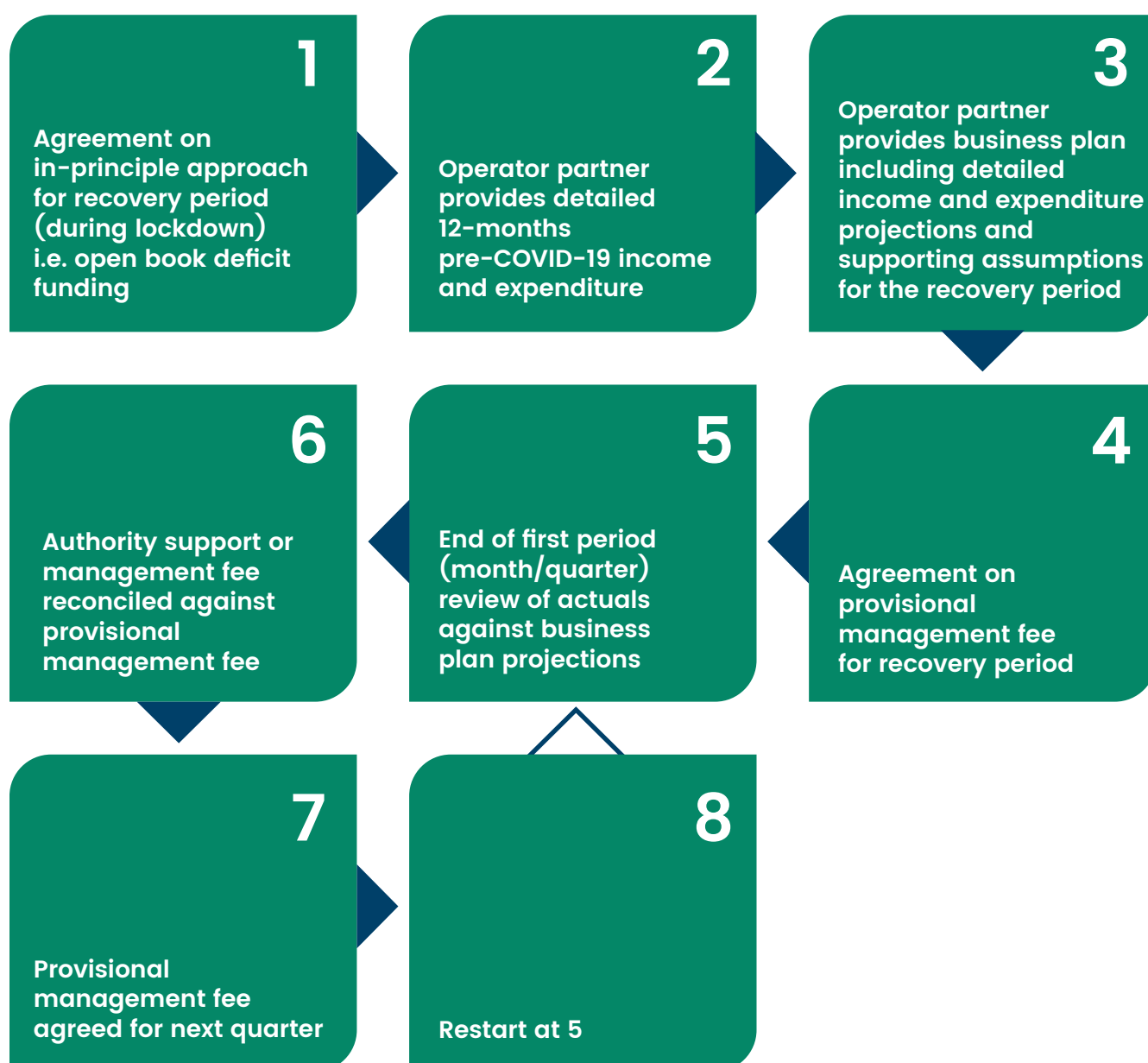
3.4.8 Local authorities may wish to appoint specialist consultancy support to advise the local authority and, where the services are outsourced, support discussions with their operator partner to ensure that the costs are reasonable and in line with appropriate benchmarks and that all reasonable measures to mitigate the costs have been implemented.

- 3.4.9 Local authorities should be mindful of the cash flow position of their operator partner and provide support in a timely manner.
- 3.4.10 The projected cost should be reconciled against the actual costs on a monthly basis and adjustments made to the level of local authority support accordingly. Local authorities should work closely with their operator partner to review and agree the actual costs incurred in each month.

3.5 Recovery phase resolution for leisure contracts

- 3.5.1 Once indicative timescales and conditions for reopening have been made clear by the Government, specific negotiations on the recovery period should commence.
- 3.5.2 The proposed approach is set out in [Figure 3.2](#).

Figure 3.2: Recovery financial support process



- 3.5.3 Whilst there are social distancing restrictions in place, a typical leisure contract will still require additional financial assistance during the recovery phase. Income levels will be severely impacted upon by reduced capacity in facilities due to social distancing and other potential restrictions and the open book approach from the operator partner and support funding by the local authority will therefore need to continue.
- 3.5.4 Local authorities and operator partners will need to continue to be flexible and respond quickly to the continued uncertain impact of Covid-19. The financial support being provided will need to be reviewed regularly and respond to any changes which impact upon the recovery plan.
- 3.5.5 The operator partner should provide actual 12-month income and expenditure for the last full year of pre-Covid-19 trading including all support costs for the contract. In the case of single authority NPDO trusts this should include a statement of any financial reserves.
- 3.5.6 The operator partner should provide 12-month income and expenditure projections for the recovery period. These should include accounting adjustments such as depreciation. It should include an associated business plan for the recovery period informed by any restrictions imposed as a condition of reopening. Supporting commentary should be provided to explain all income and expenditure projections. This should include any proposed phased reopening of facilities or restarting of services, areas of increased cost for preparing centres to operate under social distancing and baseline membership numbers/ swimming lesson numbers and the projected growth in these which inform the income projections for the recovery period.
- 3.5.7 Where services are outsourced, the local authority and operator partner will need to consider their approach to financial risk and profit/surplus payments. As with the lockdown period, where services continue to be supported by Local and Central Government relief, financial assistance should be focused on the additional cost of the service as opposed to loss of income or profit. The extent and timing of any future Covid-19 restrictions will directly impact upon the speed of recovery. Local authorities and their operator partners will need to consider and agree an approach to incentivise the recovery of the business to exit the financial assistance. Sport England is working to provide further guidance for local authorities and operator partners on this issue.
- 3.5.8 Projected income and expenditure should be compared to the 12-month income and expenditure pre-Covid-19 and all assumptions scrutinised and benchmarked accordingly. Local authorities may wish to use specialist consultants to support this review and provide advice to the authority on any changes to be negotiated.
- 3.5.9 Through this process of review and negotiation a bottom-line cost or required level of support will be identified and agreed between the local authority and operator partner. This should be the provisional management fee for the recovery period.

3.5.10 At the end of the first quarter (or month) following re-opening, an open book reconciliation should be undertaken between the local authority and the operator partner. This should include a review of the business plan projections against detailed actual income and expenditure for the period. The operator partner should provide commentary against any areas of underperformance (higher costs or lower income compared with the business plan) and evidence to support key income and expenditure lines e.g. Direct Debit collection reports, payroll reports, large items of maintenance expenditure etc.

3.5.11 Local authorities may wish to use specialist consultancy support to review the accounts, seek clarification as required and scrutinise them (if possible, against national sector data on recovery rates) in order to advise on a reasonable position. A reconciliation to the provisional management fee should be agreed for the review period and adjustments made (if required) to the provisional management fee for the next period.

Operator partner viability

3.5.12 Before providing deficit funding support local authorities should undertake due diligence on their operator partner's viability and financial standing.

3.5.13 Local authority support payments should be paid on a monthly basis without any advanced payment. This will reduce the risk of the funding being lost in the event of the operator partner becoming insolvent.

3.5.14 The operator partner's recovery plans should set out how support payments will keep them solvent and other funding and loan scheme(s) they may be accessing.

3.6 Operator partner insolvency or contract termination

3.6.1 The Covid-19 pandemic has resulted in some operator partners becoming insolvent and in a small number of cases, operator partners or local authorities terminating their contracts.

3.6.2 In this case local authorities will need to establish alternative management arrangements, potentially within a very short time frame.

3.6.3 The core options available are:

- Re-procurement of the contract
- Direct appointment of an operator partner under emergency procurement powers
- Bringing services back in-house
- Setting up or using an existing Local Authority Trading Company
- Setting up a new trust or Community Interest Company to run services under a lease.

3.6.4 [Table 3.3](#) provides a summary of the potential benefits and disbenefits of these options in the event that a local authority needs to establish new management arrangements quickly.

Table 3.3: Potential benefits and disbenefits of core management approaches in the event of a loss of current operator partner due to Covid-19

Management approach	Potential benefits	Potential disbenefits
Re-procurement of the contract	<ul style="list-style-type: none"> Competitively tests the market Likely to result in appointment of established operator partner Potential economies of scale from larger operator partner The local authority can review the service scope and services specification. 	<ul style="list-style-type: none"> Will take a minimum of 9 months to complete a procurement process May be limited market interest under Covid-19 Authority will need to commit for the longer term Operators less likely to take on all contract risks compared to their pre-Covid-19 position.
Direct appointment of an operator partner under emergency procurement powers	<ul style="list-style-type: none"> Can be activated quickly (c. 1 to 3 months) Local authority can engage with operator partner genuinely capable and interested in the contract Potential economies of scale from larger operator partner The local authority can review the service scope and services specification. 	<ul style="list-style-type: none"> Not competitively tested with the market Would need to be a shorter contract which may not attract market interest Operators are likely to take on less contract risks compared to their pre-Covid-19 position.
Bringing services back in-house	<ul style="list-style-type: none"> Provides flexibility through direct control of the service The local authority can review the service scope and services specification. 	<ul style="list-style-type: none"> May take up to 6 months to set up an in-house service The local authority will carry all risks related to the operation of the service Substantial resources needed for TUPE, setting up support services including HR and finance etc. Lack of economies of scale Likely to be the highest cost option due to higher staff costs associated with local government terms and conditions and potential loss of VAT recovery. May impact upon future costs if the service is transferred to an external operator partner with higher baseline costs through a procurement in the future.

Management approach	Potential benefits	Potential disbenefits
Setting up or using an existing Local Authority Trading Company	<ul style="list-style-type: none"> • Can be actioned without the need to go through procurement • The local authority can review the service scope and services specification. 	<ul style="list-style-type: none"> • Likely to take up to 9 months to transfer to a LATC • The local authority will carry most of the risks related to the operation of the service • Substantial resources needed for TUPE, setting up support services including HR, legal and finance etc. • Lack of economies of scale • Could result in increased management costs due to LATC governance structure.
Setting up a new trust or Community Interest Company to run services under a lease.	<ul style="list-style-type: none"> • Can be actioned without the need to go through procurement • The local authority can review the service scope and services specification 	<ul style="list-style-type: none"> • Lease only approach will mean the local authority has limited control due to lack of a management contract • The local authority will carry most of the risks related to the operation of the service • Substantial resources needed for TUPE, setting up the organisation, support services including HR, legal and finance etc. • Lack of economies of scale • Could result in increased management costs due to trust or CIC governance structure.



Emergency procurement powers

- 3.6.5 The Cabinet Office Procurement Policy Note 01/20 dated March 2020 considers that there will be a range of commercial actions that must be considered by contracting authorities in responding to the impact of Covid-19. In such circumstances, authorities may need to procure services with extreme urgency. This is permissible under the current Public Contract Regulations 2015 and recognised in the Policy Note by the Crown Commercial Service.
- 3.6.6 Regulation 32(c) confirms that in specific cases and circumstances as laid down in the regulations, contracting authorities may award public contracts by a negotiated procedure without prior publication. This is acceptable where it is considered strictly necessary for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, that the time limits for the open or restricted procedures with negotiation cannot be complied with.
- 3.6.7 Prior to any contract award, the local authority must be satisfied that it has sufficient reason to act with extreme urgency in making the proposed direct award as a result of Covid-19.
- 3.6.8 Although use of Regulation 32 does not require a local authority to publish a Voluntary Ex Ante Transparency (VEAT) Notice, for transparency purposes and as an additional advance protection to the local authority making the proposed direct award, it is advisable to publish a VEAT Notice on the OJEU portal. The local authority will in any event be required to publish a contract award notice, but this will be after the contract award has been made.
- 3.6.9 The Cabinet Office Guidance 051/20, provides for temporary guidance on the rules relating to State Aid, which were last reviewed on 2 February 2021. The threshold for expenditure remains as up to EUR 800,000, which is aimed at remedying the liquidity shortage faced by undertakings and ensuring that disruption caused by the Covid-19 outbreak do not undermine their viability. This is in effect a de-minimis level for the Covid-19 period with the limit now expiring on 30 June 2021 unless it is reviewed. This doesn't replace or relax the wider EU limits on State Aid, and the non-Covid-19 current de-minimis threshold.
- 3.6.10 Under Section 111 of the Local Government Act 1972, the Council has the power to do anything that is calculated to facilitate, or which is conducive or incidental to, the discharge of any of their functions.
- 3.6.11 A direct award under Regulation 32 must be for a term proportionate to the urgency (taking into consideration a requirement for the supplier to make a return on its investment). Sport England suggest the maximum term is for a period of 5 years, and the local authority will need to ensure that 18-24 months prior to the expiration of that term, a procurement exercise is commenced under the Regulations.

- 3.6.12 Sport England advise local authorities to seek a legal opinion which considers the specific needs of the local authority before undertaking a direct appointment of an operator partner.

3.7 Reviewing and resetting contract arrangements

- 3.7.1 Whilst the Covid-19 pandemic is a significant challenge for local authorities it also provides an opportunity to review and reset its services, so they are more aligned to the strategic objectives of the local authority. In doing so it is suggested that the Strategic Outcomes Planning Guidance referred to in [Section 2](#) is considered.
- 3.7.2 Local authorities should review the scope of services in the existing contract ensuring that its resources are focused on current priorities, potentially removing any services that are obsolete.
- 3.7.3 The local authority, with the agreement of their operator partner should consider updating the services specification to ensure it is fit for purpose and aligned to its strategic objectives (a services specification template can be found in [Appendix 8](#)).
- 3.7.4 Local authorities and their operator partner will typically negotiate and agree a formal variation to the contract which sets out the financial support to be provided by the authority to manage the impact of Covid-19. This negotiation provides leverage for the local authority to seek to secure some benefit in return. There may be an

opportunity to agree changes to other elements of the contract which would benefit the local authority or where there is some ambiguity that requires more clarity. For example, the local authority may wish to secure agreement on the handover of assets including membership data in the event of either early termination or a new provider being appointed through a future procurement process. Alternatively, the local authority may wish to agree a new reporting regime to ensure the operator partner is providing meaningful data which better measures its performance in contributing to local strategic outcomes.

Undertaking a procurement process during the Covid-19 crisis

- 3.7.5 Some local authorities may need to commence a procurement process due to their contract coming to end within the next two years.
- 3.7.6 The market conditions are very different than pre-Covid-19 and local authorities undertaking procurement should refer to the key considerations for its procurement strategy set out in [Table 3.4](#).

Table 3.4: Considerations when developing a procurement strategy under Covid-19

Procurement strategy checklist		Covid-19 considerations
1	Has the local authority developed a clear strategic approach to its physical activity, sport and wellbeing services with a clear vision on what outcomes and behaviour change it is looking to promote going forward as outlined in Section 1 of this guidance including any Social Value policy objectives to be met?	<ul style="list-style-type: none"> Local authorities may have new target groups or locality areas due to the impact of Covid-19 on health inequalities Consider revisiting the balance between asset-based delivery and community/partnership based interventions Consider the opportunity to re-design services with wider partners from transport, health and education to support a more holistic approach to physical activity, sport and wellbeing services
2	Has the local authority clearly defined the scope of services to be included in the procurement?	<ul style="list-style-type: none"> Local authorities may have facilities that are no longer affordable/meet the needs of the strategic objectives of the service Local authorities may want to create or increase community-based services and interventions.
3	Has the local authority clarified any capital facility development and investment requirements?	<ul style="list-style-type: none"> Return on investment may be impacted by Covid-19 and the anticipated recession.
	Are these investments to be initiated by the successful bidder or local authority?	<ul style="list-style-type: none"> Operator partners have major cash flow issues under Covid-19 and reduced reserves and will therefore be more reluctant to provide capital.
	Has local authority capital been secured for the project?	<ul style="list-style-type: none"> Local authorities will have new pressures on capital and revenue arising from Covid-19 and are reviewing their medium term financial strategies Local authorities may be more risk averse about providing capital for investment in leisure.

Procurement strategy checklist	Covid-19 considerations
<p>4 Is the local authority clear on the level of risk it wishes to transfer to the operator partner including asset management, pensions, utilities etc.?</p>	<p>Early results from soft market testing during Covid-19 indicate:</p> <ul style="list-style-type: none"> • There are likely to be less operator partners bidding for contracts during and immediately after Covid-19 • Operator partners will be more risk averse and less willing to take on full risk in areas such as utilities and maintenance • It is unlikely that full commercial risk can be transferred whilst there is still service disruption due to Covid-19. Local authorities will therefore need to be prepared to accept an open book approach in the early stages of the contract • Given the uncertainty regarding market conditions post Covid-19, operator partners are likely to be cautious in their financial submissions. The local authority should therefore consider use of an income or profit share mechanism to benefit from any over performance.
<p>5 Has the local authority undertaken affordability modelling, considering forward maintenance and equipment costs (based on asset condition) for the life of the contract, agreed investment and the likely market perception of its portfolio?</p>	<ul style="list-style-type: none"> • Local authorities are likely to have less revenue funding available post-Covid-19
<p>Has this been aligned to the Medium-Term Financial Plan and a realistic minimum affordability threshold set for the procurement?</p>	<ul style="list-style-type: none"> • Pre-Covid-19 management fee payments were based on a buoyant operator partner market and authorities should not expect to return to these levels of management fee for the foreseeable future • Local authorities will need to consider an open book approach in the early part of the contract as operator partners will be unwilling to take on full commercial risk whilst the services are recovering from Covid-19.

Procurement strategy checklist	Covid-19 considerations
6 Has the local authority agreed a contract length including any break clauses or potential extension periods?	<ul style="list-style-type: none"> Local authorities should consider more of a staged contract such as 5 years plus 5 years. This will enable break clauses and the ability to negotiate a financial arrangement after Covid-19 has passed and there is more certainty on market conditions Break clauses could also enable local authorities to reset elements of the contract and services specification.
7 Has the local authority developed clear strategic objectives and performance indicators linked to its physical activity, sport and wellbeing outcomes to be delivered by the operator partner and embedded into the contract?	As per normal conditions.
8 Does the local authority have contractual access to data from its incumbent operator partner? If not has it negotiated a reasonable position for them to release financial and operational data to be made available to other bidders?	As per normal conditions.
9 Has the local authority selected the optimal procurement route?	As per normal conditions.
10 Has the local authority undertaken market engagement to test key elements of its Procurement Strategy with potential bidders?	<p>Specific soft market testing is crucial to understand current market perceptions and identify:</p> <ul style="list-style-type: none"> Potential market interest Acceptable levels of risk transfer Scope of services Length of contract Financial arrangements during Covid-19 recovery Essential contract clauses to deal with future events similar to Covid-19.
11 Has the local authority engaged Members with the Procurement Strategy and have they signed off the final version?	As per normal conditions.

Contract extension

- 3.7.7 In order to allow time for the market to stabilise and the Covid-19 crisis to pass, local authorities may wish to consider extending the contract with their existing operator partner.
- 3.7.8 If the current contract does not allow for an extension, then authorities can consider enabling this through the emergency procurement powers as outlined in this section. Sport England recommend that local authorities seek legal advice before taking this approach.
- 3.7.9 There are a number of potential benefits to this approach:
- It avoids the time and expense of procuring services in an uncertain market during Covid-19
 - Implementation is straightforward (subject to legal considerations and negotiating an extension which is acceptable to both parties) and can be done relatively quickly
 - It provides an opportunity to revise and update aspects of the contract and services specification
 - The local authority can review its affordability position for its services and if necessary, change the scope of the services
 - A contract extension can be linked to Covid-19 recovery planning enabling the local authority and its operator partner to develop a clear plan with risk potentially transferring back to the operator partner over time
 - The Council can negotiate with a tried and tested operator partner.
- 3.7.10 The services specification can be reviewed and updated using the guidance and template in [Appendix 8](#).
- 3.7.11 As with the option to re-procure the services, local authorities should be prepared to adopt an open book approach during the initial period of any contract extension as it is unlikely that operator partners will provide a fixed management fee during the recovery period post-Covid-19.
- 3.7.12 Local authorities will also need to accept that a contract extension will not be competitively driven and the financial offer from an existing operator partner is likely to be much less favourable than through procurement in normal circumstances. Local authorities may need to be prepared for a financial offer that is less favourable than the current financial arrangement due to the time needed to recover the business post-Covid-19 and a potential shift in the operator partner's willingness to take on risk.
- 3.7.13 Local authorities may consider taking specialist independent advice to develop new contract documentation and to assess and benchmark their operator partner's offer for a contract extension to ensure it will deliver value for money during the proposed term.

3.8 Government support funding for physical activity, sport and wellbeing services through Covid-19

Local government income compensation scheme for lost sales, fees and charges

- 3.8.1 Covid-19 has impacted upon local authorities' ability to generate revenues in several service areas as a result of lockdown, government restrictions and social distancing measures, related to the pandemic. This one-off income loss scheme (the scheme) will compensate for irrecoverable and unavoidable losses from sales, fees and charges income generated in the delivery of services, in the financial year 2020/21.
- 3.8.2 The scheme involves a 5% deductible rate, whereby authorities will absorb losses up to 5% of their planned 2020 /21 sales, fees and charges income, with government compensating them for 75p in every pound of relevant loss thereafter. By introducing a 5% deductible rate, government is accounting for an acceptable level of volatility, whilst shielding authorities from the worst losses.
- 3.8.3 With regards to physical activity, sport and wellbeing services this will include lost income for services that are **run in-house and lost management fee payments** where an operator partner/contractor pays the local authority a management fee or rent.
- 3.8.4 The scheme does not cover outsourced contracts where there is a payment to the contractor/ operator partner.
- 3.8.5 Local authorities are making claims for this fund through the whole organisation as it covers other services where income is generated. [Further guidance can be found on the government's website.](#)





4 Leisure Management Approaches and Options Appraisal

Covid-19 Key Considerations

- The increased cost of physical activity, sport and wellbeing services associated with loss of income caused by the Covid-19 crisis apply to all management models. This means that a change in management arrangements is unlikely to provide a solution to the financial challenges caused by the Covid-19 pandemic. Services will need additional financial support through Covid-19 regardless of the management model.
- Some local authorities may need to source new management arrangements quickly due to losing their current operator partner. [Table 3.3](#) contains guidance on the potential benefits and disbenefits of core management approaches in these circumstances.
- In these circumstances it will not be possible to undertake a full management options appraisal suggested in this guidance due to time constraints.
- Authorities may need to implement a short term management solution to give them time to consider the best approach to providing physical activity, sport and wellbeing services in the longer-term. In such cases a contract extension, short term contract or LATC may provide the best interim solution. In-house management can also be used as an interim solution, but it may have longer term cost implications through TUPE and local government terms and conditions.

4.1 Introduction

- 4.1.1 Once the local authority is clear on its strategic approach to its physical activity, sport and wellbeing services, this is the point to then consider the most appropriate management arrangements for delivering the services.
- 4.1.2 Management arrangements will have an impact on the effectiveness and efficiency of service delivery. However, the key to a successful operation will be having a well written contract/service level agreement and funding agreement. This needs to be supported by a sound approach to contract/service monitoring and performance management. This applies to all management options.
- 4.1.3 At the end of what often can be a long period of delivery under particular arrangements, it is recommended that a local authority reviews its client requirements and leisure management approach.
- 4.1.4 There are a number of established leisure management approaches used for the delivery of physical activity, sport and wellbeing services. There are several factors to be considered in assessing the appropriateness of a particular approach (or approaches) to establish the right balance for a local authority. These factors include:
 - **Political** – acceptability of a particular management approach
 - **Control** – the level of control a local authority has on programming, pricing, customer service and quality

- **Affordability** – can the planned service/facility mix be delivered with the resources available using a particular management approach?
- **Deliverability** – can the management approach provide comfort that they can deliver the desired outputs and contribution to local strategic outcomes within a particular timeframe?
- **Risk** – does the management approach enable the local authority (and its operator partner where appropriate) to manage a known and acceptable level of risk?
- **Sustainability** – is the planned service/facility mix sustainable using a particular management approach to deliver the required outputs and outcomes?

- 4.1.5 In many instances it may be appropriate for a combination of leisure management approaches to deliver a service – for example, an outsourced leisure management contract for operating core leisure facilities, asset transfer of some community facilities and an in-house sports development team linked to a client function.
- 4.1.6 Whatever approach or method of delivery a local authority selects, the principles of responsible commissioning should be applied, i.e. taking into consideration social, environmental and economic impacts to support sustainable development.
- 4.1.7 Sport England would advise local authorities to take appropriate legal advice regarding its management options for physical activity, sport and wellbeing services.

4.2 Why Carry Out a Management Options Appraisal?

- 4.2.1 An options appraisal will provide a transparent framework for a local authority to select the most appropriate management approach(es) to meet the strategic needs of the local authority and provide Best Value on behalf of its residents.
- 4.2.2 There are other core reasons why local authorities carry out a management options appraisal:
- The difference in the cost of running physical activity, sport and wellbeing services between different management options can be substantial
 - A management options appraisal will highlight whether a local authority is taking full advantage of tax exemptions and benefits that different management options can offer and what the risks could relate to in the event of a change in law
 - Different management approaches (and their suppliers) often have particular strengths and weaknesses when delivering outreach and social interventions and these considerations need to be fully understood and balanced against financial considerations
 - A local authority may not have looked at management options for some time and want to understand what other options are available.

- 4.2.3 It is good practice to review management arrangements at timely intervals to ensure the local authority has the most suitable and sustainable approach to meet the needs of its community. This may be when an existing contract or lease agreement is coming to end, when there is a change in political administration or when there is a planned facility investment programme.
- 4.2.4 Whilst this document provides a summary of the key characteristics of different leisure management approaches, in order to determine the most appropriate approach for your local authority, it is recommended that a management options appraisal is undertaken. The advantages and disadvantages of each leisure management approach have not been explored in this document as these will be bespoke to each local authority and its particular priorities and circumstances.

4.3 Best Value and Social Value

- 4.3.1 Local authorities have a statutory duty to deliver Best Value and their auditors carry out an Annual Value for Money Conclusion Assessment within their Annual Audit Letter. As part of this duty, there is also a statutory requirement for local authorities to consider Social Value in their functions, as required by the Public Services (Social Value) Act 2012.
- 4.3.2 Social Value is used to describe social, economic and environmental value. Social Value is still an emerging concept and local authorities are being encouraged to be innovative in how they apply the principles to commissioning. Local authorities are encouraged to look at Sport England's Strategic Outcomes Planning Guidance ([Section 2](#)) and Moving Communities service. Further guidance is available from the [Cabinet Office](#).

4.4 Key Drivers for Exploring Options

- 4.4.1 Most local authorities are looking to deliver their physical activity, sport and wellbeing services with reduced budgets – ideally at reduced cost or to make a positive revenue contribution which can be reinvested into additional targeted benefits for residents or other priorities.
- 4.4.2 However, as part of the strategic approach recommended in the Strategic Outcomes Planning Guidance, local authorities should consider a multitude of factors important to them when carrying out a management options appraisal. Figure 4.1 shows some of the key drivers for a management options appraisal that a local authority may wish to consider.
- 4.4.3 This approach will enable the local authority to work towards optimising an appropriate financial and social return on investment.

Figure 4.1 Some of the Key Drivers for Leisure Management Options Appraisals



- 4.4.4 Local authorities can select the appropriate drivers that are important to develop evaluation criteria for the management options appraisal.
- 4.4.5 In the event that a local authority has a preference for a particular management approach, there may be no appetite from elected Members to request that an options appraisal is undertaken as the local authority may have already decided at a political level on its preferred management approach.
- 4.4.6 However, we would encourage officers to present elected Members with an overview of alternative approaches and their implications in terms of financial and social considerations, risks and benefits in order to inform their decision.
- 4.4.7 It is recommended that the local authority consciously selects a management option based on an evidenced evaluation and recommendation. This guidance can support that process to provide transparency over the decision, whether it be light touch or a full management options appraisal.
- 4.4.8 Regardless of the management option selected, the services commissioned should be underpinned by a clear strategy, specification and performance management regime so that the local authority and its Members can set standards, monitor and evaluate service delivery.

4.5 Client and Management Arrangement Considerations

- 4.5.1 With very different management approaches available to local authorities, a transparent framework for considering them independently and establishing the suitability of an option or combination of options is important to ensure the right local solution that is politically acceptable, affordable, sustainable, manages risk and is deliverable.
- 4.5.2 It is important when reviewing the options that a range of factors are considered, not limited to the existing management arrangements such as:
- Whether there is a clear strategy and strategic objectives
 - Effectiveness of current governance arrangements
 - If there is currently limited or no performance management
 - If there are ageing assets that have lacked investment over a sustained period
 - Effectiveness of client monitoring
 - Increasing local competition
 - Increasing costs
 - Local economic factors
 - Lack of clear specification.
- 4.5.3 In the event that there is a real appetite to explore alternative ways of delivering services, a management options appraisal should be undertaken.

4.6 Management Approaches Overview

- 4.6.1 The **core management approaches** currently available to local authorities in England to determine the management arrangements for their physical activity, sport and wellbeing services are as follows:
1. **Competitive procurement – could result in the appointment of a multi-site operator partner (private/trust management operator partner or charitable Not for Profit Distributing Organisation (NPDO)), an existing local NPDO where there is one operating in an authority area, an in-house operation or an LATC. This approach often results in the appointment of a multi-site operator partner or a local NPDO. This approach accounts for over 60% of local authorities in England.**
 2. **Direct commissioning to a Local Charitable NPDO usually serving one authority.**
 3. **Setting up a Local Authority Trading Company (LATC).**
 4. **Direct commissioning through in-house management.**
 5. **Through a Joint Venture Company.**
 6. **Through asset transfer.**

- 4.6.2 The key characteristics of organisations that manage physical activity, sport and wellbeing services are set out in the following sections.
- 4.6.3 It should be noted that most of the approaches set out in 4.6.1 – i.e. 2 – 6, are specifically designed to result in a specific management arrangement. A competitive procurement approach, by its nature, can result in one of a number of types of management arrangement, including those which can otherwise be put in place through a direct commissioning or ‘spinning out’ approach. The key characteristics of a multi-site operator partner have been set out below. This type of management arrangement usually results from a competitive procurement approach but would not be the only possible outcome.

Multi-site Operator

- 4.6.4 If the local authority were to outsource the management of the service(s) through a procurement process, they are likely to contract with either:
- A private/trust management operator partner which is where a private company creates an organisation that has some charitable trust characteristics. It is a legal vehicle that has a private arm that aims to make a profit and ‘not for profit’ arm. It can access discretionary National Non-Domestic Rates (NNDR) benefits and may access Value Added Tax (VAT) benefits from the sporting exemption; or
 - A charitable NPDO operator partner which can attract both mandatory rate relief and VAT benefits with regard to the sporting exemption on large proportions of their income.
- 4.6.5 The key characteristics of a multi-site leisure operator partner have been set out as follows:
- Many established multi-site leisure operator partners have developed a wider range of service offerings including sports development/outreach, health interventions, library services, cultural services and special events. Each leisure operator partner has different strengths and specialist capabilities which will often be reflected in the portfolio of contracts they manage. Some providers are able to secure or support securing external commissions from partners such as Public Health. These organisations are commercially focused and able to optimise income generation from leisure facilities, gyms, swimming lessons and group exercise classes. This can enable cross-subsidy to resource community interventions where this is specified within the contract
 - Larger multi-site leisure operator partners tend to have significant buying power, economies of scale and standardised systems of work. This is often linked to a corporate feel/brand and look to customer facing areas in the facilities they manage
 - They are experienced in controlling costs, targeting investment to improve sustainability and optimising income generation in particular from leisure facilities, gyms, swimming lessons and group exercise classes

- Multi-site leisure operator partners can manage facilities and services that are not commercially attractive as part of a broader portfolio of facilities and services
- Larger organisations are normally able to spread risk transfer from their local authority clients and have more resilience in the event of one of its contracts under-performing financially
- Some multi-site operator partners are able to provide a Design, Build Operate and Maintain (DBOM) supply chain to deliver facility developments linked to a leisure management contract
- Senior management will normally be based at a head office and not locally. Their focus will be on the whole organisation rather than on local issues. Local issues will be the focus of contract managers
- Multi-site operator partners are usually able to access capital funding although it is likely to be at a higher rate of interest than local authority sourced capital.

4.6.6 Under this option the local authority will retain influence over the service through the contract and services specification and is able to transfer some or all of the operational and commercial risk to the operator partner depending on where it best sits, albeit the financial robustness of organisations should be tested through the local authorities due diligence process. Local authorities are unlikely to be able to transfer the political risk associated with delivering leisure facilities as they remain ultimately responsible and publicly accountable for their delivery.

4.6.7 Service improvements under this option can be delivered through the contract and an agreed, costed investment plan. Potential rationalisation of facilities or improvements in relation to income generation and control of expenditure can be identified through the Contract. However, the one-off costs of making significant changes would typically need to be borne by the local authority.

4.6.8 Importantly, this model when procured competitively can provide protection from financial pressures facing local authorities. This is often enabled through upfront investment from the local authority to enable the contract to be zero cost or revenue positive. The key to a successful partnership will be having a well written contract and services specification supported by a sound approach to partnership and performance management to achieve better local outcomes more efficiently. Any significant changes to the activity required of the provider (for example contribution to cross-cutting agendas not previously agreed at the outset of the contract) would rely on the strength of the partnership or require contract variations.

Local Charitable NPDO

- 4.6.9 Another common model in England is outsourcing the management of physical activity, sport and wellbeing services to a local charitable NPDO, often referred to as a local trust. There are a number of well-established single-authority NPDOs, often set up originally from an in-house operation when there were fiscal advantages in relation to NNDR and VAT exemption and an opportunity to establish a social enterprise with a view to delivering greater levels of social value.
- 4.6.10 For many of these local NPDOs, the lease agreement is long-term, often 15 to 25 years with funding arrangements being shorter term, often in cycles of between 1 to 5 years. 5 to 4 years before the end of the lease period or funding cycle, is often a good time for a local authority to review its current arrangements and management options.
- 4.6.11 It should be noted that prior the 2015 Public Procurement Regulations, local authorities were able to set up a local charitable NPDO to run services without the need to undertake a competitive tendering process. However, since 2015 local authorities can still set up an NPDO, but it would have to tender for the services in the open market if the services were to be run under a management contract.
- 4.6.12 The key characteristics of a local charitable NPDO, a number of which relate to the scale of the organisation rather than its NPDO status, are as follows:
- Local charitable NPDOs are able to operate a range of service offerings including sports development/outreach, health interventions, library services, cultural services and special events. Each trust has different strengths and specialist capabilities which will often be reflected in the portfolio of contracts they manage. Some local charitable NPDOs are able to secure or support securing external commissions from partners such as Public Health
 - These organisations are often set up to be bespoke to an individual authority, aligned to the community needs at the time of inception to deliver local outcomes. They will have charitable aims promoting social value
 - Local charitable NPDOs tend to have less buying power and economies of scale than multi-site operator partners due to their size but can benefit from buying consortia with other trusts. Each trust has developed its own corporate identity and often has a strong alignment with its local community
 - Some local charitable NPDOs do operate other facilities beyond the local authority borders of their host client. Some of these larger trusts are running multiple operations and securing contracts in open competition
 - Local charitable NPDOs can be commercially focused and able to optimise income generation from leisure facilities, gyms, swimming lessons and group exercise classes. This can enable cross-subsidy to resource community interventions
 - Local NPDOs are able to work with other public sector and voluntary partners and are normally recognised by the Charities Commission
 - Local charitable NPDOs can effectively manage facilities and services that are not commercially attractive as part of a broader portfolio of facilities and services

- Local charitable NPDOs have not taken on Design, Build Operate and Maintain contracts but some do work with supply chains in the market that can provide end to end project management, design and build services for smaller capital projects.
- Senior management of the local charitable NPDO is usually based locally and dedicated to the operation and delivery of their host authority's services along with any other contracts they manage.

4.6.13 Local charitable NPDO models can attract both mandatory rate relief and VAT exemption benefits with regard to the sporting exemption on large proportions of their income.

4.6.14 The ability for existing local charitable NPDOs to generate significant capital funding is sometimes more limited and therefore capital funding from local authorities (for example prudential borrowing) is likely (and normally cheaper to finance) if major capital investment is required. It should be noted that the use of prudential borrowing for funding major works is a preferred option for many local authorities and their NPDO trust partners.

4.6.15 Under this approach the local authority can retain influence over the service using a services specification and partnership performance management framework. Ultimately, the authority will carry all the risk as small local charitable NPDOs are normally financially reliant on the host authority. Improvements under this option can still be delivered via self-financing investment options and/or external grants. Potential rationalisation of facilities or improvements in relation to income generation and control of expenditure can be identified through an operational review. However, this solution will not benefit from significant economies of scale or address risk transfer issues.

Setting up a New Organisation – Local Authority Trading Company

4.6.16 There is an option for the local authority to establish a new 'arm's length' organisation to run the facilities and services on its behalf. The Local Authority Trading Company (LATC) which is often referred to as a "Teckal Company" has become legal as a result of the Teckal EU Ruling (2014). These companies do not have charitable status, but as not-for-profit entities are able to benefit from similar tax exemption benefits to an NPDO trust.

4.6.17 The key characteristics of a LATC are as follows:

- LATCs can deliver a wider range of service offerings including sports development/outreach, health interventions, library services, cultural services and special events. The LATC will typically be based around the previous in-house operational team who would be transferred under TUPE
- They will have less buying power than multi-site operator partners, fewer economies of scale and more bespoke systems of work. They are not able to take on external contracts with the freedom of local NPDO trusts. They are, however, able to secure and support external commissions from partners such as Public Health
- They can be commercially and socially focused. This can enable cross-subsidy to resource community interventions

- Single-authority LATC's are unable to offer economies of scale and cost management may be more in line with an in-house management approach. A multi-authority LATC (i.e. one created by a group of local authorities across a region) may offer some economies of scale, albeit this would be limited by the total size of the parent councils' area and range of services provided by the LATC
- They can manage facilities and services that are not commercially attractive effectively as part of a broader portfolio of facilities and services
- A LATC is an option for those local authorities averse to outsourcing their services but wanting to provide some limited arm's length freedoms to the operational team whilst still retaining control over the operation
- Senior management of the LATC is usually based locally and dedicated to the operation and delivery of their host authority's services.

4.6.18 The local authority(s) must control all of the shares in the LATC and must also exercise effective day-to-day control over its affairs; in other words, the same as the relationship between the local authority and one of its internal directorates. This can be achieved through the governance structure. The company must be "inwardly and not outwardly focused". The directive requires that **at least 80%** of the activity of the LATC (over 80% of its turnover) must be for its public-sector owners or host authority(s). LATCs can be set up jointly by a group of local authorities in partnership.

4.6.19 A LATC is available to local authorities looking to establish an arm's length model. Local authorities may, subject to certain statutory limitations, establish a company and undertake social and/or commercial activities.

4.6.20 The setting up of a LATC is outside the 2015 Regulations as it has an exemption subject to a number of tests that must be met. These tests relate firstly to 'control' similar to that which a local authority exercises over its own department in strategic policy terms. Secondly the 'function test' ensures that the LATC carries out the essential part of its activities under the control of the local authority – e.g. 80% of the activities should be ordered by the host local authority. Further details are available from the [Crown Commercial Service Guidance](#).

4.6.21 LATCs in leisure are relatively uncommon and recent examples include Newark and Sherwood District Council, Hull City Council, Broxtowe Borough Council and South Kesteven District Council.

4.6.22 Under this approach, the local authority(s) will retain influence over the service through a contract and services specification and ultimately, carry all the risk as the LATC is underwritten by the local authority(s). Improvements under this option can still be delivered via self-financing investment options and/or external grants. Potential rationalisation of facilities or improvements in relation to income generation and control of expenditure can be identified through an operational review albeit the one-off costs of making those changes would typically need to be borne by the local authority. However, this solution will not benefit from significant economies of scale (which will be limited by the size of the parent council or group of parent councils) or address operational and commercial risk transfer issues.

4.6.23 Once established, a LATC cannot significantly scale and replicate its service beyond the borders of the LATC area in the way that a local charitable NPDO is able to do. An LATC may be able to expand to include other authorities if it has been set up to do this but this is a complex area and local authorities should consider taking appropriate legal and technical advice.

In-house Management

4.6.24 This approach is familiar to many local authorities and is often the baseline default position for local authorities considering the future management options for their physical activity, sport and wellbeing facilities. It involves the retention (or in some cases the transfer back to in-house management after a previous outsourcing arrangement) of the local authority's leisure facilities.

4.6.25 The key characteristics of in-house management by the local authority are as follows:

- The model can result in lower levels of VAT recovery (depending on the VAT position of an authority)
- Likely to have significantly higher staffing costs due to local government terms and conditions
- In-house management offers greater strategic and operational flexibility over all aspects of the service
- The structure and priorities of the local authority will determine the level of senior specialist leadership and expertise
- In-house teams can deliver a wider range of service offerings including sports development/outreach, health interventions, library services, cultural services and special events
- In-house teams are able to secure and support external commissions from partners such as Public Health
- They are sometimes less commercially focused and typically cannot generate the same levels of income from leisure facilities, gyms, swimming lessons and group exercise classes. Cost management can be inhibited by having to use local authority systems and reporting
- Smaller in-house operations lack the benefits of economies of scale
- In-house teams can manage facilities and services that are not commercially attractive effectively as part of a broader portfolio of facilities and services and often can invest greater levels of management time into these services
- The service can be highly integrated, linking health, adult social care, children's services etc. which can help facilitate a 'whole-place system' approach.

4.6.26 In-house teams are the standard option for those local authorities that wish to retain full control over the operation and carry all the risks.

- 4.6.27 With in-house management all commercial, property and operational risks lie with the local authority.
- 4.6.28 In the event that the service is being taken back in-house after a previous outsourcing arrangement, there would be set up costs and timescale implications that would need to be established and additional mobilisation costs (to set up systems and equip facilities) would need to be planned for. Local authorities would also have to make arrangements for providing support services such as HR, ICT and asset management.
- 4.6.29 Some local authorities are exploring a **shared services** in-house model which could be a cluster of local authorities sharing aspects of the delivery of physical activity, sport and wellbeing services. This is an approach which has the potential to deliver some efficiencies. Care should be taken to ensure clarity on the level of influence each of the partners will have on the services. Financial auditing, allocating income and operational costs to each participating authority are key considerations when setting up shared services.
- 4.6.30 Under this approach the local authority (or group of authorities if a shared service) will retain all income and expenditure and control over the service. Improvements under this option can still be delivered via self-financing investment options and/or external grants. Potential rationalisation of facilities or improvements in relation to income generation and control of expenditure can be identified through an operational review. This model is unlikely to enable the local authority to have financial certainty in relation to the cost of the service due to the lack of a contractually fixed cost or management fee.**

Joint Venture Companies

- 4.6.31 A Joint Venture Company (JVC) in the context of physical activity, sport and wellbeing services refers to when a local authority and an external partner enter into an agreement to develop a new entity to (develop and) manage the facilities (for a limited period of time). The joint venture vehicle must be set up as a defined legal entity which can take several structures including companies limited by shares, companies limited by guarantee, Community Benefit Societies, Co-operatives and many others.
- 4.6.32 Each party must be clear on the intended length of term of the joint venture, its goals and objectives, how the parties will achieve a return on investment and how they will protect their investment if another party wishes to exit or fails to perform their obligations. Normally, all parties share the risks and rewards in line with their ownership of the joint venture
- 4.6.33 Once established, the JVC would have to go through the same procurement regulations to procure a management operator partner although once established the contract may not have to be re-procured within set time frames.

Community Interest Companies

- 4.6.34 A Community Interest Company (CIC) is a special type of limited company which exists to benefit the community rather than private shareholders.
- 4.6.35 To set up a CIC, local authorities will need:
- A 'community interest statement', explaining what your business plans to do
 - An 'asset lock' – a legal promise stating that the company's assets will only be used for its social objectives, and setting limits to the money it can pay to shareholders
 - A constitution – you can use the CIC regulator's model constitutions
- 4.6.36 There are a comparatively low number of mainstream physical activity, sport and wellbeing services run through CICs although they are quite common amongst sports clubs.
- 4.6.37 In terms of the key characteristics of a CIC they are essentially the same as a local NPDO trust.

Asset transfer

- 4.6.38 An approach that is being considered by some local authorities in response to continued reductions in budget levels is asset transfer. This is particularly relevant to smaller community facilities such as community centres and sports pavilions. Asset transfers are not typically used or appropriate for larger leisure service portfolios due to their complexity. The main difference between this and other delivery approaches is that there may not be a full services specification although there may be a service level agreement or funding arrangement. Asset transfers would be subject to the provisions of Section 123 of the Local Government Act 1972 which requires that local authorities do not dispose of land "for a consideration less than the best that can reasonably be obtained". There are a number of different asset transfers and set out below are the main ones used in the sector:
- Community Asset Transfer
 - Long-term leases with restrictions
 - Long-term leases without restrictions.
- 4.6.39 Community Asset Transfers (CAT) involve a shift in the long-term management and/or ownership of land or buildings from local authorities to groups and organisations such as trusts, social enterprises, voluntary groups, sports clubs, national governing bodies etc. However, it could also be an asset transfer to another public body, such as a town or parish council or to a school (in the scenario of dual-use facilities particularly).
- 4.6.40 CAT is more prevalent for managing libraries than leisure facilities and there is specific [guidance from DCMS](#).

- 4.6.41 In response to diminishing budgets in recent years, some local authorities are also taking a more fundamental approach to asset transfers whereby sites are transferred via a long-term lease to external organisations. This is more likely to occur on an individual facility basis. The leases can either contain restrictive covenants so that the use of the land is reserved for physical activity, sport and wellbeing purposes or come without any restrictions and allow disposal of the site for a commercial value.
- 4.6.42 The key features of asset transfer are:
- The operator partner or community group will have a long-term lease and the delivery is purely a property transaction and not a management contract
 - The local authority will not be able to install a sophisticated services specification associated with a management contract and as such has limited influence over the service, programming and overall outcomes delivered by those assets included in the long-term lease
 - The assets normally run at a revenue surplus or break even, and the local authority does not subsidise them
 - The local authority will have less control over the assets and be unable to use the land they occupy for other purposes for the duration of the lease
 - The operating risks of the services lie with the leaseholder although in some cases the local authority may have certain landlord responsibilities, particularly with community asset transfers where the community group have limited resources.
- 4.6.43 Some local authorities are looking to lease their high value leisure sites to commercial operator partners in exchange for revenue which can be taken as a revenue saving (thus decommissioning the service) or more positively redirecting resources to commission local physical activity, sport and wellbeing interventions for inactive and less active communities. However, the absence of a detailed services specification can mean that the local authority cannot influence the service and specify that it must provide access to all sections of the community in line with its strategic priorities.
- 4.6.44 Under this approach the local authority will be transferring the asset on a long lease to a third party. For highly valued but often unsustainable community physical activity, sport and wellbeing facilities, this can sometimes be an option in order to retain, rather than close a facility. By working with community groups, the voluntary and third sector, this option can provide a solution on the basis of a sustainable business model. However, there is a risk for local authorities that they may be missing an opportunity to deliver key health and wellbeing programmes to vulnerable residents and those on low incomes.**

- 4.6.45 It is recommended that particular legal and specialist advice is sought when exploring community asset transfers or when an operator partner approaches the local authority to consider one due to the long-term nature of the lease and the relinquishing of influence over service delivery. Local authorities should take legal advice when amending existing contracts for physical activity, sport and wellbeing services to ensure they are doing so within the parameters of the Public Contracts Regulations 2015.

4.7 Defining the Scope of Services for a Management Options Appraisal

- 4.7.1 As well as defining and understanding the management options which will be explored as part of the options appraisal as summarised in Section 4.6, the local authority will need to define the scope of the services which they want to include in the management options appraisal. This will enable the local authority to consider each of the management options in the context of services which they will need to deliver.
- 4.7.2 Typically for physical activity, sport and wellbeing services this includes physical activity, sport and wellbeing facilities, Active Communities (outreach/development) and outdoor physical activity, sport and wellbeing facilities. The scope should be aligned to the services covered in the strategic outcomes planning phase of commissioning outlined in Section 2.
- 4.7.3 The local authority may also consider other leisure and cultural services such as **libraries, arts services, parks and theatres.**
- 4.7.4 The management options appraisal provides an opportunity for authorities to explore options for joined-up management, governance and co-location of services and whether there may be opportunities for rationalising assets and/or capital investment.
- 4.7.5 Single tier local authorities should enter into early discussions with key commissioners (e.g. Clinical Commissioning Group, Children's Services, Adult Social Care and Police etc. as appropriate) to identify areas in which the service can be 'commissioned' or 'co-commissioned' to deliver wider outcomes through integrated services (e.g. exercise on referral, weight management, mental health interventions etc.). This could have an impact on the management options appraisal. For example, co-location of facilities could provide more integrated services and economic benefits from having fewer individual buildings.
- 4.7.6 District authorities should engage with their unitary partners to explore opportunities for commissioned interventions and co-location of facilities.

4.7.7 When considering the scope of services, local authorities should:

- Consider service integration and rationalisation as part of their strategic approach to physical activity, sport and wellbeing (which should have already been developed)
- Ensure there is a market or different management models available for each aspect of the services within the scope
- Take account of the local authority's ambitions for maximising social value from the services including health, quality of life and the local economy.

4.8 Comparing the Relative Advantages and Disadvantages of Management Options

4.8.1 Each management option has particular features, advantages and disadvantages bespoke to a local authority and it is recommended that external independent advice is sought to explore this for the consideration of senior officers and elected Members through a formal management options appraisal.

4.8.2 The typical range of key areas for comparison and consideration can be seen in Table 4.1. The Management Options Appraisal should be bespoke and focused on a local authority's priorities for the service. Thus, the key areas of comparison and weighting applied to each should be adapted for a local authority.



Table 4.1: Leisure Management Options – Key Areas for Comparison

Key Features
Financial Criteria
Potential for improved revenue savings
Asset risk transfer
Medium term financial planning or degree of financial certainty
Access to economies of scale to reduce operational costs
Potential to generate capital receipts
Set-up costs and lead-in time
Potential for VAT and NNDR exemption
Access to capital funding (e.g. prudential borrowing, private capital)
Access to external revenue funding – commissioning.
Non-Financial Criteria
Potential to contribute to delivery of strategic outcomes
Opportunities to contribute to improving health and wellbeing of residents
Overall social value including contributing towards improving local health outcomes, reducing the burden on the NHS, local employment and use of the local supply chain
Retention of strategic control
Operational risk transfer
Retention of operational control
Protection of staff – Roles, Terms and Conditions
Retention of publicly accessible facilities
Potential to develop shared services
Potential for community and staff involvement
Potential to increase participation through investment of surpluses in interventions
Potential for enhancements to service
The flexibility required for future changes to be made to the service by the local authority in the short, medium and long-term.

- 4.8.3 It is recommended that a detailed appraisal of the key factors that are deemed to be important locally is undertaken. This will provide a detailed analysis of management options, taking account of the local authority's strategic approach to physical activity, sport and wellbeing investment. The most effective way to achieve this is to agree on what evaluation criteria to use to assess each option. Typically, there would be no more than 8-10 criteria in total.

4.9 Undertaking a Management Options Appraisal

4.9.1 The key steps for assessing a management approach are set out below:

1 Establish Management Options Appraisal Project Team & Evaluation Panel

2 Set Evaluation Criteria

3 Develop a Shortlist of Options

4 Financial Modelling of Shortlisted Options

5 Analysis of Shortlisted Options

6 Evaluation of the Shortlisted Options

4.10 Options Appraisal Project Team and Evaluation Panel

4.10.1 The local authority should set up a project team to carry the management options appraisal. This is typically made up of:

- Senior officers
- Elected Members including the service portfolio holder (optional)
- Independent specialist consultants to provide technical guidance
- Internal audit to ensure impartiality and transparency.

4.10.2 Local authorities should consider potential conflicts of interest when forming an evaluation panel. For example, it may not be appropriate for officers that could be affected by any change in management arrangements under TUPE to be involved with the evaluation of management options.

4.10.3 The core function of the Evaluation Panel is to:

- Identify and agree the scope of services included in the management options appraisal
- Set evaluation criteria and weightings
- Shortlist management options
- Evaluate shortlisted options against the evaluation criteria.

4.11 Setting Evaluation Criteria and Weightings

- 4.11.1 Local authorities should give careful consideration to developing evaluation criteria in order to ensure that it is assessing what matters to the authority, the community and service users.
- 4.11.2 Evaluation criteria should be bespoke and weighted according to the local authority's priorities for its Physical activity, sport and wellbeing services. [Figure 4.1](#) illustrates the common drivers for an options appraisal which can be used to develop the financial and non-financial evaluation criteria.
- 4.11.3 The first stage of developing the evaluation criteria is to set the ratio between financial and non-financial considerations. Where the authority has challenging financial circumstances, this is typically 50% financial and 50% non-financial, although it depends on the particular circumstances of a local authority. It will be important to have senior input from the local authority's finance team at this stage.
- 4.11.4 It is important to engage with elected Members at this stage to ensure that they have an input into the evaluation criteria and weightings. Independent input from a consultant, peer or auditors can add value and ensure impartiality and technical input. This could typically be enabled via a workshop involving senior officers, elected Members and independent advisors.
- 4.11.5 The evaluation criteria selected should be aligned to the local authority's priorities, essentially focusing on what matters most or areas that will have the greatest impact on outcomes for local residents and ensure a financially sustainable service.
- 4.11.6 Typically, a workshop exercise would enable elected Members and officers to establish their priority evaluation criteria and associated weightings (level of importance). This can be facilitated by an independent advisor.
- 4.11.7 Table 4.2 provides an example of evaluation criteria and weightings based on a 50:50, financial:non-financial split which is considered a reasonable approach although ultimately this depends on the needs and financial position of the local authority.
- 4.11.8 The weightings of individual criteria need to add up to the total percentage allocated for the 50:50, financial:non-financial allocation. Thus, this enables the **relative importance** of each criteria to be agreed in advance.
- 4.11.9 Note the description of each criteria is based on '**the extent or degree to which**' the criteria meet the local authority's priorities. This enables when scoring options, for the criteria to be scored consistently and unambiguously. See Section 4.15 for guidance on scoring.

Table 4.2: Example of Options Evaluation Criteria

Financial Criteria		% Weighting
1	The degree to which the option will deliver revenue savings linked to whole life costings	
2	The degree to which the option minimises operational risks to the Authority e.g. staff costs, operational costs, health and safety, quality assurance etc.	
3	The degree to which the option minimises commercial risk to the Authority	
4	The degree to which the option minimises asset management risks, ensuring sufficient funds are allocated for maintenance and lifecycle costs	
5	The degree to which the option could offer a stable revenue surplus which could be used to cross subsidise other interventions that require subsidy.	
TOTAL		50%
Non-Financial Criteria		
1	The degree to which the option enables the Authority to deliver its key strategic objectives for physical activity, sport and wellbeing including reducing inactivity levels	
2	The degree to which the option will deliver a consistently high quality service	
3	The degree to which the option will enable the Authority to respond to changing community needs	
4	The degree to which the option will maximise access to the service for all sections of the community	
5	The degree to which the option delivers overall social value policy priorities including social, economic and environmental outcomes.	
TOTAL		50%

Developing a Shortlist of Options

- 4.11.10 Normally it is not necessary for a local authority to undertake an in-depth appraisal of all the management options available as many will not be relevant or affordable to that local authority.
- 4.11.11 [Table 4.2](#) can be used to inform a desktop exercise of shortlisting the various options. For example, if the local authority wants to retain strategic control of the services and what is delivered by them this may rule out the Community and Commercial Asset Transfer options.
- 4.11.12 In most cases local authorities want to retain strategic control of the physical activity, sport and wellbeing service through direct management or through a contract and services specification in which case the most practical and realistic options are:
- Competitive procurement likely to result in a multi-site operator partner/NPDO managing the services
 - Local Authority Trading Company
 - In-house management
 - Existing local charitable NPDO.

4.12 Financial Modelling

- 4.12.1 The local authority should undertake financial modelling for each of the shortlisted options it intends to evaluate in depth. The financial models for management options are significantly different. In producing the financial models, the existing performance can be used as a baseline and the key areas to consider for each option are:
- VAT exemption
 - Non-domestic rate relief
 - Local Government terms and conditions applying or not applying, in particular, the impact on employer pension contributions
 - Support or head office charges and re-charges
 - Commercial capacity to generate sales, including branding and marketing
 - Ability to gain economies of scale on supplies and services.
- 4.12.2 The local authority may need to consider independent expert advice in producing financial models for each option. The financial models for each option with supporting assumptions should be shared with the Evaluation Panel prior to undertaking the evaluation exercise.

4.13 Assessment of Non-Financial Implications

- 4.13.1 The local authority should also undertake an assessment of the key non-financial implications of each of the shortlisted options on the service and set out the key findings for the Evaluation Panel to refer to when carrying out the evaluation.
- 4.13.2 The non-financial areas for assessment should be directly related to the evaluation criteria chosen by the authority and include considerations such as:
- Ability to contribute to achievement of strategic objectives
 - Quality of service delivery
 - Ability to generate social value
 - Flexibility and responsiveness to community needs
 - Legal, TUPE and HR considerations.
- 4.13.3 The local authority may need to consider independent expert advice in providing guidance on the implications for each option with reference to the local authority's specific circumstances and scope of services.

4.14 Carrying out Analysis of the Options

- 4.14.1 An effective method of undertaking the evaluation is to provide an independent report to the Evaluation Panel outlining the strengths and weaknesses of each option being considered, incorporating examples/case studies of what has been successful in other local authorities. This would also include summary financial models for each option. This should be produced well in advance to allow sufficient time for the panel to read and understand the report to enable them to go into the options evaluation exercise informed.
- 4.14.2 The report would provide evidence and analysis to enable a judgement to be made on the evaluation criteria when applied to a particular model. Providing case studies, supporting information and analysis in the report will support the evaluation panel in taking an informed view prior to any evaluation exercise.

4.15 Carrying out Evaluation of the Options

- 4.15.1 The evaluation of management options can ideally be undertaken by a panel typically made up of:
- Senior officers
 - Members including the service portfolio holder (optional)
 - Independent specialist consultants to provide technical guidance
 - Peers
 - Internal audit to ensure impartiality and transparency.

- 4.15.2 In order to provide consistency, the same panel that set the evaluation criteria should be used to undertake the evaluation.
- 4.15.3 This can then be followed up by a workshop to essentially score each option against the different criteria. It is recommended that this is independently facilitated. There are a number of approaches that can be used to score the options; however, a consensus-based approach is recommended where the group agrees a score and provides a rationale for why an option is scored with provision of commentary on the reason to be recorded to provide an audit trail.
- 4.15.4 Scoring can be undertaken in a number of ways and sometimes local authorities already have a standard approach.
- 4.15.5 It is recommended that a scoring matrix be developed and communicated with the evaluation panel in advance.
- 4.15.6 Scores for each evaluation criteria need to be applied consistently. Table 4.3 shows an example approach. Note the description of each criteria is based on **‘the extent or degree to which’** the criteria meet the local authority’s priorities. This enables when scoring options, for the criteria to be scored consistently and unambiguously with a high score denoting a positive, and a low score denoting a negative.

Table 4.3: Scoring Descriptions

Score	Description of Score
5	The management approach meets the criteria fully in line with the local authority’s requirements
4	The management approach meets the criteria to a significant degree with the local authority’s requirements
3	The management approach meets the criteria satisfactorily and has some disadvantages
2	The management approach only meets some of the criteria and has a number of disadvantages
1	The management approach does not meet the criteria in a number of key areas and has a significant number of disadvantages
0	The management approach does not meet the criteria to any degree.

- 4.15.7 The evaluation exercise should be designed to enable time for each model to be discussed and the criteria explored and discussed prior to the panel agreeing the score. It is recommended that detailed minutes are taken of the session to provide an audit trail and that an evaluation grid is developed which captures the justification for the score to provide transparency over the process.

- 4.15.8 This will also enable moderation of the scores to be undertaken if required with an evidence base and clear audit trail.
- 4.15.9 The raw scores (unweighted) should be recorded in one session and it is recommended that the workshop has a break to enable the scores to be calculated by the facilitator and the order of preference of options to be established.
- 4.15.10 The outcome of the exercise with weighted scores can be discussed prior to any formal reporting on the outcome.
- 4.15.11 If options are scored quite closely and there is no clear preferred option, the local authority may wish to revisit its weightings or introduce additional criteria to assist in differentiating between options.
- 4.15.12 The implications of this exercise can potentially make a significant financial and non-financial contribution to local outcomes for a local authority over (for example) a ten-year period.**
- 4.15.13 The final scores should be shared in the workshop and agreement reached on communicating the findings/reporting. In the event that there will be a significant change in the management approach, this will have a significant impact on staff running the service and thus needs to be managed sensitively.
- 4.15.14 Often there would need to be a formal agreement by the local authority to accept the outcome and recommendations from the evaluation exercise.

4.16 Management Options Appraisal Checklist

- 4.16.1 This section sets out a checklist for local authorities to complete before they confirm the decision on their future management delivery approach for their physical activity, sport and wellbeing service. Greater value for money and delivery of outcomes will be achieved if the authority has gained a full and clear understanding (often by using the Strategic Outcomes Planning Guidance) of:
- How the service is performing now
 - What the local needs are
 - A strategic vision to meet these needs
 - How it intends to deliver that vision through facilities, services and partners etc.
 - The outcomes it requires the chosen vehicle to be contributing to in the future.
- 4.16.2 The checklist is shown in [Table 4.4](#).

Table 4.4: Management Options Appraisal Checklist**Management Options Appraisal – Checklist**

- 1 Has the local authority developed clear, local strategic objectives for its sport, physical activity and wellbeing services as outlined in Section 2 of this guidance?
- 2 Does the local authority have clarity on what its strategic objectives are, and the behaviour change it is looking to enable going forward?
- 3 Does the local authority fully understand its affordability position including forward capital and revenue resources, asset condition and forward maintenance requirements?
- 4 Has the local authority undertaken robust financial modelling for each of the shortlisted management options it is assessing?
- 5 Have opportunities for joined-up management, governance and co-location of services been investigated? Does the arrangement need to include flexibility for future asset rationalisation?
- 6 Has the local authority entered into discussions with key commissioners (e.g. CCG, children's services etc.) to identify areas in which the service can be 'commissioned' to deliver wider outcomes (e.g. exercise on referral, weight management etc.)?
- 7 Has the local authority decided the scope of facilities and services that will be managed by the management approach/model(s)?
(This will include core leisure assets but are there also wider opportunities, for instance, linked to libraries, community and cultural assets? It will also include the role of active communities (sports development/outreach)).
- 8 As a minimum, have elected Members been appropriately informed/consulted with in relation to the process?
- 9 Has cross-party political support been sought for the management options appraisal process? (Achievement of this is desirable but not always possible).
- 10 Has the local authority identified its evaluation criteria, weightings and scoring system for the management options appraisal?
- 11 Has the local authority formed an approach to evaluating options such as through the establishment of a management options appraisal, Evaluation Panel and process for formalising the decision through the local authority?
- 12 Have legislative implications been adequately considered with an audit trail in place, including the impact of the Localism Act (2011), the Public Services (Social Value) Act (2012) and the Equalities Act (2010)?
- 13 Has the management options appraisal been carried out to identify the best model to enable the delivery of the strategic objectives including consideration of affordability, investment requirements, capital and revenue costs, impact on local authority's central support budgets, set-up costs, implementation timescales and risk analysis?

- 4.16.3 A local authority should endeavour to positively answer all of the questions above before finalising its decision on the future management arrangement for the service. This is true under all options, whether a local authority is intending to keep the service in-house, enter into a partnership with a third party or set up a new organisation to deliver the service. Ultimately this will enable senior officers to support elected Members in deciding on the optimal management option based on all of the facts.



5 Key Considerations for Capital Projects



Covid-19 Key Considerations

- The return on investment from capital projects is likely to be lower than pre-Covid-19 levels as activity and income yield will be adversely impacted by social distancing restrictions and the likely recession post-Covid-19.
- There may be issues with the supply chain for building materials and professional services as a result of lockdown and some businesses reducing capacity through the crisis or through a general downturn in economic conditions.
- The cash flow and reserves of leisure operator partners have been under severe pressure during Covid-19. It is less likely that they will have sufficient reserves to provide capital.
- Local authorities may not be in a position to repay capital due to budgets being under pressure through Covid-19.

5.1 Sources of Capital Funding

- 5.1.1 There are a number of sources of capital funding that local authorities may be able to access for investment in physical activity, sport and wellbeing facilities. Table 5.1 provides an outline of these and the key considerations for local authorities. A review of sources of capital funding available should be undertaken to explore the optimal solution for the local authority's specific circumstances.

Table 5.1: Funding sources for capital projects and key considerations

Funding Source	Key Considerations
Local Authority Lending & Prudential Borrowing	<ul style="list-style-type: none">• Very low interest rates• The local authority has flexibility on how the loan can be used• Each local authority has a limit for Prudential Borrowing set by the Prudential Code Regime (2017)• Used regularly in England for developing physical activity, sport and wellbeing facilities, in particular, invest to save opportunities• Local authorities should ensure that when included as part of a procurement and the operator partner is effectively spending the money on their behalf, they comply with State Aid rules. This can be mitigated by ensuring there is a demonstrable return on the investment• Capital expenditure may impact on the local authority's overall VAT position in relation to its 'de minimis' threshold.

Funding Source	Key Considerations
Asset disposal	<ul style="list-style-type: none"> • Asset disposal may be relevant if an authority is developing a new facility on a different site, releasing land which will have a value • Local authorities would need to consider the impact and costs of demolishing old assets which could offset the capital receipt for the land.
Private Funding through the Local Authority's Operator	<ul style="list-style-type: none"> • Typically, this will carry a fully commercial private sector interest rate – significantly higher than Prudential Borrowing • Unlikely that a large capital project such as a new physical activity, sport and wellbeing facility could be funded this way without a long-term management contract • Operator partners will only want to invest where they have sufficient confidence in the commercial return • Operator partners will be reluctant to invest where they are reaching the end of a contract with an authority • Some operator partners have limited access to capital funding.
Private Sector Funding for Specific Facilities	<ul style="list-style-type: none"> • There are private sector organisations that will fund specific facilities – normally those which have a greater commercial return such as health and fitness or spa facilities • The funding partner will invest in the project including project management of any building works • This will normally be in return for holding a share or all of the income generated from the project over a period of time – usually 10 to 15 years • This can result in a specific facility within a wider centre where the funding partner may carry some of the staffing and operational costs • This approach is often used by in-house managed services and small trusts as a way of developing facilities without the need for internally generated capital • This approach can be problematic if the local authority wants to procure a management operator partner for its whole service as key areas such as health and fitness may be ringfenced as they are bound by a separate contract with the investor partner • It is more difficult to create a joined-up service under this approach • The local authority is indirectly accessing private sector capital at higher rates of interest than Prudential Borrowing. <p data-bbox="400 1839 1244 1877">Appendix 14 provides further information on this approach.</p>

Funding Source	Key Considerations
Private Capital Finance (PCF)	<ul style="list-style-type: none"> • The opportunity to attract PCF as an alternative to more established sources of capital funding for local authorities has recently emerged • Interest rates may to be higher than Prudential Borrowing but lower than traditional private sector financing • Private sector funder confidence has grown following a period of change in the efficiency and financial sustainability of the local authority leisure sector. This is supported by the willingness of local authorities to underwrite payments • Can be used in conjunction with a development partner to transfer project delivery risks away from the local authority • Repayments can be over a longer period than other funding sources. <p>Appendix 14 provides further information on this approach.</p>
Sport England Strategic Facilities Fund	<ul style="list-style-type: none"> • The key objective of the Sport England Strategic Facilities Fund is to support the sector to invest strategically to deliver local outcomes that are essential to local communities. This means starting with local insight and really understanding what the local community needs and wants. It means taking a place-based approach to make sure existing and future facilities will work together, not just looking at an individual building or the needs of an individual sport • Sport England encourage local authorities to be clear about the purpose of their investment and encourage the development of sustainable facilities capable of supporting service delivery which contributes to local strategic outcomes. • Sport England encourage local authorities to work collaboratively (across sectors and boundaries) to develop insight into local needs and to determine local strategic outcomes, including how to support behaviour change in less active communities. • The fund is designed to support capital investment into local facilities, providing new opportunities to encourage people to live healthier and more active lifestyles, particularly those who are currently less active and inactive • To access this funding, local authorities will need to demonstrate a clear need for any proposed investment, ideally utilising the Strategic Outcomes Planning Guidance. Sport England can provide support in implementing this.

Developer Contributions

- Through the planning system developers may be required to pay:
 - a Community Infrastructure Levy (CIL) – a financial charge set by a local authority which developers must pay when they bring forward new development. The purpose of CIL is to contribute to new infrastructure to support growth in an area; and
 - Planning Obligations (Section 106 agreements) – these may be secured by local authorities at the planning application stage to help mitigate the impact of a proposed development. This may include providing new or enhanced sporting provision to meet the needs generated by the development for such provision.
- Local authorities have a significant degree of discretion over how they use CIL funding whereas the use of planning obligations must meet three tests:
 - be necessary to make the development acceptable in planning terms;
 - be directly related to the development; and
 - be fairly and reasonably related in scale and kind to the development.
- CIL and planning obligations (so long as they meet the three tests) can be used as contributions towards larger projects.
- The approach and use of CIL and planning obligations for sporting provision will vary between local authorities depending on a number of factors including competing infrastructure priorities, land values and the robustness of their evidence base for physical activity, sport and wellbeing to help justify and direct appropriate contributions.
- Local authorities are required to publish and maintain annual Infrastructure Funding Statements detailing their developer contributions funding and spending (CIL and planning obligations).

5.2 VAT

- 5.2.1 A key issue for local authorities with any capital project is VAT exemption. If the local authority is close to its de-minimis VAT threshold, then it may not be able to recover VAT on the expenditure associated with a capital project. For a large new physical activity, sport and wellbeing facility this could amount to £ millions in irrecoverable VAT. Local authorities may need to look at a delivery structure where the capital expenditure is undertaken by a third party such as the operator partner or a development partner and paid back through a management fee or as a loan repayment.
- 5.2.2 Sport England advise local authorities to seek specialist VAT advice when undertaking major capital projects.

5.3 Considerations for Procuring New Build Projects

Introduction

- 5.3.1 There are several procurement processes that may be required to deliver a new or refurbished physical activity, sport and wellbeing facility. Consideration should be given to the provision of external specialist support to complement the local authority's in-house resources.
- 5.3.2 These could include the procurement of:
- Project management (where an in-house resource is not available)
 - Financial advice
 - Legal advice
 - Technical team comprising some or all the following:
 - Project management
 - Architect
 - Quantity surveyor
 - Mechanical engineer
 - Electrical engineer
 - Structural engineer
 - Civil engineer
 - Principal designer
 - Other project specific disciplines, i.e. specialists in acoustics, BREEAM, transport, planning, ecology, artificial and natural outdoor sports surfaces, clerk of works etc.

- Specialist surveys and investigations
- Principal contractor
- Leisure operator partner advice
- Leisure operator partner
- Equipment suppliers.

5.3.3 This section deals with the procurement of the technical team and the principal contractor.

General Client Considerations

5.3.4 Any public procurement process must comply with the Public Contract Regulations 2015. Whether it is necessary to follow an Official Journal of the European Union (OJEU) compliant process will depend on the likely value of the contract(s) and whether it is above or below the OJEU threshold. If the value of the contract(s) is/are below the threshold, the authority may opt to comply with their own financial standing orders and seek competitive quotations or tenders or use a suitable framework. However, for most projects an OJEU compliant process will be required.

Client Considerations for OJEU Procedure

- 5.3.5 The local authority needs to determine if it has the internal resources to manage the procurement. If the local authority opts to run an OJEU procurement themselves, as opposed to using a framework, input will be required from legal, procurement and technical officers. Should such resources not be available internally, the local authority can opt to use a procurement specialist with access to legal and technical advice.
- 5.3.6 Managing an OJEU process can be resource intensive and therefore costly. Sufficient budgets will need to be identified.
- 5.3.7 The local authority needs to determine if there are sufficient resources available to meet the programme. The programme will be dependent on several factors, for example:
- Political considerations
 - Replacement of an existing facility
 - Programme for the procurement of a new operator partner
 - For work to an existing facility, limiting the operator partner's loss of revenue
 - The scale and size of the facility
 - Other developments in the location
 - The budget available for the procurement process and the value of the contract(s).

- 5.3.8 An overview of the OJEU procurement routes is provided below. Those which apply to technical and construction procurement are:
- Open procedure
 - Restricted procedure
 - Competitive procedure with negotiation
 - Competitive dialogue.
- 5.3.9 The use of Competitive Dialogue or Competitive Procedure with Negotiation would only be considered in the unlikely circumstance of a local authority being unable to define the requirement.
- 5.3.10 For the procurement of a technical team, the restricted procedure is often the preferred option unless the programme requires a quick procurement, where the open procedure can be used. The main issue here being that the local authority will potentially receive many bids that it will need to fully assess for quality and price as there is no pre-qualification stage.
- 5.3.11 Typical procurement timelines from inviting expressions of interest are:
- Open procedure 3-4 months
 - Restricted procedure 3-5 months.

Client Considerations for Frameworks

- 5.3.12 There are a considerable number of consultant frameworks for use throughout the United Kingdom. Local authorities are encouraged to determine that there is a framework available that includes consultants with sufficient experience in the leisure sector. If this is not the case, then subject to thresholds, consideration should be given to undertaking a bespoke OJEU procedure as noted above.
- 5.3.13 It is essential that consultants on frameworks have the requisite physical activity, sport and wellbeing skills, expertise and experience, particularly for projects in the public sector.**
- 5.3.14 There are several advantages to using a framework:
- Compliant with the Public Contract Regulations 2015
 - Can reduce the programme
 - Can reduce costs
 - Do not require a large in-house resource
 - Procurement process is often managed by the framework
 - Consultants can be subject to performance measurement through key performance indicators (KPI's) by the framework
 - May be subdivided into suitable lots by discipline or grouped disciplines, by region and/or by value
 - May have pre-agreed rates and prices competitively tendered.

- 5.3.15 Frameworks may be national or just for use in a geographic region and may include mechanisms to run further competition between framework consultants or in certain circumstances by direct award.
- 5.3.16 Some frameworks make a charge for their use which can vary from less than 1% of the total fee value up to 5%. Charges may depend on the total fee value. The local authority will need to determine if it will need to enter into an access agreement (contract) with the framework.
- 5.3.17 Depending on the nature and complexity of a project, the typical procurement timeline for a framework approach is 1–2 months from issuing the tender documents.

Risk

- 5.3.18 The procurement of a technical team is a relatively low risk process overall. The main risk is one of challenge to the award of contract. This can delay the award or result in the award being set aside, potentially at the cost of the local authority in that it will need to determine if it should run the procurement again. Under a bespoke process, the local authority needs to determine if it will need specialist legal and procurement advice to ensure that the process has been managed in accordance with the Public Contract Regulations 2015. Under a framework, the local authority needs to be satisfied that the framework has the skills and resources to manage the procurement on behalf of the local authority in accordance with the regulations.

Design Control/Novation

- 5.3.19 Depending upon the procurement route used for the appointment of a principal contractor, the local authority needs to determine if it will novate certain members of the technical team to the contractor. It is however recommended that the local authority needs to determine if it retains or employs separately some expertise in relation to the project. On most, if not all projects, the project manager or employer's agent and quantity surveyor will remain with the local authority. The architect may also retain an assurance role for the local authority.

Overview of Technical Team Procurement Options

- 5.3.20 The options available to a local authority to procure a technical team are to a large extent governed by the scale and complexity of a project and how the local authority wants the project to be managed. For example, in developing a new physical activity, sport and wellbeing facility, the local authority could elect to make separate appointments for the technical team with an independent project manager reporting directly to the local authority (employer) and being responsible for managing the architect and the other members of the technical team.
- 5.3.21 Quantity surveying services could also be a separate appointment by the local authority, reporting directly to the local authority or the project management and quantity surveying services could be one combined appointment.

- 5.3.22 Technical team appointments could be made individually for each relevant discipline or combined into one 'design team' appointment with (usually) the architect appointed as 'lead designer' assuming the responsibility for managing the design team.
- 5.3.23 Alternatively, the local authority could opt to make one technical team appointment for project management and full design services, including all the technical disciplines needed for a project.
- 5.3.24 A local authority will usually need to agree a procurement strategy for officer or elected Member approval that considers the merits of the chosen option and why other options have been discounted. This should include cost, the prevailing market conditions, the type of project, timescales, the accountability of the team, governance and compliance with the Public Contracts Regulations 2015.

Overview of Principal Contractor Procurement Options

- 5.3.25 The options available to a local authority to procure a principal contractor are to a large extent governed by the scale and complexity of a project, programme, attitude to risk, affordability, control over design, prevailing market interest and how the local authority wants the project to be managed.
- 5.3.26 There are three main issues to consider when developing a procurement strategy for a contractor which are inter-linked and dependent on the factors noted above:
- Whether to use a bespoke OJEU process or use a suitable framework
 - The contracting arrangement i.e. design and build, traditional or other
 - If design and build, single stage or two stage.
- 5.3.27 For procurement of a principal contractor, the Restricted Procedure has tended to be the most common option, with the Open Procedure only being used if the programme dictates the need for a quicker procurement process (no pre-qualification stage) or if there is likely to be a very small number of bids.
- 5.3.28 The Open and Restricted Procedures do not permit any negotiation with the bidders, only clarification. It is therefore essential that every project must be assessed on its own merits when deciding the procurement procedure. For example, if there is the possibility of having to negotiate with one or more bidders, particularly in the case of a single stage or two stage Design and Build Contract, the use of Competitive Procedure with Negotiation should be used. Similarly, this approach will be beneficial if there is a need for 'value engineering' or price negotiation should tenders be unaffordable.
- 5.3.29 The use of competitive dialogue should only be considered for projects where the local authority is unable to sufficiently define the requirement.

Contracting Arrangements

5.3.30 There are essentially three contracting arrangements for leisure capital projects:

- Traditional Contracting
- Single Stage Design and Build
- Two Stage Design and Build.

5.3.31 Other contracting arrangements such as management contracting, or construction management are for complex projects, usually of a much higher value than typical leisure capital projects and are not considered in this guidance.

5.3.32 Traditional Contracting – the local authority (employer) appoints a technical team to fully design the new facility prior to seeking bids from contractors. Bids are based on specifications and drawings and a draft contract that comprise the tender documents prepared by the technical team, and sometimes a bill of quantities. The bidding contractors submit their fixed price for the project based on the tender documents. The local authority then enters into contract with the contractor who has provided the most economically advantageous tender (cost/quality) with the technical team remaining employed by the local authority.

5.3.33 Traditional contracting offers the local authority maximum control over design and quality. However, it involves minimal risk transfer from the local authority to the contractor. The cost of any changes to the design during construction due to design errors or unforeseen circumstances beyond the contractor's control will be met by the local authority. This can increase cost and extend the programme. Over the past two decades, traditional contracting has been rarely used.

5.3.34 Single Stage Design and Build – typically the technical team develop the design to RIBA Stage 3, sometimes to RIBA Stage 4 to offer the local authority (the employer) more control over the quality of the design and then bids are sought from contractor based on the employer's requirements. The bidding contractors submit their fixed price for the project based on the employer's requirements. The appointed contractor then develops the design to completion in parallel with constructing the facility.

5.3.35 Single stage design and build maximises the transfer of risk from the local authority to the contractor. Only changes made by the local authority to the employer's requirements will attract additional cost to the local authority. It can also accelerate the overall project programme as the contractor is responsible for completing the design whilst undertaking the construction.

5.3.36 This approach has become less popular over the last 5 or 6 years due to contractors operating in the leisure market having a good supply of work. During the tender stage, the contractors and their supply chain have to commit considerable resource to obtaining prices in order to submit a fixed price bid, whilst in competition with 3-5 other bidders.

- 5.3.37 At the time of publishing this guidance, Sport England are not aware of any frameworks that offer single stage design and build.
- 5.3.38 Two Stage Design and Build** – at the time of publication this contracting arrangement is the most widely used in the leisure sector due to prevailing market conditions. Bidding contractors do not need to commit a large resource to preparing their first stage bid, nor is there any need for them to engage with their supply chain at this stage.
- 5.3.39 Typically, the design is developed by the local authority's technical team to RIBA stage 3, sometimes stage 2, with a set of employer's requirements. Bidders then provide their costs for preliminaries, overheads, profit and fees along with qualitative requirements. Fees might include a fixed fee for a pre-construction services agreement and fees for design. The bidders may also be required to provide a view on the robustness of the construction budget and their view of a likely contract sum for the project.
- 5.3.40 A preferred bidder(s) is then appointed for the second stage tender process, whereby the design is developed in tandem with the local authority's technical team. The preferred bidder(s) will input to the design in terms of 'buildability' and engage with their supply chain to provide a fixed price design and build offer at the completion of the second stage, typically at RIBA stage 4.
- 5.3.41 Like single stage design and build, two stage design and build maximises the transfer of risk from the local authority to the contractor. Only changes made by the local authority to the employer's requirements can result in additional cost to the local authority. It can also further accelerate the overall project programme as the contractor is responsible for completing the design whilst undertaking the construction and having already provided input on the 'buildability' of the project.
- 5.3.42 The key risk on two stage design and build is cost 'creep' between the estimated cost at the first stage and the fixed price offer at completion of the second stage. It is not uncommon to see increases in the order of 15% or more between the first and second stages, necessitating extensive value engineering that can compromise quality and extend the programme, or in the worst case, the project is abandoned due to being unaffordable.

Typical Procurement Timelines

- 5.3.43 Defining a typical timeline for procuring a leisure capital project, whether it is a new development or refurbishment, is influenced by many factors. These factors include the selected procurement process and contracting arrangements and external factors such as local authority and stakeholder approvals.
- 5.3.44 The quickest route, commencing at the issue of the OJEU contract notice to contractor appointment is Traditional, taking 3-4 months. However, the lead in time, i.e. undertaking and completing the design is much longer.
- 5.3.45 For single and two stage design and build, the procurement timeline is typically 8-10 months with a reduced design period. Use of a framework can reduce this to 6-8 months.

Form of Contract

- 5.3.46 For a standalone construction contract, the use of a proprietary form of contract is recommended. They are widely used and familiar to consultants and contractors. A bespoke form is not necessary. Local authorities should look to use the New Engineering and Construction Contract (NEC) or the Joint Contracts Tribunal (JCT) suite of contracts. Advice on the most suitable form of contract should be provided by the project manager with input from the local authority's procurement team.

Further Guidance

- 5.3.47 Sport England has developed a [set of documents](#) to support the decision-making process for local authorities wanting to deliver leisure capital projects which have an emphasis on affordability and financial sustainability
- 5.3.48 The documents include several indicative design options that are tightly planned, functionally efficient and accommodated within an economical building structure that can be quickly constructed. The indicative designs and capital and operational cost models provide a reference point for the development of 'affordable' projects that can be tailored and adapted to the needs and requirements of a project and its location:
- Affordable Community Swimming Pools
 - Affordable Sports Centres with Community 25m Pool Options
 - Affordable Sports Centres with Community 50m Pool Options
 - Further Information on these Documents [can be found here](#)
 - Design, Build, Operate and Maintain (DBOM) Contract.

Client Considerations for Design Build Operate and Manage (DBOM) Facility Design and Construction

- 5.3.49 Section 6 of this guidance explains in detail the procedures for procuring a DBOM contract and its subsequent operation. This section provides guidance to local authorities on the capital construction element of a DBOM based on Sport England's experience of working with local authorities on DBOM projects.
- 5.3.50 The DBOM market has matured over the past five years or so. However, at the time of publication, DBOMs are in the minority, with most local authorities opting to procure a leisure management contract and a construction contract separately.
- 5.3.51 The DBOM approach offers a local authority a single point solution, with the operator partner being able to influence and direct their design team to try and ensure that the design is efficient both operationally and commercially whilst complying with the requirements of the DBOM contract.

- 5.3.52 Similar to a conventional standalone design and build construction contract, risk transfer is maximised, in this case to the operator partner as the construction contract is between the operator partner and their chosen construction contractor, providing more cost certainty to the local authority.
- 5.3.53 Procuring the management and construction contracts separately can still allow the appointed operator partner to influence the design. To enable this, the management contract should be in place during RIBA Stage 3, when the design has been approved by the local authority, prior to seeking bids for the construction contract. The operator partner will then have the opportunity to review and comment on design proposals and attend design team meetings.

The Brief

- 5.3.54 It is essential that bidders are provided with a concise brief for the construction element of the contract. The lack of a tight brief or no brief at all is likely to reduce the number of bidders, despite soft market testing. **Bidding for a DBOM is a highly time consuming, costly, resource intensive and complex process.** To go to the market, leaving it for bidders to propose the facility mix, or to propose variant designs, or ask for bids on several different designs or facility mixes, i.e. pool and sports hall size options, will add considerable time and cost to the tender process.
- 5.3.55 To ensure the opportunity is as attractive as possible to the operator partner market, local authorities should ideally provide a brief that clearly states what is required, why it is required and where it is located. The location issue should be a 'given' and it is recommended that local authorities have outline planning permission at the outset of the tender process.
- 5.3.56 A good brief should not however deter bidders from proposing innovative solutions that comply with the proposed contract and are acceptable to the local authority.

What should the brief comprise?

- 5.3.57 Local authorities should seek sound, professional design advice from an architect with a strong track record in the design and construction of leisure facilities in the public sector at the outset of the project, who can design the proposed facility to RIBA Stage 2. The design should take account of Sport England's published Design Guidance and 'Affordable Model' suite of documents. At the outset of the tender process, the bidders will therefore be on a 'level playing field'. This approach will also avoid the scenario of bidders providing completely different design solutions to a common requirement.
- 5.3.58 It has been common to see multiple bids, each with different interpretations of the brief and different design solutions of varying quality. The situation can be further exacerbated by the choice of designer and construction contractor within each bid. A bid consortium will have on board one designer and one contractor.

- 5.3.59 The design for each bid is therefore priced by one contractor. The situation has arisen where what has been considered the best design in terms of being functionally and commercially efficient and therefore should be the least expensive to build, has been priced by a more expensive contractor, resulting in a local authority awarding the DBOM contract to a consortium with less efficient design for the construction element, but priced by a less expensive contractor.
- 5.3.60 In summary, there is no competition for the construction element of a DBOM, each operator partner has one contractor to price the proposed facility, whereas on a conventional, standalone Design and Build procurement, up to five contractors will bid for the same design.
- 5.3.61 A brief that includes the proposed design as part of the initial tender documentation will set a level playing field for the bidders and reduce the risk of receiving inappropriate or poorly designed proposals during the tender process. It will also stimulate potential bidder interest as the local authority will have specifically defined the requirement.
- 5.3.62 Careful consideration of the evaluation criteria is needed to strike the right balance between the proposed subsidy/surplus weighting and the weighting for the build proposals both in terms of quality and price. All too often the criteria are weighted too heavily towards the subsidy/surplus element which can compromise the design and build quality. Model evaluation criteria is provided in Tables 6.16 and 6.17. Tables 6.18 and 6.19 provide examples of method statement subjects and questions for the Quality element of bidder's proposals.

DBOM Market Interest

- 5.3.63 Local authorities need to weigh up the likely market interest for a DBOM contract compared with separate management and design and build contracts. Soft market testing to gain insight on the likely market interest for a DBOM contract can be misleading. It is not uncommon for local authorities to be advised of good market interest for a DBOM prior to issuing the OJEU contract notice (good being defined as 5–6 potential bidders), only to receive 2–4 responses to the 'Invitation to Submit Outline Solution' (ISOS) stage, which can reduce to two or even just one bidder by the time dialogue has ended and the process has reached the 'Invitation to Submit Detailed Solutions' (ISDS) stage.
- 5.3.64 There are a limited number of leisure operator partners with the expertise, capacity and supply chain to bid for and then deliver a DBOM contract and competition can be limited as a result.
- 5.3.65 At the time of publication, the appetite amongst leisure operator partners seems to be greater for a separate management contract, with typically up to 6 responses to an OJEU contract notice. Similarly, at the time of publication, the market appetite amongst suitably experienced building contractors for a conventional, standalone design and build contract is good, 5–8 responses is typical.

- 5.3.66 The pool of building contractors operating in the DBOM market at the time of publication is more difficult to gauge due to the limited number of contracts that have used the DBOM route. What is clear, however, is that the appetite for standalone design and build contracts remains greater because more projects are procured by conventional standalone construction contracts using proprietary forms of contract that are familiar to building contractors.
- 5.3.67 On occasion, bespoke construction contracts have been drafted by operator partners. In such circumstances, it is the operator partner's responsibility to ensure that the terms and conditions of the construction contract with their building contractor is "back to back" with their DBOM contract with a local authority.

Risk and Programme

- 5.3.68 Competitive dialogue is the most commonly used procurement procedure for a DBOM contract. It is feasible to use a competitive procedure with negotiation; however, its use would be limited to a situation where the local authority can clearly define the services scope and specification along with a clearly defined brief for the design of the facility. Both procedures can take up to 15-18 months.
- 5.3.69 At the end of the procedure, the selected operator partner will agree a fixed price contract for the design, construction, and long-term operation and management of a facility.
- 5.3.70 In terms of the construction element, the programme must include sufficient time for:
- The local authority to commission and undertake site surveys and investigations to determine the full extent and character of the site location to mitigate risk that would otherwise fall to the local authority. This will maximise risk transfer to the bidders and allow bidders to provide the most competitive price without having to include a considerable price premium to cover the design and construction risk. Typical surveys and investigations might include:
 - Ground investigation and testing
 - Flood risk assessment
 - Utilities capacity investigations
 - Transport survey and impact assessment
 - Environmental Impact Assessment
 - Ecological Surveys
 - Biodiversity statement and assessment
 - Lighting assessment
 - Surface water drainage assessment
 - Foul sewage and drainage assessment

- Surface water drainage and capacity survey
- Topographic survey
- Heritage/Archaeological Investigations
- Land contamination assessments
- Demolition and refurbishment survey (for refurbishment or demolition)
- BREEAM assessment statement
- Arboriculture survey
- Noise impact survey.
- Bidders at final tender stage to develop the design sufficiently that allows them (and their building contractor) to provide a fixed price for the construction element without the inclusion of a high premium cost for design development/construction risk
- Agree a mechanism for sharing risks post award. The contract needs to be fair and balanced not one sided with the contractor having to price for all the risks some of which may never be realised. Fair and sensible positions and risk shares are key. Items that might impact on the construction element include:
 - Variation to an agreed design and specification for the construction of a facility that could not have been reasonably foreseen by the contractor at the time of the contract award, or at the instruction of the local authority, i.e. a change in the Employer's Requirement
 - Inflation. There is time lag between letting a fixed price DBOM contract and construction commencing. Typically, this might be 4-5 months to allow sufficient time for the bidder's design team/building contractor to sufficiently develop the design, discharge pre-commencement planning conditions and to let the main construction supply chain packages. If the DBOM includes more than one facility, and where one or more facilities is not planned to commence construction work until, for example, a year after the DBOM is let, construction market conditions and therefore prices, may have changed.
 - Items that might arise from a deficiency or inaccuracy in the project information provided by the local authority at the time of letting the contract, i.e. the site investigations or surveys noted above.
 - Costs for electrical, gas, water and foul and surface water supplies and connections undertaken by a statutory undertaker.



6 Strategic Delivery Through Competitive Procurement

Covid-19 Key Considerations

- Some local authorities may need to procure an operator partner quickly due to their current operator partner becoming insolvent or a termination of the current contractual arrangements. In such cases emergency procurement powers could be deployed for a direct appointment. Further guidance can be found in [Section 3.6](#).
- Soft marketing testing which includes specific questions regarding Covid-19 recovery is critical to enable the local authority to understand the potential interest in their services and an appropriate level of risk allocation.
- Operators' appetite and ability to take on risk is likely to be lower than pre-Covid-19 levels. Local authorities will need to carefully consider shared risk on asset management and benchmarking clauses for areas such as utilities.
- If the new contract commences whilst the sector is still being impacted by Covid-19 the local authority will need to consider an open book approach for the initial period of the contract. This should be explored through soft market testing. This could mean for example that a fixed tender price will commence in year 2 of the contract with an open book approach being undertaken during year 1.
- In setting affordability levels local authorities should model this on the current market conditions as opposed to pre-Covid-19 levels. It is unlikely that the pre-Covid-19 management fee payments to local authorities will be offered by operator partners for the foreseeable future.
- Local authorities should expect a lower number of bidders for a procurement than pre-Covid-19. Potential bidders are likely to be more selective with the contracts they decide to bid on and will 'qualify out' those which are perceived as carrying too much risk or have affordability thresholds which are considered too high.

6.1 Introduction

- 6.1.1 This section provides guidance for those local authorities that have decided to undertake competitive procurement to find an operator partner to manage their physical activity, sport and wellbeing services.
- 6.1.2 Local authorities should ideally commence procurement when the Strategic Planning and Options Appraisal stages in this guidance have been completed. The local authority should have developed a strategic approach to physical activity, sport and wellbeing and its leisure infrastructure as highlighted in [Section 2](#). The management options appraisal should have clearly concluded that the procurement route is the best value option for the local authority based on Members having been provided with good quality information regarding all the options available and made their decision based on the evidence supplied.

- 6.1.3 Competitive procurement is the most widely used approach amongst local authorities in England, accounting for more than 60% of physical activity, sport and wellbeing services delivery. The process can result in the appointment of a number of types of organisation as set out in Section 4. This section deals with the approach to running a competitive procurement process.

6.2 Project Team and Resources

- 6.2.1 The local authority should consider whether it has sufficient capacity to manage the procurement. There are several roles to be fulfilled in delivering a successful procurement, including:
- Project management and reporting
 - Leisure advice
 - Technical advice (architect, cost consultant, other technical disciplines)
 - Asset management advice
 - Financial advice
 - Legal advice.
- 6.2.2 The advisor roles will include input to documentation, input to bidder clarifications and dialogue/negotiation, and evaluation of submissions.
- 6.2.3 In addition, specialist areas in which additional advice may be required include insurance, property and pensions.
- 6.2.4 Each local authority should consider the availability of in-house resources and whether appropriate expertise is available, or whether external support should be considered to ensure the project is delivered in line with best practice. Ideally, a dedicated project manager (internal or external) should be made available to lead the project. If external support is required, it is recommended that specific task lists are developed against which quotations can be sought, to minimise expenditure on external advisor fees and ensure all aspects of the process are covered.
- 6.2.5 Feedback from local authorities and operator partners that have been through this process strongly advocates the use of external advisors as critical friends at key milestones, particularly up-front in terms of developing the procurement and contractual documentation and evaluation criteria and during any clarification or negotiation phase, depending on the procurement process used. A brief to assist local authorities to commission specialist leisure procurement support can be found in [Appendix 11](#).
- 6.2.6 The project manager should ideally understand both the procurement process and the specific market issues for leisure, which can then be supplemented by more detailed expertise from in-house personnel (for example procurement specialists) or external advisors.

- 6.2.7 As a broad guide, the project management role for a physical activity, sport and wellbeing services procurement will require in the region of 2–3 days per week of dedicated resource, whilst for a DBOM project this is likely to be 4–5 days per week given the additional technical roles and input to be managed.
- 6.2.8 Input from other local authority personnel will be focused on key points in the procurement process and Table 6.1 identifies key stages where input will be required from different departments. This is in addition to on-going project management and support from external advisors. In general terms, there is up-front input to develop the documentation and populate the data room, followed by specific input during dialogue and/or clarification and evaluation of tenders.
- 6.2.9 In some instances, the level of in-house resource and expertise is limited, so consideration will need to be given to additional external support requirements.
- 6.2.10 Table 6.1 does not cover the Project Board and Project Team, which will be directly involved in all aspects of the project.

Table 6.1: Overview of local authority input required

	Pre-procurement and Procurement Strategy	Pre-Qualification Stage	Tender Stage & Evaluation	Preferred Bidder/ Contract Award
Elected Members	<p>Significant input into strategic outcomes planning.</p> <p>Input into the Procurement Strategy.</p> <p>Final approval of the Procurement Strategy.</p>	<p>Delegated authority is usually agreed for shortlisting during the tender stages, although there may be Councillor representation on the Project Board and regular progress reporting to Members. Members may also be involved with dialogue meetings.</p>		<p>Approval of recommendation for preferred bidder.</p> <p>Approval of contract award.</p>

	Pre-procurement and Procurement Strategy	Pre-Qualification Stage	Tender Stage & Evaluation	Preferred Bidder/ Contract Award
Sport, physical activity and wellbeing/ leisure development	<p>Provision of information for and on-going maintenance of the data room.</p> <p>Drafting of services specification and Payment and Performance Monitoring System (PMS).</p> <p>Input to facility requirements and design brief.</p> <p>Input to SSQ drafting.</p>	Review of SSQ responses, particularly service delivery aspects.	Input to negotiation/ clarification process and evaluation process, covering leisure-specific areas, e.g. service delivery proposals, sports development plans and local authority outcomes.	Finalisation of service method statements and reporting frameworks (KPIs and outcome scorecard in particular).
Technical – QS/Architect and Property	<p>Provision of information for data room.</p> <p>Input to services specification, particularly maintenance aspects and facility performance standards.</p> <p>Development of technical requirements and design brief (if relevant).</p>	Review of SSQ responses, particularly technical aspects.	Input to negotiation/ clarification process and evaluation process, covering property-specific areas, e.g. design and construction proposals, capital costs and maintenance plans.	Finalisation of technical requirements, maintenance plans and input to lease details.

	Pre-procurement and Procurement Strategy	Pre-Qualification Stage	Tender Stage & Evaluation	Preferred Bidder/ Contract Award
Finance	<p>Provision of information for data room.</p> <p>Approval of capital/revenue affordability positions.</p> <p>Input to PMS drafting.</p>	Review of SSQ responses, particularly financial aspects.	Input to negotiation/ clarification process and evaluation process, covering finance-specific areas, e.g. future revenue affordability.	Finalisation of base financial model and payment framework. On-going review of project affordability.
Legal / procurement	<p>Drafting of OJEU advert.</p> <p>Compliance review of documentation and approval of process.</p> <p>Development of contract and schedules.</p>	Review of SSQ responses.	Input to negotiation/ clarification process and evaluation process, covering legal-specific areas, e.g. contract mark-up.	<p>Finalisation of contract and schedules.</p> <p>Confirmation of leases/licences.</p>
Practical Tip: Legal advice may overlap with some of the other areas referred to within this table. For example, as well as needing legal input in relation to the contract, OJEU advert and schedules, legal advice in relation to property matters, employment and pension matters will be needed at all stages.				
Property/ Estates	<p>Development of contract, lease and schedules.</p> <p>Potentially preparing title documents and ensuring any superior landlord consent is obtained.</p>		<p>Input to negotiation/ clarification process and evaluation process, covering legal-specific areas, e.g. contract mark-up.</p> <p>Input into property due diligence.</p>	<p>Finalisation of contract and schedules.</p> <p>Confirmation of leases/licences.</p>

	Pre-procurement and Procurement Strategy	Pre-Qualification Stage	Tender Stage & Evaluation	Preferred Bidder/ Contract Award
Personnel/HR and Pensions	Provision of information for data room. Approval of approach to TUPE and pensions.		Input to evaluation process, covering personnel-specific areas, e.g. approach to TUPE and pensions.	Ad-hoc input during handover process (if relevant).
Insurance	Agreement of preferred insurance structures/ requirements.		Evaluation of insurance proposals.	Agreement of detailed insurance requirements and schedules.
Health & Safety	Input to development of services specification and relevant SSQ aspects.		Evaluation of health & safety method statement.	
Sustainability (environmental / energy)	Input to development of Specification and relevant SSQ aspects.		Evaluation of sustainability proposals/method statements.	

6.3 Procurement Strategy

- 6.3.1 Following the Strategic Planning phase outlined in [Section 2](#), it is good practice to translate this into a procurement strategy, which sets out the key drivers for the procurement in terms of risk profile, finances, investment and performance requirements.

Special Note Regarding Incumbents and Data and Assets

- 6.3.2 Where there is an incumbent operator partner, and the service is not operated in house, it is essential for the local authority to understand what data it has contractual access to and what can be passed onto other bidders.
- 6.3.3 Older leisure contracts may not be explicit on data ownership and may not contain provisions for data handover. The data may be even legally owned by the operator partner as opposed to the local authority. This can create several issues:

- The local authority is unable to pass on financial and key operational data to other bidders for its procurement. This may deter market interest
- Bidders submitting “blind tenders” without baseline information may either overstate or understate a financial offer to the local authority, building in the risk of the unknown or not building in the risk of the known when it comes to financials
- At contract award stage, in the event of a new operator partner being successful they may not be able to access crucial information such as direct debit details of members (bulk transfer) or customer databases including those on courses such as swimming lessons. This can potentially have a disruptive effect on the service
- The local authority or new operator partner may have to pay a fee (which can sometimes be quite significant) for the data adding to the costs of the service.

6.3.4 Local authorities in this position may need to negotiate with their incumbent prior to procurement to gain access to data.

6.3.5 As a last resort, a potential lever with an incumbent could be in relation to Public Contracts Regulation 41, (2015) which makes reference to prior involvement of candidates or tenderers. In essence it is the local authority's duty to ensure that prior involvement does not distort competition by providing all prospective bidders with the same information. If this cannot be achieved, then a local authority could consider excluding an incumbent that does not release information necessary to conduct a procurement on a level playing field. However, this has not been tested through Case Law and Sport England would advise local authorities to take legal advice in the context of their existing contract.

6.3.6 Local authorities will also need to understand the ownership of assets, in particular items such as fitness equipment which are likely to have been replaced during the contract period. If this equipment is owned by the incumbent the local authority will need to communicate this to other bidders so that they are able to include this in their costing and financial submission.

6.3.7 As a minimum and as part of good and fair practice incumbents should provide:

- Membership direct debit information sometimes referred to as bulk transfer
- Headline income and expenditure for the service
- Membership and course booking customer information
- A list of equipment owned by the incumbent
- Asset management log.

Contract Service Scope

- 6.3.8 The local authority will need to be clear on the scope of services it wants to procure. This involves considering:
- Whether it wants to “commit” to the services for the duration of the contract (normally at least 10 years) or remove them from the scope
 - Including a range of services such as sports development outreach, community facilities or cultural services
 - If new facilities and services will come on-line during the contract period
 - Future community needs for the duration of the contract
 - Whether the services will be best put into Lots which will determined by the market for the services it proposes to procure.
- 6.3.9 When considering Lots, local authorities should refer to Public Contract Regulations.
- 6.3.10 As part of the drive to encourage SMEs, Regulation 46 requires a contracting authority deciding not to divide a contract into Lots to explain in the procurement documents or Regulation 84 report why they have taken this decision. It would be good practice to include this justification in both the procurement documents and the Regulation 84.
- 6.3.11 Regulation 46(4) allows contracting authorities to limit the number of Lots any individual tenderer can win. However, Regulation 46(5) also requires contracting authorities setting such a maximum to provide details of the objective and non-discriminatory criteria they intend to use to decide how a lot should be awarded if the winner of that Lot has already won the maximum number of Lots permitted. Finally, it is possible to reserve the right to combine Lots if required, however, contracting authorities considering this option must ensure that they provide for this in the Contract Notice or invitation to confirm interest.

Facility Capital Development and Investment

- 6.3.12 Whether to invest in facilities prior to or as part of the procurement and the scale of investment has a significant impact on the procurement approach. The local authority needs to be clear on this before going out to tender. Approaches to this and their respective benefits and risks are set out in Table 6.2.

Table 6.2: Facility Development Approaches

Development / Approach	Key Potential Benefits	Key Potential Risks
New Build Leisure Centre		
Design, Build, Operate and Manage Contract (DBOM)	<ul style="list-style-type: none"> • Operator takes on construction risks including construction costs • Operator takes on the commercial risk of any construction delays • Operator normally takes on ongoing facility management risks • Removes the need for the authority to have project management capacity for new build • Local authority has a fixed building and management cost • Local authority able to tap into the operator partner's (and the consortium's) technical expertise. 	<ul style="list-style-type: none"> • Local authority normally commits to a long-term contract (usually c. 25 years). This can cause potential issues if the strategic objectives of the local authority change mid contract • Potential difficulties with the construction if the operator partner runs into difficulty mid-project • The local authority may get less market interest as there are a limited number of operator partners that undertake DBOM • Construction, project management and management costs are not always fully transparent with this approach • Building condition issues at the end of the contract may be difficult to resolve due to the passing of time (20 years or more) and staff knowledge may have been lost • In the event of the operator partner being sold or taken over the local authority could be left with a new operator partner they did not select for the period of the contract • DBOM contracts can incur substantial legal costs • Operators have to price for risk on a DBOM contract due to the duration (normally 20-years or more). This may not provide best value • Limits the number of management options available to the local authority • Benchmarking schedules in the DBOM contract can cause financial uncertainty for the service and can be client resource intensive.

Development / Approach	Key Potential Benefits	Key Potential Risks
Local authority builds new leisure facilities and procures a management operator partner	<ul style="list-style-type: none"> Local authority has full visibility of project management, construction and management costs Local authority has direct control of the building project and selection of contractor Substantial market interest is likely and can include those operator partners that do not undertake DBOM contracts The local authority will often yield a substantial management fee payment for well-designed facilities Local authority can let a conventional contract (normally c. 10-years) enabling it to reshape the service and re-test the market Local authority can consider a broader range of management options Local authority can still capture operator partner input through dialogue/negotiation. 	<ul style="list-style-type: none"> Local authority takes on construction risks including costs and any delays Local authority will have to compensate operator partner if there are delays Local authority may need project management capacity with additional costs Procurement and legal costs for building contractor.
Facility extensions or refurbishment on existing assets		
Local authority undertakes refurbishment prior to or as part of the procurement	<ul style="list-style-type: none"> Local authority has direct control of the building project and selection of contractor Local authority can let a conventional contract (normally c. 10-years) enabling it to reshape the service and re-test the market Local authority can still capture operator partner input through dialogue. 	<ul style="list-style-type: none"> Local authority takes the risk on project delivery and refurbishment costs Local authority will have to compensate operator partner if there are delays Local authority may need project management capacity with additional costs Procurement and legal costs for building contractor.

Development / Approach	Key Potential Benefits	Key Potential Risks
Operator includes facility development proposal as part of the procurement process	<ul style="list-style-type: none"> • Operator takes on construction risks including construction costs • Operator takes on the commercial risk of any construction delays • Removes the need for the authority to have project management capacity for new build • Local authority has a fixed building and management cost • Local authority able to tap into the operator partner's technical expertise • Local authority will be able to encourage innovation and have a range of proposals from different bidders • The local authority can benefit from the operator partner's procurement advantages e.g. fitness equipment • If part of the bidding process likely to yield maximum return on capital. 	<ul style="list-style-type: none"> • Solutions from operator partners could have a commercial focus • Proposed operator partner solutions may not be acceptable to the Council (although this could be mitigated through a dialogue/ negotiation process).

6.3.13 Capital for facility development should ideally be agreed at pre-procurement stage. Local authority-sourced capital is usually at a much lower interest rate than operator partner capital. Often the optimum solution is to allocate local authority capital with the operator partner paying back the sum and interest through the life of the contract.

Case Study: West Lindsey District Council, 2018

West Lindsey District Council decided that its main physical activity, sport and wellbeing facility required investment and to include this as part of the retendering exercise. Members agreed that the Council would make up to £1.5 million of capital available to the operator partner providing that, as minimum, the operator partner paid this back plus interest over the 15-year contract.

As part of tender bidders were asked to provide proposals including the amount of capital they would wish draw. The successful tenderer provided a solution to convert an under-used hall into a health and wellbeing centre drawing on the Council's capital and adding additional capital of their own.

The impact on finances was transformational as the service moved from a significant subsidy to surplus and residents will benefit from a modern facility designed to improve health interventions.

- 6.3.14 For additional guidance on facility planning and capital investment Sport England have a range of advice and tools on the [Facilities and Planning](#) sections of the website. Local authorities also may want to investigate the [Sport England Strategic Facilities Fund](#). The fund is designed to support the sector to invest strategically to deliver the outcomes essential to local communities. The Strategic Facilities Fund will direct capital investment into several key local area projects. These will be identified through a strategic vision and the impact on local outcomes and KPIs clearly identified. Projects that can provide an integrated offer of services and facilities will be prioritised.

Proposed Facility Asset Management Risk Transfer

- 6.3.15 The local authority should identify the level of risk it intends to transfer through procurement to an operator partner. This is particularly the case with asset management.
- 6.3.16 The level of risk transfer is likely to affect the type of organisation that will have the capability to manage the contract and its risks. For example, smaller organisations may not be able to carry the risk of full repair and maintenance responsibilities where these are substantial due to the number and/or nature of the assets.
- 6.3.17 Many operator partners are comfortable with full repair and maintenance arrangements, but the local authority should provide robust information regarding the condition of its facilities. Operating partners will be taking on maintenance responsibilities for the facilities and will need up to date condition survey information. If there is a significant capital maintenance/replacement requirement identified through condition surveys, then it may be better value for the local authority to adopt a shared risk approach. For example, the leisure operator partner could be responsible for facility asset management but the local authority finances capital maintenance/lifecycle costs over a certain level depending on the local authority's definition of a capital item.

- 6.3.18 Local authorities should ideally provide bidders with a full title search for each building within the contract to provide confidence to bidders and ensure each bidder is working to the same information.
- 6.3.19 Table 6.3 highlights the key areas of risk.

Table 6.3: Key Risk Areas

Risk/Responsibility	Key considerations
Maintenance – fabric of the buildings including windows and roofs	<ul style="list-style-type: none"> • Operators will price for risk as well as based on condition survey information. However, they are normally happy to take on the risk • Local authorities will need to consider the condition of the building fabric and whether the local authority or an operator partner would provide the most cost-effective method of maintaining the fabric of the assets • Transferring risk gives the local authority more certainty over future costs of the service • Transferring risk means the local authority does not require technical capacity to carry out maintenance works • The local authority needs to consider how it will monitor the maintenance programmes to ensure the operator partner is carrying out planned works in the event of full risk transfer.
Maintenance – internal fixtures and fittings	<ul style="list-style-type: none"> • Operators will price for risk as well as condition survey information but are happy to take on the risk • Transferring risk gives the local authority more certainty over future costs of the service • Contract needs to specify 'no worse' for condition of equipment at the end of the contract.
Maintenance – Plant	<ul style="list-style-type: none"> • Operators will price for risk as well as based on condition survey information. However, they are normally happy to take on the risk • Transferring risk gives the local authority more certainty over future costs of the service • Transferring risk means the local authority does not require technical capacity to carry out maintenance works • The local authority needs to consider how it will monitor the maintenance programmes to ensure the operator partner is carrying out planned works in the event of full risk transfer • Contract needs to specify 'no worse' for condition of equipment at the end of the contract.

Risk/Responsibility	Key considerations
Maintenance and replacement of equipment	<ul style="list-style-type: none"> • Operators will price for risk as well as based on condition survey information • Transferring risk gives the local authority more certainty over future costs of the service • Contract needs to specify equipment 'no worse' for condition at the end of the contract.
Maintenance – latent defects	<ul style="list-style-type: none"> • It is not reasonable to expect the operator partner to take responsibility and risk for any latent defects. • This is particularly relevant for any contract where the authority is undertaking facility development involving capital works • This risk would lie with the operator partner for a DBOM contract.
Asbestos	<ul style="list-style-type: none"> • Any work required regarding asbestos is normally the responsibility of the local authority • The operator partner is required to comply with all relevant health and safety regulations related to asbestos.
Utilities (usage and tariff)	<ul style="list-style-type: none"> • Operators will take on full utility cost risk • Authorities may want to consider cap and collar on utility tariff increases/decreases • Some contracts have split responsibility such as the operator partner taking on consumption risk and the authority tariff increases • Shared responsibilities cause the authority uncertainty and require client resource to undertake benchmarking and negotiate an annual settlement • For new build facilities the authority could implement benchmarking for the first 1 – 2 years as utility consumption levels will be uncertain • Utility benchmarking can be considered as a way of mitigating the amount of risk being passed onto the operator partner • Transferring full responsibility for utilities to the operator partner may encourage them to invest in energy saving technology and contribute towards addressing the climate change emergency.
Buildings Insurance	<ul style="list-style-type: none"> • Normally the local authority as the owner of the building is responsible for buildings insurance.
Public Liability Insurance	<ul style="list-style-type: none"> • The local authority needs to specify the level of cover.
Employer Liability Insurance	<ul style="list-style-type: none"> • The local authority needs to specify the level of cover.

Risk/Responsibility	Key considerations
Professional Indemnity Insurance	<ul style="list-style-type: none"> • The operator partner will be potentially providing advice on facility investments • The local authority needs to specify the level of cover.
Employer pension contributions	<ul style="list-style-type: none"> • As per TUPE • Operators are happy to take on employer contributions unless they are set to significantly rise in which case this may require a cap and collar approach.
Pension deficit	<ul style="list-style-type: none"> • It is not reasonable to expect the operator partner to take on any pension deficits • Most operator partners will not bid if required to underwrite any deficit.
Compensation in the event of unforeseen closure that is not within the Operator's control	<ul style="list-style-type: none"> • This would normally be based on 'no better no worse' open-book accounting.
Title	<ul style="list-style-type: none"> • Both the DBOM Contract and Leisure Operating Contract contain a local authority title warranty in the format developed in schools' projects (see Clause 6.4 (Authority Title Warranty) and Schedule 13 (Title Matters)). • This means that the local authority (and/or its legal advisors) will need to carry out title investigations at an early stage in the procurement process and disclose the results of this to bidders so that bidders can rely on them. Whilst this may create an additional expense for the local authority at an early stage of the procurement, it is considered the most cost-effective approach overall as it means that bidders will all be given the same information which they will need to take account of in their tender proposals and will avoid the risk of bidders not undertaking adequate title due diligence and potentially proposing unworkable solutions. Furthermore, as the local authority knows the site(s), it represents a fair risk profile. • The local authority will need to factor in the time/costs of undertaking title investigations/providing a title warranty.

Title Deeds	<ul style="list-style-type: none"> • In terms of when the local authority requires bidders to complete their title due diligence, there are three primary routes that can be taken, although option 2 is considered the most balanced for both parties: <ol style="list-style-type: none"> 1. Bidders are required to complete full title due diligence at bid stage. Whilst this not only results in the disproportionate costs being incurred by bidders, it also requires all the documents listed in the Schedule 13 (Title Matters) of the contract to be disclosed to bidders in the data room, as well as red line plans for the sites. This can result in significant time and costs for the local authority, and if any searches are disclosed at bid stage they may then need to be updated prior to completion, thus incurring additional costs for the local authority. 2. Bidders are required to complete high level title due diligence. This represents a fair middle ground for both bidders and the local authority: The local authority would need to provide plans of the sites and copies of the official titles, which the bidders would be expected to review but it would be recognised that full title due diligence can be completed at preferred bidder stage. 3. Bidders are not required to carry out any title due diligence. As noted above, this could lead to bidders proposing unworkable solutions.
Property Structure	<ul style="list-style-type: none"> • Lease granted to the operator partner • The granting of a lease means the contractor will be “in occupation” of the facilities which may allow them to claim NNDR Relief. Provisions have been included to allow contracting out of the security of tenure provisions of the Landlord and Tenant Act 1954 • A suggested form of “bare bones” lease for use with the DBOM Contract and Leisure Operating Contract has been included in the templates. The lease does not contain any substantive provisions (for instance in relation to repairs/maintenance/insurance etc). These provisions are dealt with in the main contract and the lease refers back to the main contract on such issues to avoid conflict between the documents.
Change in Law	<ul style="list-style-type: none"> • General changes in law risks that affect the leisure operator sector as a whole such as VAT exemption and recovery are normally covered by the local authority • Specific changes in law risks which affect an individual operator partner’s financial model are normally covered by the operator partner.

Risk/Responsibility Key considerations

Protection for redundancy costs at termination/ expiry of contract when TUPE does not apply	<ul style="list-style-type: none">• Assuming the expiry or termination of the contract is not because of contractor default, and if TUPE does not apply at the end of the contract (for example, should the local authority make the decision to close one or more facilities at the end of the contract), redundancy costs will be covered by the local authority• The LOC reflects the above, as such an event is outside the contractor's control, and pricing for such a risk at tender stage would mean that the tender price submitted would not represent best value for the local authority• Furthermore, such redundancy protection is seen as market standard across the leisure sector. The contractor remains under a duty to use all reasonable endeavours to redeploy any persons.
---	--

Additional Considerations for Procurements Involving Design and Build Requirements

Planning Risk (assuming the contract/ project imposes construction obligations on the contractor)	<ul style="list-style-type: none">• To maximise bidder interest, provide comfort over deliverability of the project and provide a framework within which submissions can be evaluated, it is recommended that the local authority seeks outline planning approval as a minimum.• This process can be twin tracked with the initial stages of the procurement process (SSQ stage and Initial Tender stage) so that the timetable is not adversely affected.
Design Risk (assuming the contract/ project imposes construction obligations on the contractor)	<ul style="list-style-type: none">• The operator partner will be responsible for the design and construction of the works, and for making sure that the works are completed on time.

Site Risk and Condition (assuming the contract/project imposes construction obligations on the contractor)	<ul style="list-style-type: none"> • Additional time may be required if English Heritage or other similar body needs to be consulted • The local authority is responsible for any contamination under existing buildings which has not (and could not) have been identified in any surveys. Any issues relating to existing buildings and assets should sit with the local authority. • When considering the risk of where contamination should sit, parties should take note of the guidance issued by the government in their PF2 document: where it is not possible for a contractor to adequately assess contamination risk (for instance by obtaining surveys) it may be better value for money for the local authority to bear or share the risk. • The contractor is normally responsible for having investigated them to the extent necessary to perform its obligations under the contract. The DBOM contract contains more onerous provisions as a contractor carrying out works obligations should carry out more thorough and detailed investigations relating to a site than a contractor that is merely providing services.
Commission and construction risk	<ul style="list-style-type: none"> • Risks sit with the operator partner under a DBOM contract • The DBOM contract allows the local authority various rights to monitor and inspect the works with the suggested process of an Independent Certifier (appointed by both parties) signing off when the works (or parts of the works) are complete • If the works are delayed beyond the "Planned Services Availability Date" (i.e. the date that the contractor commits to completing the works by), then, in certain circumstances, the local authority may be entitled to claim liquidated damages from the contractor. However, if the operator partner is paying the local authority a management fee the local authority may wish to consider whether it is reasonable to ask for the management fee and compensation.

6.3.20 It is important that before deciding on risk transfer the authority has up to date asset condition surveys which includes forward maintenance costs so that it understands the nature of the risks it may be looking to transfer. The survey should also be made available to bidders.

Affordability

6.3.21 Once it has developed the contract risk profile, proposed investment and strategic objectives, the local authority should consider undertaking an affordability test to assess the minimum value of the contract or minimum financial offer likely to be submitted by a bidder.

- 6.3.22 Local authorities that have carried out a management options appraisal as outlined in [Section 4](#) may already have undertaken affordability modelling.
- 6.3.23 The affordability modelling should reflect the current financial performance and the requirements of the proposed services specification.
- 6.3.24 Establishing affordability has a number of benefits and advantages for a procurement:
- It provides a check for the local authority that the services when procured will be affordable within its Medium-Term Financial Plan
 - It gives an indication of whole life costings, identifying any areas of the contract which may require significant subsidy for the local authority to check and challenge before committing to procurement
 - It ensures that the local authority does not waste time and resources evaluating bids that it may not be able to afford
 - It sets clear financial parameters for bidders for when they are qualifying opportunities – they will know that they will have to exceed the affordability threshold to have a chance of winning the contract
 - It enables Members to make decisions on the procurement strategy and shape the type of bids a local authority receives prior to going out to tender
 - It can be used as a baseline for any proposed investment plans.
- 6.3.25 Local authorities will need to consider the profiling of the management fee, recognising that it will take time for a new contract to mobilise and reach optimum performance levels. This can be addressed through a stepped management fee approach. For example, over the life of a 10-year contract the affordability may be a payment to the local authority of £1 million. However, it will be difficult for an operator partner to deliver this in years 1 and 2 of the contract. Thus, the solution could be to make affordability zero in years 1 and 2 and £125K per annum in years 3 to 10.
- 6.3.26 The most significant benefit to having an affordability threshold is it enables local authorities to focus the procurement on quality as opposed to price. It will mean that all compliant bids will meet or exceed the local authority's minimum financial requirements thus enabling it to weight quality higher than price, safe in the knowledge that it can afford all compliant bids. This will help a local authority to select a partner that understands local needs and is able to deliver the local authority's priorities.
- 6.3.27 In order to further reduce the focus on price and discourage "over bidding", local authorities may want to consider having a maximum financial threshold particularly when it involves a payment to the local authority. It is possible even with a 60:40 Quality:Price split for a bidder to put in such an aggressive price that other bidders will not be able to make up the ground on quality. A maximum price enables all bidders to score the maximum points for price and further encourages bidders to focus on quality.

Income Share or Profit Share

- 6.3.28 Some existing leisure operating contracts will currently include some profit or income share arrangements. In most cases, particularly where the facilities being procured are more of a “known quantity”, the inclusion of income share or profit share arrangements will not be appropriate.
- 6.3.29 Where the local authority is expecting a management fee payment from the operator partner on mature facilities and services, it should consider whether there is likely to be scope for yielding further payments in income or profit share and whether asking for a management fee payment and profit/income share is reasonable. There is a risk that asking for too much will deter bidders, particularly in the context of a wider transfer of risk in other areas to the operator partner.
- 6.3.30 Where there are new facilities involved or significant investment the local authority may have more of a case for considering the inclusion of income or profit share arrangements to ensure it gains a share of any over performance, given that the potential of the facilities from an income and surplus generating perspective is untested. In this case, inclusion of an income or profit share arrangement may be considered to mitigate against the risk of the facilities yielding a significantly higher surplus than originally anticipated, with no benefit to the local authority.
- 6.3.31 This should however be considered in the wider context of the overall risk profile and the amount of risk which the operator partner is being asked to take on as part of the contract. In a contract which proposes a significant burden of risk being transferred to the operator partner, it may not be appropriate to curtail the potential “reward” for the operator partner through income or profit share, and to do so will risk putting off potential bidders.
- 6.3.32 If income share is included, it is important to ensure it is reasonable, bearing in mind that operator partners will also incur additional costs to generate an increase in income. A reasonable position on income share is the local authority receiving 10% of all additional income when the operator partner has over-achieved by over 10% on its bid submission or Leisure Operator Trading Account (LOBTA). An example of this would be an operator partner with an annual income of £1 million it its LOBTA achieving £1.2 million. The overperformance above 10% over LOBTA is therefore £100K so the authority would receive 10% of this or £10K.
- 6.3.33 The local authority will need to consider how any income or profit share arrangements would be implemented. Some existing contracts have a profit share arrangement which have proved to be over complicated, problematic to enforce and create an unnecessary burden on local authority client officers. Particularly with profit share arrangements, the local authority will need to consider the potential financial visibility issues which can make such arrangements difficult to enforce. A mechanism which ensures transparency will be required to make a profit share arrangement worth considering.

Contract Length

- 6.3.34 The typical contract length for a leisure contract is 10 to 15 years. Operators are reluctant to use valuable bidding resources for shorter contracts as they need time to gain a return on their investment.
- 6.3.35 There may be instances where a shorter contract is more appropriate, for example if the economic life of the assets is shorter in which case the local authority needs to ensure that the procurement process reflects this so as not to deter bidders.
- 6.3.36 If there is a new physical activity, sport and wellbeing facility coming on stream during this time, the local authority can consider installing the option of extending the contract so that the incumbent operator partner could provide vital project management support for the new centre as part of their overall offer.
- 6.3.37 For DBOM contracts a much longer term is required due to the added investment from the operator partner. Most DBOM contracts run for c. 25-years.

Strategic Priorities and Performance Indicators

- 6.3.38 The local authority will have identified its strategy objectives for the physical activity, sport and wellbeing services with headline performance indicators at Strategic Planning stage.
- 6.3.39 The local authority will need to embed this into the procurement and contract and essentially agree the strategic objectives and associated performance indicators that can be delivered by a leisure operator partner through the contract.
- 6.3.40 [Appendix 8](#) contains a services specification template which includes several example performance indicators that can be used in a leisure contract.

6.4 Procurement Approach or Route

- 6.4.1 The procurement route will be determined by the procurement strategy and whether there is investment within the procurement and the level of investment. The following procedures can be used for a leisure contract:
- Open Procedure
 - Restricted Procedure
 - Competitive Procedure with Negotiation
 - Competitive dialogue
 - Concession contract.
- 6.4.2 The Open Procedure** is essentially a single staged process where the OJEU contract notification is sent out and the local authority will send its Invitation to Tender (ITT), including its contract documents, to all respondents expressing an interest. Bidders submit their pre-qualification information and bid together. There is no opportunity for negotiation or dialogue in this process.

- 6.4.3 It is sometimes described as “one step tendering” as there is no separate qualification stage. After publication of the Contract Notice in the OJEU, interested parties ask for the tender documents. They return their tenders along with information proving their qualifications if any were required. In theory, qualification details (if any) are checked first and then all tenderers meeting the qualification requirements have their tenders assessed in accordance with the contract award criteria. Failure to satisfy minimum qualification requirements (which would be scored on a pass/fail basis rather than qualitatively) would effectively mean that, although submitted, a tender would not proceed or be compliant.
- 6.4.4 The Restricted Procedure** is a two-stage process. Under this procedure, interested parties can submit an expression of interest in response to the OJEU contract notice. The local authority will then carry out a shortlisting exercise using the CCS Supplier Selection Questionnaire (the mandatory evaluation criteria including the bidders’ legal capacity, economic and financial standing and technical capability). This is normally enhanced with project specific questions. Those bidders most closely meeting the local authority’s selection criteria will be invited to tender.
- 6.4.5 All interested parties may express an interest in tendering for the contract but only those meeting the selection criteria will be invited to do so. In contrast to the Open Procedure, the Restricted Procedure has a separate qualification stage. This permits the contracting authority to “shortlist” down to a pre-set number to be invited to tender, which may not be less than 5 (provided 5 such organisations can meet the minimum requirements of qualification) where, for example, the number meeting any qualification threshold is in excess of that number.
- 6.4.6 Following tender submissions, negotiation with bidders is not permitted although the local authority may ask for clarifications from bidders following ITT submission.
- 6.4.7 The Competitive Procedure with Negotiation Procedure** allows greater flexibility and may be a three-stage process or more. Bidders are shortlisted at pre-qualification stage as per the Restricted approach and then are asked to submit Initial Tenders. The ITT specifies aspects of the tender which may be open to negotiation. Following the submission of Initial Tenders, the local authority can choose to accept one of the tenders at this stage or go into negotiation, which can include a meeting and then ask bidders to submit a Revised Tender. The local authority can accept one of the Revised Tenders or ask for a Final Tender. This procedure does not allow for significant modification of the contract or services specification. Unlike the Open and Restricted Procedures, the Competitive Procedure with Negotiation and the Competitive Dialogue procedures are not freely available for use and must always be justified (for example as part of an audit trail), however, they are more appropriate for the successful delivery of a complex procurement:

- 6.4.8 This procedure can only be used in the specific circumstances namely:
- A 'ready-made' solution does not exist
 - The contracting authority requires design services or 'innovative' solutions
 - The contract requires negotiation due to the specific nature, complexity or legal or financial make-up of the contract or the risks attaching to it
 - A technical specification cannot be established with sufficient precision
 - A prior tender process was operated under the Open or Restricted Procedure, but only irregular or unacceptable tenders were submitted.
- 6.4.9 The Competitive Procedure with Negotiation is a new procedure, though in many ways replaces the former 'Negotiated Procedure' under the 2006 Regulations. Like Competitive Dialogue, it is a competitive process where negotiations are to be carried out with bidders left in the process following the selection process stage. The major change from the old Negotiated Procedure appears to be (as it is not clear from the drafting and there is no case law or guidance yet) that following negotiation on submitted tenders there will be a formal end to the negotiating. Bidders will then be invited to submit a Revised Tender (very much like the final tender phase in Competitive Dialogue).
- 6.4.10 Also, like Competitive Dialogue, the negotiation process may take place in several stages, with the number of bidders reducing at the end of each stage by application of the contract award criteria. If this method is to be applied, the OJEU Notice and tender documents must indicate that this will be the case.
- 6.4.11 Other important points to note include:
- The minimum number of bidders to be invited to negotiate is 3
 - The ability to hold an Accelerated Procedure making it possible to use it in cases of urgency
 - A bidder's solution or other confidential information is not to be revealed to other tenderers without specific consent.
- 6.4.12 Another difference is that the procedure specifies the extent to which the contracting authority can change its requirements during the process. The Regulations specifically preclude making changes to:
- The description of the procurement
 - The minimum requirements
 - The award criteria.
- 6.4.13 These must be set out in the procurement documents from the outset. Good practice requires that contracting authorities be very careful when contemplating a change to their requirements under any procedure.

- 6.4.14 Competitive Dialogue Procedure** allows a local authority to enter into dialogue with bidders to develop solutions to meet its needs. Dialogue usually consists of meetings with each bidder to focus on the different aspects of the procurement which relate to the price and risk of the bidder's solution. This would involve using the CCS Supplier Selection Questionnaire to shortlist bidders for the ITT stage. Following this, bidders will be invited to tender and to dialogue meetings where they will have an opportunity to input into aspects of the services specification. The local authority then may make amendments to the ITT before bidders' Initial Tenders are submitted. Following this the local authority may reduce the number of bidders following evaluation of the Initial Tenders. Further dialogue takes place and bidders still in the process who are then asked to submit Detailed Solutions. Following this further dialogue may take place and the bidders are then asked to submit Final Tenders.
- 6.4.15 The dialogue may occur in stages, with the option that the number of bidders reduces at the end of each stage by application of the contract award criteria (provided sufficient bidders remain to ensure a genuine competition and a staged selection process is referred to in the OJEU Notice or the 'descriptive document').
- 6.4.16 Contracting authorities have discretion to determine what aspects they wish enter into dialogue on and largely how this dialogue phase is conducted/what documents are provided. For example, it may prescribe most aspects of the contract and so enter into dialogue on only a few narrowly defined areas. Alternatively, it may prefer to enter into dialogue on all aspects of the proposed contract. It is also up to the contracting authority how those discussions should be structured e.g. face to face meetings; formal presentations; demonstrations and site visits; dialogue on technical solutions, contract terms etc.; formal written bid type phases and formal clarification and evaluation.
- 6.4.17 There are no minimum time limits for the dialogue phase other than that timescales should be "reasonable" having regard to the complexities of the project.
- 6.4.18 The minimum requirements and award criteria should not be subject to dialogue. Dialogue may take place in successive stages to reduce the number of solutions and/or bidders involved. Where a reduction in solutions/ bidders is involved, this must be through the application of the disclosed contract award criteria and weightings. The stages may require further rounds of documentation, such as an Invitation to Continue Dialogue (ITCD)/Invitation to Submit Detailed Solutions (ISDS), before ending with an Invitation to Submit Final Tenders (ISFT).
- 6.4.19 As the dialogue phase is the most flexible part of the process, it is vital that all aspects of the deal are covered and that the dialogue drives out a sufficient level of detail (i.e. technical, legal and commercial) before the dialogue phase is concluded and final tenders are requested.
- 6.4.20 The contracting authority will draw the dialogue to a close once it can identify the solution(s) meeting its requirements, at which point it requests the bidders remaining in the competition to submit final, formal tenders. Final tenders are expected to be complete, but may be 'clarified, specified or optimised'. However, this cannot involve changes to essential aspects of the tender, or of the needs

and requirements set out in the OJEU Notice or descriptive document. It is currently unclear what “optimised” means. It is likely that this means more than “fine-tuning” as required under the old 2006 rules, and there is currently no definitive guidance on the meaning of “optimisation”.

- 6.4.21 Following clarification of the final tenders (if needed), the contracting authority will evaluate the tenders by application of the stated award criteria and select its preferred tenderer.
- 6.4.22 Limited negotiations with the preferred bidder can take place at this stage to confirm financial commitments or other terms provided:
- Negotiations do not have the effect of modifying essential aspects of the tender or procurement
 - Do not risk distorting competition/ causing discrimination.
- 6.4.23 If contracting authorities want to be able to “optimise” final tenders and negotiate with the preferred tenderer, they should consider the Competitive Dialogue Procedure.
- 6.4.24 It is acknowledged that it can be difficult to strike a balance in a complex procurement, extending to numerous rounds of dialogue, between recording key points and actions and recording everything that has been said at each meeting. It is advisable that the approach reflects the nature of the subject-matter and procurement but, in broad terms, contracting authorities should ensure that they maintain some sort of written record of all dialogue meetings for audit purposes which should include all information provided at the meeting, including any questions asked, the answers given and who gave them to enable any further clarification later, as well as any follow-up communications. For example, this might take the form of the chair of the meeting summing up what has been discussed and agreed before the meeting is brought to a close. The bidder would then have an opportunity to comment on this before it becomes a formal record of the dialogue. Having a formal record in this manner would be helpful to confirm what was/was not dialogued on in the event of a procurement challenge.
- 6.4.25 A Concession Contract** is a work concession contract or a services concession contract where the contractor is being offered the opportunity to exploit the works/services that are the subject of the contract or in that right together with payment provided that “the award of the contract shall involve the transfer to the concessionaire of an operating risk in exploiting the works or services encompassing demand or supply risk or both” and “the part of the risk transferred to the concessionaire shall involve real exposure to the vagaries of the market such that any potential estimated loss incurred by the concessionaire shall not be merely nominal or negligible” – i.e. the opportunity associated with management of the leisure facilities, and that the risks associated with this are also being transferred to the contractor. This allows greater flexibility to the local authority.

- 6.4.26 A Concessions Directive (2014/23/EU) was introduced in 2014. England, Wales and Northern Ireland introduced this Concessions Directive into national law by virtue of the Concession Contracts Regulations 2016 (CCR 2016) which came into force on 18 April 2016 and applies to the procurement of works concessions and services concessions. A concession is an arrangement where the operational risk is transferred to the contractor (or “concessionaire”), and payment is based wholly or in part on the contractor’s right to exploit the works/services that are the subject of the contract. A common example of a concession would be the provision of car parking facilities and services. The concessionaire would operate/provide the facilities and services to third party users, and receive income from this, but would have no guarantee of recouping the costs incurred from operating these services.
- 6.4.27 The process for procuring a Concessions contract is quite flexible. There are no set procedures to follow in the CCR16. The design of the most appropriate procurement process is left to the contracting authority/entity (see Regulation 300 of the CCR 2016). There are however a number of principles that have to be followed and reference should be made to the CCR 2016 the associated CCS guidance and to legal advice as appropriate.
- 6.4.28 There are no set procedures to follow in the CCR16. The design of the most appropriate procurement process is left to the contracting authority/entity (see Regulation 30 of the CCR 2016). There are however a number of principles that have to be followed. The procedure must:
- Be transparent, and not be discriminatory. Treaty principles have to be followed
 - Avoid distorting competition
 - Include measures to combat fraud, favouritism and corruption
 - Prevent, identify and remedy any conflict of interest
 - Include the publication in the OJEU of a concession notice completed in line with Annex V of the Directive and any additional information that might be useful
 - Adhere to the minimum time limits of 30 days for single staged tenders, or 22 days for multi staged tenders from publication of advert to receipt of tenders (both minimum timescales can be reduced by 5 days where e-submission is allowed)
 - Provide electronic availability of the concession documents
 - Include self-declaration on exclusion grounds
 - List award criteria in descending order of importance
 - Include a request for contact details of any sub-contractors working on a works concession at a facility under the oversight of the contracting authority/utility
 - Include the publication in OJEU of a concession award notice no later than 48 days after the award of the concession contract. However, award notices for concessions within the social and other specific services categories can be grouped together and forwarded to the OJEU on a quarterly basis, within 48 days of the end of each quarter

- Include notification at the end of the process of the award of the concession and an explanation of the grounds for decision to each organisation involved, or the fact that no award is to take place, or the decision to recommence the procedure.

6.4.29 A risk to using a Concessions approach is having a heavy services specification in which the local authority shares a degree of risk in which case it could be considered a services contract.

6.4.30 Table 6.4 provides guidance on which procedure to use according to procurement circumstances.

Table 6.4: Procurement Approaches/Routes – Suitability

Procurement Approach/ Route	Suitable Circumstances	Unsuitable Circumstances
Open Procedure Typical procurement timeline 6 to 9 months	<ul style="list-style-type: none"> • Potentially low number of bidders • Clearly defined service scope • Clearly defined services specification • When procurement required quickly. 	<ul style="list-style-type: none"> • DBOM requirement • Potentially large number of bidders • Facility investment part of the procurement • Local authority wishes to negotiate on aspects of the contract and services specification.
Restricted Procedure Typical procurement timeline 12 – 15 months	<ul style="list-style-type: none"> • Potentially large number of bidders • Clearly defined service scope • Clearly defined services specification • Clearly defined low/medium investment specified and delivered by the local authority part of the procurement. 	<ul style="list-style-type: none"> • DBOM requirement • Significant facility development requiring operator partner solutions • Local authority wishes to negotiate on aspects of the contract and services specification.

Procurement Approach/ Route	Suitable Circumstances	Unsuitable Circumstances
Competitive Procedure with Negotiation Typical procurement timeline 14 – 18 months	<ul style="list-style-type: none"> Potentially large number of bidders Clearly defined service scope Clearly defined services specification with some aspects for negotiation Clearly defined low/medium investment specified and delivered by the local authority part of the procurement Medium level investment proposals part of the procurement (e.g. building extension or refurbishment) requiring operator partner solution Local authority requires some flexibility but may still want to award at tender stage. 	<ul style="list-style-type: none"> DBOM requirement Local authority wishes to negotiate on aspects of the contract and services specification through dialogue.
Competitive Dialogue Procedure Typical procurement timeline 14 – 24 months	<ul style="list-style-type: none"> DBOM requirement Service scope open to negotiation through dialogue Services specification open to change through negotiation High level investment proposal requiring bidder solution e.g. new build physical activity, sport and wellbeing facility. 	<ul style="list-style-type: none"> This approach can be over engineered where there is low/medium level investment solution required from the operator partner or no room for negotiation of the services specification.
Concessions Contract Typical timeline 12 – 16 months	<ul style="list-style-type: none"> Where there is a positive fee to the local authority Light to medium weight services specification. 	<ul style="list-style-type: none"> Where the services require a subsidy or payment to the Leisure Operator Where the local authority is carrying a degree of risk This would include when using local authority capital as part of the solution Where there is a complex Services specification.

- 6.4.31 Since the 2015 Public Contract Regulations were introduced **Competitive Procedure with Negotiation** is the most frequently used approach as it allows flexibility without committing to a potentially time-consuming dialogue process. Indeed, this reduces the need to use the Restricted Approach unless the procurement is required quickly because local authorities can accept initial tenders through this procedure.
- 6.4.32 In all cases the local authorities should obtain legal advice before selecting the procurement approach or route.

6.5 Market Engagement

- 6.5.1 The local authority should look to test key aspects of its Procurement Strategy through market engagement. This could include:
- Scope of services
 - Maintenance risk profile
 - Investment options and sources of capital
 - Procurement route
 - Indicative financial savings
 - Initial interest in the portfolio.
- 6.5.2 Preliminary market consultation, or “pre-tender engagement” refers to the process of contracting authorities conducting research and market engagement with a view to preparing the procurement and informing prospective bidders of their plans and requirements, prior to commencing a regulated procurement process (namely before a call for completion is published in the OJEU).
- 6.5.3 Preliminary market consultation can take many forms. Options for contracting authorities to consider include:
- Publishing a PIN in the OJEU
 - Desktop research
 - Benchmarking
 - Seeking or accepting advice from independent experts
 - Webinars
 - Holding documented meetings with potential bidders
 - Holding a formal event for potential bidders e.g. an open day and/or workshop
 - Inviting written comments from potential bidders, e.g. a questionnaire.

6.5.4 Preliminary market consultation must be carried out in accordance with the General Treaty Principles, namely transparency, non-discrimination, equal treatment and proportionality and must not have the effect of distorting competition. Contracting authorities choosing this route should do so in a manner that “increases awareness of and interest in bidding” by smaller companies and social value enterprises, “and other economic operator partners”. It is good practice to ensure that a diverse spectrum of the market is invited to participate in the preliminary market consultation and the opportunity is not limited to the contracting authority’s current suppliers.

Why do it?

6.5.5 Preliminary market consultation is consistent with the Government’s “lean sourcing” procurement approach, and can assist the contracting authority in:

- Getting an advance understanding of the market, suppliers and their offerings
- Gauging the level of interest and hopefully increasing the level of interest and competition within the market
- Forming or strengthening relationships with suppliers
- Identifying and defining its requirements and potential solutions
- Structuring the procurement process.

6.5.6 Early market engagement can help raise market awareness generally and is expressly encouraged both by central government and now covered under the Regulations, in terms of how such engagement should be lawfully conducted.

6.5.7 Whilst this is an important step in engaging with the market and benefiting from expert opinion in relation to key issues and helps confirm the proposed procurement strategy, this process should not represent a time consuming and costly exercise for bidders. Alongside a brief overview of the background and key project priorities a maximum of 5-10 key questions should be set out on which brief responses are requested. This can be implemented through an on-line questionnaire.

6.5.8 Some local authorities undertake market engagement through a bidder’s day, but this runs the risk of bidders holding back on their feedback on the proposed contract if they are in the company of other potential bidders.

6.5.9 For most leisure contracts the local authority will need to place a notice within the Official Journal usually through a Prior Information Notice (PIN) outlining how operator partners can participate in the market engagement.

6.5.10 Once the results of the market engagement have been analysed, the local authority can consider whether it wants to amend any aspects of its procurement strategy.

6.5.11 It should be noted that the physical activity, sport and wellbeing sector is now very mature in terms of outsourcing and that local authorities should not be over concerned about generating market interest providing they have the right procurement strategy.

Table 6.5: Guidance on conducting market engagement

DO	DON'T
<p>Clearly explain the rules of the pre-procurement engagement, including:</p> <ul style="list-style-type: none"> • That this stage is not part of the formal selection and award process, and accordingly that any proposals/suggestions put forward will not necessarily form part of the subsequent procurement process • That respondents are required to be conscious of conflicts of interest arising from the pre-market engagement, i.e. that measures may be required by the local authority in any subsequent formal procurement process to ensure an unfair advantage has not been obtained by involvement in the pre-market engagement (e.g. separation of teams, creation of information barriers) • That any failure to engage with the pre-procurement engagement process will not affect the respondent's chances of being considered for the contract once the regulated procurement process commences. 	<p>Allow respondents to draft or input into documents to be used in any subsequent selection or award process unless in very exceptional circumstances where proper separation of teams can be ensured (as this may lead a bidder raising a complaint that there has not been a level playing field).</p>
<p>Ensure that all respondents are treated equally, in particular:</p> <ul style="list-style-type: none"> • That all respondents are given access to the same documentation/information both before and during any meetings • That all respondents are given the same amount of time in any meetings with the authority. <p>Each engagement session should follow broadly the same format (i.e. with the same questions being asked of each respondent).</p>	<p>Engage in any discussions with a respondent outside defined parameters (e.g. informal meetings, telephone discussions).</p>

DO**DON'T**

Separately **publish** any documentation shared with respondents during the pre-market engagement process (e.g. on the authority's website) as early as possible to ensure that those involved in the early engagement do not have an advantage over those that subsequently participate in any formal procurement process.

Maintain a **written record** of all meetings and any follow-up communications for audit purposes in the event of any future allegations of a conflict of interest or breach of the General Treaty Principles. Whilst the records need not necessarily be made available publicly, there should at least be created a pre-market engagement report documenting who they spoke to and the outcome of those discussions. It is prudent to assume that such a document could subsequently be disclosed (for example to potential suppliers as part of the procurement process).

Take questions away where an answer is not immediately apparent and follow-up later.

Ensure that any follow-up communications are made through official channels and recorded with a view to subsequently making this information available to the market (where appropriate) (assuming that a formal procurement will be carried out).

Ensure that any confidential or commercially sensitive information provided by potential tenderers is treated accordingly.

Provide papers or information to only those who take part in any pre-market engagement. The procurement team should always remain alive to the fact that a 'level playing field' must be achieved and be seen to be achieved.

Discourage innovation and feedback but be cautious of respondents which express negative opinions of other options/routes available to the authority without sound justification. The procurement team should not automatically rule out solutions/routes which could narrow the potential pool of bidders to such a degree that only one bidder appears appropriate.

Attempt to answer a question if the procurement team does not know, or is not sure, of the answer. This can lead to a lack of consistent information being provided to all respondents.

Allow personal relationships to be formed between the local authority's representatives and those of a respondent. Where local authority representatives already have close relationships with pre-market respondents or bidders, it is important to avoid perceived or actual conflicts of interest by adhering to any internal conflict of interest protocol, and by ensuring that representatives are clear of their obligations and the appropriate parameters of any exchanges with operator partners.

Disclose information without properly considering whether that information is exempt from disclosure.

DO**DON'T**

Maintain a full audit trail following pre-market engagement: the local authority should be aware that decisions made as a result of pre-market engagement should be objectively justifiable and should derive from consideration of the responses of suppliers as a whole. Approaches should not be designed to benefit any particular supplier over other suppliers. Key decisions regarding the structure of the project/procurement which are taken following the engagement should be recorded with an explanation as to the basis on which the position was adopted.

Discuss the status of a particular respondent beyond establishing that they are credible and establishing which sections of the market, their views may be representative of (e.g. do not discuss in detail either their performance on previous projects or their financial status nor should you discuss in detail the strength of their market offering).

6.6 Signing Off the Procurement Strategy and Member Engagement

- 6.6.1 Once the project team has finalised the Procurement Strategy this can be signed off through the local authority's appropriate governance structures by Members.
- 6.6.2 It should be noted that the Procurement Strategy will essentially shape the physical activity, sport and wellbeing services for the life of the contract (usually 10 years or more) including the financial outcome of the procurement. It is therefore the most important stage for Member involvement and sign off.
- 6.6.3 Often Members do not get involved in decision making on a procurement project until a preferred partner has been proposed but to great extent this is too late for Members to shape the outcome other than either accepting a bid or not. The Procurement Strategy will heavily influence the solutions offered by bidders.

Case Study: East Northamptonshire District Council, 2017

East Northamptonshire District Council developed a physical activity, sport and wellbeing strategy in preparation for re-procuring its contract for its three leisure facilities. A critical aspect of this was the need to create an outreach service for those residents unable to access its physical activity, sport and wellbeing facilities. The Council formed a Leisure Procurement Working Party made up of senior officers and Members to develop the Procurement Strategy with support from specialist consultants. The Procurement Strategy included affordability and the need for the outreach service and was presented to full Council Members through an Issues Debate. Following Member questions and input the Procurement Strategy was formally agreed and the Working Party given a mandate to initiate the procurement.

6.7 Procurement Strategy Checklist

6.7.1 Table 6.6 provides a checklist guide for local authorities developing a procurement strategy.

Table 6.6: Procurement Strategy Checklist

Procurement Strategy Checklist	
1	Has the local authority developed a clear strategic approach its physical activity, sport and wellbeing services with a clear vision on what outcomes and behaviour change it is looking to promote going forward as outlined in Section 2 of this guidance including any Social Value policy objectives to be met?
2	Has the local authority clearly defined the scope of services to be included in the procurement?
3	Has the local authority clarified any capital facility development and investment requirements? Are these to be initiated by the successful bidder or local authority? Has local authority capital been secured for the project?
4	Is the local authority clear on the level of risk it wishes to transfer to the leisure operator partner including asset management, pensions, utilities etc.?
5	Has the local authority undertaken affordability modelling, considering forward maintenance and equipment costs (based on asset condition) for the life of the contract, agreed investment and the likely market perception of its portfolio? Has this been aligned to the Medium Financial Plan and a realistic minimum affordability threshold set for the procurement?
6	Has the local authority agreed a contract length including any break clauses or potential extension periods?
7	Has the local authority developed clear strategic objectives and performance indicators linked to its physical activity, sport and wellbeing outcomes to be delivered by the leisure operator partner and embedded into the contract?
8	Does the local authority have contractual access to data from its incumbent operator partner? If not has it negotiated a reasonable position for them to release financial and operational data to be made available to other bidders?
9	Has the local authority selected the optimal procurement route?
10	Has the local authority undertaken market engagement to test key elements of its Procurement Strategy with potential bidders?
11	Has the local authority engaged Members with the Procurement Strategy and have they signed off the final version?

6.8 Procurement Documentation

- 6.8.1 Once the local authority is clear on its Procurement Strategy it can then commence production of the procurement documents.
- 6.8.2 The 2015 PCR Regulations represent a significant change to the previous regulations in that all procurement documentation must be published with the OJEU contract notice.
- 6.8.3 It is no longer possible for contracting authorities to prepare and release the procurement documents required at each stage of the tender process at the beginning of that relevant stage. Regulation 53(1) of the Regulations provides that:
- “Contracting authorities shall, by means of the internet, offer unrestricted and full direct access free of charge to the procurement documents from the date of the publication [of the OJEU Notice or date on which an invitation to confirm interest is sent].”*
- 6.8.4 Procurement documents are defined as:
- “Any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents.”*
- 6.8.5 There has been much debate concerning the amount of information which must be made available to bidders from the outset of a procurement process. When carrying out more complex projects, it may not be possible to provide all documentation from ‘day one’ (i.e. the date of the OJEU Notice/invitation to confirm interest).
- 6.8.6 The Crown Commercial Service has issued some guidance on this point and has stated that contracting authorities would be expected to provide only information that is reasonably available at the point at which notification to the market is made.
- 6.8.7 The guidance does refer to the fact that the interpretation of this requirement changes based on the different stages of the process that have been reached, and that a “purposive interpretation” is appropriate. A “purposive interpretation” would take into account the intended purpose of Article 53 of the Directive (which is what Regulation 53 is based on). The purpose of Article 53 was to enable bidders to gain a better understanding of the contract opportunity from the outset of the process, allowing them to determine “is this opportunity for us?” before committing time and resource to the bidding process. The CCS guidance, in referring to a “purposive” approach, suggests that the purpose of Article 53 would be fulfilled if enough information about the opportunity was released at the outset of the process, even if not all of the procurement documentation itself was available from day one.

- 6.8.8 The expectation then is that more of the documents should be generated as the process continues, and therefore will be supplied to bidders, and the guidance specifically states that “in contrast, at very early stages, fewer of the documents, if any, would be included.”
- 6.8.9 The most plausible interpretation therefore seems to be that Regulation 53 is a requirement to make available all documentation which describes the opportunity and how the process is going to operate as soon as possible. This does not mean however that fully developed and detailed versions of all of the documents need to be made available from the outset.
- 6.8.10 Table 6.7 shows the suggested minimum documentation requirements at OJEU notice stage for each procurement procedure for a leisure contract.

Table 6.7: Suggested Minimum Procurement Documentation

Procurement Procedure	Procurement Documents
Open Procedure	<ol style="list-style-type: none"> 1. Invitation to Tender Document including SSQ 2. Draft services specification 3. Risk Allocation Matrix 4. Draft Leisure Operating Contract.
Restricted Procedure	<ol style="list-style-type: none"> 1. Supplier Selection Questionnaire 2. Invitation to Tender Document 3. Draft services specification 4. Risk Allocation Matrix 5. Draft Leisure Operating Contract.
Competitive Procedure with Negotiation	<ol style="list-style-type: none"> 1. Supplier Selection Questionnaire 2. Invitation to Tender Document containing details of <ul style="list-style-type: none"> • Invitation to Submit Initial Tenders • Invitation to Submit Revised/Final Tender 3. Draft services specification 4. Risk Allocation Matrix 5. Draft Leisure Operating Contract.

Procurement Procedure	Procurement Documents
Competitive Dialogue Procedure	<ol style="list-style-type: none"> 1. Supplier Selection Questionnaire 2. Invitation to Tender Document containing details of <ul style="list-style-type: none"> • Invitation to Submit Outline Solutions • Invitation to Submit Detailed Solutions • Invitation to Submit Final Tenders • Services specification • Risk Allocation Matrix • Draft Leisure Operating Contract.
Competitive Dialogue Procedure, Design Build, operate and Manage	<ol style="list-style-type: none"> 1. Supplier Selection Questionnaire 2. Invitation to Tender Document containing details of <ul style="list-style-type: none"> • Invitation to Submit Outline Solutions • Invitation to Submit Detailed Solutions • Invitation to Submit Final Tenders • Services specification • New Build Facilities requirements • Risk Allocation Matrix • Draft Design, Build, Operate and Manage Contract.
Concession Contract	<ol style="list-style-type: none"> 1. Invitation to Tender Document 2. Services specification 3. Contract and lease.

6.9 Supplier Selection Questionnaire (SSQ)

- 6.9.1 The Crown Commercial Service (CCS) published an SSQ template in 2016 which is now the standard approach for compliance with Public Procurement Regulations. It is used for all procurement procedures except Open Procedure and Concession Contract. The CCS template can be found in [Appendix 9](#).
- 6.9.2 The aim of the SSQ stage as a whole is to shortlist the most suitable candidates based on their experience and capability.

- 6.9.3 Ultimately, an effective SSQ document (and OJEU Notice) will result in candidates “self-selecting”, with only the most able candidates with the most relevant experience submitting SSQ responses. Theoretically, therefore, the contracting authority should be happy to potentially contract with any of the candidates shortlisted and invited to tender. Thus, setting the “bar” at the right level is key at this stage, and will be influenced by what sort of technical/experiential/financial aspects are tested, and how (amongst other factors). In addition to these points, there are a number of requirements under the Regulations which must also be applied to short list candidates.
- 6.9.4 As noted below there is a new standard form document, called the “Supplier Selection Questionnaire” which must be used, and a contracting authority can add project specific questions to this document to tailor it to the procurement at hand. It is mandatory for a potential supplier to complete Part 1 and Part 2 of the SSQ, for all procurements above EU thresholds.
- 6.9.5 As Part 1 and Part 2 of the SSQ provide a formal statement that the relevant grounds for exclusion do not apply to the potential supplier completing it, a completed form is required for each organisation that the potential supplier will rely on to meet the selection criteria. This also means that where the potential supplier is actually a group of suppliers, including joint ventures and partnerships, each potential supplier in that group must complete Part 1 and Part 2 of the SSQ self-declaration. This requirement must be made clear in the procurement documents.
- 6.9.6 The local authority can choose whether or not to ask for a self-declaration of exclusion grounds from sub-contractors who are not being relied on by the bidder to meet the selection criteria. However, if the local authority chooses to ask for one, then the procurement documents should explicitly state that one is required (the SSQ includes a line to this effect).
- 6.9.7 Contracting authorities must indicate the requirements for participating in tendering exercises, which may be expressed as minimum levels of ability together with the appropriate means of proof. The overall, purpose of this stage is to:
- Identify the pool of qualified bidders who are potentially competent in performing the contract. This is generally done by assessing tenderers against minimum standards which may include:
 - Completeness and compliance checks
 - Mandatory and discretionary grounds for exclusion
 - Financial and technical requirements.
 - Allow a ranking of bidders to a certain number (as specified in the OJEU Notice) to draw up a shortlist of qualifying tenderers, so that a manageable number are involved in the rest of the procurement process.

- 6.9.8 The questions included in Part 3 of the standard SSQ should be adopted across all relevant procurement procedures. The local authority does not have to use all the questions – only those relevant and proportionate to the contract. When considering how a procurement process might improve the social, economic or environmental wellbeing of a relevant area, the authority must only consider matters which are relevant to the what is proposed to be procured. The authority must also only consider those matters to the extent to which it is proportionate, in all the circumstances to take those matters into account.
- 6.9.9 The questions should be used in line with the relevant procurement procedure, and used:
- As part of the tender pack to test that a potential supplier meets minimum levels of suitability when using the open procedure
 - To pre-qualify suppliers to be invited to tender when using the Restricted Procedure
 - To submit an initial tender under the Competitive Procedure with Negotiation
 - To participate in a Competitive Dialogue Procedure.
- 6.9.10 No changes or additions can be made to questions in Part 1 and Part 2 of the SSQ as they list the exclusion grounds set out in the PCR 2015.
- 6.9.11 The expectation is that you do not deviate from the questions set out in Part 3 of the SSQ. However, if you do deviate from this guidance, you must report this to the Crown Commercial Service Mystery Shopper scheme (PQQDeviations@crownccommercial.gov.uk).
- 6.9.12 You must report the following deviations:
- Changes to the wording of the standard questions and instructions
 - Additional questions that are included which are not specific to the individual procurement.
- 6.9.13 The report (for information purposes only, and not for approval) should include:
- A covering letter or e-mail explaining the reasons for any deviations, demonstrating that they are relevant, proportionate and linked to the requirements of the contract and contract delivery
 - Confirmation that the deviations have been approved by the Head of Procurement or equivalent in the organisation
 - A copy of the questions template or supplier selection process which clearly shows the deviations. This could include a document summarising the deviations.



6.9.14 You do not need to report:

- Project specific questions developed in line with this guidance
- Simple amendments to make the questions compatible with e-procurement systems
- Standard questions which you have decided to omit in Part 3 of the SSQ.

6.9.15 It should be noted that potentially over 12 leisure operator partners will be able to pass the standard SSQ and the authority may need to avoid having an excessive number of bidders. Therefore, the local authority may need to consider adding some additional quality-based method statements asking for the organisation's track record in specific areas relevant to the Procurement Strategy. These could include, for example:

- Case studies on increasing participation levels in a population
- Case studies on delivering outreach services to address inactivity in targeted populations
- Case studies on delivering sustainable physical activity, sport and wellbeing services which achieved their targets
- Health and safety track record and processes such as risk assessments
- Design, Build, Operate and Maintain capability
- Investment track record
- Full repair and maintenance of assets capability.

6.9.16 The evaluation criteria of the additional questions must be clearly set out in the SSQ with the weighting for each question. Table 6.8 provides an example of additional SSQ questions and their weightings.

Table 6.8: Sample SSQ Additional Questions and Weightings

Question	Weighting
Please enclose 2 examples of risk assessments and safety method statements for work activity undertaken within the last 12 months. This should include manual handling, COSHH or others that are relevant to your work activities.	10%
Please enclose details of health and safety training courses or programmes undertaken by managers and workforce.	10%
Has your organisation had to pay any fees or been served notice for breach of regulations or intervention during the last two years under The Health and Safety (Fees) Regulations 2012, where those who break health and safety laws are liable for recovery of Health and Safety Executive's related costs, including inspection, investigation and taking enforcement action over the last 2 years? This also includes any breaches and notices served in relation to the Food Safety and Hygiene (England) Regulations 2013. If "yes" please outline how your organisation learned from the incident. If your answer to the above is 'No' a score of 4 will be given. If 'Yes' the maximum score possible will be 3 depending on your response (word limit 1000).	10%
Please provide a separate appended document with up to three case studies of where your organisation has assisted local authority clients in the feasibility, design and build and maintenance of a multi-use physical activity, sport and wellbeing facility within the last five years. (Word limit 2000) <i>(Note: only use if a DBOM procurement)</i>	20%
Please provide a separate appended document with up to three case studies of where your organisation manages a physical activity, sport and wellbeing services that has resulted in increased participation within the last three years. Please include details of innovation, partnership working and how you contributed to improving outcomes, particularly amongst the client's key target groups. (Word limit 2000)	20%
Please provide a separate appended document with up to three case studies of where and how your organisation has delivered significant revenue savings on behalf of your clients. (Word limit 2000)	20%
Please provide a separate appended document with details of your experience of managing staff TUPE processes and pension schemes. (Word limit 1000)	10%

6.9.17 The local authority must also set out the scoring criteria for the additional questions. Table 6.9 provides an example of this based on a 0 to 5 scoring system.

Table 6.9: Example SSQ Scoring Criteria

Score	Description of information received
0 (=0%)	No comments or information provided; complete rejection of fundamental principles of the project; meets none of the local authority's basic expectations, complete misunderstanding of project brief; no innovation and no comment on the draft contract(s).
1 (=5%)	Unsatisfactory submission, no comments given or rejection of some fundamental principles; meets few of the local authority's basic expectations; poor understanding of project brief and significant omissions from the bid; very little, or no evidence of innovation.
2 (=15%)	Poor submission with identifiable shortcomings – the comments made show areas of weakness and/or limited information has been provided; meets the local authority's basic expectations; vague understanding of project brief; limited examples of innovation but are inappropriate.
3 (=50%)	Adequate/satisfactory submission – comments or information submitted is acceptable for this stage in project; meets the local authority's basic expectations without offering any great advantages, adequate understanding of project brief, satisfactory evidence of innovation but is not particularly beneficial to the local authority; compliant with draft contract(s) subject to minor drafting.
4 (=75%)	Good submission – comments made demonstrate a sound and complete approach which have the potential to fully accord with the local authority's strategic objectives and requirements and/or wholly meets expectations at this stage; good understanding of project brief; some innovative solutions that will be acceptable to the local authority; compliant with draft contract(s) and any project specific comments cause no appreciable concerns.
5 (=100%)	Excellent submission – comments made demonstrate a sound and complete approach which will have the potential to meet the local authority's strategic objectives and requirements in all respects; and/or exceeds expectations at this stage; thorough understanding of project brief and requirements; excellent innovative solutions which offer potential for increased capacity; efficiency and value for money; compliant with draft contract(s) and any project specific comments are advantageous.

6.9.18 Detailed guidance on SSQ is [published by the CCS](#).

6.10 Invitation to Tender (ITT) Document

- 6.10.1 The ITT is not only the key document to provide bidders with clear instructions on how to tender, it can also showcase the opportunity and provide crucial information about the local authority and its strategic vision for its physical activity, sport and wellbeing services.
- 6.10.2 All the procurement procedures outlined in [Table 6.4](#) require an ITT document although the content will vary. Table 6.10 provides an example of the typical contents included within the ITT.

Table 6.10: ITT Document Contents

ITT Section	Typical Contents
Outline of the Opportunity	<ul style="list-style-type: none">• Introduction and description of the local authority• Essential data on health and wellbeing levels and inequalities in the local authority area• Essential information on physical activity levels and inequalities in the local authority area• Outline of the tender opportunity including:<ul style="list-style-type: none">• key features such as investment• headline financial information• headline usage of facilities and services in scope• key areas of proposed risk transfer• procurement procedure and variant bids.• Statement of financial requirements, such as the affordability threshold.

ITT Section	Typical Contents
Strategic objectives, Contract Scope and Operational Philosophy	<ul style="list-style-type: none"> • Outline of the local authority's strategic objectives and how they are embedded into the Contract • Contract Scope: <ul style="list-style-type: none"> • Outline of services within the contract including facilities and other services such as outreach, healthy lifestyle advisers, social prescription etc. • Outline of facility requirements (DBOM only) • Local authority capital investment included in the contract. • Partnership Philosophy stating how the local authority wants to work with the leisure operator partner • Core requirements which could include: <ul style="list-style-type: none"> • affordability • contract length • headline asset risk allocation • investment whether from the authority or required from the operator partner • data capture and sharing. • Asset Management – high level responsibilities • Capital Investment whether from the authority or expected from the operator partner • Utilities risk share • License or lease arrangements • Dual Use Agreement(s) if applicable • Additional requirement such as Living Wage Foundation • Pricing and concessions strategy • Data security, ownership, capture, sharing (open data) and management.

ITT Section	Typical Contents
The Procurement Process	<ul style="list-style-type: none"> • Overview • Procurement Stages which depending on the Procurement Procedure used could include: <ul style="list-style-type: none"> • Prior Information Notice (if applicable) • OJEU Notice • SSQ • ITT including Initial Tender, Detailed Solutions and Final Tender if appropriate. • Management of the procurement process • Supporting information (Data Room) • Clarifications and communications • Bidder visits to view the facilities protocols.
Evaluation Criteria	<ul style="list-style-type: none"> • Price/quality weighting (social value can be included as a separate evaluation area or included under the quality criteria) • Scoring methodology • Method statements and weightings • Pricing schedule (to include Building costs for DBOM) • Include Initial, Detailed and Final Tender stages for Competitive Dialogue.
Invitation to Tender	<ul style="list-style-type: none"> • Introduction • Structure of the ITT • Intentions of the ITT and Important notices • TUPE.
Invitation to Tender Submission Requirements (Initial Tenders for CPN and Competitive Dialogue)	<ul style="list-style-type: none"> • Bid requirements • Mandatory Variant bids (if applicable) • Quality submission requirements • Financial submission requirements • Tender submission – contractual points to note • Changes to information previously submitted • Procedure for submitting tenders.

ITT Section	Typical Contents
Invitation to Submit Detailed Solutions (Competitive Dialogue only)	<ul style="list-style-type: none"> • Bid requirements • Mandatory Variant bids (if applicable) • Quality submission requirements • Financial submission requirements • Tender submission – contractual points to note • Changes to information previously submitted. • Procedure for submitting tenders.
Invitation to Submit Revised/ Final Tenders (CPN and Competitive Dialogue)	<ul style="list-style-type: none"> • Bid Requirements • Mandatory Variant bids (if applicable) • Quality Submission requirements • Financial Submission requirements • Tender Submission – contractual points to note • Changes to information previously submitted.
Conditions of Tenders and Signed certificates	<ul style="list-style-type: none"> • Bidder's Warranties • Confidentiality • Canvassing and Collusion • Information Disclosure • Right to Clarify, Vary or Cancel the Process. • Costs and Expenses • Publicity • Disclaimer • Accuracy of Information Provided.
Appendices	<p>Appendix 1 Form of Offer</p> <p>Appendix 2 Certificate as to Non-Collusive Tendering</p> <p>Appendix 3 Certificate as to No Canvassing</p> <p>Appendix 4 Acceptance of the services specification</p> <p>Appendix 5 Acceptance of the Draft Management Agreement Contract.</p>

6.10.3 A template for the Invitation to Tender Document is provided [Appendix 10](#).

6.11 Services specification

- 6.11.1 The services specification is the key document that specifies the outputs and contribution to wider strategic objectives, the contractual relationship and minimum performance standards the authority wants to achieve through the service in the scope of the procurement.
- 6.11.2 The services specification should contain:
- Local authority strategic objectives and contribution to wider strategic outcomes required, and specific targets against which performance of the operator partner can be measured (this will ideally be linked to the local authority's required strategic objectives and contribution to wider strategic outcomes developed as part of the strategic pre-procurement work). Ideally there should be an explicit link between the strategic outcomes planning outputs highlighted in Section 2 and the core requirements embedded into the services specification.
 - Service and facility requirements – for example, relating to sports development, disability and inclusion, health and wellbeing plans, customer care, data management, marketing and social media, reporting, pricing, programming and opening hours, cleaning, maintenance, lighting, heating, staffing & equipment.
 - Monitoring and evaluation requirements including Key Performance Indicators and data capture requirements to effectively measure performance against the strategic objectives.
- 6.11.3 The services specification forms part of the main contract and thus the operator partner will be legally required to deliver the requirements set out in the document
- 6.11.4 [Table 6.11](#) contains the typical contents of a services specification.



Table 6.11: Services specification Contents

Specification Section	Typical Contents
Introduction	<ul style="list-style-type: none"> • Background • Measurement • Reporting.
General Core Requirements	<ul style="list-style-type: none"> • Introduction • Strategic objectives and Contribution to wider local Outcomes • Facility Management • Active Communities • Partnership Philosophy and Governance (example) • Management Fee • Asset Management • Utility Costs and National Non-Domestic Rates • Environmental and Energy Management.
Overall Performance Requirements	<ul style="list-style-type: none"> • Managing Performance against Strategic objectives • Quality Management • Social Value.
Service Requirements	<ul style="list-style-type: none"> • Active Communities • Opening Hours • Access • Customer Experience • Programming for All • Pricing • Concessionary Pricing (See Appendix 13 for Guidance) • Staffing and Skills Development • Safeguarding • Equalities • Cleaning and Housekeeping • Food and Beverages • Marketing, Research and Communication • Data and ICT Management • Health and Safety Management • Major Incident Reporting.

Specification Section	Typical Contents
Asset Management Requirements	<ul style="list-style-type: none"> • Asset Management Capital and Revenue Funding • Building Maintenance • Statutory/ Mandatory inspections • Maintenance and Replacement of Equipment • Grounds Maintenance • Environmental and Energy Management • Legislation and Policy • Water (Hot and Cold Installations) • Drainage • Ventilation • Heating (Thermal Comfort) • Lighting.
Appendices	<ul style="list-style-type: none"> • Appendix 1 Licence Arrangements • Appendix 2 Minimum Opening Hours of Leisure Facilities • Appendix 3 Protected Bookings • Appendix 4 Existing Bookings • Appendix 5 Current Pricing/Fees & Charges • Appendix 6 Site Boundaries and Plans • Appendix 7 Repairs and Maintenance Responsibility Schedule • Appendix 8 Equipment Inventory • Appendix 9 Safeguarding Policy • Appendix 10 Prevention and Wellbeing Programme • Appendix 11 Local Authority's Equalities Policy.

6.11.5 A services specification template can be found in [Appendix 8](#).

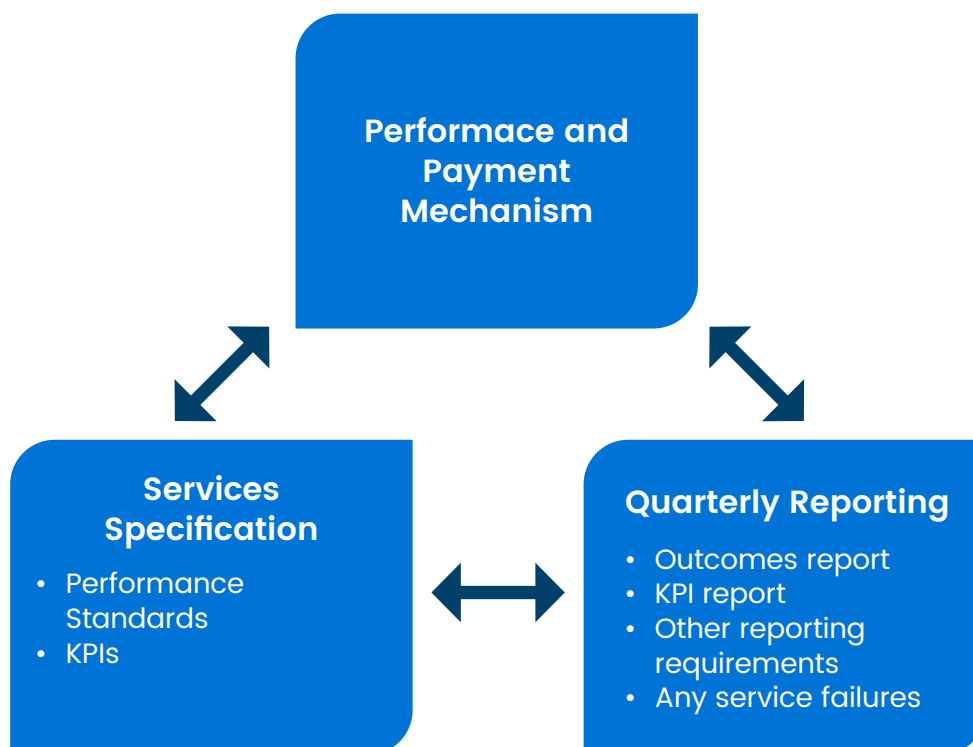
6.12 DBOM Facilities Requirement and Technical Specification

- 6.12.1 These additional documents are specific to DBOM procurements.
- 6.12.2 When new or substantially refurbished facilities are part of the contract, a detailed set of facility requirements and technical specification will need to be compiled, setting out the facilities to be provided and the technical requirements for the new build/refurbishment and covering the following key aspects:
- Schedule of Accommodation
 - Adaptability & Flexibility
 - Sustainability & Environmental
 - Design Life
 - Durability & Maintenance
 - Mechanical & Electrical Engineering requirements
 - ICT and Communications requirements
 - Civil and Structural Engineering requirements
 - External works requirements
 - Construction site management.
- 6.12.3 Drafting of the Facilities Requirements and Technical Specification will require technical input from advisors with specialist knowledge of sports facility development unless the local authority has sufficient expertise in-house. In all cases, the technical specification should take account of Sport England [design guidance notes](#).
- 6.12.4 A key issue is the approach to be taken in relation to planning. Wherever possible, it is preferable for the local authority to obtain at least outline planning permission in advance of the procurement process, for the following reasons:
- It provides confidence on deliverability to potential bidders
 - It reduces the timescale for the process and can facilitate a better risk transfer in the contract
 - It provides a framework within which bidders can develop their solutions, which allows the local authority to evaluate bids on a more like-for-like basis.
- 6.12.5 The template for Facilities Requirements and Technical Specification are provided in [Appendix 6a](#) and [Appendix 6b](#).

6.13 Performance and Payment Mechanism (PPM)

- 6.13.1 Example Performance and Payment Mechanism Systems are provided in [Appendix 2](#) of this guidance. The local authority should ensure that whichever system it adopts it is fully aligned to the contract and services specification so that documents 'work together' in ensuring high quality service delivery by the operator partner.
- 6.13.2 It is important that the Payment and Performance Monitoring system links to the services specification and provides clear incentives for the operator partner to perform and remedies if there are any performance failures.
- 6.13.3 The PPM should also contain a provision for embedding key aspects of the successful operator partner's bid so that it is legally obliged to deliver what it has promised in its tender submission.
- 6.13.4 The Performance and Payment Mechanism should contain:
- A clear process for changes in the base price – for example, inflationary increases (e.g. CPI) and changes in general law
 - A clear system for financial adjustments resulting from poor performance – the example provided uses 'performance points', which are weighted according to the seriousness of the performance failure
 - Clear delivery milestones for initiatives contained in the operator partner's bid
 - An incentive mechanism to allow the operator partner to benefit from enhanced performance against the key outcomes and objectives for the contract
 - Clearly defined 'excusing causes' which provide the operator partner with relief from financial adjustments in specific circumstances that the operator partner cannot reasonably control (linked to achieving a 'fair' risk profile and encouraging value for money solutions).
- 6.13.5 [Figure 6.12](#) shows the link between the Performance and Payment Mechanism, services specification and contract reporting.

Figure 6.12: Link between the specification, and reporting requirements and PPM



- 6.13.6 The aim of the documentation is to create a contract that encourages partnership working and a co-operative approach to improving service and customer focus. The PPM can be adopted for both deficit and surplus schemes. The performance monitoring process should not be seen as a mechanism for generating income, as any approach like this would be counterproductive to overall service quality. However, the mechanisms need to be sufficiently robust and specific so that they are effective where genuine underperformance occurs and there is little or no evidence of commitment by the operator partner to resolve problems and improve service provision.
- 6.13.7 In relation to the value of adjustments, a balance must be achieved between a level of financial adjustment which is representative of the seriousness of the performance failure, but which does not unnecessarily jeopardise the financial robustness of the operator partner – often, putting the operator partner’s profit margin plus a small amount of central costs at risk will be a sufficient incentive – without impacting on business sustainability.
- 6.13.8 The PPM will need to be aligned to ensure that any amounts set out for adjustments in relation to poor performance are calculated in the context of being a reasonable and ascertainable loss incurred by the local authority, otherwise the mechanism may be open to challenge. Nevertheless, the opportunity to link performance failure points to termination triggers should be retained.
- 6.13.9 A draft Performance and Payment Mechanism template can be found in [Appendix 2](#). It should be noted that the PPM should to a degree be bespoke to the requirements of individual authorities.

6.14 Legal Contract

- 6.14.1 The Leisure Management Contract is clearly a critical document in the process and therefore the following templates are provided as part of this toolkit:
- Appendix 1 – Risk and Responsibility Allocation Matrix
 - Appendix 2 – Performance and Payment Mechanism (to be included in the contract as a schedule)
 - Appendix 3 – Template management agreement for a Leisure Operating Contract
 - Appendix 4 – Template agreement for a DBOM Contract (design, build, operate and maintain)
 - Appendix 5 – New Build Drafting Riders
 - Appendix 6 – DBOM Facilities Requirement and Technical Specification Templates
 - Appendix 8 – Services specification (to be included in the contract as a schedule).
- 6.14.2 Table 6.13 provides guidance for identifying which contract best fits a particular project type.

Table 6.13: Contract Documents and Project Type

Project Type	Type of contract and additional schedules
<p>Procurement of physical activity, sport and wellbeing services including facility management. There could be some minor capital works.</p> <p>Note: This is the most common type of procurement project</p>	<p>Appendix 1 – Risk and Responsibility Allocation Matrix</p> <p>Appendix 2 – Performance and Payment Mechanism (to be included in the contract as a schedule)</p> <p>Appendix 3 – Leisure Operating Contract</p> <p>Appendix 8 – Services specification (to be included in the contract as a schedule).</p>
<p>New build or substantial refurbishment funded by the local authority where the operator partner will be responsible for designing and building the new facilities in addition to ongoing facility management and managing the services and maintaining the building.</p>	<p>Appendix 1 – Risk and Responsibility Allocation Matrix</p> <p>Appendix 2 – Performance and Payment Mechanism (to be included in the contract as a schedule)</p> <p>Appendix 4 – DBOM contract</p> <p>Appendix 6 – DBOM Facilities Requirement and Technical Specification Templates</p> <p>Appendix 8 – Services specification (to be included in the contract as a schedule).</p>

Project Type	Type of contract and additional schedules
New build or substantial refurbishment funded by the local authority where the local authority will be responsible for designing and building the new facilities. The operator partner will be responsible for ongoing facility management and managing the services.	Appendix 1 – Risk and Responsibility Allocation Matrix Appendix 2 – Performance and Payment Mechanism (to be included in the contract as a schedule) Appendix 3 – Leisure Operating Contract Appendix 5 – New Build Drafting Riders Appendix 8 – Services specification (to be included in the contract as a schedule).

- 6.14.3 There has been much debate concerning the amount of information which must be made available to tenderers from the outset of a procurement process to ensure compliance with the Regulations. The Crown Commercial Service has issued some guidance on this point.
- 6.14.4 The most plausible interpretation seems to be that Regulation 53 is a requirement to make available all documentation which describes the opportunity and how the process is going to operate as soon as possible. We therefore suggest, in respect of the legal contract at OJEU stage, as a minimum the draft contract template should be included together with a completed Risk and Responsibility Allocation Matrix ([Appendix 1](#)) to highlight any deviation from the standard form in the absence of a fully developed Contract.
- 6.14.5 A Risk and Provisions Proforma Responsibility Allocation Matrix (Appendix 1) has been included in this guidance. Local authorities should complete the proforma which essentially highlights the key contract risks and whether they sit with the operating operator partner or local authority. These will have been identified and signed off as part of the Procurement Strategy set out in [Section 6.3](#) of this guidance.
- 6.14.6 A check should be done before documents are issued to bidders to ensure legal consistency between all documents. Failure to do this could result in inconsistencies between assumptions made by bidders. A further check should also be done before signature of the final form contract to ensure that all legal documents are consistent.
- 6.14.7 The main contract should be consistent with the any form of lease to be granted in relation to the properties within the Contract.

6.15 Data Room

- 6.15.1 To ensure maximum market engagement and bidder confidence, the local authority can consider compiling a Data Room which is electronically accessible for all bidders (e.g. available through a secure online portal). This should contain the essential detailed information that bidders need to compile their solutions.
- 6.15.2 From 18 October 2018 all tender processes must be run on a fully electronic basis. This means that communication with all bidders will need to be undertaken electronically. There are only minor exceptions to this requirement and appropriate advice should be sought.
- 6.15.3 A well populated Data Room will not only enhance bidder confidence but will also substantially reduce the number of clarification questions raised by bidders, reducing local authority time and procurement costs.
- 6.15.4 Table 6.14 provides a list of documents that can be included in the Data Room which are all needed by operator partner to compile a robust, high-quality bid.

Table 6.14: Typical Data Room Contents

Information Type	Typical Document List
Financial Information	<ul style="list-style-type: none">• Operator accounts with income/expenditure workings for last 3 years• Financial information (details of income/expenditure) relating to grant funded programmes etc.• Details of membership sales and income for past 3 years• Non-Domestic Rates invoices for each centre in the contract• Breakdown of VAT/Non-VAT (e.g. service changes showing which are VAT exempt etc.)• Details of property spend since over last 5 years 2010 including contractors.

Information Type	Typical Document List
Asset and Facility information	<ul style="list-style-type: none"> • Detailed condition surveys for all facilities with lifecycle costings aligned to the proposed contract length • Equipment Inventories for all sites • Assets Register • Water usage records – past 3 years • Energy usage records – past 3 years • Gas usage records – past 3 years • Electricity usage records – past 3 years • Rolling building maintenance programme • Site plans • Plans showing services to sites – gas, sewerage, telephone, water • Floor layout plans • Utilities contracts register • Building plans in DWG format • Building fabric inventories • Heads of terms of leases • Lease Plans • Collateral warranties and certificates e.g. for fire alarms, extinguishers, lifts etc. • Mechanical conditions surveys • Asbestos surveys.
TUPE and Pensions	<ul style="list-style-type: none"> • TUPE list – draft initial list at OJEU notice stage and final list prior to tender submissions • Local Government Pension Scheme (LGPS) Risk Assessment Information Report • LGPS Pension Fund Information • Details of how membership sales commissions are calculated and Terms for receiving commission • Any previous modifications to terms and conditions of employment • Relevant pay scales.
Service Plans	<ul style="list-style-type: none"> • Performance management reviews in relation to the service • Service plan • Service's strategic plans /strategies • Service's terms of reference • Corporate plan (or equivalent).

Information Type	Typical Document List
Customer Information	<ul style="list-style-type: none"> • Active membership subscriptions • Member information profiles by month for past 3 years • Membership distribution maps • Latent demand studies if available.
Programming and Pricing	<ul style="list-style-type: none"> • Information on programmes • Centre's fees and charges • Centre's protected and block bookings • Pool hire block bookings • Advanced bookings taken by operator partner beyond end of contract • Usage statistics – throughput by activity.
Staffing	<ul style="list-style-type: none"> • Staffing structures • Management staffing structure • Job Descriptions • Cleaning staff information including rotas • Crèche rota/staff information • Customer/sales Advisor Rota • Duty Officer Rota • Fitness Staff Rota • Reception Rota • Management Rota.
Population and Demographic information	<ul style="list-style-type: none"> • Population and Demographic Information – general e.g. Health Profiles etc. • Any latent demand studies • Indoor Built Facilities Strategy (or similar).

6.15.5 The Data Room can also contain the ongoing updated clarifications matrix so that bidders can see questions raised and answers provided during the procurement process.

6.16 Evaluation Frameworks and Approaches

- 6.16.1 The approach to evaluation must be fully transparent and published in the ITT documentation.
- 6.16.2 Each of the procurement routes requires evaluation of bid submissions and selection of shortlisted parties to progress to the next stage or selection of a preferred bidder. It is therefore important to consider the various aspects associated with evaluation and selection, including:
- Development of evaluation criteria
 - Bid evaluation team selection
 - Clarification questions and clarification meetings
 - Scoring table
 - Score moderation meeting
 - Evaluation report
 - Providing feedback to bidders.
- 6.16.3 A detailed and clear evaluation is critical to the overall success of the project, therefore sufficient time should always be set aside for this, considering the need for clarification meetings, moderation meetings and reporting.

Consideration of the balance between outcome delivery and quality and financial performance.

- 6.16.4 It is essential that the local authority considers how the balance between the key components of the evaluation process can deliver an efficient service, contributing towards local outcomes within a sustainable financial framework. The balance between quality and price criteria will be critical in determining this for the service over the next 10 – 15-year period.
- 6.16.5 It is recommended that the evaluation criteria are developed and tested to ensure that the evaluation model is weighted towards the achievement of key strategic objectives and the contribution towards strategic outcomes as opposed to simply facility management.
- 6.16.6 Subject to the procurement route being followed, dialogue can then be focused on the required strategic objectives and strategic outcomes and how the contractor intends to contribute to their achievement.
- 6.16.7 The evaluation criteria should reflect the priorities of the service and will need to be tested to ensure that the outcome of the evaluation will accurately reflect these priorities within the context of the weightings applied to each area.
- 6.16.8 There are normally two or three overarching categories as illustrated in Table 6.15 for a normal procurement without any technical/construction requirements using Competitive Procedure with Negotiation, Restricted Procedure or Concession approach.

Table 6.15: Headline Evaluation Criteria – Restricted, CPN and Concession

Evaluation Criteria	Initial Tender Weighting	Final Tender Weighting
Quality: Delivering Priorities and Operational Delivery	50 – 60%	60%
Commercial/Price: Maximum payment to authority or minimum payment to operator partner	40 – 50%	40%
Total	100%	100%
Note – in this example, social value would be included as a sub-criteria of quality, but local authorities may wish to pull social value out as a separate evaluation criteria heading. If the local authority has an existing social value evaluation framework, this can be integrated into the wider evaluation criteria.		

6.16.9 For a Competitive Dialogue process where there is substantial technical/construction requirement including DBOM, the authority can consider three stages as shown in the example on Table 6.16.



Table 6.16: Headline Evaluation Criteria – Competitive Dialogue

Evaluation Criteria	Outline Solutions Weighting	Detailed Solutions Weighting	Final Tender Weighting
Quality: Delivering Priorities and Operational Delivery	30%	25% - 40%	25% - 40%
Technical/design solution	20%	25% - 30%	25% - 30%
Commercial (Revenue)	25%	25% - 35%	25% - 35%
Maximum payment to local authority or minimum payment to operator partner			
Commercial/Price Capital: Capital project cost	25%	25% - 35%	25% - 35%
Total	100%	100%	100%
Note – in this example, social value would be included as a sub-criteria of quality, but local authorities may wish to pull social value out as a separate evaluation criteria heading. If the local authority has an existing social value evaluation framework, this can be integrated into the wider evaluation criteria.			

- 6.16.10 The overall weighting given to evaluation criteria can change depending on which stages of the procurement process the local authority is at, however any changes to the overall award criteria is not permitted.
- 6.16.11 Of note in Table 6.15 is that ranges have been provided for the later stages of the process, which allows the local authority to retain some flexibility to tailor the evaluation as the scope/ focus of the project becomes clearer. However, please note that specific weightings should always be published in advance of each stage.
- 6.16.12 Sometimes an additional overarching category is added – ‘Added Value’ – which can be useful in assessing the bid submissions against specific local criteria which do not easily form part of either core services delivery or commercial criteria.
- 6.16.13 It is important to carefully consider the split of weightings between price and quality (services/design) in the overall context of the key priorities for the local authority and the key contribution towards strategic outcomes for the contract. A 60:40 or 50:50 price: quality balance is typically recommended, recognising the importance of delivery of outcomes with associated wider benefits.
- 6.16.14 Ultimately, the weightings should reflect the local authority’s priorities for the project and be adjusted accordingly.

6.17 Evaluating Commercial Proposals (Price)

- 6.17.1 Local authorities can consider setting an **affordability threshold** for the procurement or minimum payment/fee that is acceptable to the local authority. This should be based on the “minimum market value” of the contract from financial modelling undertaken as part of the Procurement Strategy. It can then be tested against the Medium-Term Financial Plan to ensure that the proposed services are affordable going forward. The authority may need to take specialist advice to establish affordability.
- 6.17.2 The affordability threshold can then be used within the Invitation to Tender as a minimum payment to the authority or maximum payment to the operator partner for a compliant bid. This has two major benefits:
- a. It ensures the local authority can afford all compliant bids and does not waste resources on evaluating bids that are unaffordable
 - b. It enables the local authority to put a greater weighting on quality as all compliant bids will meet its financial requirements and ensure it selects a partner that understands local needs and is able to deliver the local authority’s priorities.
- 6.17.3 Where an affordability threshold is used the local authority can comfortably weight quality at 60% or higher.
- 6.17.4 The commercial score can be set up in different ways to incorporate risk and sustainability or simply be based on lowest price or highest surplus as shown in Table 6.17. The examples are based on commercial being weighted at 40% or 50% depending on the circumstances.



Table 6.17: Evaluation Criteria for Price

Approach	Benefits	Risks
<p>1 a. Basic Approach</p> <p>Highest surplus or lowest management fee scores a full 40%. Subsequent bids score on pro-rata basis.</p> <p>Example (assuming £0 fee affordability)</p> <p>Highest surplus bid £100,000, the second-place bid is £50,000. Therefore, the highest bid scores 40%, next placed bid scores 20%</p>	<ul style="list-style-type: none"> • Incentivises bidders to offer the best possible price • Objective • Transparent. 	<ul style="list-style-type: none"> • It is sometimes difficult for bidders to catch up on quality if there is a substantial difference in price. In this example it would be very difficult for the second placed bidder to make up 20 percentage points on the quality scoring • This could mean the local authority is forced to accept the bidder offering lowest quality • This ignores other financial criteria such as viability and investment.
<p>b. Basic Average Price Approach</p> <p>Price scores are allocated based on the extent to which the bidder's price falls above or below the average price. For example, a bidder that submitted a price that was equal to the average price would be awarded a score of 20% out of 40% for every pound that a bidder's price is above or below the average price the price evaluation score will be increased or reduced accordingly.</p>		

Approach	Benefits	Risks
<p>2 Overall Commercial Approach</p> <p>Commercial score weighted:</p> <ul style="list-style-type: none"> - Revenue Payment 15% - Operator capital 5% - Viability 10% - Risk transfer/legal 10% <p>40%</p> <p>Bidders are ranked based on overall score as 1)</p>	<ul style="list-style-type: none"> • Gives a more wholistic view of commercial proposals including capital investment • Enables the local authority to assess viability of the financial proposals • Prevents a bidder offering a comparatively high revenue payment winning on price alone. 	<ul style="list-style-type: none"> • Local authority has to make a subjective judgement on the viability of each bidder's model • Local authority must assess different capital solutions which could be subjective • This could discourage high revenue payment.
<p>3 Approach for substantial capital development or DBOM</p> <ul style="list-style-type: none"> - Revenue Payment 20% - Capital project cost 15% - Deliverability 10% - Risk transfer/legal 5% <p>50%</p>	<ul style="list-style-type: none"> • Gives a more wholistic view of commercial proposal including capital build costs • Enables the local authority to assess deliverability of the financial proposal for the capital project • Prevents a bidder offering a comparatively high revenue payment or low capital requirement and winning on price alone. 	<ul style="list-style-type: none"> • Local authority must make a subjective judgement on the deliverability of each bidders' solution • Local authority must assess different capital solutions which could be subjective • This could discourage high revenue payment.

Approach	Benefits	Risks
4 Sliding Scale Approach Produce a sliding scale over the affordability threshold e.g.: Management fee payment/receipt (10-years) - £1,000,000 25% Zero or break even 30% +£1,000,000 40% (Maximum score 40%)	<ul style="list-style-type: none"> Enables a positive or negative management fee in the event that affordability is borderline between a deficit or surplus Prevents “over bidding” and bidders putting in a high payment to the local authority and winning on price Most procurements using this approach result in the bidder offering the highest quality solution winning the tender. 	<ul style="list-style-type: none"> Local authority may be able to get a higher financial offer without a ceiling.

6.17.5 Sport England, in reviewing this guidance undertook consultation with the market which revealed that the sliding scale approach appeals to most operator partners.

6.18 Evaluating the Quality of Proposed Solutions

- 6.18.1 This approach should allow the Quality aspect of the evaluation framework to be weighted higher than price and it is therefore important that the evaluation framework is aligned to the Procurement Strategy.
- 6.18.2 Local authorities should note the contents of the services specification and ensure that this is not duplicated in the method statements requested in the Procurement.
- 6.18.3 Given that the market is now mature and more sophisticated, local authorities are now seeking operator partners that can deliver key priorities on their behalf and that the basics of facility management are minimum requirements as highlighted in the services specification. Thus, with modern leisure procurements, the expectation is to assess quality of bidder solutions at a much more strategic level.
- 6.18.4 Table 6.18 provides a list of examples of method statements that could be used to assess quality. It is important that all method statements are forward looking, essentially asking bidders to outline how they will deliver the services over the length of the new contract, as opposed to how they have delivered them elsewhere in the past.

Table 6.18: Example Method Statement Subjects and Questions

Method Statement	Proposed Weighting and Comments
Delivering Priorities	
Please outline how your organisation will deliver improvements in general participation levels and targeted interventions to improve exercise participation and health outcomes in the area for targeted groups. This should include examples of where your approach has been successful in contributing to your client's key outcomes.	High This should be linked to the local authority's physical activity, sport and wellbeing objectives
How will you deliver the local authority's objectives for physical activity, sport and wellbeing including your approach to reaching target groups and the inactive?	High This should be linked to delivering the physical activity, sport and wellbeing objectives
Where new facilities projects led by the local authority are included, or facility enhancements project managed by the operator partner	
Please provide an outline plan and an accommodation schedule for a new physical activity, sport and wellbeing facility in XX based on £XX million building budget. Please demonstrate how your facility would contribute to addressing barriers to participation and target groups to increase physical activity, sport and wellbeing participation.	High
What project management capacity and expertise will your organisation bring towards designing and building the new leisure facilities?	Medium
Please outline your proposed investment solution using up to £1.5 million (for example) of local authority capital. How will this enhance delivering the local authority's strategic objectives and contribute towards strategic outcomes?	High
Facility Management	
Please provide a costed 10-year PPM and lifecycle replacement programme for the 10 years of the contract.	High if full repair and maintenance risk transfer
What local and head office resources will you put in place to deliver a full maintenance and repair lease?	Medium

Method Statement	Proposed Weighting and Comments
<p>Outline how you propose to effectively maintain the buildings, facilities and equipment ensuring that the local authority's assets are maintained to the highest of standards. You should include how your asset management systems ensure safe, effective operation of buildings, equipment is fit for purpose and meets customer demands. Please include a lifecycle replacement schedule as an attachment to your response.</p>	<p>High</p>
Quality and Performance	
<p>How will your Quality Assurance system ensure high standards of customer satisfaction for key operational areas including cleaning, customer service, health and safety and maintenance for the physical activity, sport and wellbeing services?</p>	<p>Medium</p>
<p>How will you ensure a consistently high level of customer care, customer journey and experience that promotes and delivers inclusion, ensuring a high quality and enjoyable experience for all users? Your response should include how you intend to use technology to achieve this and how you intend to monitor customer feedback and continuously improve levels of service delivery for all users.</p>	<p>Medium</p>
<p>Outline how you will collect the performance indicators in the contract using modern ICT and your approach to business planning in partnership with the local authority.</p>	<p>Medium</p>
New Services	
<p>Please outline your approach to creating a physical activity, sport and wellbeing outreach service in the area and how it will increase physical activity participation for targeted groups. Please include examples of where this approach has been successful elsewhere ideally, with a similar demographic.</p>	<p>High if a local authority priority</p>

Social Value

Please outline what wider social and economic benefits you will provide to the community through the contract.

Medium

You should address the social value requirements in the specification and be specific about your commitments and how they will be delivered, avoiding inclusion of information that is not relevant to this contract.

You should include an outline of your approach to delivering sustainable social value outcomes, an overview of your delivery, monitoring and measurement capability and how you propose to engage and collaborate with relevant stakeholders and prospective partners in the delivery of social value.

Your response could include, but not be limited to, contribution to local strategic priorities (improved health, wellbeing, crime reduction etc.), supporting the local supply chain, ethical purchasing standards, creating jobs for local people, improving skills, providing work experience and apprenticeship opportunities and local volunteering opportunities etc.

Please outline how you would ensure that the facilities are managed in an environmentally sustainable and cost-effective manner in order to meet the specification. Your response should consider elements such as waste and recycling, energy and water usage and travel planning and pollution control. Please include details of any invest to save schemes and initiatives you would propose to implement to help meet this requirement.

Medium

You should address the requirements in the specification and be specific about your commitments and how they will be delivered, avoiding inclusion of information that is not relevant to this contract.

You should include an outline of your approach to delivering sustainable environmental measures, an overview of your delivery, monitoring and measurement capability and how you propose to engage and collaborate with relevant stakeholders and prospective partners.

Method Statement	Proposed Weighting and Comments
------------------	---------------------------------

Staffing

Please outline your staff resourcing strategy to provide sufficient and suitably qualified staff to deliver the local authority's strategic priorities and contribute towards the local authority's strategic outcomes. Include details on your approach to ensuring staff welfare, good customer care, and the safe operation of facilities. What is your approach to continuing professional development for staff, apprentices and volunteers?

Medium

6.18.5 For DBOM contracts local authorities will need to add technical criteria and weightings as shown in Table 6.19.

Table 6.19: Additional Criteria for DBOM Projects

Main Criteria	Sub Criteria	Weighting
Technical	Design Layout	
	Design Quality	
	Design Quality of Services	
	Plans & Drawings	
	Design & Construction	
	Programming & Management	
	Planning Requirements	
	Facilities Management and Planned and Preventive Maintenance	

6.18.6 Where new build is the major aspect of the procurement then the technical elements could occupy 40% to 60% of the Quality weighting.

6.19 Evaluation of Tenders

- 6.19.1 The period of bid evaluation requires intensive resource from both the local authority and its advisors to review, clarify, score, moderate and select a shortlist/preferred bidder. Early in the process, consideration will need to be given to forming an evaluation team. Time then needs to be allocated in diaries to ensure sufficient resource is available at the critical times.
- 6.19.2 Local authorities should ensure that their approach to evaluation conforms to what is set out within the Invitation Tender documents without deviations.
- 6.19.3 The evaluation team will need to include specialist expertise in the key areas associated with service delivery, commercial aspects and, depending on the project, technical issues. As a minimum, the following local authority departments are likely to be involved in some or all the evaluation:
- Leisure
 - Finance
 - HR
 - Legal
 - Property
 - Planning (only where there is new build or substantial refurbishment)
 - Procurement.
- 6.19.4 The local authority should consider the procurement process and its impact on resources for evaluation, for example a Competitive Dialogue process is likely to involve evaluation of SSQ, ISOS, ISDS and Final Tenders.
- 6.19.5 In addition, there may be specialists within the local authority who are responsible for areas such as insurance, pensions, health and safety and ICT, who can all contribute to specific aspects of the evaluation.
- 6.19.6 Prior to commencing any evaluation, it is recommended that the evaluation team is briefed, particularly in relation to the scoring matrix and key project issues. Also, all evaluators should seek to undertake a general review of the bid submission as well as focusing on their key areas, in order that they understand the context of the submission and how their specific element fits into the wider picture.
- 6.19.7 Local authorities will need to ensure that their evaluation processes follow the evaluation methodology as set out in the tender documentation. From a practical perspective, this may mean that at least two people should score each question to ensure the evaluation is robust, reduces the potential for error/omission and enables each score to be moderated.

6.19.8 The normal process for the evaluation team would be:

- Compliance check where there is a SSQ
- Initial review of bids and drafting of clarification questions
- Clarification meetings (if necessary) and review of clarification responses
- Scoring and justification by individual evaluators
- Moderation of scores and agreement of score for each criteria
- Clarification questions meetings.

6.19.9 As part of the initial review of the submissions, evaluators should identify clarification questions relating to any areas of the bids that are not clear. These written questions can then be submitted to the bidders and form the basis of clarification meetings, where bidders are given the opportunity to respond and clarify their submissions to the evaluation panel. Clarification meetings may not be required in all instances, depending on the nature of the questions.

6.19.10 In all cases, written responses to clarifications should also be requested, as this forms an important part of the audit trail for the evaluation process.

6.19.11 It is worth noting that the clarification process is aimed at ensuring the evaluation panel has a clear understanding of the bid submissions – it is not an opportunity for further dialogue with the bidders, albeit the clarification process can identify topics for subsequent stages of dialogue (if following the Competitive Dialogue Route).

6.19.12 The local authority must ensure that the procurement regulations are followed correctly, and, if Competitive Dialogue is followed, that a commercial solution is refined during dialogue. As noted above, local authorities should be considerate of the costs for contractors bidding. This is particularly the case around the legal documentation.

6.19.13 Each evaluation criteria can be scored against an agreed scoring table, which clearly sets out the basis for the marks awarded. An example is provided in Figure 6.20 of a 5-point scoring matrix. Depending on the local authority's preference/ procurement regulations, some prefer a 10-point range, which provides greater opportunity to differentiate between bidders. However, using a 10-point scale can often have the opposite effect as scorers may gravitate to the middle scores where there is very little scoring difference between, for example, a 5 or a 6.

Figure 6.20: Illustrative Evaluation Scoring Criteria

Score	Description of information received
0 (=0%)	No comments or information provided; complete rejection of fundamental principles of the project; meets none of the local authority's basic expectations, complete misunderstanding of the brief; no innovation and no comment on the draft contract(s).
1 (=5%)	Unsatisfactory submission, no comments given or rejection of some fundamental principles; meets few of the local authority's basic expectations; poor understanding of the brief and significant omissions from the bid; very little or no evidence of innovation; position on the draft contract(s) and financial position is unacceptable.
2 (=15%)	Poor submission with identifiable shortcomings – the comments made show areas of weakness and/or limited information has been provided; meets the local authority's basic expectations; vague understanding of the brief; limited examples of innovation but are inappropriate; seeks significant amendment and major negotiation required on the draft contract(s).
3 (=50%)	Adequate/satisfactory submission – comments or information submitted is acceptable for this stage in project; meets the local authority's basic expectations without offering any great advantages, adequate understanding of the brief, satisfactory evidence of innovation but is not particularly beneficial to the local authority; complaint with draft contract(s) subject to minor drafting.
4 (=75%)	Good submission – comments made demonstrate a sound and complete approach which have the potential to fully accord with the local authority's strategic objectives and requirements and/or wholly meets expectations at this stage; good understanding of the brief; some innovative solutions that will be acceptable to the local authority; compliant with draft contract(s) and any project specific comments cause no appreciable concerns.
5 (=100%)	Excellent submission – comments made demonstrate a sound and complete approach which will have the potential to meet the local authority's strategic objectives and requirements in all respects; and/or exceeds expectations at this stage; thorough understanding of the brief and requirements; excellent innovative solutions which offer potential for increased capacity; efficiency and value for money; compliant with draft contract(s) and any project specific comments are advantageous.

- 6.19.14 Each evaluator can then score their individual criteria against the agreed scoring table and provide narrative justification to support their scores.
- 6.19.15 It is important that the evaluators are clear that their scoring and narrative is a comparison of the bid submission to the local authority's requirements – bids should not be scored on how they compare to other bids, as the aim is to appoint the bidder who best meets the local authority's requirements.
- 6.19.16 A simple spreadsheet can then be used to weight the scores according to the weighting of each evaluation criteria, which will provide an overall score for the bid.

Evaluation Panel meetings

- 6.19.17 In order to agree a single score for each criteria, the local authority and its advisors should hold a moderation meeting at which each evaluation criteria is discussed and a score with associated justification agreed.
- 6.19.18 Depending on the procurement approach and number of tender stages there could be a requirement for 4 meetings.
- 6.19.19 A well-managed moderation meeting will result in scores against which all evaluators are confident, and which have robust justification and rationale that can form the basis of the evaluation report.

Evaluation reporting

- 6.19.20 A detailed evaluation report, setting out the process that has been followed, the criteria used, the scores awarded and the narrative justification, should be prepared. This is a critical part of the audit trail for the project and should allow, for example, Members and senior executives, to read and understand the basis on which the preferred bidder has been selected.
- 6.19.21 The detail within the report should also be specific enough to provide the basis for feedback to the bidders.
- 6.19.22 Local authorities should make arrangements to ensure confidentiality at evaluation stage and clear communication protocols with bidders once the final decision has been approved.

Best practice evaluations

- 6.19.23 Whichever procurement procedure is chosen, the following outlines some best practice approaches which contracting authorities should seek to adhere to:
- Start planning early: It is best practice to have considered and modelled the evaluation criteria and weightings at an early stage of the procurement to ensure that a clear and justifiable decision can be made (and also to test the evaluation model).
 - Training: Training should be provided to evaluators in order that their role is clearly outlined and understood.

- Test the evaluation process: From a practical perspective, in complex procurements, it can often be useful to “test” the evaluation process to identify any potential problems early on. For example, undertake “sensitivities testing” or modelling ahead of publishing the procurement documents in order to test the methodology.

6.19.24 Additionally, in procedures which involve dialogue or negotiation, once the methodology has been published, it could be worth scheduling a meeting with each of the bidders early in the procurement exercise to specifically discuss not only the evaluation requirements but also the intended approach to the evaluation process itself. This would have to be managed closely, but would serve three key purposes:

- It will help to ensure that the bidders fully understand the evaluation process that is being undertaken
- It means issues can be dealt with before they become overly problematic
- It puts the onus on bidders to raise issues at the outset rather than storing them up until after an award decision has been made and seeking at that point to raise them. If no concerns are raised or, if raised and then resolved, it should be more difficult for bidders to thereafter raise an issue around something being unclear. Sufficient time should be allowed for the development of responses and for the evaluation.

6.19.25 The contracting authority should be careful to keep an audit trail to disclose the conduct and progress of these meetings with bidders.

What reporting requirements are there under the Regulations?

6.19.26 Regulation 84 requires contracting authorities to draw up a report in relation to each contract or Framework that is awarded following a formal procurement process (including “Light Touch Regime” contracts), and ensure it includes all the information set out at Regulation 84(1).

6.19.27 Contracting authorities must communicate the entirety of these reports (or their main elements) to the Commission (when it so requests). Contracting authorities should also note that by Regulation 84(5) the Cabinet Office has the right to request a copy of the report.

What information should be included in each individual report?

6.19.28 Regulation 84(1) lists the information, which is required in each individual report, depending on the circumstances of the contract, Framework Agreement or Dynamic Purchasing System. This information has been summarised in the below table.

6.19.29 It would be good practice for contracting authorities to have the obligations under Regulation 84 at the forefront of their minds from the very beginning of the procurement process. Contracting authorities should also consider preparing a template report listing each requirement systematically in order to ensure that all information necessary (where appropriate) has been included. Table 6.21 provides guidance on the contents of the report.

Table 6.21: Contents of Procurement Report

Provision	Information	Necessary?
84(1)(a)	The name and address of the contracting authority	Yes
84(1)(a)	The subject-matter and value of the contract, Framework Agreement or Dynamic Purchasing System	Yes
84(1)(b)	The names of the selected candidates or tenderers who have been selected after a qualitative selection and reduction of numbers pursuant to Regulations 65 and 66 and reasons for their selection	If applicable
84(1)(b)	The names of the rejected candidates or tenderers who have not passed a qualitative selection and reduction of numbers pursuant to Regulations 65 and 66 and reasons for their rejection	If applicable
84(1)(c)	The reasons for the rejection of tenders found to be abnormally low	If applicable
84(1)(d)	The name of the successful tenderer and the reasons why its tender was selected	Yes
84(1)(d)	The share of the contract or Framework Agreement which the successful tenderer intends to subcontract to third parties	If applicable
84(1)(d)	The names of the successful main contractor's subcontractors	If applicable
84(1)(e)	For competitive procedures with negotiation and competitive dialogues, the circumstances (as laid down in regulation 26) which justify the use of those procedures	If applicable
84(1)(f)	For negotiated procedures without prior publication, the circumstances (as referred to in regulation 32) which justify the use of this procedure	If applicable
84(1)(g)	The reasons why the contracting authority has decided not to award a contract or Framework Agreement or to establish a Dynamic Purchasing System	If applicable
84(1)(h)	The reasons why means of communication other than electronic means have been used for the submission of tenders	If applicable
84(1)(i)	Conflicts of interests detected, and subsequent measures taken	If applicable

6.19.30 Note also Regulations 84(7) and (8) which places a general obligation on contracting authorities to (although not necessarily within the Regulation 84(1) report) document the progress of all procurement procedures and keep sufficient documentation to justify decisions taken at all stages of the process. This will ordinarily include documentation such as: communications with bidders and internal deliberations, preparation of the procurement documents, dialogues or negotiations (if any), and the selection and award of the contract. Contracting authorities are under an obligation to keep such information for a period of at least 3 years from the date of award of the contract.

Providing feedback to bidders

- 6.19.31 Following evaluation of final bids and local authority decision, the local authority will issue letters confirming whether each bidder has or has not been successful in the bidding process. This may be supported by a telephone call to the successful bidder. Such correspondence should give feedback to bidders on the relative advantages and disadvantages of their bid against the successful bidder's bid.
- 6.19.32 A Standstill Letter (or notification) must be sent to all bidders who submitted an offer in the procurement (even if they are no longer in the competition at the latter stages) and to all candidates who participated in the qualification stage of the process but only if they remain technically in the competition (i.e. have yet to be told that they have been rejected from the competition and the reasons for that rejection).
- 6.19.33 The notification should be sent "in writing" and when sent to bidders must contain:
- a reminder of the original award criteria
 - the name of the successful bidder (or bidders in the case of a multi supplier Framework)
 - the reasons for the decision including the characteristics and relative advantages of the successful tender(s) and the scores obtained by that/those tender(s) as well as the scores obtained by the recipient of the notification
 - details of when the standstill period will end.
- 6.19.34 The requirements for a notification sent to any relevant candidates are very similar, with the exception that there is no obligation to disclose the 'relative advantages' of the successful tender(s).

6.19.35 In terms of the information that must be provided upfront, in compliance with the duty to detail “the characteristics and relative advantages of the successful tender”, case law defines this as “all the information that would be necessary for the unsuccessful bidder to determine whether or not a decision is well founded”. This implies the need to devise a bespoke letter for each recipient. In the case of bidders, such a letter would disclose:

- The full breakdown of the recipient’s scores against each award criteria and sub-criteria
- A narrative explanation for the scores (but taking care not to disclose information which the winner might legitimately regard as commercially sensitive).

6.19.36 Having invested a great deal of time and resource in their bid preparations, it is appropriate to provide bidders with detailed feedback on their submission if requested by the unsuccessful bidders and identify areas where their bid submissions can be improved in future.

6.19.37 Local authorities can also consider offering bidders the opportunity for a debrief meeting at which further feedback on their submission can be provided, which will no doubt be helpful to bidders in future submissions.

6.19.38 The local authority’s legal advisors will be able to provide template letters for the intention to award and then subsequent contract award notifications. Table 6.22 provides a sample feedback matrix to an unsuccessful bidder which shows a comparison of the unsuccessful bidder’s weighted score with that of the successful bidder. Note that where the score is below that of the successful bidder the notes provide the explanation for this.



Table 6.22: Example of Feedback to an Unsuccessful Bidder

Method Statement Example	Successful Bidder Weighted Score	Bidder Weighted Score	Score/Notes
Please outline how your organisation will deliver mass participation interventions to increase physical activity and improve health outcomes in the area.	2.8	2.8	<p>Overall, this response has been scored as “Good”.</p> <ul style="list-style-type: none">• The response shows a focused approach to physical activity in the district and clear understanding of the Physical Activity, Sport and Wellbeing Strategy• The response indicates clear and significant increases in physical activity planned for the contract• The response shows some positive health improvement interventions, working in partnership aimed at high risk groups particularly GP referrals and weight management• The response is focused on the mainstream physical activity, sport and wellbeing facility-based activities such as swimming lessons, health and fitness and general swimming but there is less of a focus on outreach• Overall, the response shows a robust approach to physical activity, sport and wellbeing facility programming to increase participation but approaches to outreach including rural areas are less developed.

Method Statement Example	Successful Bidder Weighted Score	Bidder Weighted Score	Score/Notes
Outline your plans to refurbish the centre using local authority capital. How will this contribute to the local authority's Priority Outcomes?	6	4.2	<p>Overall, this response has been scored as "Good".</p> <ul style="list-style-type: none"> The response offers tried and tested approaches to running a health and fitness facilities based on the bidder's significant experience in this sector. The plans to increase both the usage and commercial viability of the facility are solid Costings for the refurbishment of the centres put forward in the response are robust. However, a significant proportion of the capital funding is planned for removing wetside facilities The response includes some positive new programmes proposed including walking football, disability football installing the Inclusive Fitness Initiative. Also, the latest cardio equipment is proposed for the facility The successful bidder's response contained a much wider offer for the new facility and a commitment to making the facility more inclusive for families.

Method Statement Example	Successful Bidder Weighted Score	Bidder Weighted Score	Score/Notes
Outline your proposals for a targeted concessionary pricing scheme which balances maximising revenue with enabling access for the vulnerable and those on low incomes.	2.1	1.2	<ul style="list-style-type: none"> • Overall, this response has been scored as “Adequate”. • The response recognises the need for a concessionary scheme as set out in the services specification • The response reflects the bidder’s research undertaken on eligibility through profiling • The response reflects a mixed picture on access to concessionary discounts. The proposal suggests 40% discount for concessions on core prices but nothing on popular activities such as swimming lessons • The response suggests some good approaches to targeting free passes in specific localities in the district • The response does not show concessionary hire charges or group bookings • The successful bidder proposes a much greater range of discounts across the service including all the popular activities.

Method Statement Example	Successful Bidder Weighted Score	Bidder Weighted Score	Score/Notes
Please provide Planned and Preventative Maintenance and Lifecycle replacement plans for the leisure facilities in the contract.	3.5	2	<p>Overall, this response has been scored as “Adequate”.</p> <ul style="list-style-type: none"> • The response does cover the key areas of the services such as fire, asbestos, equipment • PPM plans are clear and reflect the key workstreams of the leisure facilities • The response shows the bidder is proposing a new Asset Management System • However, the bid contains significantly less resources required for a full repair and maintenance lease than identified on the condition surveys presented in the Data Room. This presents doubts on whether there are sufficient resources to deliver the PPM plans • The successful bidder’s response demonstrated more robust PPM plans • The successful bidder’s response contained details of implementing a new Asset Management System and subsequently a much clearer approach to maintaining the Asset Management Database.

Method Statement Example	Successful Bidder Weighted Score	Bidder Weighted Score	Score/Notes
Outline how you will track the progress of the physical activity, sport and wellbeing Strategy including the use of ICT and reporting progress against the performance indicators for the contract.	4	2.8	<p>Overall, this response has been scored as “Good”.</p> <ul style="list-style-type: none"> The response showed that the use of an XXX ICT system is having a positive impact on tracking usage of all users in the bidder’s other contracts. This approach is proposed for the authority The response contains details of a well embedded approach ICT and capturing data for several sources including at outreach locations The successful bidder’s response also showed a robust and detailed approach capturing physical activity, sport and wellbeing participation The successful bidder’s approach demonstrated innovation in measuring the overall social value of the service.

6.20 Contract award and mobilisation

- 6.20.1 Once a preferred bidder is selected, there are several important workstreams still to complete before the contract can be signed and service delivery commences. A well planned and properly resourced contract award and mobilisation stage will help to ensure a smooth start to the new contract and minimise any impact upon staff and customers.
- 6.20.2 The responsibility for the successful mobilisation of a new contract is shared between the local authority and the preferred bidder.
- 6.20.3 [Section 10](#) of this document provides guidance on the following workstreams relevant to this final stage:
- Workstream 1: Authority sign off procedures
 - Workstream 2: Contractual matters
 - Workstream 3: Mobilisation plan
 - Workstream 4: Staffing
 - Workstream 5: Data

- Workstream 6: Communications strategy
- Workstream 7: Buildings and equipment
- Workstream 8: Future contract monitoring.

6.20.4 Depending on whether there is to be a change in service provider, some of the information in this chapter may not be relevant, but all contracts should consider the inclusion of provisions that protect any handover in future – including provision of key information and documentation.

6.21 Light Touch Regime

- 6.21.1 The 2015 Regulations and the Concessions Contracts Regulations 2016 provide local authorities with a high degree of discretion in how they structure the tender stage under the light touch regime and when procuring a concession. There are no set procedures to be adhered to, however, local authorities will need to ensure that bidders are treated equally in accordance with the EU Treaty /or UK equivalent when structuring their tendering stage.
- 6.21.2 In practice, local authorities can choose to adopt one of the procedures set out within the 2015 Regulations on a voluntary basis and structure that procedure as it wishes, considering the overall nature of the contract being procured. The documentation to be issued to bidders therefore will very much depend on the complexity of the contract in question. This will dictate the structure that the local authority ultimately adopts i.e. whether it wishes to accept initial tenders (such as under the Open, Restricted or potentially Competitive Procedure with Negotiation) for relatively simple procurements. It may wish to build in several stages within a process similar to the Competitive Dialogue procedure for projects which require a greater degree of negotiation. In practice therefore, the structure of the tender stage will need be considered and agreed on a case-by-case basis.

6.22 Open Procedure Guidance

- 6.22.1 After completing its Procurement Strategy as outlined in [Section 6.3](#) of this guidance, the local authority will have decided upon a procurement route. The Open Procedure is occasionally used for leisure procurements, normally for very specialist or relatively small services.
- 6.22.2 Local Authorities should be aware that for significant procurements, the Open Procedure could result in several tenders without pre-qualification which could be very resource intensive. Nationally there are circa. 14 organisations that tender for leisure contracts. However, their capacity to able to take on large contracts and risk is variable.

- 6.22.3 This procedure involves a single staged process without any scope for dialogue or negotiation. The minimum documentation to be made available at OJEU notice stage are:
- Invitation to Tender Document plus SSQ
 - Services specification
 - Leisure Operating Contract.
- 6.22.4 Although there is no pre-qualification, authorities must include the Crown Commercial Service SSQ in the tender documents to ensure that suppliers are assessed against the standard criteria.
- 6.22.5 The process and indicative timelines for a Restricted Procedure are outlined in [Figure 6.23](#).



Figure 6.23: Open Procedure Process and Timelines

Month	Stage	Notes and Actions
1	1. Issue Prior Information Notice	<ul style="list-style-type: none"> This is optional Normally used when the local authority wishes to undertake market engagement/soft market testing.
1/2	2. OJEU Contract Notice	<ul style="list-style-type: none"> Must include the minimum procurement documentation outlined in paragraph 6.8.10 Good practice would also include a Data Room as outlined in paragraph 6.15.3.
2/4	3. Clarifications and site visits	<ul style="list-style-type: none"> Bidders able to submit clarification question in writing (usually through a procurement portal) All questions and answers published in the Data Room Facility for bidders to submit commercial confidential questions Good practice is to allow bidders to visit sites where appropriate.
4/5	4. Receipt of Tenders	<ul style="list-style-type: none"> Good practice is to allow bidders c. 2 full working months to compile their tenders Minimum of 35 days from the date the contract notice was sent This can be reduced to 30 days if the contracting authority accepts tenders by electronic means This may be shortened to 15 days if both the PIN included all of the information required of a contract notice and it was sent for publication between 35 days and 12 months before the date on which the contract notice was sent This may also be shortened to not less than 15 days if there is a state of urgency duly substantiated by the contracting authority.
5/6	5. Evaluation of Tenders	<ul style="list-style-type: none"> Details of evaluation approaches can be found in Section 6.19 of this guidance.
6/7	6. Local Authority Decision to Award	<ul style="list-style-type: none"> Time needs to be allowed for the decision to scrutinised and approved through the local authority's appropriate governance process.

Month	Stage	Notes and Actions
6/7	7. Inform Tenderers via Contract/ Standstill Notice	<p>There are strict requirements as to the contents of the standstill notice. It must cover:</p> <ul style="list-style-type: none"> • The criteria for the award of the contract • The reasons for the decision including the characteristics and relative advantages of the successful tender (see paragraph 6.19.36) • The reason (if any) why the economic operator partner did not meet the technical specifications • The name of the bidders to be awarded the contract/ become party to the framework agreement • A statement of when the standstill period is expected to end.
6/7	8. Standstill Period	<ul style="list-style-type: none"> • Defined as midnight at the end of the tenth day after the date on which the authority sends the contract standstill notice; or • midnight at the end of the fifteenth day after the sending date, where the notice has been sent by means other than fax or email.
7/8	9. Award Contract	
8/9	10. Send Contract Award Notice by electronic means to the EU Publications Office	<ul style="list-style-type: none"> • No later than 30 days after award of contract.

6.22.6 For an Open Procedure there is one evaluation panel meeting to evaluate the ITT of each bidder.

6.23 Restricted Procedure Process Guidance

- 6.23.1 After completing its Procurement Strategy as outlined in [Section 6.3](#) of this guidance the local authority will have decided upon a procurement route.
- 6.23.2 The Restricted Procedure is frequently used for leisure procurements normally where there is no significant capital project connected to the procurement and the local authority is clear on its requirements.
- 6.23.3 This procedure involves a two staged process without any scope for dialogue or negotiation. The minimum documentation to be made available at OJEU notice stage is:
- Enhanced SSQ to include initial quality assessment
 - Invitation to Tender Document
 - Services specification
 - Leisure Operating Contract.
- 6.23.4 The process and indicative timelines for a Restricted Procedure are outlined in Figure 6.24.

Figure 6.24: Restricted Procedure Process and Timelines

Month	Stage	Notes and Actions
1	1. Issue Prior Information Notice	<ul style="list-style-type: none">• This is optional• PIN to be despatched between 35 days and 12 months before the contract notice sent to OJEU• This may include market engagement or soft market testing.
1/2	2. OJEU Contract Notice	<ul style="list-style-type: none">• Must include the minimum procurement documentation outlined in paragraph 6.8.10• Good practice would also include a Data Room as outlined in paragraph 6.15.3.
2/3	3. SSQ Clarifications	<ul style="list-style-type: none">• Bidders able to submit clarification question in writing (usually through a procurement portal)• All questions and answers published in the Data Room• Facility for bidders to submit commercial confidential questions.

Month	Stage	Notes and Actions
3/4	4. Receipt of SSQs	<ul style="list-style-type: none"> Minimum time limit is 30 days from the date on which the contract notice was sent This can be reduced to not less than 15 days from the date on which the contract notice was sent if there is a state or urgency duly substantiated by the contracting authority.
4/5	5. Evaluation of SSQs	<ul style="list-style-type: none"> Details of evaluation approaches can be found in Section 6.19 of this guidance.
4/5	6. Invitation to Tender for selected bidders	<ul style="list-style-type: none"> Must be a minimum of 3 bidders selected if 3 or more SSQ submissions SE recommend if possible 5 bidders selected to allow for some bidders deciding not to submit a tender.
4/5 to 6/7	7. ITT Clarifications	<ul style="list-style-type: none"> Bidders able to submit clarification question in writing (usually through a procurement portal) All questions and answers published in the Data Room Facility for bidders to submit commercial confidential questions Good practice is to allow bidders to visit sites where appropriate.
7/8	8. Receipt of Tenders	<ul style="list-style-type: none"> Good practice is to allow c. 3 full working months for bidders to compile their tenders Minimum time limited is 30 days from the date on which the ITT is sent. This can be reduced by 5 days if the authority accepts the receipt of tenders by electronic means This can be shortened to 10 days if the PIN included all of the information required of a contract notice and it was sent for publication between 35 days and 12 months before the date on which the contract notice was sent This may also be shortened to no less than 10 days if there is a state of urgency duly substantiated by the contracting authority.
8/9	9. Evaluation of Tenders	<ul style="list-style-type: none"> Details of evaluation approaches can be found in Section 6.19 of this guidance.
9/10	10. Local Authority Decision to Award	<ul style="list-style-type: none"> Time needs to be allowed for the decision to scrutinised and approved through the authority's appropriate governance process.

Month	Stage	Notes and Actions
9/10	11. Inform Tenderers via Contract/ Standstill Notice	<ul style="list-style-type: none"> • There are strict requirements as to the contents of the standstill notice. It must cover: • The criteria for the award of the contract • The reasons for the decision including the characteristics and relative advantages of the successful tender (see paragraph 6.19.36) • The reason (if any) why the economic operator partner did not meet the technical specifications • The name of the tenderers to be awarded the contract/ become party to the framework agreement • A statement of when the standstill period is expected to end.
10/11	12. Standstill Period	<ul style="list-style-type: none"> • Defined as midnight at the end of the tenth day after the date on which the authority sends the contract standstill notice; or • midnight at the end of the fifteenth day after the sending date, where the notice has been sent by means other than fax or email.
10/11	13. Award Contract	
11/12	14. Send Contract Award Notice by electronic means to the EU Publications Office	<ul style="list-style-type: none"> • No later than 30 days after award of contract.

6.23.5 For a Restricted Procedure there is normally two evaluation panel meetings to evaluate:

- SSQ submissions
- ITT submissions.

6.24 Competitive Procedure with Negotiation (CPN) Process Guidance

- 6.24.1 After completing its Procurement Strategy as outlined in [Section 6.3](#) of this guidance the local authority will have decided upon a procurement route.
- 6.24.2 CPN is becoming more widespread in its application for leisure contracts because of its flexibility. It is also used where there may be capital solutions proposed by the bidder as part of the procurement utilising local authority capital and/or that of bidder.
- 6.24.3 This procedure normally involves a three staged process with the opportunity for negotiation although is flexible and allow for a two or even four staged process. The minimum documentation to be made available at OJEU notice stage is:
- Enhanced SSQ to include initial quality assessment
 - Invitation to Tender Document which outline the approach to Initial Tender and Final Tender
 - Services specification
 - Leisure Operating Contract.
- 6.24.4 The process and indicative timelines for CPN are outlined in [Figure 6.25](#).



Figure 6.25: CPN Procedure Process and Timelines

Month	Stage	Notes and Actions
1	1. Issue Prior Information Notice	<ul style="list-style-type: none"> This is optional PIN to be despatched between 35 days and 12 months before the contract notice sent to OJEU This may include market engagement or soft market testing.
1/2	2. OJEU Contract Notice	<ul style="list-style-type: none"> Must include the minimum procurement documentation outlined in paragraph 6.8.10 Good practice would also include a Data Room as outlined in paragraph 6.15.3.
2/3	3. SSQ Clarifications	<ul style="list-style-type: none"> Bidders able to submit clarification question in writing (usually through a procurement portal) All questions and answers published in the Data Room.
3/4	4. Receipt of SSQs	<ul style="list-style-type: none"> Minimum time limit is 30 days from the date on which the contract notice was sent This can be reduced to not less than 15 days from the date on which the contract notice was sent if there is a state or urgency duly substantiated by the contracting authority.
4/5	5. Evaluation of SSQs	<ul style="list-style-type: none"> Details of evaluation approaches can be found in Section 6.19 of this guidance.
4/5	6. Invitation to Submit Initial Tender for selected bidders	<ul style="list-style-type: none"> Must be a minimum of 3 bidders selected if 3 or more SSQ submissions Sport England recommend 5 bidders selected to allow for some bidders deciding not to submit a tender.
4/5 to 6/7	7. ISIT Clarifications	<ul style="list-style-type: none"> Bidders able to submit clarification question in writing (usually through a procurement portal) Bidders may submit commercially confidential questions All questions and answers published in the Data Room Facility for bidders to submit commercial confidential questions Good practice is to allow bidders to visit sites where appropriate.

Month	Stage	Notes and Actions
7/8	8. Receipt of Initial Tenders	<ul style="list-style-type: none"> Good practice is to allow c. 3 full working months for bidders to compile their tenders Minimum time limited is 30 days from the date on which the ITT is sent. This can be reduced by 5 days if the local authority accepts the receipt of tenders by electronic means This can be shortened to 10 days if the PIN included all of the information required of a contract notice and it was sent for publication between 35 days and 12 months before the date on which the contract notice was sent This may also be shortened to no less than 10 days if there is a state of urgency duly substantiated by the contracting authority.
8/9	9. Evaluation of Initial Tenders	<ul style="list-style-type: none"> Details of evaluation approaches can be found in Section 6.19 of this guidance.
Decision as to whether to enter Negotiation or Accept Initial Tenders If Initial Tender Accepted go to Stage 14		
9/10	10. Negotiation Meetings	<ul style="list-style-type: none"> The local authority may reduce the number of bidders at this stage based on the ISIT evaluation scores Potential negotiating point should be included in the ITT documents Each bidder in the process should be given an equal negotiating opportunity Local authorities can go to Revised Tender stage even with one bidder left in the process to enable to refine their solutions to meet the local authority's needs.
9/10	11. Invitation to Submit Revised Tenders (ISRT)	<ul style="list-style-type: none"> Local authorities may want to enable further clarification questions although this is optional Local authorities should provide bidders with a brief for the ISRT clearly highlighting areas where they can amend their Initial Tender and areas where they cannot. Typically, local authorities request a revised financial submission and amendments to any capital proposals that are included in the procurement.
10/11	12. Receipt of Revised Tenders	<ul style="list-style-type: none"> Good practice is to allow 4-6 weeks for bidders to produce Revised Tenders depending on the extent of revision from ISIT.

Month	Stage	Notes and Actions
11/12	13. Evaluation of Revised Tenders	<ul style="list-style-type: none"> The evaluation should purely be focused on those aspects of the tender identified through negotiation.
The local authority, should it wish to do so has the option of entering further negotiation and asking for a Final Tender. In this case the process is the same as Stages 10 to 12. The local authority will need a further 4/5 weeks to initiate this.		
12/13	14. Local Authority Decision to Award	<ul style="list-style-type: none"> Time needs to be allowed for the decision to scrutinised and approved through the local authority's appropriate governance process.
12/13	15. Inform Tenderers via Contract/ Standstill Notice	<p>There are strict requirements as to the contents of the standstill notice. It must cover:</p> <ul style="list-style-type: none"> The criteria for the award of the contract The reasons for the decision including the characteristics and relative advantages of the successful tender (see paragraph 6.19.36) The reason (if any) why the economic operator partner did not meet the technical specifications The name of the tenderers to be awarded the contract/ become party to the framework agreement A statement of when the standstill period is expected to end.
13/14	16. Standstill Period	<ul style="list-style-type: none"> Defined as midnight at the end of the tenth day after the date on which the authority sends the contract standstill notice; or midnight at the end of the fifteenth day after the sending date, where the notice has been sent by means other than fax or email.
13/14	17. Award Contract	
14/15	18. Send Contract Award Notice by electronic means to the EU Publications Office	<ul style="list-style-type: none"> No later than 30 days after award of contract.

6.24.5 For CPN the evaluation panel will need to meet to evaluate for each bidder:

- SSQ
- Initial Tenders
- Final Tender (if required by the local authority)
- Additional Final Tender (if required by the local authority).

6.25 Competitive Dialogue Process Guidance

6.25.1 After completing its Procurement Strategy as outlined in [Section 6.3](#) of this guidance the local authority will have decided upon a procurement route.

6.25.2 Competitive Dialogue should be used for complex projects with a significant capital element, in particular DBOM contracts.

6.25.3 This procedure normally involves a four staged process with bidders being able to enter into dialogue both on their outline proposals and the terms of the contract. The minimum documentation to be made available at OJEU notice stage is:

- Enhanced SSQ to include initial quality assessment
- Invitation to Tender Document which outline the approach to Outline Solutions, Detailed Solutions and Final Tenders
- Services specification
- For DBOM and where there is a significant capital project Facilities Requirements and Technical Specification documents
- Usually a DBOM Contract.

6.25.4 The key feature of the Competitive Dialogue process is that it allows a local authority to enter dialogue with bidders to develop solutions to meet its needs. Dialogue usually consists of meetings with each bidder to focus on the different aspects of the procurement which relate to the price and risk of the bidder's solution. It can be resource demanding and drawn out if not managed effectively and requires bidders' understanding of the Regulations.

6.25.5 Where Competitive Dialogue is the most appropriate route, the opportunity to streamline the process should be seriously considered, for example in relation to having less dialogue stages or restricting dialogue to key issues only.

6.25.6 The typical process and indicative timelines for a Competitive Dialogue Procedure is outlined in Figure 6.26. However, there is flexibility on the number of stages and opportunities for dialogue with the Procurement Regulations.

Figure 6.26: Competitive Dialogue Procedure Process and Timelines

Month	Stage	Notes and Actions
1	1. OJEU Contract Notice	<ul style="list-style-type: none"> • Call for competition via contract notice only • Must include the minimum procurement documentation outlined in paragraph 6.8.10 • Good practice would also include a Data Room as outlined in paragraph 6.15.3.
2	2. SSQ Clarifications	<ul style="list-style-type: none"> • Bidders able to submit clarification question in writing (usually through a procurement portal) • All questions and answers published in the Data Room.
3	3. Receipt of SSQs	<ul style="list-style-type: none"> • Minimum time limit is 30 days from the date on which the contract notice was sent • This can be reduced to not less than 15 days from the date on which the contract notice was sent if there is a state or urgency duly substantiated by the contracting local authority.
3	4. Evaluation of SSQs	<ul style="list-style-type: none"> • Details of evaluation approaches can be found in Section 6.19 of this guidance.
4	5. Invitation to Submit Outline Solutions for selected bidders	<ul style="list-style-type: none"> • Must be a minimum of 3 bidders selected if 3 or more SSQ submissions • Bidders able to submit clarification question in writing (usually through a procurement portal) • All questions and answers published in the Data Room.
4-6	6. Dialogue and clarifications	<ul style="list-style-type: none"> • All bidders provided with the same opportunity for dialogue • Enables bidders to discuss aspects of the contract and propose • Site visits.

Month	Stage	Notes and Actions
6	7. Receipt of Outline Solutions	<ul style="list-style-type: none"> • Good practice is to allow c. 3 full working months for bidders to compile their tenders • Minimum time limited is 30 days from the date on which the ITT is sent. This can be reduced by 5 days if the local authority accepts the receipt of tenders by electronic means • This can be shortened to 10 days if the PIN included all of the information required of a contract notice and it was sent for publication between 35 days and 12 months before the date on which the contract notice was sent • This may also be shortened to no less than 10 days if there is a state of urgency duly substantiated by the contracting authority.
7	8. Evaluation of Outline Solutions	<ul style="list-style-type: none"> • Details of evaluation approaches can be found in Section 6.19 of this guidance • The local authority may want to short list the bidders further depending on their ISOS scores.
8	9. Further Dialogue and clarifications	<ul style="list-style-type: none"> • The authority can undertake dialogue using the bidders Outline Solution as a baseline for discussions on the contract and their solutions.
9	10. Invitation to Submit Detailed Solutions	<ul style="list-style-type: none"> • The local authority has the option to reduce the number of bidders based on their ISOS scores • The ISDS requirements and contract may have been amended from ISOS based on the dialogue with bidders.
11	11. Receipt of Detailed Solutions	<ul style="list-style-type: none"> • Good practice is to allow bidders 2 months to produce their ISDS tenders.
12	12. Evaluation of Detailed Solutions	<ul style="list-style-type: none"> • The evaluation should purely be focused on those aspects of the tender identified through negotiation.
The local authority, should it wish to do so has the option of entering further dialogue and a Final Tender. In this case the process is the same as Stages 8 to 12. The authority will need a further 6/7 weeks to initiate this.		
13	13. Local Authority Decision to Award	<ul style="list-style-type: none"> • Time needs to be allowed for the decision to scrutinised and approved through the local authority's appropriate governance process.

Month	Stage	Notes and Actions
14	14. Inform Tenderers via Contract/ Standstill Notice	<ul style="list-style-type: none"> • There are strict requirements as to the contents of the standstill notice. It must cover: • The criteria for the award of the contract • The reasons for the decision including the characteristics and relative advantages of the successful tender (see paragraph 6.19.36) • The reason (if any) why the economic operator partner did not meet the technical specifications • The name of the tenderers to be awarded the contract/ become party to the framework agreement • A statement of when the standstill period is expected to end.
13/14	15. Standstill Period	<ul style="list-style-type: none"> • Defined as midnight at the end of the tenth day after the date on which the authority sends the contract standstill notice; or • midnight at the end of the fifteenth day after the sending date, where the notice has been sent by means other than fax or email.
13/14	16. Award Contract	
14/15	17. Send Contract Award Notice by electronic means to the EU Publications Office	<ul style="list-style-type: none"> • No later than 30 days after award of contract.

- 6.25.7 For Competitive Dialogue, the evaluation panel will need to evaluate for each bidder:
- SSQ
 - Outline Solutions
 - Detailed Solutions
 - Final Tender (if required by the local authority).
- 6.25.8 Competitive Dialogue also requires resources for dialogue meetings. Typically, this would include:
- Procurement Officer
 - Head of Service
 - Independent consultant
 - Legal represented (for selected meetings).
- 6.25.9 The local authority needs to ensure that there is a consistent team at dialogue meetings and the at all meetings are recorded.

6.26 Concession Contracts

- 6.26.1 After completing its Procurement Strategy as outlined in [Section 6.3](#) of this guidance the local authority will have decided upon a procurement route.
- 6.26.2 Previously (until April 2016) the letting of a service concession contract was outside the scope of procurement regulations in the UK and therefore any local authority was not required to follow one of the procurement routes noted above – it was however within the scope of general EU Treaty principles, so some form of competition should have been initiated to ensure fair, open and transparent treatment within the relevant market.
- 6.26.3 The essence of a services concession is that the operator partner is being offered the opportunity to exploit the rights associated with the concession – i.e. the opportunity associated with management of the leisure facilities, and that the risks associated with this are also being transferred to the contractor. The opportunity to procure outside of the Regulations provided greater flexibility to the local authority, but nevertheless the principles of non-discrimination, transparency and equality of treatment should have been adhered to in any procurement process.
- 6.26.4 There is no set procedure to be followed when awarding a concession under the Concession Contract Regulations, however bidders should, in accordance with the EU Treaty principles, be treated equally and without discrimination and in a transparent and proportionate manner.

- 6.26.5 Contracting authorities must publish a concession notice in the OJEU. They may set qualification standards based on professional and technical ability and financial and economic standing. These qualifications must be stated in the concession notice and must be non-discriminatory and proportionate to the subject matter of the concession. If qualifications are set, contracting authorities may then select from those who qualify a limited number to participate in the awards process. The Concession Contract Regulations do not specify a minimum number, but the contracting authority must ensure that the number selected is sufficient to ensure genuine competition.
- 6.26.6 The minimum time limit which can be set for receipt of applications or tenders is 30 days from the date on which the concession notice is published. When setting the deadline, the contracting authority should consider the complexity of the concession and the expected time needed. Objective criteria must be used to identify the application or tender providing an 'overall economic advantage'. The criteria must be linked to the subject matter of the concession and consider the principles of equal treatment, non-discrimination and proportionality. The criteria must be listed in descending order of importance and disclosed in advance to all of the tenderers.
- 6.26.7 Following the award of a concession, the contracting authority must 'as soon as possible' inform all of the bidders of award decisions. If the bidder is unsuccessful, they have a right to request information, and the contracting authority must respond with detail on the characteristics and advantages of the successful tender within 15 days of receipt of the written request. As noted above.
- 6.26.8 The minimum documentation to be made available at notice stage is:
- Enhanced SSQ to include initial quality assessment
 - Invitation to Tender Document stated whether there is more than one tender stage)
 - Services specification.
- 6.26.9 [Table 6.27](#) outline the stages for a Concession approach although there is no set procedure for the ITT stage and number of stages. This illustrates a single staged ITT.

Table 6.27: Typical Concession Process and Timelines

Month	Stage	Notes and Actions
1	1. Concession Notice	<ul style="list-style-type: none"> Must include the minimum procurement documentation outlined in paragraph 6.8.10 Good practice would also include a Data Room as outlined in Table 6.14.
4	2. Receipt of SSQs	<ul style="list-style-type: none"> Minimum time limit is 30 days from the date on which the contract notice was sent. This can be reduced to not less than 15 days from the date on which the contract notice was sent if there is a state or urgency duly substantiated by the contracting local authority.
5	3. Evaluation of SSQs	<ul style="list-style-type: none"> Details of evaluation approaches can be found in Section 6.19 of this guidance.
5	4. Invitation to Tender for selected bidders	<ul style="list-style-type: none"> Must be a minimum of 3 bidders selected if 3 or more SSQ submissions SE recommend 5 bidders selected to allow for some bidders deciding not to submit a tender
<p>There is no set procedure for the ITT stage of a Concessions Contract. Therefore, local authorities could use the Restricted single tender stage approach or the CPN 2/3 tender stage approach. Where the procedure takes place in successive stages the minimum time limit for receipt of Initial Tenders is 22 days from the date on which the ITT is sent.</p>		
8	5. Receipt of Tenders	<ul style="list-style-type: none"> Good practice is to allow c. 3 full working months for bidders to compile their tenders Minimum time limited is 30 days from the date on which the ITT is sent. This can be reduced by 5 days if the local authority accepts the receipt of tenders by electronic means This can be shortened to 10 days if both the PIN included all of the information required of a contract notice and it was sent for publication between 35 days and 12 months before the date on which the contract notice was sent This may also be shortened to no less than 10 days if there is a state of urgency duly substantiated by the contracting local authority.
9	6. Evaluation of Tenders	<ul style="list-style-type: none"> Details of evaluation approaches can be found in Section 6.19 of this guidance.

Month	Stage	Notes and Actions
9	7. Authority Decision to Award	<ul style="list-style-type: none"> Time needs to be allowed for the decision to be scrutinised and approved through the local authority's appropriate governance process.
10	8. Inform Tenderers via Contract/ Standstill Notice	<ul style="list-style-type: none"> There are strict requirements as to the contents of the standstill notice. It must cover: <ul style="list-style-type: none"> The criteria for the award of the contract The reasons for the decision including the characteristics and relative advantages of the successful tender (see paragraph 6.19.36) The reason (if any) why the economic operator partner did not meet the technical specifications The name of the tenderers to be awarded the contract/ become party to the framework agreement A statement of when the standstill period is expected to end.
10	9. Standstill Period	<ul style="list-style-type: none"> Defined as midnight at the end of the tenth day after the date on which the authority sends the contract standstill notice; or Midnight at the end of the fifteenth day after the sending date, where the notice has been sent by means other than fax or email.
11	10. Award Contract	
11	11. Send Concession Award Notice by electronic means to the EU Publications Office	<ul style="list-style-type: none"> No later than 48 days after award of contract.

6.26.10 For a Concession approach the evaluation panel will need to meet and evaluate for each bidder the:

- SSQ (if not using open approach)
- Initial Tenders (if required)
- Final Tender.



7

Direct Delivery Through an In-House Management Model

Covid-19 Key Considerations

- With potentially lower income levels and lower revenue funding, local authorities may need to revisit the affordability of their services aligned to their strategic outcomes for sport, physical activity and wellbeing.
- Local authorities that are considering bringing services back in-house will need to balance the benefits of increased control of their service with the full transfer of risk and the potential increase in costs due to local government staff terms and conditions and in some cases lower VAT recovery. [Table 3.3](#) provides more guidance on the potential benefits and disbenefits associated with this.

7.1 Introduction

- 7.1.1 Should a local authority decide to adopt an in-house approach it can still specify a requirement to an in-house team to deliver the required outcomes.
- 7.1.2 This section aims to help the local authority (and the in-house team) develop an agreement which ensures the authority gets the service it requires, and the in-house team is able to demonstrate its effectiveness in delivering services.
- 7.1.3 A direct in-house management model describes a situation where the service is essentially a department within the local authority and staff are employed directly by the local authority.
- 7.1.4 In many cases, the local authority will have operated this model for several decades in some form or other.
- 7.1.5 In the event that a local authority decides to bring the service 'back in-house' following a period operating under a different management model, local authorities should ideally commence commissioning of their in-house service once the Strategic Planning and Options Appraisal stages have been completed. The Options Appraisal should have clearly concluded that operating under an in-house management model is the best value option for the local authority based on Members having been provided with robust financial and non-financial information regarding all the options available and made their decision based on the evidence supplied.
- 7.1.6 The operational process of bringing a service back in-house is outside of the scope of this document and Sport England recommends that specialist advice is sought if a local authority decides to take this approach.
- 7.1.7 Some in-house services operate on a short-term basis and are not subject to a formal commissioning process or a service level agreement. Others do not have a formally adopted strategy.

- 7.1.8 This guidance provides local authorities with a framework of guidance, support and documentation to revisit their current arrangements and refocus on how a more strategic approach can be delivered sustainably by an in-house management model.
- 7.1.9 This creates the opportunity for the in-house team to be very clear about what its local authority's priorities are, and how it can best deliver this sustainably using its local expertise and knowledge. This should also create the right conditions to support investment in facilities and commissioning of specific interventions to meet particular local needs.
- 7.1.10 This section of the guidance provides a framework for in-house services to be formally commissioned by the local authority.
- 7.1.11 In 2017 the London Borough of Ealing was successful in its case to the European Court of Justice in obtaining VAT exemption for its leisure and culture services which were managed in-house. Previously, VAT exemption had only applied to trusts and social enterprises. This means that one of the previous financial disadvantages of in-house management may no longer apply. However, this is subject to a local authority's overall VAT position. In exploring this, local authorities should take specialist VAT advice.

7.2 Commissioning through the In-House management model

- 7.2.1 The local authority should have a clear strategic approach for its physical activity, sport and wellbeing services as outlined in [Section 2](#). This should include:
- A Physical Activity, Sport and Wellbeing Strategy which clearly sets out the local authority's strategic objectives for increasing participation in physical activity and sport, addressing inactivity in the area and contributing towards local strategic outcomes. This will also include associated KPIs
 - A Leisure Facilities Investment Plan/Strategy setting out the local authority's strategic plan for the future of its facilities, based on a sound understanding of their condition and forward maintenance costs.
- 7.2.2 This can be used to provide a clear framework for the local authority's leisure sport and physical activities services, identifying the priorities, objectives and requirements of the in-house operation.

7.3 Financial Resources

- 7.3.1 The local authority also needs to have a clear understanding of the affordability of the services and to ensure that this is aligned to its Medium-Term Financial Strategy (MTFS). Given that physical activity, sport and wellbeing assets require ongoing investment, the local authority should seek a medium-term financial agreement with the in-house team so that it has a clear commitment to delivering the services within the affordability parameters set by the MTFS.

7.4 Services specification for the In-House management model

- 7.4.1 Some in-house physical activity, sport and wellbeing services do not have specific standards and terms of reference. In these circumstances it is often unclear what the services are expected to achieve and what contribution they are making to the local authority's strategic outcomes and objectives.
- 7.4.2 To address this, local authorities may wish to use a services specification in a similar way to when services are outsourced under an alternative management model. Table 7.1 provides guidance on the typical contents of a services specification.

Table 7.1: Services specification – Typical contents for In-House management model

Specification Section	Typical Contents
Introduction	<ul style="list-style-type: none">• Explanation of the document structure, required outcomes, performance requirements and reporting.
Core Requirements	<ul style="list-style-type: none">• The local authority's strategic priorities and objectives linked to physical activity, sport and wellbeing and associated key performance indicators• List of facilities• Other services included in the scope e.g. sports development• Social value• Subsidy/surplus financial parameters or budget• Asset management responsibilities• Quality management.

**Service
Requirements**

- Opening hours – minimum requirement
- Access and inclusivity – including for those with disabilities
- Customer service
- Activity programming and protected bookings
- Booking systems
- Pricing
- Concessionary pricing (see [Appendix 13](#) for guidance)
- Staffing – recruitment and retention, staffing levels, qualifications and approach to Continuing Professional Development
- Safeguarding – adhering to the local authority's policies
- Cleaning
- Catering and vending
- Marketing and publicity
- ICT systems and data including provision of open data
- Business plan
- Health and safety management
- Major incident reporting
- Maintenance of buildings, plant and equipment
- Equipment
- Grounds maintenance
- Environmental and energy management
- Legislation and policy
- Water (hot and cold Installations)
- Drainage
- Ventilation
- Heating (thermal comfort)
- Lighting
- Pool water quality
- CCTV and security
- Reporting.

Specification Section

Typical Contents

Appendices

- Appendix 1 Licence arrangements
- Appendix 2 Minimum opening hours of facilities
- Appendix 3 Protected bookings
- Appendix 4 Existing bookings
- Appendix 5 Pricing/fees & charges (including concessionary pricing)
- Appendix 6 Site boundaries and plans
- Appendix 7 Repairs and maintenance schedule
- Appendix 8 Equipment inventory
- Appendix 9 Safeguarding policy
- Appendix 10 Prevention and wellbeing programme or other health interventions
- Appendix 11 Inclusion policy.

7.4.3 Local authorities can adapt the template in [Appendix 8](#) of this guidance to produce a bespoke specification for their in-house services.



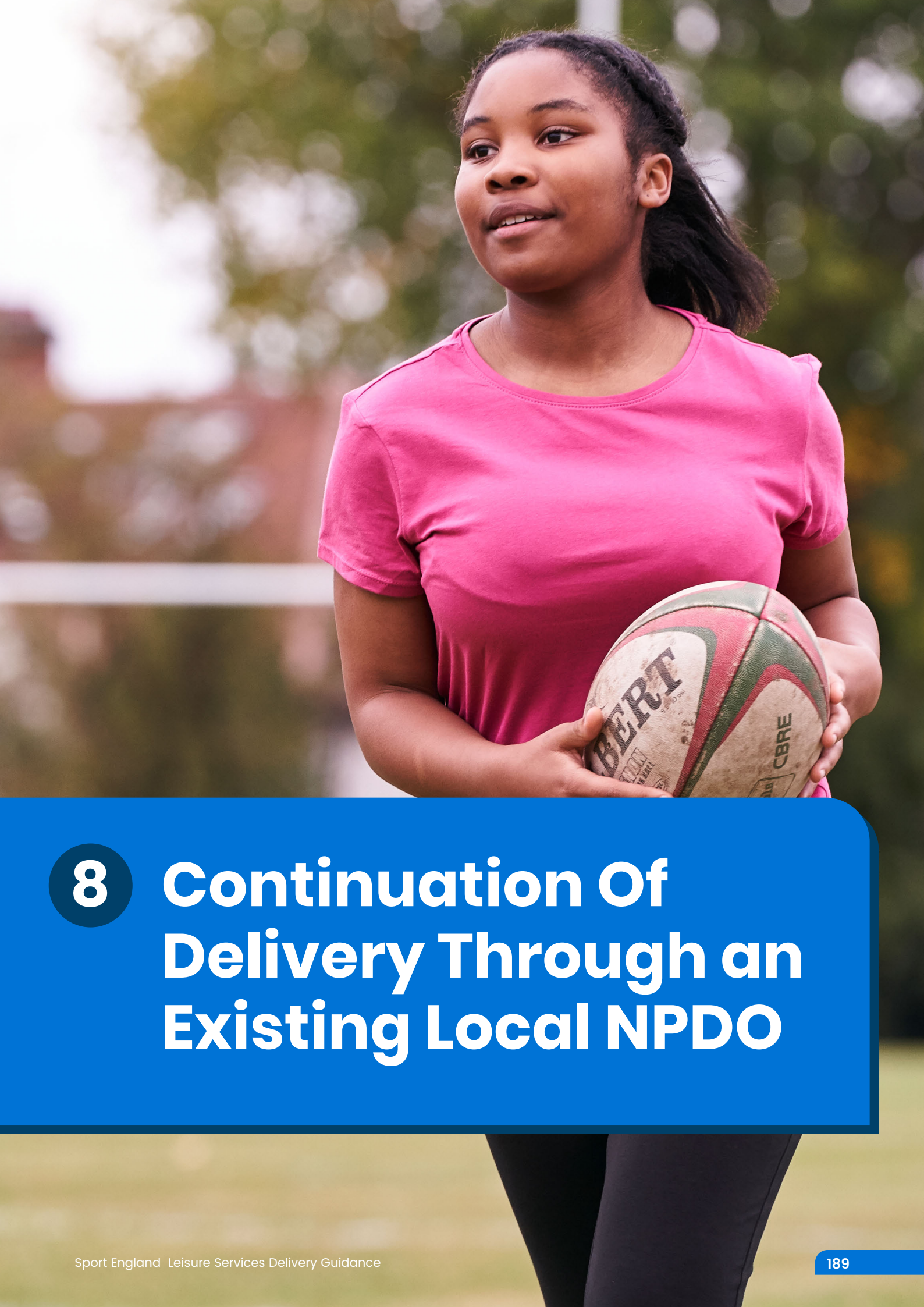
7.5 Commissioning Approach

7.5.1 Local authorities that choose to commission in-house services should consider the stages as shown in Table 7.2 following the development of a strategic approach to physical activity, sport and wellbeing and selection of a management option.

Figure 7.2: Commissioning the In-House Management Model – Key Stages

Month	Stage	Outputs
1-2	1. Developing the Specification	<ul style="list-style-type: none">• Clear performance indicators linked to physical activity, sport and wellbeing priorities and required outcomes• Customer service standards• Operational performance standards.
3	2. Service Level Agreement or Service Plan	<ul style="list-style-type: none">• A Service Level Agreement or Plan that is based on a minimum 5-year cycle to allow for forward planning and includes revenue and capital resources or budget• A services specification that is embedded in the Service Level Agreement or Plan• Monitoring arrangements (based on performance indicators and services specification)• Signed off by elected Members.





8 Continuation Of Delivery Through an Existing Local NPDO

Covid-19 Key Considerations

- With potentially lower income levels and lower revenue funding, local authorities may need to revisit the affordability of their services aligned to their strategic outcomes for sport, physical activity and wellbeing. This may provide the opportunity to review the scope of services.
- Local authorities are advised to undertake due diligence regarding the financial standing of their operator partner with full visibility on finances including reserves, cash flow, debtors and creditors. This will help ensure that the local authority is well informed in relation to the financial health of their operator partner, the level of financial assistance required and the level of risk of the operator partner becoming insolvent.
- In the event that the contract needs to be amended or re-negotiated due to Covid-19 this provides an opportunity to review the services specification to ensure the physical activity, sport and wellbeing services reflect local priorities and tailored to delivering local community outcomes.

8.1 Introduction

- 8.1.1 There are a number of local authorities that have, over the last 25 years, established a local Not for Profit Distributing Organisation (NPDO) (sometimes referred to as a leisure trust) which in the main, run services exclusively for the host local authority. There are a few exceptions where the organisation operates facilities on behalf of other local authorities and/or school and community facilities. In many cases the trust has a long-term lease with their host local authority on the physical activity, sport and wellbeing facilities. This section refers to the continuation and improvement of existing arrangements that have been developed by a local authority through the establishment of their own local NPDO trust rather than those who have appointed an existing charitable NPDO trust through a competitive procurement.
- 8.1.2 There is an opportunity for local authorities with an established local NPDO trust to update the services specification and contract to better reflect the local authority's current priorities and required outcomes and local community needs, which may have changed since the original agreement was established. There is also an opportunity to provide more clarity on risk share between the parties.
- 8.1.3 This section aims to help the local authority (and the local NPDO trust) develop an agreement which focuses the service on local priorities and outcomes and provides a suitable mechanism to ensure the local authority gets the service it requires. The guidance can also be used to assist local authorities and local NPDO trusts to develop a more effective partnership which better demonstrates the contribution of the services to local communities and strategic outcomes.

- 8.1.4 This guidance provides local authorities and their local NPDO trusts with a framework of guidance, support and documentation to revisit their current arrangements and refocus or better articulate how, together, a more strategic approach can be delivered sustainably, with risk sitting where it can best be managed proactively.
- 8.1.5 This creates the opportunity for the local NPDO trust to be very clear about what its host local authority's priorities are, and how it can best deliver this sustainably using its local expertise and knowledge. This should also create the right conditions to support investment in facilities and commissioning of interventions to meet specific local needs.

8.2 Commissioning through a Local NPDO Trust

- 8.2.1 Local authorities that have set up a local NPDO trust should consider reviewing the management contract and financial arrangements to ensure alignment to strategic objectives.
- 8.2.2 The local authority is encouraged to develop a clear strategic approach for its physical activity, sport and wellbeing services as outlined in [Section 2](#). Typically, this will include:
- A Physical Activity, Sport and Wellbeing Strategy which clearly sets out the local authority's priorities for increasing participation in physical activity, sport and wellbeing, addressing inactivity in the area and contributing towards local strategic outcomes. This will also include associated KPIs
 - A Leisure Facilities Investment Plan/Strategy setting out the local authority's strategic plan for the future of its facilities, based on a sound understanding of their condition and forward maintenance costs.
- 8.2.3 This can be used to drive the local authority's physical activity, sport and wellbeing services, identifying clear priorities, objectives and requirements for the local NPDO trust's operational team.

8.3 Financial Resources

- 8.3.1 The local authority also needs a clear understanding of the affordability of the services to ensure that this is aligned to its Medium-Term Financial Strategy (MTFS). Given that physical activity, sport and wellbeing assets require ongoing investment, the local authority should seek a medium-term financial agreement with the local NPDO trust so that it has a clear commitment to deliver within the affordability parameters set by the MTFS.

8.4 Risk Transfer

- 8.4.1 The local authority will need to agree the risk share for the services in scope with the local NPDO trust. It is important to assess the capacity of the local trust to take on risks/responsibilities and which risks/responsibilities will need to remain with the local authority. Table 8.1 highlights the key risks and considerations for the local authority.

Table 8.1: Key Risk Areas

Risk/Responsibility	Key considerations
Commercial risk – achieving required levels of income and expenditure	<ul style="list-style-type: none"> • An assessment will need to be made of the capacity and willingness of the local NDPO trust to undertake commercial risk • Commercial risk may need to be underwritten by the local authority.
Maintenance – full repair and maintenance of fabric of the buildings including windows and roofs	<ul style="list-style-type: none"> • A local NPDO trust is unlikely to be able to take on full repair and maintenance responsibilities • The local authority should be able to transfer the risk of carrying out works using local authority funding • The local authority needs to consider how it will monitor maintenance programmes to ensure that the operational team is carrying out planned works and to the required standard. Often this can be undertaken by an in-house Property Services team.
Maintenance – internal fixtures and fittings	<ul style="list-style-type: none"> • A local NPDO trust is likely to be able to take on day to day repair and maintenance responsibilities • The local authority should be able to transfer the risk of carrying out works using local authority funding • The local authority needs to consider how it will monitor maintenance programmes to ensure that the operational team is carrying out planned works and to the required standard. Often this can be undertaken by an in-house Property Services team • The contract needs to specify that the condition of equipment is 'no worse' at the end of the contract linked to sufficient evidence of regular and proper maintenance.
Maintenance – Plant	<ul style="list-style-type: none"> • A local NPDO trust is likely to be able to take on day to day repair and maintenance responsibilities • The local authority should be able to transfer the risk of carrying out works using local authority funding • The local authority needs to consider how it will monitor maintenance programmes to ensure that the operational team is carrying out planned works and to the required standard. Often this can be undertaken by an in-house Property Services team • The contract/management agreement needs to specify that the condition of equipment is 'no worse' for at the end of the contract linked to sufficient evidence of regular and proper maintenance.

Risk/Responsibility	Key considerations
Maintenance and replacement of equipment	<ul style="list-style-type: none"> • A local NPDO trust is likely to be able to take on day to day maintenance responsibilities and in some instances, replacement of equipment • The local authority should be able to transfer the risk of carrying out works using local authority funding • The local authority needs to consider how it will monitor maintenance programmes to ensure that the operational team is carrying out planned works and to the required standard. Often this can be undertaken by an in-house Property Services team • The contract needs to specify that the condition of equipment is 'no worse' at the end of the contract linked to sufficient evidence of regular and proper maintenance.
Maintenance – latent defects	<ul style="list-style-type: none"> • It is not reasonable to expect the local NPDO trust to take responsibility and risk for any latent defects • This is particularly relevant for any contract where the local authority is undertaking facility development involving capital works • This risk would lie with the main contractor who delivered the works.
Asbestos	<ul style="list-style-type: none"> • Any work required regarding asbestos should be the responsibility of the local authority • The local NDPO trust is required to comply with all relevant health and safety regulations related to asbestos.
Utilities (usage and tariff)	<ul style="list-style-type: none"> • It is unlikely that a local NDPO trust will be able to carry full risk for utilities • Some contracts have split responsibility with the local NPDO trust taking on the consumption risk and the local authority the tariff increases • Shared responsibilities can cause the local authority financial uncertainty and require client resource to undertake benchmarking and negotiate an annual settlement.
Buildings Insurance	<ul style="list-style-type: none"> • Normally the local authority, as the owner of the building, is responsible for buildings insurance.
Public Liability Insurance	<ul style="list-style-type: none"> • The local authority needs to specify the level of cover to be maintained by the local NPDO trust.
Employer Liability Insurance	<ul style="list-style-type: none"> • The local authority needs to specify the level of cover to be maintained by the local NPDO trust.

Risk/Responsibility	Key considerations
Professional Indemnity Insurance	<ul style="list-style-type: none"> • The local NPDO trust will potentially be providing advice on facility investments • The local authority needs to specify the level of cover to be maintained by the local NPDO trust.
Employer pension contributions	<ul style="list-style-type: none"> • As per TUPE requirements • The local NPDO trust will be prepared to take on employer contributions unless they are set to significantly rise in which case this may require a 'cap and collar' approach • The local authority is likely to have to underwrite the pension liability.
Pension deficit	<ul style="list-style-type: none"> • It is not reasonable to expect the local NPDO trust to take on any pension deficits • The local authority should be responsible for pension deficits.
Compensation in the event of unforeseen closure that is not within the local NPDO trust's control	<ul style="list-style-type: none"> • This would normally be based on 'no better no worse' open-book accounting.
Property Structure	<ul style="list-style-type: none"> • Lease granted to the local NPDO trust • The granting of a lease means the local NPDO trust will be "in occupation" of the facilities which may allow them to claim NNDR Relief. Provisions have been included to allow contracting out of the security of tenure provisions of the Landlord and Tenant Act (1954) • A suggested form of a basic lease for use with the Leisure Operating Contract has been included in the templates. The lease does not contain any substantive provisions (for instance in relation to repairs/maintenance/insurance etc.). These provisions are dealt with in the main contract and the lease refers back to the main contract on such issues so as to avoid conflict between the documents.
Change in Law	<ul style="list-style-type: none"> • Risks relating to general changes in law that affect a local NPDO trust's financial model such VAT exemption and recovery are normally covered by the local authority • Risks relating to specific changes in law which affect the local NPDO trust's financial model are normally covered by the local authority.

Protection for redundancy costs at termination/ expiry of contract when TUPE does not apply	<ul style="list-style-type: none"> Assuming the expiry or termination of the contract is not as a result of local NPDO trust default, in the event that TUPE does not apply at the end of the contract or agreement (for example, should the local authority make the decision to close one or more facilities at the end of the contract/agreement), redundancy costs will be covered by the local authority The Leisure Operating Contract drafting as above has been inserted as such an event is outside the local operator partner's control, and pricing for such a risk when establishing the local NPDO trust would mean that the proposed business case submitted would not represent best value for the local authority Furthermore, such redundancy protection is seen as market standard across the leisure sector. The local NPDO trust remains under a duty to use all reasonable endeavours to redeploy any persons.
--	--

8.5 Services specification for a Local NPDO Trust

- 8.5.1 The services specification is the key document that specifies the outputs and contribution to the wider strategic priorities that the local authority wants to achieve through the services. This is critical to an existing partnership with a local NPDO trust and, in the event a local authority and its existing local NPDO trust partner do not have any specification in place, developing one is strongly encouraged.
- 8.5.2 Successful partnerships are often achieved where there is a shared vision, shared objectives and clarity on the required outcomes of the service. Without this, there is a risk that parties can become misaligned despite working with the best intentions for the local communities. Misalignment can be a source of friction which needs to be addressed in order to foster a successful partnership. Establishing clarity through a new or refreshed services specification can reassure the local authority and assist the local NPDO trust partner to demonstrate its effectiveness.
- 8.5.3 The services specification can typically contain:
- Local authority strategic objectives and contribution to wider strategic outcomes required, and specific targets against which performance of the local trust can be measured
 - Service and facility requirements – for example, relating to sports development, disability and inclusion, health and wellbeing plans, customer care, data management, marketing and social media, reporting, pricing, programming and opening hours, cleaning, maintenance, lighting, heating, staffing and equipment.
- 8.5.4 Table 8.2 contains the typical contents of a services specification.

Table 8.2: Services specification – Typical contents for a local NPDO trust management model

Specification Section	Typical Contents
Introduction	<ul style="list-style-type: none"> • Background • Measurement • Reporting.
General Core Requirements	<ul style="list-style-type: none"> • Introduction • Strategic objectives and Contribution to wider local Outcomes • Facility Management • Active Communities • Partnership Philosophy and Governance (example) • Management Fee • Asset Management • Utilities and National Non-Domestic Rates • Environmental and Energy Management.
Overall Performance Requirements	<ul style="list-style-type: none"> • Managing Performance against Strategic objectives • Quality Management • Social Value.
Service Requirements	<ul style="list-style-type: none"> • Active Communities • Opening Hours • Access • Customer Experience • Programming for All • Pricing • Concessionary Pricing (see Appendix 13 for Guidance) • Staffing and Skills Development • Safeguarding • Equalities • Cleaning and Housekeeping • Food and Beverages • Marketing, Research and Communication • Data and ICT Management • Health and Safety Management • Major Incident Reporting.

Specification Section	Typical Contents
Asset Management Requirements	<ul style="list-style-type: none"> • Asset Management Capital and Revenue Funding • Building Maintenance • Statutory/Mandatory inspections • Maintenance and Replacement of Equipment • Grounds Maintenance • Environmental and Energy Management • Legislation and Policy • Water (Hot and Cold Installations) • Drainage • Ventilation • Heating (Thermal Comfort) • Lighting.
Appendices	<ul style="list-style-type: none"> • Appendix 1 Licence arrangements • Appendix 2 Minimum opening hours of leisure facilities • Appendix 3 Protected bookings • Appendix 4 Existing bookings • Appendix 5 Current pricing/fees & charges • Appendix 6 Site boundaries and plans • Appendix 7 Repairs and maintenance responsibility schedule • Appendix 8 Equipment inventory • Appendix 9 Safeguarding policy • Appendix 10 Prevention and wellbeing programme • Appendix 11 Local authority equalities policy.

8.5.5 A services specification template can be found in [Appendix 8](#).

8.6 Legal Contract

- 8.6.1 The local authority will require a legal contract with the local NPDO trust.
- 8.6.2 Table 8.3 provides guidance on the contract documents which can be used for establishing a local NPDO trust.

Table 8.3: Contract Documents – Local NPDO Trust

Project Type	Type of contract and additional schedules
Procurement of physical activity, sport and wellbeing services management including facility management. There could be some minor capital works.	Appendix 2 – Performance and Payment Mechanism (to be included in the contract as a schedule) Appendix 3 – Standard Leisure Operating Contract Appendix 8 – Services specification (to be included in the contract as a schedule).

- 8.6.3 The main contract should be consistent with the form of lease to be granted. The lease must be consistent with the local authority's adopted risk profile for the contract.
- 8.6.4 Local authorities that want to take a commissioning approach with an existing local NPDO trust should consider the stages either at inception or review stage (if already in contract) with their local NPDO trust as shown in Table 8.4 following the development of a strategic approach to physical activity, sport and wellbeing and selection of a management option.

Table 8.4: Commissioning Services for Local NPDO Trust– Key Stages

Month	Stage	Outputs
1 –2	1. Developing the Specification and level of Risk Transfer	<ul style="list-style-type: none"> • Develop realistic approach to risk transfer with local NPDO trust • Clear performance indicators linked to physical activity, sport and wellbeing priorities and required outcomes • Customer service standards • Operational performance standards.
1 –2	2. Establish affordability and agree financial arrangement with local NPDO trust	<ul style="list-style-type: none"> • Establish affordability for income and expenditure for the period of the agreement • Include any planned capital investment • Incorporate forward maintenance costs from condition surveys • Financial arrangement should be linked to MTFS.
3	3. Draft and agree Leisure Operating Contract	<ul style="list-style-type: none"> • A Leisure Operating Contract that is based on a minimum 5–year cycle and includes revenue and capital resources or budget • Risk profile integrated into the contract • A services specification that is embedded in the Contract • Monitoring arrangements (based on KPIs and Services specification) • Signed off by elected Members.



9 Direct Commissioning through A Local Authority Trading Company



Covid-19 Key Considerations

- With potentially lower income levels and lower revenue funding, local authorities may need to revisit the affordability of their services aligned to their strategic outcomes for sport, physical activity and wellbeing.
- Local authorities are advised to undertake due diligence regarding the financial standing of their operator partner with full visibility on finances including reserves, cash flow, debtors and creditors. This will help ensure that the local authority is well informed in relation to the financial health of their operator partner and the level of risk of the operator partner becoming insolvent.
- For some authorities that have lost their current operator partner there may be a case for running services through an LATC permanently or for an interim period. [Table 3.3](#) sets out the potential benefits and disbenefits of this approach in more detail.
- The importance of a modern services specification and contract are still applicable under Covid-19. In the event that the contract needs to be amended or re-negotiated this provides an opportunity to review the services specification.

9.1 Introduction

- 9.1.1 There are currently a small number of Local Authority Trading Companies (LATCs) which have been set up under the Teckal ruling to operate physical activity, sport and wellbeing services. These include South Kesteven District Council, Hull City Council and Newark and Sherwood District Council.
- 9.1.2 Local authorities should ideally commence commissioning a LATC once the Strategic Planning and Options Appraisal stages have been completed. The Options Appraisal should have clearly concluded that operating the services under a LATC management model is the best value option for the local authority based on elected Members having been provided with robust information regarding all the options available and made their decision based on the evidence supplied.
- 9.1.3 This section of the guidance provides a framework for LATCs to be formally commissioned by the local authority. It is recommended that specialist legal support and external advice be sought in establishing this model.

9.2 Commissioning through a Local Authority Trading Company (LATC)

- 9.2.1 The introduction of the 2015 procurement regulations mean that local authorities are no longer permitted to set up a local NPDO trust to run services without undergoing a competitive procurement process. However, local authorities can set up a LATC which can benefit from similar NNDR relief and VAT exemption as a local NPDO trust. Further details of the LATC option can be found in [Section 4](#).
- 9.2.2 Local authorities considering setting up a LATC should only do so following a management options appraisal as per [Section 2](#) of this guidance. Grant Thornton have produced helpful guidance on setting up a LATC: [“Spreading their wings – Building a successful local authority trading company”](#).
- 9.2.3 The local authority is encouraged to have a clear strategic approach for its physical activity, sport and wellbeing services as outlined in [Section 2](#). Typically, this will include:
- A Physical Activity, Sport and Wellbeing Strategy which clearly sets out the local authority’s priorities for increasing participation in leisure, physical activity, sport and wellbeing
 - A Leisure Facilities Investment Plan/Strategy setting out the local authority’s strategic plan for the future of its facilities, based on a sound understanding of their condition and forward maintenance costs.
- 9.2.4 This can be used to drive the local authority’s physical activity, sport and wellbeing services, identifying clear priorities, objectives and requirements for the LATC’s operational team.

9.3 Financial Resources

- 9.3.1 The local authority also needs to have a clear understanding of the affordability of the services to ensure that this is aligned to its Medium-Term Financial Strategy (MTFS). Given that physical activity, sport and wellbeing assets require ongoing investment, the local authority should seek a medium-term financial agreement with the LATC so that it has a clear commitment to deliver the services within the affordability parameters set by the MTFS.
- 9.3.2 Local authorities should consider employing advice on affordability modelling to ensure that it has a benchmark from which to assess any financial proposal from the LATC prior to it being formally established.

9.4 Risk Transfer

- 9.4.1 The local authority will need to agree the risk share for the services in scope with the LATC. It should be noted that a LATC will not have the capacity to take on risk to the same extent as a larger multi-site operator partner and that many key risks will need to remain with the local authority. Table 9.1 highlights the key risks and considerations for the local authority.

Table 9.1: Key Risk Areas

Risk/Responsibility	Key considerations
Commercial risk – achieving required levels of income and expenditure	<ul style="list-style-type: none"> • Whilst a degree of risk can be transferred to a LATC, the local authority needs to be mindful that it will have to underwrite commercial risk as the LATC may not have other sources of income other than the single contract with the host local authority. At least 80% of a LATC's activity (i.e. turnover) must be for its public sector owner • The local authority and LATC should seek to agree a minimum 5-year financial agreement for both revenue and capital at the outset.
Maintenance – full repair and maintenance of fabric of the buildings including windows and roofs	<ul style="list-style-type: none"> • A LATC is unlikely to be able to take on full repair and maintenance responsibilities • The local authority should be able to transfer the risk of carrying out works using local authority funding • The local authority needs to consider how it will monitor maintenance programmes to ensure the operational team is carrying out planned works and to the required standard. Often this can be undertaken by a in-house Property Services team.
Maintenance – internal fixtures and fittings	<ul style="list-style-type: none"> • A LATC is likely to be able to take on day to day repair and maintenance responsibilities • The local authority should be able to transfer the risk of carrying out works using local authority funding • The local authority needs to consider how it will monitor the maintenance programmes to ensure that the operational team is carrying out planned works and to the required standard. Often this can be undertaken by a in-house Property Services team. • The contract needs to specify that the condition of equipment is 'no worse' at the end of the contract linked to sufficient evidence of regular and proper maintenance.

Risk/Responsibility	Key considerations
Maintenance – Plant	<ul style="list-style-type: none"> • A LATC is likely to be able to take on day to day repair and maintenance responsibilities • The local authority should be able to transfer the risk of carrying out works using local authority funding • The local authority needs to consider how it will monitor maintenance programmes to ensure the LATC is carrying out planned works and to the required standard • The contract needs to specify that the condition of equipment is 'no worse' at the end of the contract linked to sufficient evidence of regular and proper maintenance.
Maintenance and replacement of equipment	<ul style="list-style-type: none"> • A LATC is likely to be able to take on day to day repair and maintenance responsibilities • The local authority should be able to transfer the risk of carrying out works using local authority funding • The local authority needs to consider how it will monitor maintenance programmes to ensure that the operational team is carrying out planned works and to the required standard • The contract needs to specify that the condition of equipment is 'no worse' at the end of the contract linked to sufficient evidence of regular and proper maintenance.
Maintenance – latent defects	<ul style="list-style-type: none"> • It is not reasonable to expect the LATC to take on responsibility and risk for any latent defects • This is particularly relevant for any contract where the local authority is undertaking facility development involving capital works • This risk would lie with the main contractor who delivered the works.
Asbestos	<ul style="list-style-type: none"> • Any work required regarding asbestos should be the responsibility of the local authority • The LATC is required to comply with all relevant health and safety regulations related to asbestos.
Utilities (usage and tariff)	<ul style="list-style-type: none"> • It is unlikely that a LATC will be able to carry full risk for utilities • Some contracts have split responsibility with the LATC taking on the consumption risk and the authority the tariff increases • Shared responsibilities can cause the local authority financial uncertainty and require client resource to undertake benchmarking and negotiate and annual settlement.
Buildings Insurance	<ul style="list-style-type: none"> • Normally the local authority as the owner of the building is responsible for buildings insurance.

Risk/Responsibility	Key considerations
Public Liability Insurance	<ul style="list-style-type: none"> • The local authority needs to specify the level of cover to be maintained by the LATC.
Employer Liability Insurance	<ul style="list-style-type: none"> • The local authority needs to specify the level of cover to be maintained by the LATC.
Professional Indemnity Insurance	<ul style="list-style-type: none"> • The LATC will potentially be providing advice on facility investments • The local authority needs to specify the level of cover to be maintained by the LATC.
Employer pension contributions	<ul style="list-style-type: none"> • As per TUPE requirements • The LATC will be prepared to take on employer contributions unless they are set to rise significantly in which case this may require a 'cap and collar' approach • The local authority is likely to have to underwrite the pension liability.
Pension deficit	<ul style="list-style-type: none"> • It is not reasonable to expect the LATC to take on any pension deficits • The local authority should be responsible for pension deficits.
Compensation in the event of unforeseen closure that is not within the LATC's control	<ul style="list-style-type: none"> • This would normally be based on 'no better no worse' open-book accounting.
Title	<ul style="list-style-type: none"> • The local authority (and/or its legal advisors) will need to carry out title investigations at an early stage in establishing a LATC • The Leisure Operating Contract contains a local authority title warranty in the format developed in schools projects (see Clause 6.4 (Authority Title Warranty) and Schedule 13 (Title Matters)). • The local authority will need to factor in the time/costs of undertaking title investigations/providing a title warranty.

Risk/Responsibility Key considerations**Property Structure**

- Lease granted to the LATC
- The granting of a lease means the LATC will be “in occupation” of the facilities which may allow them to claim NNDR Relief. Provisions have been included to allow contracting out of the security of tenure provisions of the Landlord and Tenant Act (1954)
- A suggested form of “bare bones” lease for use with the Leisure Operating Contract has been included in the templates. The lease does not contain any substantive provisions (for instance in relation to repairs/maintenance/insurance etc). These provisions are dealt with in the main contract and the lease refers back to the main contract on such issues so as to avoid conflict between the documents.

Change in Law

- Risks relating to general changes in law that affect an LATC’s financial model such VAT exemption and recovery are normally covered by the local authority
- Risks relating to specific changes in law which affect the LATC’s financial model are normally covered by the local authority.

Protection for redundancy costs at termination/ expiry of contract when TUPE does not apply

- Assuming the expiry or termination of the contract is not as a result of LATC Default, in the event that TUPE does not apply at the end of the contract (for example, should the local authority make the decision to close one/more facilities at the end of the contract), redundancy costs will be covered by the local authority
- The Leisure Operating Contract drafting as above has been inserted as such an event is outside the LATC’s control, and pricing for such a risk at tender stage would mean that the tender price submitted would not represent best value for the local authority
- Furthermore, such redundancy protection is seen as market standard across the leisure sector. The LATC remains under a duty to use all reasonable endeavours to redeploy any persons.

9.5 Services specification for a LATC

- 9.5.1 The services specification is the key document that specifies the outputs and the contribution to wider strategic priorities that the local authority wants to achieve through the services in the scope of the operating partner's activities. This is equally applicable to an existing partnership with a LATC or a new LATC.
- 9.5.2 The services specification can typically contain:
- Local authority strategic objectives and the contribution to wider strategic outcomes required, and specific targets against which performance of the LATC can be measured
 - Service and facility requirements – for example, relating to sports development, disability and inclusion, health and wellbeing plans, customer care, data management, marketing and social media, reporting, pricing, programming and opening hours, cleaning, maintenance, lighting, heating, staffing and equipment.
- 9.5.3 Table 9.2 contains the typical contents of a services specification.

Table 9.2: Services specification – Typical contents for a LATC management model

Specification Section	Typical Contents
Introduction	<ul style="list-style-type: none">• Background• Measurement• Reporting.
General Core Requirements	<ul style="list-style-type: none">• Introduction• Strategic objectives and Contribution to wider local Outcomes• Facility Management• Active Communities• Partnership Philosophy and Governance (example)• Management Fee• Asset Management• Utilities and National Non-Domestic Rates• Environmental and Energy Management.
Overall Performance Requirements	<ul style="list-style-type: none">• Managing Performance against strategic objectives• Quality Management• Social Value.

Specification Section	Typical Contents
Service Requirements	<ul style="list-style-type: none"> • Active Communities • Opening Hours • Access • Customer Experience • Programming for All • Pricing • Concessionary Pricing (see Appendix 13 for Guidance) • Staffing and Skills Development • Safeguarding • Equalities • Cleaning and Housekeeping • Food and Beverages • Marketing, Research and Communication • Data and ICT Management • Health and Safety Management • Major Incident Reporting.
Asset Management Requirements	<ul style="list-style-type: none"> • Asset Management Capital and Revenue Funding • Building Maintenance • Statutory/ Mandatory inspections • Maintenance and Replacement of Equipment • Grounds Maintenance • Environmental and Energy Management • Legislation and Policy • Water (Hot and Cold Installations) • Drainage • Ventilation • Heating (Thermal Comfort) • Lighting.

Specification Section	Typical Contents
Appendices	<ul style="list-style-type: none"> • Appendix 1 Licence arrangements • Appendix 2 Minimum opening hours of leisure facilities • Appendix 3 Protected bookings • Appendix 4 Existing bookings • Appendix 5 Current pricing/fees & charges • Appendix 6 Site boundaries and plans • Appendix 7 Repairs and maintenance responsibility schedule • Appendix 8 Equipment inventory • Appendix 9 Safeguarding policy • Appendix 10 Prevention and wellbeing programme • Appendix 11 Local authority's equalities policy.

9.5.4 A services specification template can be found in [Appendix 8](#).



9.6 Legal Contract

- 9.6.1 The local authority will require a legal contract with the LATC.
- 9.6.2 Table 9.3 provides guidance on the contract documents which can be used for establishing a LAC.

Table 9.3: Contract Documents – LATC

Project Type	Type of contract and additional schedules
Procurement of physical activity, sport and wellbeing services management including facility management.	Appendix 2 Performance and Payment Mechanism (to be included in the contract as a schedule)
	Appendix 3 Standard Leisure Operating Contract
	Appendix 8 Services specification (to be included in the contract as a schedule).

- 9.6.3 The main contract should be consistent with the form of lease to be granted. The lease must be consistent with the local authority's adopted risk profile for the contract.
- 9.6.4 Local authorities that want to take a strategic commissioning approach with an existing LATC or LATC should consider the stages either at inception or review stage (if already in contract) with their operating partner as shown in [Table 9.4](#) following the development of a strategic approach to physical activity, sport and wellbeing and selection of a management option.

Table 9.4: Commissioning Services for LATC – Key Stages

Month	Stage	Outputs
1 – 2	1. Developing the Specification and level of Risk Transfer	<ul style="list-style-type: none"> • Develop a realistic approach to risk transfer with the LATC • Clear performance indicators linked to physical activity, sport and wellbeing priorities and required outcomes • Customer service standards • Operational performance standards.
1 – 2	2. Establish affordability and agree financial arrangement with the LATC	<ul style="list-style-type: none"> • Establish affordability for income and expenditure for the period of the agreement • Include any planned capital investment • Incorporate forward maintenance costs from condition surveys • Financial arrangement should be linked to MTFS.
3	3. Draft and agree Leisure Operating Contract	<ul style="list-style-type: none"> • A Leisure Operating Contract that is based on a minimum 5-year cycle and includes revenue and capital resources or budget • Risk profile integrated into the Contract • A services specification that is embedded in the Contract • Monitoring arrangements (based on KPIs and services specification) • Signed off by Members.



10 Delivery Through Other Approaches



Covid-19 Key Considerations

- With potentially lower income levels and lower revenue funding, local authorities may need to revisit the affordability of their services aligned to their strategic outcomes for sport, physical activity and wellbeing. This may provide the opportunity to review the scope of services.
- Community asset transfer will be difficult during Covid-19 as community organisations are likely to be reluctant to take on services where income is reduced under Covid-19.
- Similarly, it is unlikely that organisations or operator partners will be willing to enter into a long lease on facilities that are going to require a subsidy.
- There are potential state aid risks for local authorities supporting a leaseholder where the contractual arrangement is purely property based and is not a management contract.
- The approach is unlikely to remove or reduce the level of local authority support required through the Covid-19 crisis.
- Local authorities considering an asset transfer or lease approach should consider the limitations of not having a services specification and as such the limited influence over how the facilities are used.

10.1 Community Asset Transfer

- 10.1.1 Community Asset Transfer is an option used by some local authorities, often as a way of retaining facilities that may otherwise be unsustainable and at risk of closure.
- 10.1.2 There are various options, but in most cases Community Asset Transfer is taken to mean a long lease or freehold transfer of the facility to a sports club (or clubs) or community organisation. The length of lease is variable but, in most cases, where grants or loans are required for capital development, the length of tenure will need to be long enough to secure external investment, which usually means a lease of at least 25 years.
- 10.1.3 The responsibility for managing the leisure or community facility is transferred to the sports club, community organisation or community group under the terms of a lease that sometimes includes a service level agreement. It should be noted that this approach may still result in the local authority providing a grant or subsidy.
- 10.1.4 A process of Community Asset Transfer may involve competing claims between different clubs and community organisations and local authorities need to be confident that a transfer is in the best interests of the community and of the organisation to which the asset is being transferred. However, while risks undoubtedly exist in the transfer of assets from local authorities to community-based organisations, this is not a reason in itself to avoid exploring this as an option.

Sport England has provided [guidance on this approach](#)

10.1.5 Further [guidance can also be found from Locality](#)

10.1.6 Table 10.1 contains some key considerations for local authorities on the approach to Community Asset Transfer.

Table 10.1: Community Asset Transfer – Key Considerations

Delivery Model	Key considerations
Community Asset Transfer	<ul style="list-style-type: none">• The local authority will need to be clear on the level of asset management responsibility it retains• Unlikely to yield any capital investment• If fully transferred to the leaseholder, the local authority will require monitoring to ensure the leaseholder is undertaking the required repairs and maintenance• The community group will need to be able to demonstrate suitable competency and qualified personnel• The ability of the community group to take on full risk for a sustained period is likely to be uncertain• The local authority should assess the capacity and resilience of the community group. Often capacity within a community group can fluctuate and may require support at different times• The local authority would have a limited level of influence over the service although a service level agreement can form part of the lease• This may result in some targeted physical activity, sport and wellbeing interventions for those who are inactive, vulnerable or hard to reach although the sustainability of such interventions will be uncertain• This may enable facilities to continue in the context of austerity and serve as a 'last resort' with few options other than to close a valued local asset.

- 10.1.7 Local authorities transferring assets to a community group should consider the stages outlined in Table 10.2 following the development of a strategic approach to physical activity, sport and wellbeing and selection of a management option.

Table 10.2: Transferring Assets to a Community Group – Key Stages

Month	Stage	Outputs
1	1. Developing the Service Level Agreement and level of Risk Transfer	<ul style="list-style-type: none"> • An agreement which contributes to a shared set of outcomes for the local authority and community group • A realistic approach to risk transfer • Performance indicators that are realistically deliverable by a community group.
1 - 2	2. Establish affordability and agree financial arrangement with the community group	<ul style="list-style-type: none"> • Develop affordability for income and expenditure for the period of the agreement • Include any planned capital investment • Incorporate forward maintenance costs from condition surveys • An agreed financial arrangement over a period of at least 5-years on the basis of a business plan submitted by the community group.
3	3. Draft and agree lease and Service Level Agreement	<ul style="list-style-type: none"> • Should be based on a minimum 5-year cycle and include revenue and capital resources or budget • Risk profile integrated into the Agreement • Monitoring arrangements (based on KPIs and lease conditions) where practical • Signed off by elected members.



10.2 Long Lease

- 10.2.1 There are some instances where local authorities have granted a long lease to an operator partner or have considered long lease arrangements with a commercial developer.
- 10.2.2 This approach is essentially a property transaction which can yield a positive financial outcome, transfer risk and in some cases, lever in capital investment from the leaseholder. The local authority is not legally obliged to undertake a competitive procurement for this arrangement although it should design an approach to securing an arrangement that ensures value for money.
- 10.2.3 A long lease is different to a management services contract and it is not appropriate for the agreement to include a detailed services specification and Contract. This means that the focus of the service delivery will be largely determined by the leaseholder and the local authority will have limited control or influence over the objectives and priorities of the service.
- 10.2.4 With no mechanism to substantially influence or specify service delivery, the local authority will be relying on the characteristics and structure of the organisation being granted the long lease to ensure it contributes to the authority's local strategic outcomes. Whilst there may be high level assurances within the lease documentation that protects against such things as change of use, there is no mechanism which can readily affect service delivery or the focus on strategic objective. This means there is a risk that valuable local assets may not be utilised as effectively as the local authority would wish for community benefit. The local authority will need to consider how it can mitigate against this risk within an agreement which is over a long period.
- 10.2.5 As with Community Asset Transfer, the option of a long lease may provide a solution which sustains a facility when all other options have been explored.
- 10.2.6 Table 10.3 provides some key considerations for local authorities on this approach.

Table 10.3: Long Lease – Key Considerations

Delivery Model	Key considerations
Long Lease	<ul style="list-style-type: none">• The local authority will need to be clear on the level of asset management responsibility it retains• If fully transferred to the leaseholder, the local authority will need to maintain a monitoring function to ensure the leaseholder is undertaking the required repairs and maintenance• The local authority should undertake an affordability test before negotiating a lease. This is especially the case where an incumbent leaseholder or contractor is offering the local authority a new financial arrangement for a long lease• The local authority would have a limited level of influence over the service – e.g. no services specification• There is a risk that this will not result in required physical activity, sport and wellbeing interventions and delivery of strategic objectives• This may enable facilities to continue in the context of austerity• A long-term lease may attract capital investment.

- 10.2.7 Local authorities should carefully consider the risks associated with long lease arrangements. They will typically result in the local authority having much less control and influence over the services and will likely be less effective in contributing to local strategic outcomes. A long lease also ties the local authority into an agreement which can constrain future flexibility over its strategic policies and priorities for physical activity, sport and wellbeing.
- 10.2.8 Local authorities exploring this approach should take advice on any long lease proposals to ensure they are legal, comply with procurement regulations and local authority financial standing orders and that the local authority would be receiving best value from such an arrangement.



11 Mobilisation of new management arrangements

Covid-19 Key Considerations

- Some local authorities may need to mobilise an alternative management arrangement quickly due to their operator partner becoming insolvent or an existing contract being terminated. In such cases the local authority should agree a mobilisation programme with the new operator partner.
- In the event of the local authority setting up an in-house service or LATC it should allow a minimum of 3 to 4 months to undertake TUPE, set up back office systems and ICT and organise governance arrangements.

11.1 Introduction

- 11.1.1 Once an operator partner is selected, there are several important workstreams still to complete before the commencement of the new contract.
- 11.1.2 The period between the award of contract and the commencement date is known as the mobilisation stage and this period is a critical part of the overall commissioning process. A well planned and properly resourced mobilisation stage will help to ensure a smooth and successful start to the new contract and minimise any impact upon staff and customers.
- 11.1.3 It is recommended that a period of at least three months is allowed for the mobilisation stage.
- 11.1.4 The responsibility for the successful mobilisation of a new contract is shared between the local authority and the selected operator partner. The process can be managed through close partnership working and strong communication between the parties.
- 11.1.5 This section provides guidance on the following workstreams relevant to the mobilisation stage:
- Contractual matters
 - Mobilisation plan
 - Staffing
 - Customer data
 - Buildings and equipment
 - Communications strategy
 - Service plans
 - Governance arrangements
 - Handover/financial reconciliation
 - Contract management.

- 11.1.6 The workstreams covered in this section should not be addressed sequentially or considered in isolation. Ideally, they will be undertaken concurrently and will involve input from a number of designated personnel from both the operator partner and local authority.
- 11.1.7 A lead contact from the local authority should be identified and given responsibility for overall co-ordination and management of the outputs required of the local authority and for liaison with the operator partner's lead contact through the mobilisation stage. This liaison can be undertaken through a series of regular mobilisation meetings to discuss progress on workstreams and to highlight any risks and mitigating actions.
- 11.1.8 The required workstreams will depend, to an extent, on whether there is to be a change in operator partner. This section has been developed to cover all of the workstreams required for a change in operator partner and some of the information in this chapter may therefore not be relevant for situations where the operator partner remains the same.

11.2 Contractual Matters

- 11.2.1 Immediately following any standstill period, the local authority's legal representatives (either in-house or external) should contact the legal representatives of the selected operator partner to initiate the process of finalising the contract.
- 11.2.2 The process of finalising the contract shall include the following:
- Confirmation and clarification of commitments/finalisation of the contract and associated schedules including any minor amendments to drafting agreed through the tender process
 - Drafting and execution of leases (and sub-leases if required)
 - Confirmation of technical detail for any capital works (if required) e.g. designs, drawings, programme, identity of sub-contractors etc.
 - Development of any required sub-contracts
 - Updating of the schedules to the contract and associated appendices to reflect the agreed positions (where applicable) and service provider proposals
 - Cross referencing the Contract, schedules and associated appendices to ensure correct use of defined terms and references.
- 11.2.3 This process should not result in any significant changes to the documents and is simply a cross-checking and confirmation process. There should be no "significant changes" to the contract once the selection of preferred bidder is made. The Public Contracts Regulation (2015) (depending on the procurement process) identify what finalisation is permitted within the parameters.
- 11.2.4 The new contract and associated leases should be formally executed as soon as is reasonably practical following the completion of all necessary due diligence by both parties.

11.3 Mobilisation Plan

- 11.3.1 There are large number of specific individual tasks that will need to be undertaken during the mobilisation stage and these can be captured within a comprehensive mobilisation plan that is developed and updated throughout this stage by the operator partner.
- 11.3.2 Immediately following any standstill period, the local authority should set up an initial mobilisation meeting with the operator partner. The operator partner should be requested to provide a draft version of their mobilisation plan in advance of the meeting.
- 11.3.3 Mobilisation plans may differ according to the specific requirements of different contracts and whether there is to be a change in operator partner. The mobilisation plan will include fewer tasks when the operator partner and scope of the new contract remains the same as the existing service, and many more tasks when there is a new operator partner or where the scope of services of the new contract is very different to the existing service.
- 11.3.4 The specific individual tasks can be listed in full in the mobilisation plan and can be categorised under a series of broader workstream headings. Table 11.1 provides an example of these workstream headings together with examples of the type of specific individual tasks required under each heading. *Please note: the tasks listed in the table are just a selection of examples designed to provide an indication of required tasks and should not be considered a comprehensive list.*



Table 11.1: Mobilisation Plan Workstreams and Example Tasks

Workstream	Example Tasks
Communications	<ul style="list-style-type: none"> • Agree communications strategy with local authority • Develop joint press release • Internal communications (staff).
Staffing	<ul style="list-style-type: none"> • Finalise TUPE list • Make necessary arrangements for pensions • Schedule staff briefings and individual meetings • Establish training needs and develop training plan • Uniform order • Set up payroll system • Review and establish staffing rotas.
Asset Management	<ul style="list-style-type: none"> • Develop asset registers • Develop and install ICT asset management systems • Finalise Planned Preventative Maintenance (PPM) schedules • Review and agree dilapidations survey with local authority and incumbent operator partner • Check statutory compliance of key installations e.g. electrical, fire protection, water services etc.
Equipment	<ul style="list-style-type: none"> • Review and update inventory • Agree equipment to remain at service commencement • Order new or replacement equipment as appropriate.
ICT	<ul style="list-style-type: none"> • Establish hardware requirements • Set up of ICT management systems • Set up of website, online bookings and social media platforms • Establish agreement with incumbent operator partner on specific arrangements leading up to handover.
Finance and Administration	<ul style="list-style-type: none"> • Set up of accounting systems, profit and loss accounts, budgets etc. • Supplier set up and ordering processes • Set up of Direct Debit system • Undertake training with key staff (where possible).
Customer Data	<ul style="list-style-type: none"> • Agree format and approach to bulk transfer of customer data • Transfer of data and testing of systems • Send notification letters to members.

Workstream	Example Tasks
Programming	<ul style="list-style-type: none"> • Review contractual programming requirements including protected bookings • Meet with clubs and regular hirers • Insert bookings and courses onto ICT management system • Arrange staff and develop promotional material for additional/new programmes.
Operating Procedures/ Integrated Management System	<ul style="list-style-type: none"> • Draft operating procedures • Establish site specific Integrated Management System • Undertake training with key staff (where possible).
Health and Safety	<ul style="list-style-type: none"> • Develop health and safety standard operating procedures • Undertake risk assessments • Review existing Asbestos registers and Legionella risk assessments • Establish competent persons and review qualifications e.g. First Aid, National Pool Lifeguard Qualification • Identify training requirements • Arrange internal/external health and safety site visit/audit.
Service Agreements/ Contracts	<ul style="list-style-type: none"> • Review asset register and set up all required service agreements and maintenance contracts • Set up utilities' contracts.
Sales and Marketing	<ul style="list-style-type: none"> • Develop marketing plan in partnership with local authority • Establish sales system on site and provide training to staff (where possible) • Develop marketing material (printed and electronic) • Develop new signage.
Service Plans	<ul style="list-style-type: none"> • Meet with local authority and key partners to inform the development of annual service plans e.g. physical activity, sport and wellbeing Development Plan • Draft service plans for approval by local authority.
Financial Reconciliation	<ul style="list-style-type: none"> • Agree approach to financial reconciliation with incumbent operator partner and local authority • Liaise with incumbent operator partner on extent of pre-paid income and any agreement regarding the purchase of equipment and stock and handover of floats and petty cash.

- 11.3.5 Each task within the mobilisation plan can be given a clear target date for completion and ideally be prioritised to identify those of greatest importance and of highest risk. Tasks that require specific input from the local authority or other partners should be clearly identified and communicated.
- 11.3.6 The draft mobilisation plan should be discussed at the initial mobilisation meeting, with particular focus upon those tasks which require input from the local authority.
- 11.3.7 The mobilisation plan can be a live, working document which is reviewed at each mobilisation meeting and updated regularly to show progress against each of the tasks including the identification of tasks completed, those yet to be completed and those overdue.

11.4 Staffing

- 11.4.1 Where a new operator partner has been selected by the local authority through a procurement process, the mobilisation stage can be an unsettling time for staff. This section identifies ways in which this can be mitigated and provides outline information relating to the transfer of staff.
- 11.4.2 The following information on the transfer of staff is provided as high-level guidance only and the local authority will need to establish a clear understanding of its own obligations either as the outgoing employer (where employees are transferring from in-house to an external provider) or as the client (where employees are transferring between two external providers).

TUPE

- 11.4.3 The new contract will include obligations relating to the Transfer of Undertakings (Protection of Employment) Regulations, 1981 (TUPE). The TUPE regulations preserve the terms and conditions of employees when a service, business or undertaking is transferred to a new employer.
- 11.4.4 There are obligations upon the incoming and outgoing employer to ensure the TUPE transfer of staff is undertaken smoothly and effectively. The process is reliant upon open communication and cooperation between the parties.
- 11.4.5 During the tender period, a series of TUPE information will have been provided to bidders including draft TUPE lists (an initial draft list at OJEU notice stage and a final draft list prior to final tender submissions) containing anonymised information on individual staff terms and conditions e.g. salary, start date, holiday entitlement, employee/employer pension contributions etc.
- 11.4.6 Where there is to be a change in operator partner, the outgoing employer is legally obliged to provide Employee Liability and Due Diligence information to the incoming employer at least 28 days before the transfer date. However, it is good practice and in the best interests of all parties if this information is provided as early as possible in the mobilisation stage.

- 11.4.7 The Employee Liability and Due Diligence information should include as a minimum:
- Identities and ages of the transferring employees
 - Employment particulars of the transferring employees
 - Active/live disciplinary and grievance records from the last two years of the transferring employees
 - Any collective agreements which are in force
 - Any outstanding claims the transferring employees have against the outgoing employer.
- 11.4.8 Once received and reviewed by the incoming employer, it is good practice for any queries to be discussed with the outgoing employer to ensure a full understanding of all individual terms and conditions prior to any direct engagement with transferring employees.
- 11.4.9 Employee pension schemes will need to be considered as part of the TUPE transfer, as the new operator partner may need to seek Admitted Body Status to the Local Government Pension Scheme, or staff pensions transferred to the contractor's broadly comparable pension scheme. Specific advice can be sought from specialist pensions advisors to ensure this process is managed carefully and there is transparency at all stages. This can be a lengthy process so will need to be addressed early in the mobilisation stage.
- 11.4.10 Depending on the circumstances, the local authority may have no direct interest in the TUPE transfer i.e. the transfer is between two external operator partners. However, as the client, it is good practice for a representative of the local authority's human resources team to liaise closely with the new operator partner to ensure the transfer is being managed appropriately and to help avoid any conflict or negative publicity which may risk reputational damage to the authority.

Staff Briefings/1-2-1 meetings

- 11.4.11 Early initial engagement between staff and the incoming operator partner is critical and agreement on this should be established with the outgoing and incoming operator partner as early as possible in the mobilisation stage.
- 11.4.12 This initial engagement can be undertaken through a series of group staff briefings (held at different times to allow for shift work) designed to provide an opportunity for employees to learn more about their new employer and help alleviate any concerns regarding the TUPE transfer or how the service is to be provided under the new Contract.
- 11.4.13 Following the group staff briefings, good practice is to offer employees individual 1-2-1 meetings with the new employer. These confidential meetings provide an opportunity to discuss any concerns the employee may have regarding the transfer, their future role, training requirements or any specific terms and conditions of their employment contract.

- 11.4.14 The new employer is obliged to notify the relevant Trade Union representatives and provide them with information regarding the transfer including details of planned briefings and meetings with staff.

11.5 Customer Data

- 11.5.1 Where there is to be a change in operator partner, the successful transfer of relevant customer data between the parties is critical to ensure business continuity and to minimise any disruption to services and customers. Along with the TUPE transfer of staff, the transfer of data is a high priority for the incoming service provider and carries a high level of risk.
- 11.5.2 A successful customer data transfer will enable the incoming service provider to continue collecting Direct Debit payments from customers who pay monthly for services (e.g. health and fitness memberships, swimming lessons etc.). It will also enable those customers to continue using these services seamlessly and without disruption.
- 11.5.3 An unsuccessful customer data transfer will have significant financial implications for the incoming operator partner if it leads to them being unable to continue collecting Direct Debit payments, a key source of income. It may require them having to rebuild the customer database by manually inputting customer information when they visit the facilities. This process is likely to take many months, will require additional resources to manage and have a prolonged negative impact upon the new operator partner's income.
- 11.5.4 This impacts negatively upon customers who may temporarily be unable to access services until they have been set up on the new operator partner's management system.
- 11.5.5 Given the high risk of an unsuccessful data transfer to the incoming operator partner, the outgoing operator partner may choose to withhold the information or demand payment for it.
- 11.5.6 The issue of withholding or charging for customer data is an unfortunate and relatively common situation in leisure procurements and one which is likely to continue. Although new contracts are being procured which protect against this issue by ensuring that this data is owned by the local authority and the incumbent operator partner is contractually bound to pass this data to any new operator partner at no cost, there are many existing contracts which do not include such protection.
- 11.5.7 The local authority is able to mitigate the risk of an unsuccessful data transfer in the following ways:
- Early (pre-tender) review of the existing contract to understand what (if any) provisions there are for the transfer of data and what obligations the incumbent service provider is under to provide this data in the event the service transfers to a new operator partner. If the existing contract does contain provisions for the transfer of data, these can be communicated to and confirmed with the incumbent operator partner.

- If the existing contract does not contain provisions relating to the transfer of data, the local authority should ask the incumbent operator partner to confirm their intentions for the transfer of data in the event they choose not to bid or are unsuccessful in the tender process. This should take place as early as possible pre-tender in order to allow time to negotiate further/ revisit the contract to address this issue/ and/or formally agree a position which can be communicated to bidders during the tender stage.

11.5.8 In securing agreement with the incumbent operator partner, the local authority should insist that the customer data is provided at a level of detail and in a format, which enables a successful transfer to the new operator partner. The precise technical requirements for this may vary between operator partners and their respective ICT management systems and will be subject to more detailed discussions between the parties during the mobilisation stage.

11.6 Buildings and Equipment

- 11.6.1 During the tender process, bidders may have been provided with information regarding the condition of buildings, plant and mechanical and electrical installations. Bidders may also have been provided with an inventory of equipment utilised in the current contract which identifies those items that are owned by the local authority and will be retained under the new Contract.
- 11.6.2 Bidders will have used this information to inform the financial projections within their bid in accordance with the specific obligations of the new contract.
- 11.6.3 Where there is to be a change in operator partner, the new operator partner will need to establish further clarity during the mobilisation stage on the condition of buildings and assets to inform the development of a detailed maintenance programme and lifecycle replacement schedule. Liaison with the incumbent operator partner will be required to establish an asset register, review the historical servicing of plant and equipment and to ensure all statutory certifications are in place.
- 11.6.4 The local authority needs to undertake a comprehensive review of the equipment inventory during the mobilisation period and in consultation with the incumbent operator partner to formally agree which equipment will remain at handover. Once agreed, the inventory should be provided to the new operator partner to establish requirements for any additional or replacement equipment.
- 11.6.5 During the mobilisation stage the new operator partner will be required to set up servicing and maintenance contracts to ensure the full safety and compliance of assets, installations and equipment and should provide the local authority with a list of these contracts.

11.7 Communications Strategy

- 11.7.1 It is important that staff, customers and key stakeholders are kept well informed during the mobilisation stage through the use of clear and consistent messaging regarding the TUPE transfer and the ways in which the new service is to be delivered.
- 11.7.2 Immediately following the end of any standstill period, the local authority and selected operator partner can agree a communications strategy which sets out the planned communication with the following key groups:
- Staff
 - Elected Members (Councillors)
 - Clubs and regular hirers (including schools and any licensees/tenants)
 - Customers
 - Wider public
 - Local and national press.
- 11.7.3 The information provided may need to be adapted to suit these different groups depending upon their specific interests, but the overall messages should remain consistent. The use of a Frequently Asked Questions sheet is often a good way of providing key information to these different groups.
- 11.7.4 The communications strategy will ensure that the additional benefits of the new contract such as new programmes, activities and services, investment proposals etc. are consistently highlighted and that different methods and channels of communication, including social media, are used to promote these.
- 11.7.5 Where there is to be a change in operator partner, the communications strategy should be discussed with the incumbent operator partner to ensure they are fully aware of the approach. The local authority should request that the incumbent operator partner refrains from issuing any communication that may compromise the position of the incoming operator partner or the local authority as client.
- 11.7.6 Communications to staff from the new operator partner and/or local authority during the mobilisation stage should be provided to the incumbent operator partner in advance of being issued. As the existing employer, it is appropriate that the incumbent operator partner is aware of these communications.
- 11.7.7 Wherever practical, the wording of communications should be developed jointly by the new operator partner and local authority reflecting a strong partnership approach. Joint branding through the use of logos can help with this.

11.8 Service Plans

- 11.8.1 The services specification requires the development of a series of service plans for the first year of the new contract which are to be provided to the local authority a minimum of one month prior to the commencement date. These include an Annual Business Plan, a Physical Activity, Sport and Wellbeing Development Plan, a Health and Safety Management Plan and Marketing Plan. These plans, together with a Planned Preventative Maintenance (PPM) Schedule, are to be developed by the operator partner during the mobilisation stage and submitted to the local authority for approval.
- 11.8.2 It is recommended that the operator partner works closely with the local authority and other partners in developing the physical activity, sport and wellbeing Plan to ensure it contributes to the strategic objectives and strategic outcomes of the new Contract. The local authority should play a key role in supporting this process by identifying priority target groups and offering insight into the local landscape of existing activities and partners.
- 11.8.3 The development of draft service plans should be reviewed and discussed as part of the regular mobilisation meetings to ensure they are closely aligned to the strategic objectives and local strategic outcomes of the local authority.

11.9 Governance Arrangements

- 11.9.1 The services delivered in the new contract will need a robust governance structure which is underpinned by a partnership philosophy between the local authority and selected operator partner based on the following principles:
- Mutual respect
 - A shared vision, operational philosophy and commitment to the strategic objectives and strategic outcomes of the service
 - Proactive collaboration and cooperation
 - Partnership working with key public, private and third sector organisations involved with enabling and delivering opportunities for sport and physical activity participation
 - Effective and regular communication and reporting
 - A proactive approach to identifying new opportunities to develop or enhance the services and issues affecting service delivery.
- 11.9.2 The partnership philosophy can be delivered through the establishment of a Strategic Partnership Board made up of key senior representatives from the local authority and the operator partner. The aim of this Board is to provide strategic oversight of the contract at a senior level and to provide clear direction to the operational team on delivery of the services.

- 11.9.3 The Strategic Partnership Board can be established during the mobilisation stage and consist of the following suggested representatives from each partner:
- Elected Member Portfolio Holder (local authority)
 - Head of Service (local authority)
 - Contract Client Manager (local authority)
 - Managing Director (operator partner)
 - Operations/Regional Director (operator partner)
 - Contract Manager (operator partner).
- 11.9.4 The specific terms of reference for the Strategic Partnership Board can be established during the mobilisation stage including agreement on representatives, frequency of Board meetings and matters to be discussed which may include:
- Progress on Annual Business Plan
 - Financial performance
 - Service improvement opportunities
 - Variations to contract and future commissioning opportunities
 - Other matters of a strategic nature considered appropriate for discussion by the Board.
- 11.9.5 Local authorities also have the following powers to participate in external bodies and their exercise might therefore create a situation for elected Member or officer participation, if a local NPDO trust or LATC management model is in place:
- Section 111 of the Local Government Act 1972
 - Section 1 of the Localism Act (the general power of competence)
 - Section 95 of the Local Government Act 2003 (power to trade).
- 11.9.6 The Section 111 power was introduced to improve the discharge of functions and enables the authority “to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.”

11.10 Handover/Financial Reconciliation

- 11.10.1 Where there is to be a change in operator partner, the mobilisation plan will include a long list of specific individual tasks to be undertaken in the days leading up to the commencement date which relate to the physical handover of buildings, equipment and services.

- 11.10.2 In addition to the physical handover, there will need to be a financial reconciliation between the incumbent and new operator partner which takes account of the following matters:
- Agreement on advanced income received by the incumbent operator partner (e.g. pre-paid annual memberships, advanced bookings etc.) to be paid to the new operator partner
 - Agreement on any pre-paid services (e.g. utilities) that the new operator partner has agreed to take on (where applicable)
 - Agreement on any payment to the incumbent operator partner for equipment and stock owned by the incumbent operator partner to be retained in the new Contract
 - Agreement on the handover of any floats or petty cash.
- 11.10.3 The local authority should be prepared to act as intermediary within this process to ensure fair agreement between the parties on the financial reconciliation.

11.11 Contract and Partnership Management

- 11.11.1 The formal mechanisms for managing performance under the new contract are set out within the contract documents and provide the local authority with robust contractual measures to apply in the event the operator partner consistently fails to achieve the required performance standards. However, it is strongly recommended that the local authority takes a more proactive and collaborative approach to contract management in accordance with the partnership philosophy referred to in [paragraph 11.9](#) above.
- 11.11.2 The services specification provides a comprehensive list of performance standards and Key Performance Indicators (KPIs) together with a schedule of required quarterly and annual reports supported by monthly, quarterly and annual meetings. These provide the basis of the performance management framework used to measure delivery of the local authority's strategic objectives and contribution towards its strategic outcomes.
- 11.11.3 In addition to this performance management framework, the operator partner will employ its own methods of self-reporting and auditing of service quality standards to meet the strategic objectives and contribution towards the strategic outcomes of for the new Contract. These methods will often be described in the tender submission and should be captured within the contract documents to form part of the overall performance management framework.
- 11.11.4 During the mobilisation stage, the local authority can take the opportunity to review and establish its approach to contract management in partnership with the operator partner. This review should consider the performance management framework and KPIs set out within the contract documents, the operator partner's own methods of self-reporting/auditing and the local authority's contract management resources.



- 11.11.5 The local authority and operator partner will meet during the mobilisation stage to discuss, refine and agree the overall performance management framework. This process should include a detailed examination of the KPIs contained within the contract documents to ensure both parties fully understand them and for the operator partner to confirm precisely how they are to be measured and reported. There should be a particular focus on those KPIs which demand a more sophisticated approach to measuring participation levels.
- 11.11.6 It is likely that the first year of the new contract will involve the collection of baseline data to measure the new KPIs. It is therefore essential during the mobilisation stage that these KPIs are fully understood and agreed and that clear, robust methods for measuring and reporting them are firmly established. This will ensure that the collection of baseline data can begin at the start of the new Contract.
- 11.11.7 Depending upon available resources, the local authority may wish to develop a regular programme of client reviews/monitoring visits to the facilities to assess the quality of service. The structure and content of these reviews should be discussed with the operator partner during the mobilisation stage to agree the approach and ensure the most efficient use of resources.

A female boxer with blonde hair tied back, wearing a grey tank top and maroon boxing gloves, is sitting in a boxing ring. She is looking upwards and to the left with a focused expression. The background shows the ropes of the ring and some blurred text on the wall.

12 Client services management and monitoring

Covid-19 Key Considerations

- A key aspect of client monitoring under Covid-19 lockdown and recovery will be reviewing monthly income and expenditure against the recovery plan. This process is set out in [Figure 3.1](#) and [Figure 3.2](#) of this guidance.
- This will be required whilst the local authority is providing additional funding to support their operator partner to meet the additional cost of the service/contract as part of an open book approach.
- Close monitoring of usage and income and expenditure will also be required through the recovery period to understand how the market is responding following lockdown and when commercial risk is likely to be able to be transferred back to the operator partner.
- Local authorities should ensure that it retains visibility of the non-financial elements of service delivery and services specification that ensure the service continues to contribute to wider local strategic outcomes.

12.1 Introduction

- 12.1.1 Client Services Management and Monitoring will ideally have already been considered by local authorities when preparing for the future delivery of its physical activity, sport and wellbeing services. (See [Strategic Outcomes Planning Guidance Stage 3.](#))
- 12.1.2 There are some real benefits to giving Client Services Management and Monitoring detailed consideration before the commencement of the new service.
- 12.1.3 Modern Client Services Management and Monitoring should be both **strategic** and **operational** in focus.

Strategic

- 12.1.4 The strategic function is to act as the guardian of the strategic objectives and contribution to the wider local strategic outcomes. This function is about managing the partnership with the operator partner proactively and collaboratively and acting as the link with wider strategic partners.

Operational

- 12.1.5 The operational function is to ensure the service delivery is of the quality required and as specified within the services specification and performance management framework.

- 12.1.6 The responsibility for the successful monitoring of the new arrangements is shared between the local authority and the selected operator partner. The operator partner will typically employ its own methods of self-reporting and auditing of service quality standards and both parties should ensure that these methods can clearly demonstrate how the services are meeting the strategic objectives and contributing towards the strategic outcomes of the new contract.
- 12.1.7 The process should be managed through close partnership working and strong communication between the parties, and where appropriate, supported by external support offering specialist performance management and monitoring services. This is often appropriate when local authority client-side resource is limited in relation to Client Services Management and Monitoring.
- 12.1.8 The approach to managing performance under the new arrangements is described in [Appendix 8](#) (Managing Performance against strategic objectives) and [Section 5](#) (Performance Management and Reporting) of the services specification.
- 12.1.9 The formal mechanisms to managing performance are set out in [Schedule 5](#) (Payment and Performance Monitoring System) of the contract. These provide the local authority with robust measures to apply in the event the operator partner consistently fails to achieve the required performance standards.
- 12.1.10 However, it is recommended that the local authority takes a proactive and collaborative approach to Client Services Management and Monitoring in accordance with the partnership philosophy described in 11.9 and set out within the services specification.
- 12.1.11 The Client Services Management and Monitoring function can include some or all of the following:
- a.** Performance Management Monitoring (KPIs)
 - b.** Service Compliance Monitoring
 - c.** Asset Management Monitoring
 - d.** Quality Monitoring
 - e.** Social Value Impact
 - f.** Audits
 - g.** Risk Management
 - h.** Review of strategic outcomes
 - i.** Contract Variations (for Externalised Services)
 - j.** Active Communities monitoring
 - k.** Service Monitoring Reporting
 - l.** Client Services Management and Monitoring Resources.

- 12.1.12 A key area for any leisure contract is a partnership approach to leisure asset maintenance and lifecycle replacement. The Leisure Operating Contract should clearly set out where responsibilities for maintenance and lifecycle works lie and be accompanied by a maintenance and lifecycle plan for the life of the contract. This plan should be agreed between the local authority and operator partner and monitored on a regular basis (usually quarterly).

12.2 Performance Management Monitoring (KPI's)

- 12.2.1 The services specification will set out the key performance indicators that are relevant and important to the local authority. These need to be designed to be relevant and deliverable by the operator partner linked to the stated reporting periods. [Appendix 12](#) provides detailed guidance on Impact Monitoring.

Financial

- 12.2.2 Robust financial monitoring of the contract is vital from both parties' perspective to ensure that all income and expenditure related to the contract is clearly documented and can be used to inform the review of service performance.
- 12.2.3 The services specification will provide details on the requirements for financial performance reporting in terms of format and frequency. These requirements should be reviewed and agreed by both parties prior to service commencement, to ensure financial performance is being reported in line with contractual requirements.
- 12.2.4 There may be a period of 'baselining' new data that is being reported and 'bedding in' agreed by the local authority and operator partner to allow for reports to be set up and management systems to be configured to ensure the agreed reporting can be provided.
- 12.2.5 The agreed reporting mechanisms should not only ensure that the requirements detailed in the services specification are met, but that trends and exceptions to "normal" performance are identified and monitored to help inform service delivery and performance related decisions. An example would be increases/decreases in the financial performance of the service as a whole or individual elements of service delivery such as Health & Fitness, which could be adversely affected by changing usage trends or by external competition.

Services specification

- 12.2.6 The services specification provides a comprehensive list of performance standards and Key Performance Indicators (KPIs) together with a schedule of required quarterly and annual reports supported by regular partnership meetings. These provide the basis of the performance management framework used to measure delivery of the local authority's strategic objectives and contribution towards its wider strategic outcomes.

- 12.2.7 Again, as with Financial Monitoring, mechanisms should be agreed by both parties and implemented prior to service commencement to ensure performance against the services specification is being reported in line with the local authority's requirements.
- 12.2.8 It is important for both parties to fully understand the KPI's and for the operator partner to confirm precisely how KPIs are to be measured and reported prior to the services commencing.
- 12.2.9 There should also be an element of flexibility in the approach to developing and reviewing performance information through KPIs to ensure that they reflect any changes to the local authority's priorities or policies during the contract term. Embedding a strong partnership philosophy will be key to this to ensure any such changes are discussed and agreed through a collaborative approach.

ICT to assist Client Services Management

- 12.2.10 The use of appropriate ICT is essential to assist contract monitoring. Operator partners will use their own ICT systems for various aspects of service delivery and local authorities should try where possible and appropriate to work closely with the operator partner to use these systems to enhance and inform reporting on performance of the services. Where the operator partner's systems and procedures do not allow, local authorities may use external specialist support to implement appropriate ICT systems to assist with Client Services Management activities.

12.3 Service Compliance Monitoring

- 12.3.1 It is essential for both parties that the operator partners achieves compliance in relation to all service-related legislation and best practice guidance to maintain compliance throughout the duration of the service.
- 12.3.2 During the mobilisation stage the new operator partner will be required to set up various servicing and maintenance contracts to ensure full safety and compliance in delivering the services.
- 12.3.3 Other considerations could include service exception reporting. For example, the monitoring of unplanned closure of facilities or services throughout the contract term would help measure operator partner compliance in relation to the services specification.

12.4 Asset Management Monitoring

- 12.4.1 It is critical that the local authority's assets are (at the very minimum) maintained in the condition they were in at service commencement by the operator partner. Asset condition could also improve through any investment made by the operator partner and/or the local authority during the contract term.
- 12.4.2 In order to ensure that the local authority's assets are suitably maintained, robust monitoring mechanisms need to be put in place as specified in the services specification.

- 12.4.3 A partnership approach to managing an agreed lifecycle plan between the operator partner and local authority will be important in optimising the value and use of the local authority's assets. Proactive management in consultation with the operator partner will help to ensure that lifecycle items are replaced or repaired when necessary and appropriate rather than when specified in the original lifecycle plan. This should be managed as part of the review procedure throughout the contract.
- 12.4.4 The monitoring could be delivered by a combination of Client Services and operator partner monitoring and/or could be carried out by an independent external organisation appointed by the local authority to monitor and report on asset condition and ongoing maintenance.
- 12.4.5 This can be supported by ICT based asset management systems which could include developing asset registers, agreeing Planned Preventative Maintenance (PPM) schedules, checking statutory compliance of key installations e.g. electrical, fire protection, and water services. It also requires reviewing and agreeing a dilapidations survey with the local authority and the incumbent operator partner at the end of the contract period or at interim periods as specified.

12.5 Quality Monitoring

- 12.5.1 Effective monitoring of service quality is critical to ensure the required performance standards, as detailed in the services specification, are achieved. This monitoring of quality can be undertaken using a combination of methods. These could include using of some or all of the following suggested approaches:
- *Agreement of and monitoring of **Quality Assurance standards***
 - **Site Visits** – *made regularly by the local authority or by its nominated representative*
 - **Mystery Customer Visits** – *this could be through the use of a nationally recognised scheme or by the local authority's preferred method*
 - **Customer feedback and service standards** – *through monitoring and reporting of regular customer feedback against the agreed service standards*
 - **Benchmarking (contract wide and individual sites)** – *through use of nationally recognised schemes such as Sport England's Moving Communities Platform.*

12.6 Social Value Impact

- 12.6.1 As stated in [Section 4.3](#), local authorities have a statutory duty to deliver Best Value. As part of this duty, there is also a statutory requirement for local authorities to consider Social Value in their functions, as required by the Public Services (Social Value) Act 2012.
- 12.6.2 The Act places a requirement on commissioners to consider the economic, environmental and social benefits of their approaches to procurement before the process starts and requires commissioners and procurers at the pre-procurement stage to consider how what is procured may improve the social, environmental and economic wellbeing of the relevant area, how they might secure any such improvement to consider the need to consult. It would be appropriate for physical activity, sport and wellbeing services to engage with the wider community as well as schools, colleges, youth services, social care and health etc.
- 12.6.3 Social Value is used to describe social, economic and environmental value. Social Value is still an emerging concept and local authorities are being encouraged to be innovative in how they apply the principles to commissioning. The role of the services in delivering Social Value is set out in more detail in Section 2.12 of the services specification including the use of KPIs. Local authorities are encouraged to use Sport England's Strategic Outcomes Planning Guidance to establish their key Social Value requirements from the service.
- 12.6.4 Reporting and monitoring mechanisms established to measure and demonstrate Social Value should consider the social, economic and environmental value of services delivery. They can take into account economic factors, environmental impacts and social value impacts in relation to wider health and wellbeing outcomes.
- 12.6.5 This approach will enable the local authority to work towards measuring the wider financial and social return on investment of the services.

12.7 Audits

- 12.7.1 In addition to the performance management framework set out within the services specification and contract, the operator partner will employ its own methods of self-reporting and auditing of service quality standards to meet the strategic objectives and contribution towards the strategic outcomes of the new contract.
- 12.7.2 Regular monitoring of these audit processes and procedures carried out by the operator partner should be contained within the services specification and confirmed through the mobilisation period.
- 12.7.3 Typically, the local authority should be granted read only access to data which supports the KPI reporting – e.g. customer throughput.
- 12.7.4 Local authorities should consider a regular programme of asset management audits to ensure the maintenance and lifecycle replacement of assets and equipment is being undertaken by the operator partner in accordance with the services specification. These audits can be undertaken directly by the local authority or through independent, commissioned surveys by external surveyors.

12.8 Risk Management

- 12.8.1 Ongoing assessment of local authority and the operator partner's levels of risk should take place throughout the contract period. The performance management framework/services specification will specify how this is reported and the partnership approach should allow for regular, open dialogue to ensure a full understanding of risk by both parties.

12.9 Review of strategic outcomes

- 12.9.1 Agreed service plans should be reviewed and discussed as part of regular partnership meetings to ensure they remain closely aligned to the strategic objectives and are contributing to the strategic outcomes of the local authority.
- 12.9.2 Service monitoring and performance mechanisms, including KPIs should consider how the services can be measured to demonstrate the contribution to local strategic outcomes.
- 12.9.3 If this review process identifies any concerns in relation to the current strategic approach, then these can be discussed with the operator partner and where possible measures put in place to address these concerns within the scope of the services specification.
- 12.9.4 Appropriate service monitoring and reporting on an annual basis will determine whether partnership arrangements and perceived levels of support for the delivery of the services required within the services specification has remained constant, increased or decreased. Appropriate action can then be taken.
- 12.9.5 Where capital investment takes place during the life of the contract, monitoring mechanisms should be put in place to demonstrate the impact of this capital investment in meeting the strategic objectives and contribution to local strategic outcomes.

12.10 Contract Variations (for Externalised Services)

- 12.10.1 Contractual arrangements may need to change during the contract term. [Section 13](#) provides guidance on how this can be approached.
- 12.10.2 Where contractual arrangements change during the contract term, contract monitoring mechanisms should be reviewed and where appropriate, revised, in order to measure the impact of the change in contractual arrangements.

12.11 Active Communities Monitoring

- 12.11.1 When Active Communities programmes are included within the scope of services or potentially added during the contract term then appropriate monitoring mechanisms should be put in place to demonstrate the impact of these delivery programmes. Whilst these will include some of the contract monitoring mechanisms outlined in this section and should look to monitor the overall impact on the strategic objectives and strategic outcomes of the local authority, it is anticipated that bespoke monitoring mechanisms would be developed for each specialist delivery programme due to their nature and the softer social impact outcomes often required by the nature of the programmes being delivered.

12.12 Annual and Quarterly Service Monitoring reporting

- 12.12.1 There will be a requirement for the local authority to report the performance of the operator partner to various internal committees throughout the term of the contract. There will also be a need to report to the Strategic Partnership Board made up of key senior representatives from the local authority and the operator partner, in line with the governance structure arrangements set out in the services specification.
- 12.12.2 The services specification sets out the requirements for annual and quarterly reporting on service plans and performance. This reporting will need to be led by the operator partner, but the local authority will need to ensure sufficient internal resource to support the process effectively. Where internal resource is not available, the local authority may consider seeking external resource to this support through an independent review.
- 12.12.3 The level of reporting required should be aligned to the nature of the management model. It should be noted that in the case of community asset transfer or long lease arrangements monitoring would still be required albeit a lighter touch in terms of formal reporting.

12.13 Client Services Management and Monitoring Resources

- 12.13.1 It is recommended that during the mobilisation stage, the local authority takes the opportunity to review and confirm its approach to Client Services Management and Monitoring. This should consider the resources available in terms of staff linked to the value of the assets and services in scope. This will be informed by the local authority's approach to commissioning and the nature of the facility and service mix. Failure to ensure adequate resources in Client Services Management and Monitoring is likely to result in a sub optimal partnership, less visibility and control over service quality and ultimately less impact on wider local strategic outcomes.
- 12.13.2 The process of reviewing and confirming the approach to Client Services Management and Monitoring should include a detailed examination of the KPIs contained within the contract documents to ensure both parties fully understand them and for the operator partner to confirm precisely how they are to be measured and reported.

- 12.13.3 The first year of the new contract is likely to require the collection of new baseline data to measure the new KPIs, that are now fully understood and agreed by both parties together with clear, robust methods for measuring and reporting them. Agreement on the KPIs during the mobilisation period will ensure that the collection of baseline data can begin at the start of the new contract.
- 12.13.4 In order to deliver effective contract monitoring consideration needs to be given to the existing level of resource that is available both from the operator partner and the local authority in house team.
- 12.13.5 Often the operator partner has more resource available to undertake contract monitoring, but ultimately it is in the local authority best interests to manage the monitoring function as much as possible in house.
- 12.13.6 It is recognised however that in-house resources are often limited and that in order to effectively manage and monitor contractual arrangements and to ensure that best value is achieved and delivered through the contractual arrangements it may be appropriate for the local authority to seek external support to provide some or all of the client monitoring function.



13 Considerations for contract variations and extensions



Covid-19 Key Considerations

- Extending an existing contract may in some cases be the most appropriate commissioning solution whilst the service and leisure operator market is being impacted upon by the Covid-19 crisis.
- This may need to be implemented through emergency procurement powers as outlined in [Section 3.5](#) of this guidance if the existing contract does not provide for an extension.
- A contract extension provides an opportunity to update the contract and services specification to ensure they are fully aligned to the current strategic objectives for the services or to make amendments to elements of the contract which would benefit from being strengthened or clarified.
- If investment is included within the contract extension local authorities should consider the likelihood that return on investment will be lower than under pre-Covid-19 conditions.
- [Section 3.7](#) of this guidance provides further advice for extending a contract under Covid-19.

13.1 Introduction

- 13.1.1 In some cases, certain core requirements of the services may change during the contract period. This can be due to planned changes or investment opportunities that may arise or due to a change in the local authority's priorities. It could also be driven by the need for a local authority to make savings or to extend or reduce the scope of the services.
- 13.1.2 This section provides high level commercial and practical guidance for local authorities who may need to amend aspects of their contract and should not be taken as legal guidance. The legal implications of proposed contract variations will differ in each case according to the change provisions within the contract and where relevant, to the contract notice advertised at the procurement stage.
- 13.1.3 Local authorities should take professional legal advice when considering any significant variations to the contract.

13.2 Contract Extensions

- 13.2.1 Where a contract was procured for a specified period, local authorities should take legal advice regarding the possibility of extending the contract.
- 13.2.2 Any extension to the contract term would need to be permitted in accordance with [Regulation 72 of the Public Contracts Regulations 2015](#).
- 13.2.3 The local authority should assess whether the contract extension fits with any of the permitted grounds under Regulation 72. Where local authorities wish to allow themselves future flexibility on this front then they should provide for it upfront in the OJEU contract notice and procurement documents and include a contract clause to this effect, so it fits within Regulation 72 i.e. a modification contemplated by initial procurement in a clear, precise and unequivocal review clause. If this review clause is in place there is usually no need to issue a Modification Notice.
- 13.2.4 If there is no such review clause then it would depend on whether one of the other grounds in Regulation 72 could be relied upon e.g. an extension for technical and economic reasons or, perhaps, a short term extension such as not to be deemed substantial.
- 13.2.5 Local authorities cannot generally rely on their own failure to procure a replacement contract prior to expiry of the existing one as grounds for extending a contract.
- 13.2.6 If one of the other grounds for extension under Regulation 72 are relied upon, then a Modification Notice would need to be advertised. Operators in the market other than the incumbent would then be able to challenge the contract modification in response to this notice.

13.3 Optional Contract Extension Period

- 13.3.1 Where a local authority is anticipating changes to the contract or significant investment during the contract term, it should consider including an optional contract extension period. It is now common for local authorities to let a 10-year contract with an option to extend for say, up to 5 years. This enables the local authority to offer its operator partner a significant incentive to implement any required changes to the contract and provide value for money solutions to any investment opportunities that may emerge during the contract period.
- 13.3.2 The timing of any negotiation relating to investment will depend, to an extent, on whether the funding is being provided by the operator partner or the local authority. For significant investment proposals that are to be funded by the operator partner, local authorities should consider negotiating with their operator partner at a point during the contract period which allows sufficient time for the operator partner to gain a return in order to strengthen the overall business case for investment. Typically, on a 10 plus 5-year contract and for significant investment projects, this would be up to Year 5 of the contract to allow c. 10-years for the operator partner to make a return on its investment.
- 13.3.3 There may be instances where a variation to the contract requires a widening of

the scope of services to be provided by the operator partner to reflect a change to corporate objectives and/or local strategic outcomes. A local authority may also be seeking a variation to the contract and scope of services due to a requirement for savings within other departments to improve delivery in sports development or Public Health. There may be an opportunity to add services or programmes currently provided by these departments to the operator partner's scope of services, the cost of which may be either offset or covered entirely by invoking an extension to the contract term.

- 13.3.4 The optional contract extension may also be used to provide an improved management fee position in order to provide a saving to the local authority. Negotiating an improved management fee with the operator partner mid-contract in return for a contract extension can be a relatively simple way of delivering a saving. However, this is only likely to be the case where an extension will be commercially beneficial to the operator partner and will be influenced by specific factors relating to the financial performance of the current service, the ongoing risk profile, condition of buildings and assets and the local market conditions.
- 13.3.5 The optional contract extension has the added benefit of allowing the local authority a period of time to assess the performance of its operator partner before committing for the longer term.

13.4 Unplanned closure of facilities or services in the Contract

- 13.4.1 The contract and associated documents require bidders to produce a Leisure Operator Business Trading Account (LOBTA) in their bid submissions. In the event of an unplanned closure or change to the services, the operator partner may seek compensation as part of the change protocols in the contract on the basis of '**no better and no worse**' open book accounting.
- 13.4.2 The LOBTA should be used to establish the specific facilities and services affected by any unplanned closure and the associated income and expenditure which can be used to identify any compensation due to either party.
- 13.4.3 Local authorities should ask for a LOBTA which provides sufficient detail to enable the parties to identify the financial implications of any unplanned closure or change to the services.
- 13.4.4 It is important that LOBTA is embedded into the contract and local authorities should seek legal advice to ensure this becomes legally binding.
- 13.4.5 If the operator partner was aware of a potential closure of facilities prior to submitting their tender, they may for commercial reasons submit higher levels of projected profit for that particular aspect of the service in their LOBTA. This creates a risk that the local authority may end up paying higher levels of compensation which do not fairly reflect the actual commercial performance of the closed facilities. Local authorities can mitigate against this if they are using a procurement procedure that requires two or more financial submissions by asking bidders to amend their LOBTA following Negotiation or Dialogue on potential facility closures.

13.5 Mid-contract investment opportunities

- 13.5.1 The local authority and/or operator partner may identify opportunities for facility investment during the contract period. The funding of such investment can come either from the local authority or the operator partner or a combination of both parties. Commonly, the local authority provides the capital, either from reserves or through prudential borrowing which is usually substantially cheaper than borrowing sourced by the operator partner.
- 13.5.2 Local authorities should be mindful when considering mid-contract investment that the commercial circumstances will be very different to the procurement stage for both parties. The operator partner will take a fixed term view on any investment proposal depending on the remaining period of the contract i.e. the number of years they have to make a return, but the local authority is able to take a longer term view as the asset owner. For example, if an operator partner has a 10-year contract and both parties are looking at a major capital investment such as a gym extension in year 7 of the contract, the operator partner will be thinking about its return on investment (either through providing funding or through project management resource) over 2/3 years whereas the local authority is able to take a longer term view of the business case including the repayment of the capital over perhaps 10/15 years. In this scenario the operator partner has less incentive to offer significant levels of project management assistance for the planned investment and will be looking to make a short-term return.
- 13.5.3 The commercial circumstances are also very different to the procurement stage where the local authority might have had a choice of competing bidders. The incumbent operator partner is not in a competitive bidding process and is therefore more likely to be cautious in terms of the potential return on investment. As a result, the return on investment is likely to be higher if investment proposals are included as part of the procurement stage compared to mid-contract. This applies to all outsourced management arrangements whether through a multi-site operator partner, local NPDO trust or LATC. This should be balanced against the benefits of investing in facilities now rather than later.
- 13.5.4 Ideally, it is recommended that investment opportunities are considered as part of the local authority's strategic planning and as part of the development of any subsequent procurement strategy.
- 13.5.5 When considering the business case for any mid-contract investment, the local authority is advised to undertake some form of robust financial benchmarking, perhaps through the development of a 'shadow business plan' to assess any business proposal from its operator partner. This will provide a reference point for negotiation and should include an assessment of latent (unmet) demand for facilities, projected income, expenditure, profit and overheads. This will ensure that the local authority is getting an appropriate return on the investment. This is particularly important where the local authority has a long-term contract or lease with its operator partner in order to test value for money.

- 13.5.6 There is a point in any contract term where it may be too late to invest and get an optimal return for both the operator partner and local authority, and it may be better to wait until procurement of a new contract where the return on investment can be fully market tested and secured through the new contract. This will have the added benefit of making the new contract more attractive to the market during the procurement stage. Whilst every investment opportunity is different it is suggested that local authorities carefully consider the timing of any such investment in relation to the remaining term of the contract.

13.6 Changes to the services specification

- 13.6.1 Over the term of a contract the local authority may wish to make amendments to the services specification in response to customer needs and changing market conditions or as a result of changes in priorities or required local strategic outcomes. Examples of changes to the services specification that may have commercial implications include:
- Specifying Living Wage Foundation pay rates
 - Amending concessionary pricing policies
 - Reducing or increasing the number of protected bookings
 - Adding more requirements for the operator partner to undertake outreach services
 - Changing the repairs and maintenance risk share
 - Specifying free activities for identified target groups
 - Changing quality assurance standards e.g. moving from Quest Plus to Quest Stretch.
- 13.6.2 As noted in [paragraph 13.5.3](#), the negotiating position of the operator partner is much stronger when they are in contract. Where changes to the services specification involve either actual increased cost or a risk of increased cost, they will likely seek an improved management fee in their favour (either a reduction in their payment to the local authority or increase in the payment by the local authority).
- 13.6.3 A potentially good strategy for a local authority that wishes to make changes to the services specification without changing the management fee is to negotiate with its operator partner on a range of changes some of which could have a positive financial impact for the operator partner and others which would not. An example of this could be amendments to concessionary pricing where the local authority may want to extend the number of groups eligible, and in return the local authority could enable the operator partner to have more freedom of pricing in other areas resulting in the cross subsidy of concessionary pricing. This approach can reduce negotiation time and resources and encourage a partnership approach to finding sustainable solutions to changes in the services specification.

- 13.6.4 For changes which are likely to have a significant impact upon the management fee, and for local authorities with limited internal technical expertise, the local authority should consider taking specialist advice to assist them with negotiations in order to ensure value for money.
- 13.6.5 The operator partner may have less appetite for contract variations as it gets towards the end of the contract term. Any changes to the services specification which would require time and resources from them would likely lead to them being either reluctant to implement them or require a substantially improved management fee to incentivise them to do so.



14 Appendices

1. [Risk and Responsibility Allocation Matrix](#)
2. [Performance and Payment Mechanism](#)
3. [Standard Leisure Operating Contract](#)
4. [DBOM Contract](#)
5. [New Build Drafting Riders](#)
6. Specification Template DBOM: a. [Facilities Requirement Template](#) b. [Technical](#)
7. [DBOM Benchmarking Schedule](#)
8. [Services specification](#)
9. [Enhanced SSQ Template](#)
10. [ITT Template](#)
11. [Procurement Support Consultants Brief](#)
12. [Impact Monitoring Guidance](#)
13. [Concessionary Pricing Guidance](#)
14. [Private capital Funding Sources](#)



Sport England
21 Bloomsbury Street
London WC1B 3HF

sportengland.org

June 2021