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Guidance on Car Club Procurement

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Car clubs have been proven to be the lynch pin to supporting low car lifestyles. They support people to shift away from the default mode of private car use to embrace active travel and sustainable transport by providing a flexible service to fulfil the occasional trips not covered by other means. They lead to more efficient use of a smaller number of newer and greener vehicles freeing up space for the creation of higher quality liveable neighbourhoods.

The development of car club schemes when done at scale contribute significantly to strategies relating to the climate change emergency, the creation of clean air zones and tackling obesity and transport poverty.

This guidance sets out options for public bodies in designing successful procurement strategies and avoiding common pitfalls with the aim of ensuring the policy goals are achieved.

A: Key recommendations

1. Political and cross departmental support:

In order to have successful scheme development it is assumed that there is good understanding and support from those with responsibility for transport and the built environment. In addition, there need to be good links between the objectives of teams, most notably those responsible for parking revenues where there may be conflicting strategies with regards to converting parking spaces to car club bays.

2. Understanding business models:

CONCESSION ARRANGEMENT

In many instances, an authority will be inviting a supplier to operate in the area without funding the scheme. Under this concession model, a supplier generates revenue from its operation of the scheme rather than a management fee or funding from the authority.

As the operator is:

1) bearing the costs of operating the scheme in purchasing the assets and managing the scheme (operational risk);
2) exposed to the unpredictability of the market (i.e. the operator's revenue is directly related to the success/uptake of the scheme and the revenue generated from it); and
3) not receiving payment from the authority to provide the scheme,

...the operator would not expect to be restricted when making key business and operational decisions which are important to financial sustainability and delivery of the scheme

Consequently, the procurement strategy needs to allow for this flexibility in both:

1) the design of the procurement process (light touch process regardless of whether it triggers application of the Concession Contracts Regulations 2016 ("**CCR 2016**") or not (rather than the more familiar Public Contracts Regulations 2015 ("**PCR 2015**")); and
2) the drafting of the contract between the authority and the operator: a concession contract rather than a typical services agreement.

The less public funding available, the more the operators will wish to have control and work flexibly to manage their operating costs. The risk operators are absorbing and the investment they are making is likely to greatly exceed any funding from an authority that is available. Therefore, the balance of control, in the contract between the authority and operator, needs to reflect this reality.

TRADITIONAL SERVICES ARRANGEMENT

Alternatively, local authorities may decide they are looking to procure a specified service, either for the authority's fleet requirements alone or a wider service with set fleet numbers, locations, type and measured performance indicators. If the authority is expecting ambitious coverage from the start or a higher percentage of electric vehicles, then funding will be required. In this case there would be a requirement for appropriate levels of support to deliver the service as the authority is specifying requirements for the service rather than leaving this to the operator as under the concession model.

In contrast to a concession model, under a services arrangement:

1) the operator will charge the authority for providing the scheme and have more certainty over payment (as this is provided by the authority under a management/operation fee rather than subject to the revenue generated from scheme uptake/customers);

2) the authority could retain some revenue generated from scheme use (e.g. through permit fees). The extent to which this is done needs to be carefully considered to ensure the target policy objectives are achieved to their maximum and that the service remains commercially sustainable; and

3) the operator does not bear operation risk and is not exposed to the unpredictability of the market as it receives a guaranteed payment from the authority.

Concession Procurement

Where the operator is bearing operational / financial risk

- Light touch process (Request for Proposal (RFP) and concession agreement)
- Operator has flexibilty in operational decisions as it is bearing the financial risk

PCR* Procurement

Where the authority is funding the service

- Full tender process under PCR 2015
- Consult on appropriate specification (eg: pool car scheme)

*Public Contracts Regulation

Under either model, there will be a range of factors which the authority can begin to address to increase the chance of the car club's success and reduce the risk to the operator's ability to create a sustainable scheme, such as cost of parking, the quality of public transport and housing density. A range of policies to support the scheme are explored in section 6 of this part of the guidance.

The type of procurement route will need to reflect the authority's requirements and funding. A funded specified service will require a PCR 2015 procurement process, while a concession contract will be subject to a lighter touch process and is more appropriate when an authority is not in a position to fund the scheme and is instead granting permission to use the on-street spaces. Developing a framework agreement also gives flexibility to access multiple providers. Procurement routes are outlined in more detail in section [B] of this guidance.

3.Market consultation on scheme design

Regardless of the procurement approach or model adopted, it is essential that authorities take the time, at the outset, to design their scheme in order to future-proof it and ensure it meets the authority's requirements both from the outset and during the term of the arrangement.

Authorities should make the most of the expertise of the operators when designing a scheme as they will know what will work in their area. Early market testing, which is permitted and encouraged under public procurement law, prevents tender specifications from containing problematic requirements or tying operators into delivering something which won't maximise the potential benefits.

A pre-tender questionnaire followed by discussions will allow operators to provide like for like information then expand upon and discuss a range of ideas. It may cover topics such as the scale, density and phased growth for the scheme as well as operating models, partnership opportunities and pricing strategies. It may be important not to cherry pick the best ideas from each response and be realistic about the additional of extra initiatives.

Many of authorities are currently conducting market consultation exercises by use of publication of a Prior Information Notice advertising the opportunity and hosting sessions with operators on Microsoft Teams. This is a cost-effective and relatively quick way to engage with the market rather than the traditional route of hosting meetings in person or a market consultation day at an authority's offices.

Market testing is an opportunity to lay out the objectives the authority is wishing to address to ensure that operators are informed of these objectives and able to advise on delivering the objectives in a way which aligns with local priorities. For example, a strategy to focus on reducing local air pollution may require a higher percentage of zero emission vehicles whilst another tackling increasing housing density in the suburbs may place an emphasis on wider coverage.

Either way, market consultation provides a valuable source of information which can help shape both the scheme and procurement process through direct engagement with market operators.

4. Operational models

Traditionally car sharing vehicles have been placed in set marked bays which they must be returned to at the end of the hire. In London, a one-way scheme allows users to end a hire in any space covered by the parking permit including crossing into other boroughs. A hybrid of these models is starting to be deployed, where dedicated bays are not possible, and vehicles must be returned at the end of a hire to a geo-fenced area and parked in one of any of the available parking places along that street.

This approach allows for faster expansion of the scheme and is sometimes done in addition to a core of set marked bays. CoMoUK recommends that authorities have a clear idea of their preferred operational model, which may develop following market engagement, prior to advertising an opportunity.

5. CoMoUK accreditation

CoMoUK recommends working with operators which are currently certified by the accreditation scheme. Accreditation ensures a collectively agreed set of standards is upheld across the industry to maintain the reputation of shared transport schemes.

The criteria have been carefully chosen to provide a robust framework whilst not stifling innovation, through consultation with stakeholders.

6. Single vs multiple operator

In larger cities/local authority areas, there may be enough demand to support more than one provider. This is common in London but outside London, only Bristol and Oxford have more than one car club operating on street. It should be noted that there are only a few national CoMoUK accredited car club operators in the UK. By creating an arrangement such as that used in some London boroughs, whereby a concession is awarded on a non-exclusive basis, additional operators may be engaged in future, when required, rather than waiting for an agreement with a particular operator to expire.

Offering more than one provider in an area provides users with a choice of service although it may require a second registration process and membership fee. It may also require additional officer time managing relations with more than one car club operator.

Furthermore, consideration needs to be given to the impact on operators of increased competition which has a direct impact on the ability of operators to generate sufficient revenue from a scheme. This is particularly important in relation to the concession model where operators invest significant sums in the assets, in marketing and in the operation of a scheme. The larger the area the more likely multiple schemes can be viable.

7. Supportive policies

A local authority can support a car club in a variety of ways:

- Provision of network of signed bays alongside use of car parks or geo-fenced parking area permits for faster expansion.
- Zero or minimal parking permit fees. Parking permit fees range from zero to a few hundred or even thousands of pounds each year. Removing or minimising these costs takes away an extra financial pressure, helping to ensure the long term viability of a scheme.
- The local authority can become a corporate member of the car club and transfer some or all of the authority's grey fleet use to a commercial car club operator by block-booking vehicles as required, or making ad-hoc bookings.

  Alternatively, the authority can outsource the authority's pool fleet management to a commercial car club operator, in addition to ensuring that some vehicles are available for public use out of business hours. If no vehicles are available for public use, this is sometimes described as a 'closed' car club.
- Expansion of the scheme through the planning process with inclusion of a car club in new high-density developments and information added to Supplementary Planning Guidance.
- Promotion of the scheme through business engagement channels, Business Improvement Districts and Travel Planning Networks.
- Authorities can make strategic and links to local public transport for marketing and ticketing offers. Space can be provided at key interchanges for onward travel.
- Providing car club vehicles with same rights as Passenger Carrying Vehicles and free parking in council owned car parks.
- Electric car club vehicles to be allowed in bus lanes.
- Congestion charge waived for car clubs.
- Provision of dedicated charging bays or allowing affordable, access to electric charging point networks.

B: Procurement routes and considerations

This section of the guidance outlines different procurement routes and their relative strengths and weaknesses.

1. Concession contract procurement

The CCR 2016 contains the rules which apply to concession contracts where an operator's expected revenue over the course of the concession is expected to exceed the current threshold of £4,733,252. The rules are less prescriptive than the PCR 2015 processes with which many authorities will be familiar. Regulation 30 confirms that the authority has the freedom to design the process so long as it complies with the principles set out in the Regulations such as equal treatment, transparency and non-discrimination.

Where the expected revenue generated by the operator through the concession is below the CCR 2016 threshold, the authority has the freedom to design its selection process and is not bound by the CCR 2016.

Regardless of whether a concession agreement is within the scope of the CCR 2016 or not, it is likely that the process conducted by the authority will involve the following stages:

1) advertisement of the opportunity on the authority's preferred portal and Contracts Finder (and OJEU if a CCR 2016 procurement);

2) circulation of an Invitation to Tender/ Request for Proposal to interested operators which sets out the questions bidders must answer as well as their financial proposals and the evaluation criteria the authority will use to determine the successful operator;

3) submission of tenders by interested operators – usually within at least month of advertisement of the opportunity;

4) tender evaluation by the authority to identify the successful operator;

5) internal authority approval processes; and

6) notification of bidders and finalising the contract with the successful operator.

This option is likely to be the most useful to authorities wishing to attract an operator into their area in situations where the authority does not have funding to contribute to the operator's costs of delivering the scheme. In situations where funding is not available and the authority is simply providing parking bays (and securing TROs/TMOs and lining and signing), the process is lighter touch in comparison to a more typical PCR 2015 procurement process for a services agreement. An advantage is also that the authority is able to secure delivery of a scheme in its area without the financial commitment to the scheme.

A concession agreement is issued to an operator through which the operator is given permission to operate the scheme on authority land. The benefit to the operator is the ability to generate revenue through being granted this permission to operate on the local authority land. Concession arrangements have the advantage of being much faster to set up whilst still ensuring that there is an open competitive process.

When developing concession agreements, it important to remember the principles explored in section A - in particular the need to allow operator flexibility and avoid overly stringent KPIs and reporting requirements. If a concession agreement is too onerous, an operator is less likely to bid for the opportunity to deliver the scheme as its revenue-generation potential is more constrained.

2. Services contract arrangement

a. An existing framework agreement

There are a number of organisations such as Crown Commercial Services ("CCS") and Scotland Excel who develop frameworks for products and services which authorities can choose to sign up to. E.g. Crown Commercial Services (Lot 7 car club specific and Lot 2 -car club and daily rental) provides a template agreement for car club services. If this meets all of an authority's requirements, then an operator's services can be procured without the authority having to conduct its own procurement process. Most national operators are on the CCS framework.

The advantage of accessing a framework is that an authority is not required to conduct its own procurement process to select an operator. Accessing a supplier through a framework saves time and money – providing the framework covers the range of services an authority wishes to procure. Authorities can supplement the CCS terms with their own requirements, using the framework as a 'foundation' on which to build a requirement providing flexibility.

The framework is renewed every 3 to 4 years so it is important to check that the framework and permitted flexibility covers all requirements. As with all routes it is recommended that market testing is used to ensure the appropriate tool is chosen for an authority's needs. It should also be noted that there are fees for the operator associated with this route which can vary between 0.5-1%.

b. Services contract procurement under the PCR 2015

If the options outlined above are not suitable to an authority, for example if an authority has sufficient funding to contribute towards a scheme; and, as a result would like to exercise further control over how the scheme is operated, the authority will be required to conduct a procurement process pursuant to the PCR 2015.

There are a range of procedures under the PCR 2015 from closed (i.e. non-negotiated) procedures to negotiated procedures (such as the competitive dialogue and competitive procedure with negotiation) which allow authorities to negotiate with bidders during the procurement process. It is likely that authorities will want to make use of one of the negotiated procedures in conducting a PCR 2015 procurement process to take advantage of the ability to negotiate the draft contract during the process. This is particularly the case considering that the authority's requirements may need adaptation of an "off-the-shelf" solutions.

The typical stages involved in a negotiated procurement procedure are as follows:

1) Contract notice advertising the opportunity is published in the Official Journal of the EU (referred to as "OJEU") and the authority's preferred online Portal (e.g. Bravo or ProContract) inviting bidders to submit a Selection Questionnaire ("SQ" - formerly known as a "Pre-Qualification Questionnaire" or "PQQ") which assesses past performance and regulatory compliance;

2) The authority assesses SQ responses and shortlists 3 or 4 bidders to which it send an Invitation to Tender;

3) Bidders submit initial tenders and negotiate/dialogue with the authority to develop their proposals;

4) Bidders submit final tenders following rounds of negotiation/dialogue;

5) The authority evaluates tenders, identifies the highest-scoring tender and seeks internal approvals to make an award to that bidder;

6) The authority notifies bidders of the outcome in a contract award decision letter (also referred to as "standstill letters") which set out the reasons why a bidder has been unsuccessful and the date on which the mandatory 10-day standstill period ends;

7) Following expiry of the standstill period, the authority and successful bidder finalise the contract and scheme commencement takes place after an initial mobilisation period.

ADVANTAGES

- Provides the opportunity to fully compare the different options and identify the best solution for local circumstances;
- Creates a more formalised relationship between the authority and the operator(s) and commits the authority to using a single operator for a fixed period of time giving the operator confidence in investing in the contract and region and increases its chance of the scheme's success;
- If an authority has funding, this route allows it to detail the specification and exercise control over the operator through incorporation of obligations in relation to the operator's performance in the agreement;
- Ensures value for money and cost certainty are achieved through the competitive process; and
- Is favoured by operators as it provides certainty of payment through a management fee rather than the operator being subject to the unpredictability of the market.

DISADVANTAGES

- A negotiated procurement process can take 6 – 9 months to complete;
- The detailed specification risks being too rigid and tying operators to ways of working which are not in the best interest of the scheme (though this can be mitigated through the inclusion of variation mechanisms in the agreement);
- It increases the administrative burden to the authority when setting up a scheme. It is important to allocate sufficient officer time and engage external support (e.g. consultants and lawyers) at all stages to minimise delays;
- It may commit the authority to using a single operator for a fixed period of time if KPIs are met;
- It makes it more difficult for a competing car club to get established in the area, and competition within the market may bring down prices.

Other considerations

1. Contract/scheme content

- The length of the contract needs to be sufficiently long to encourage investment but with break clauses to encourage quality and innovation. Three years minimum to five years plus extension if KPIs are met is typical;
- How many on-street bays the authority will provide.
- Who will pay for the TROs/TMOs and lining and signing of the bays – both initially and if the scheme later expands - many authorities cover these costs as a core way to support the development of the scheme;
- If there will be any charge for the use of these bays, many authorities remove permit fees as a core way to support the development of the scheme;
- How future bays will be allocated (particularly important in a multi-operator situation);
- Reporting requirements, which should fit standard reports, where they are in place, (e.g. London Boroughs), unless there are specific reasons for needing additional information and this can be funded;
- Procedures for flexibility including withdrawal of services (either from one bay or from an area entirely);
- Maintenance requirements and responsibilities of the vehicles;
- Additional requirements, such as the need to provide low emission or electric vehicles; and
- Using CoMoUK accreditation as quality standard.

2. Evaluation process

- Allow bidders 6 weeks to respond to opportunities – using too short a time to respond to opportunities may mean that high quality operators either have to rush their submissions or miss the opportunity altogether;
- There is a danger in placing too much weighting on price vs quality of the proposal which may result in operators being required to cut corners and not deliver the best quality scheme. A price weighting no greater than 20% is recommended to ensure the emphasis is on quality delivery.
- It is important to keep the scope of the project as open as possible to allow operators to tailor responses from their experience and offer additional innovations.
- Ensure that the pricing evaluation model has a metric which allows for comparison of potentially different models. It is a key element of public procurement law that authorities must compare "apples with apples" but there are different approaches adopted by the market. If an authority takes the time to develop this, through market testing, before it advertises the opportunity to the market, it will ensure that it does not trip itself up during the evaluation process.
- Procurement options should take account of the Government measures to ensure the delivery of value to society through public procurement, (January 2021). These include the assessment of a suppliers' social impact. For further details - https://www.gov.uk/government/news/new-measures-to-deliver-value-to-society-through-public-procurement

3. Re-tendering and closure of schemes

Retendering for an operator allows an authority the opportunity to review the terms of their agreement and makes sure that both the authority and the members get the service required and best value for money.

In the event that an operator ceases operations or withdraws services from a specific area, under CoMoUK accreditation, operators must give their members two months' notice if this is practicable. Operators have agreed to work with CoMoUK to bring forward offers to give members the option to transfer to another service.

CoMoUK can help advise on car club strategy as well as providing contacts for current operators and advertising new opportunities.

Contact info@como.org.uk for further details.

Find out more about CoMoUK and Collaborative Mobility online at **www.como.org.uk**

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