

# A councillor's guide to procurement

2019 edition



# Foreword

The LGA has worked closely with councils to develop the National Procurement Strategy 2018 and a toolkit that enables councils to set their own objectives and measure their own progress. It is proving to be very popular.

The National Procurement Strategy puts the councillor role front and centre and this guide has been produced specifically for us. It looks at the roles councillor's play – both executive members and those engaged in overview and scrutiny work – and provides hints and tips on how to get the best out of procurement and contract management. Just as in the national strategy the focus is on delivering the council's objectives not something imposed from outside.

The environment we are working in is enormously challenging. In common with other councils, in Southend we have seen continued reductions in central government funding and we view procurement and contract management as important means of ensuring that budgets are well managed and that best value is achieved across council revenue and capital expenditure.

Southend-on-Sea Borough Council has developed – in partnership with local people and key stakeholders in the borough – a clear vision and set of outcomes for Southend 2050. With this focus procurement works to ensure that the resources the council has are spent wisely and that efficiencies can then be utilised to bring about change in our communities.

As councillors we have great influence on the way resources are used and we recognise how important procurement and contract management are to the delivery of our objectives. For example, in 2018 we overhauled Southend-on-Sea's contract procedure rules with a view to increasing spending locally as well as maximising the social value we obtain through the contracts that we let.

Councillors do not need to be procurement professionals. But we do need to be able to ask the right questions and that is where this guide comes in. As the guide says, it should not be forgotten that councillors need suitable training and development to be able to perform our roles effectively.

To accompany this guide the LGA has developed an online quiz for councillors. It is a light-hearted thing with a serious purpose. It will help you take stock of your own knowledge. I am happy to say that I have tried it and I recommend you try it too.

[https://research.local.gov.uk/jfe/form/SV\\_e8y37r66gEgzKWF](https://research.local.gov.uk/jfe/form/SV_e8y37r66gEgzKWF)



**Councillor Ron Woodley**

Deputy Chair of the LGA  
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# Why is procurement important?

Councils are operating in a very challenging financial environment. Demand for local public services is rising, and cost pressures are increasing, yet government grant to councils has reduced markedly since 2010. A question mark has been placed over the sustainability of local public services. LGA's current estimate is that there will be an overall funding gap of £7.8bn by 2025.

In this context, delivery of council ambitions – including better outcomes from public services and regeneration of places – requires resourcefulness and councils are responding in a variety of ways. The response includes strategies designed to:

- maximise the value – including the 'social value' – achieved from the sector's estimated £55 billion annual procurement spend
- generate income ('commercialisation')
- harness innovation including supplier innovation.

These are areas in which procurement can make a major contribution but that requires leadership and best use of resources through partnership working with other public sector organisations (particularly important for social care and health).

The LGA's National Procurement Strategy for Local Government in England 2018 looks at how procurement can contribute. It is organised around three themes:

- showing leadership
- behaving commercially
- achieving community benefits.

The leadership theme recognises the pivotal role of councillors in both executive and scrutiny roles including their role in leading work with other public sector organisations.

This guide has been developed to support the National Procurement Strategy by providing advice to councillors on how to get the best from procurement.

# What is the councillor role?

The National Procurement Strategy suggests that strategic contribution of procurement should be reflected in an executive portfolio – creating a role that champions procurement inside the council and champions partnership working with other public bodies.

Councils have a variety of executive arrangements including leader and cabinet, elected mayor and cabinet and the committee system. There is no right or wrong set of responsibilities.

The leadership role of the executive might include:

- Adopting the corporate procurement strategy, ensuring it remains aligned with strategic objectives and monitoring its implementation.
- Agreeing a policy on how the best value duty will be delivered.
- Agreeing a policy on social value in procurement and contract management.
- Overseeing the corporate arrangements for procurement and contract management to make sure they are operating effectively and efficiently.
- Making key decisions in the procurement cycle for major projects including the ‘make or buy’ decision and procurement strategy including sourcing from SMEs and VCSEs.
- Promoting the use of project assurance (eg gateway reviews) where appropriate.
- Monitoring the performance of contracts with strategic suppliers and ensuring prompt action is taken if a strategic supplier shows signs of financial distress.
- Promoting work on procurement with other

public sector bodies particularly Health

- Ensuring that contingency plans are in place to mitigate the impact of Brexit on critical supply chains.
- Ensuring contingency plans are in place and regularly refreshed to mitigate the impact of financial distress in strategic suppliers, where council monitoring indicates a raised level of concern.
- Seeing to it that the council takes best advantage of changes to public procurement rules (including any Brexit-related changes).
- Fostering innovation in procurement methods, service delivery vehicles and vehicles for income generation (‘commercialisation’).
- Learning the lessons from major projects and key contracts.

The role of overview and scrutiny councillors might encompass:

- Conducting enquiries into new service delivery models and income generation opportunities (commercialisation).
- Reviewing areas of high spend to identify opportunities for savings and improved value for money.
- Challenging the progress of major procurement projects.
- Reviewing the performance of strategic suppliers and results of council participation in regional or national initiatives aimed at managing strategic suppliers.
- Maintaining an overview of how Brexit is impacting on critical supply chains.

- Ensuring that lessons are learnt from major projects and key contracts and from failures of major suppliers to the public sector.
- Reviewing the operation of contract standing orders (fitness for purpose).

Note that there are some activities which councillors should not be involved in. For example, councillors should not participate in commercial negotiations with suppliers or the evaluation of tenders. Nor should councillors make commercial commitments on behalf of the council (unless by arrangement with council officers).

## Hackney Council’s scrutiny commission

Hackney Council is one of many focused on rooting out poor behaviour by suppliers. Recently, the Living in Hackney Scrutiny Commission has been looking at concerns in the housing area and beginning to draw lessons for the council.

**“Quite stark examples of poor behaviour by partnering contractors have been shared with us.**

**“Contractors had overcharged for works, proposed to deliver (and to charge for) work which was not required, incorrectly claimed work to be complete, and delivered substandard jobs.**

**“It is clear that large long-term partnering contracts rely on close and intensive management to ensure value for money for residents.”**

**Councillor Sharon Patrick**

Quoted in Hackney Citizen, 4 April 2019

Councillors also provide leadership to counter-fraud and anti-corruption activities across the council which includes procurement fraud. This is often done through the audit committee but councillors in other roles play an important part including overview and scrutiny councillors.

This includes promoting a counter-fraud and anti-corruption culture, helping the council to understand the procurement fraud risks it faces, examining the council’s performance and ensuring that counter-fraud and anti-corruption resources are allocated appropriately. For more on this, see LGA’s *Managing the Risk of Procurement Fraud* (in Further Reading).

Audit committees play a broader role in ensuring the effectiveness of arrangements for risk management in procurement and commercialisation projects as part of the council’s corporate governance framework.

To be able to perform their roles effectively councillors need to receive appropriate training and development and should receive regular reports including reports on the contribution that procurement is making to achievement of council objectives.

# What corporate arrangements should be made?

## What is 'procurement'?

Procurement is the process of acquiring goods, works and services from third parties. In other words, it covers the purchasing of everything from paperclips to major infrastructure schemes.

The procurement process includes options appraisal (the 'make or buy' decision). In major projects this is a key stage. Councillors will often be called upon to consider a range of options set out in a 'business case' and to decide which option will be pursued.

The aim is to achieve best value for money. In the HM Treasury publication *Managing Public Money* value for money is defined in the following way:

'It means securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought. It is not about minimizing upfront prices.'

This means that procurement decisions need to take account, as appropriate, of quality and all of the costs that will be incurred by the council throughout the life of the asset or contract period not simply the initial price.

The best results are obtained by engaging with the market before advertising an opportunity (to be sure the council's approach will get a good response from suppliers) and focusing on contract management to ensure the council gets what it is paying for.

There are also compliance issues which cannot be ignored. Every council adopts contract standing orders (sometimes called

'contract procedure rules'). These are the council's own procurement rules. Naturally, councillors need to understand and work within those rules. These form part of a broader set of arrangements the council makes locally for procurement and project management, including measures to prevent fraud and corruption, which councillors need to understand and follow.

Further, in local government, as in the rest of the public sector, procurement must be carried out in compliance with public procurement law (currently regulations implementing EU procurement directives and related case law, and therefore referred to for short as 'the EU procurement rules') and other legal requirements including the best value duty and requirements relating to staff transfers (TUPE, pensions), health and safety, equalities and social value etc.

The UK also has rules on lower value procurements including an obligation on councils to publicise advertised opportunities worth £25,000 or more on the Government's Contracts Finder website.

Public procurement law is complex and councillors need to know that the council has access to professional procurement and legal advice to navigate the rules.

The Public Contracts Regulations 2015 (PCR 2015) contain the main rules. Changes made in 2014 introduced more flexibility which councils can use to their advantage (see *Delivering Savings, Better Outcomes and Growth: Using the New EU Procurement Rules – A Guide for Councillors and Senior Managers in Further Reading*).

If the UK leaves the EU with a deal (ie a 'withdrawal agreement') public procurement law will remain broadly the same during a transition period. If the UK leaves the EU without a deal, on day one the bulk of the rules will remain the same but there will be some important changes.

Over time it should be possible to secure improvements to the procurement rules and LGA continues to argue for changes that will meet council concerns.

## Brexit and council procurement

Councillors will want to be satisfied that the council is ready to implement any Brexit-related changes to the procurement rules and to take advantage of any new opportunities that arise.

In Procurement Policy Note 02/19 the Government explained what will happen in the 'deal' and 'no deal' scenarios.

Regulations to change the procurement rules in the no deal situation have already been made ready to come into force on exit day. The regulations amend the current regulations implementing the EU procurement rules – which will be retained as part of the UK law by the European Union (Withdrawal) Act 2018 – so that those rules continue to work properly once the UK is outside the EU.

### Deal

For councils it will be 'business as usual' during the transition period including advertising of opportunities in OJEU and publicising of lower value opportunities on Contracts Finder.

There will not be a cliff edge at the end of the transition period. Procurements started before the end of the transition period will continue to be covered by the EU rules and the rules will continue to govern the award of contracts under framework agreements.

The UK's future relationship with the EU will determine what procurement rules apply once the transition period ends (for example, what any new trade agreement with the EU has to say about procurement).

### No deal

On day one, most of the procurement rules including financial thresholds, procurement procedures, time limits, exclusion, selection and contract award rules and remedies will be broadly the same as now (although there will be many minor changes).

One major change is that councils will be required to advertise opportunities through a new UK e-notification service rather than in OJEU (Contracts Finder will not be affected).

After exit, only UK and Gibraltar suppliers will have rights under the UK regulations including access to remedies if the rules are broken (currently suppliers from all European Economic Area countries are in this position).\*

Procurements started before exit day but completed afterwards will have to follow the new UK rules after exit (although there are some exceptions to ensure fairness).

\* Suppliers from countries that are members of the WTO Government Procurement Agreement (GPA) – which includes the EU alongside the USA, Canada, Japan, Australia etc – will still have rights and remedies but only in the case of procurements covered by the GPA. There will be temporary arrangements providing for this and the UK is joining the GPA in its own right.



## Is ‘commissioning’ different?

A popular short definition of commissioning is:

**“Assessing the needs of the population in an area, designing and then securing the delivery of services”**

**(Cabinet Office)**

Commissioning is usually about securing services (rather than acquisition of goods or works). The commissioning model has its origins in health and adult social care but the approach has been introduced into many other service areas too, notably children’s services. Some councils have adopted it as the model for the whole council (the ‘commissioning council’).

So how is commissioning different from procurement? The best way to think of it is that commissioning is a cycle of activities that includes procurement and contract management or can include procurement and contract management (services can be commissioned in-house).

Procurement professionals have an important role to play throughout the commissioning cycle as the diagram below illustrates.

The starting point is an assessment of the needs of the local population and the outcomes that the council and other local agencies want to achieve. (This is sometimes called strategic commissioning to reflect the population-level focus. Integrated commissioning describes alignment of approaches across agencies particularly across councils and NHS bodies. Integrated commissioning encompasses a variety of models all of which aim for improved outcomes for service users).

Service users and their organisations clearly need to be involved from the earliest stages and have a lot to contribute throughout the cycle. With appropriate safeguards, providers’ input can also be extremely valuable.

## Integrated commissioning

Without specifying any particular model of joint working between councils and the NHS, the LGA’s Integrated Commissioning for Better Outcomes identifies the ingredients for success in integrated approaches to commissioning. These are:

- building the foundations (relationships based on trust, a shared vision, values and priorities, and strong collective leadership and governance)
- taking a person-centred, place-based and outcome-focused approach
- shaping provision to support people, places and populations (which includes shaping the provider market and managing provider relationships)
- continuously raising the ambition
- the document includes questions in each of these domains which councillors can ask to support improvement locally.

Next, resources are matched to the needs and desired outcomes (or ‘results’ to be achieved). Due to financial constraints, this usually means prioritisation – a key local democratic role for councillors in consultation with the users and the wide community.

In more complex situations there will be options appraisal and service design as part of the cycle. Sometimes the decision will be to de-commission a service (ie to stop providing it) or to provide it in a radically different way (remodelling). From time to time an externally-provided service might be brought back in-house.



## Commissioning cycle

Before a decision is taken to re-procure the service, the council will need to have confidence that there is a diverse marketplace of affordable, quality providers. Market shaping means having a good 'map' of the providers and using all the tools (ie including grants, training and development and business support for providers) available to the council to shape the market to meet current and future population needs.

# What is the procurement process?

There are some well-established reasons why major procurements in local government fail including:

- Lack of councillor and senior management leadership and commitment throughout the process.
- Inadequate business case, where the requirement is uncertain, the contribution to strategic objectives is unclear and/or there is a lack of realism about the council's ability to deliver services in new ways.
- Inadequate resources, especially the skills and expertise needed to deliver a successful project.

It is therefore good practice to:

- Give proper emphasis to the business case stage in the procurement process including the options available and the make or buy decision.
- Manage major procurements as projects, incorporating risk management and assurance reviews, see below.

The Outsourcing Playbook and associated guidance provide helpful advice on the make or buy decision (see Further Reading).

Further, in local government the procurement processes can be unnecessarily lengthy and complicated. This is costly for the council and for the suppliers that are bidding and ties up key staff for long periods of time. The procurement process should therefore be designed according to 'lean' principles and councillors should challenge processes which do not remain focused on delivering results (benefits).

Typical roles and responsibilities in a project include the senior responsible owner – a senior manager who has personal responsibility for driving the project forward and making it a success.

The senior responsible owner may chair a project board that typically comprises senior managers from legal, finance, procurement, HR, ICT and property (as appropriate to the contract). The board ensures that all aspects of the project are addressed and will act on feedback from stakeholders.

The project manager is responsible for coordinating the project team and overseeing the delivery of the project on a day-to-day basis.

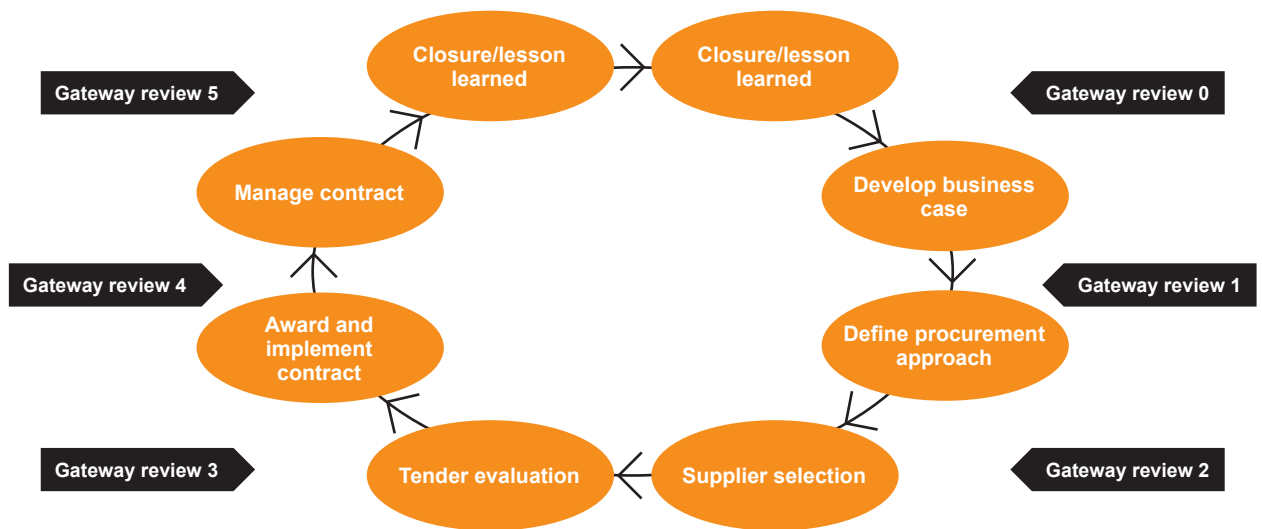
For major projects there must be a dedicated project manager with delegated authority. To manage without is a false economy.

## Critical success factors – procurement

- **Councillor involvement.** Executive direction and decisions on strategic projects; scrutiny and challenge of all major projects to ensure that they support corporate strategies.
- **Senior management involvement.** Prompt decisions on key issues; enabling access to resources outside the project team's immediate control.
- Early involvement of **procurement professionals** and other professional advisers (eg HR). Includes experienced and qualified procurement personnel on project boards for major projects.

- **Clear objectives.** Defined at the outset. Keep the project aligned with strategic objectives.
- **Results focus.** Focus on delivering the right outcomes. Making sure that the process does not get in the way of success.
- **Good preparation and planning.** Realistic timescales and milestones for delivery; access to key people when required; effort focused in the right way when needed and documentation that is complete and correct.
- **Best use of resources.** The right people for the job, not just the next available person. Full consideration of the skills and input required. Complete clarity about who should be doing what.
- **Empowered project manager.** Includes delegation of authority as necessary.
- Good quality **data collection** and maintenance of **asset registers** to inform decisions and baselines for bids.
- Requirements detailed in **clear specifications** with identifiable and measurable outcomes (including KPIs).
- **Stakeholder engagement.** Resulting in specifications that meet their needs and buy-in to the procurement project.
- **Market engagement.** Assessments of market health. Supplier days and the like held to engage the market and test the commercial viability of a proposed procurement eg a new service delivery model or commercialisation project before the procurement is formally commenced. Enables the market to gear up to deliver the requirement.
- **Make or buy decision.** Major procurements should always be preceded by an assessment of the relative merits of procuring a solution in the market versus delivering the solution in house.

- **Piloting** before committing to a major project (eg first generation outsourcing).
- **Appropriate risk allocation.** Market engagement should inform which risk are retained and which transferred under the contract. Risks should be allocated to the party best placed to manage them.
- **Contract design.** Should set reasonable expectations of suppliers and provide a fair return
- **Pricing and payment mechanisms.** Should incentivise the right supplier behaviours.
- **Planning for transition and exit.** Should include exit due to supplier insolvency.
- Planning for the **cost of supplier insolvency.** Options include **performance bonds and self-insurance** (which should feature in the make or buy decision).
- **Living wills.** Require suppliers to provide resolution planning information for use by the council in supplier insolvency situations.
- Due diligence during **selection process** including supplier **financial assessment** and **past performance.**
- Well-designed **tender evaluation methodology** and use of **'should cost' models** to guard against low bid bias.
- Ongoing **risk management.** Key project risks identified at the outset and tracked with appropriate corrective action.
- **Project assurance.** Independent reviews at key decision points, starting during the early planning stages of a project to assure deliverability, affordability and value for money.



The key stages of the procurement process are shown in the diagram above together with an indication of how assurance can be provided to senior management through assurance reviews (sometimes called 'gateway reviews').

The reviews provide management with assurance that the project is more likely to be completed on time and budget and to meet the client's requirements.

The assurance process is not an audit of a project but a tool to assist the project owner to deliver a successful project. Councils should decide to apply this form of assurance on the basis of the risks inherent in the project. It is resource-intensive and not appropriate for every project.

External assurance reviews are offered by Local Partnerships. Essentially, these are independent reviews carried out at key decision points in the cycle (see Further Reading for more information).

# How are contracts and relationships managed?

Councillors should expect a similar degree of senior management ownership of ongoing delivery throughout the life of the contract (a 'contract owner') and a properly-resourced contract management team (especially for service contracts, see below on issues construction contract management).

It is during the contract management phase that the benefits the council is paying for are actually delivered (or not). A 'let and forget' approach is never acceptable.

The foundations for success in contract management are laid during the procurement process. Critical success factors for this phase are shown in the table below.

## Critical success factors – contract management

- Contract manager involved at the outset of the project.
- Relationship built during procurement process and actively managed.
- A contract management plan in place before procurement including resources and clear roles and responsibilities.
- A contract management manual that explains key contractual provisions and documents key processes.
- A good document management system.
- A contract management system (software) which prompts action when contracts are due to expire.
- Continuing management of risks.
- Sustained focus on realising the benefits identified in the business case

(outcomes).

- Control of costs including contract variations.
- Encouragement of continuous improvement/cost reduction.
- Ongoing financial monitoring of suppliers to detect and act on signs of financial distress.
- Management of performance shortfalls.
- Adequate tools to tackle poor performance.
- Continuity of knowledge throughout the procurement and contract management phases.

## Good practice in construction contract management after Grenfell

Councillors need to feel confident that the council is keeping abreast of good practice in contract management as well as in procurement. As an example, many councils are now reviewing their use of clerks of works in construction contract management.

Following the Grenfell Tower disaster, Dame Judith Hackitt was commissioned to undertake an independent review of building regulations and fire safety. The findings were published as Building a Safer Future. Chapter 9 of the report makes a number of observations about the construction procurement process. Lack of clarity concerning roles and responsibilities - exacerbated by the fragmentation of the

industry - is a theme running through the report.

The virtual disappearance of the clerk of works role was highlighted to the review as a significant concern (not limited to fire safety) by a number of professional bodies including RIBA. Chapter 2 of the report concludes that clients need to tighten up processes to ensure they understand how their projects are being delivered and that 'it may be appropriate that more clients seek to utilise a Clerk of Works-type role to act as their eyes and ears throughout the construction process'.

# What is category management?

Every council needs good visibility of what it is spending and with whom. Councils that have the necessary resources sometimes go further using an approach known as 'category management' to structure all of their procurement activity.

Breaking down council expenditure by category is the first step towards category management. For example, construction, waste management and professional services are 'master categories' below which there will be categories and sub-categories.

Essentially, category management involves a systematic examination of the structure of demand and supply (i.e. the market) in each category (or sub-category) and the development and implementation of category-specific sourcing strategies and plans where there is an opportunity to improve value for money (ie strategies for how the council will go to market for those requirements in the future). It includes ongoing supplier management.

A category management approach also involves demand/specification management. That is to say, challenging the need to purchase the goods or services or carry out the project at all, at the current time or in the way proposed. A number of organisations have controls in place which ensure this challenge is systematic.

A category management project (a review of an area of spend) may conclude, for example, that better value can be obtained by sub-dividing requirements so that SMEs and VCSEs have an improved chance of winning contracts.

Realistically, some sourcing strategies can only be put into effect through collaboration between councils (and other public bodies) due to the volumes that are required and the benefits that can accrue from aggregating requirements.

In local government professional buying organisations (including YPO, ESPO, NEPO and CBC) are a vehicle for collaboration on the acquisition of common goods and services and there are in addition regional and sub-regional arrangements including framework agreements in the construction areas and dynamic purchasing systems for adult and children's social care. Councils also have the option of using the framework agreements and other arrangements put in place by the Crown Commercial Service.

The LGA has worked with councils on strategic category management strategies to support the National Procurement Strategy. See Further Reading for information on strategies that councils can participate in and benefit from.

## Why engage strategic suppliers?

Councils need to identify their strategic suppliers in terms of both spending and risk/dependency.

Effective engagement of strategic suppliers can deliver a range of benefits including improved outcomes for the public, added social value, reduced cost, reduced risk and innovation.



High-profile failures by key suppliers to local government have made it more important than ever for councils to gain a deep understanding of the business of those suppliers which present the greatest risk (market and supplier intelligence) and to take early action where possible (eg as soon as signs of financial distress become apparent).

This is not just a task for the procurement process and the financial and other checks that are carried out before a contract is awarded. Engagement needs to be continuous throughout the contract management stage.

## Working together on strategic supplier engagement

Many councils have strategic suppliers in common. Some suppliers are strategically important to the whole of local government.

This has been highlighted clearly by the collapse of Carillion and is reflected in the new National Procurement Strategy.

The LGA has lent its support to a project which is engaging key suppliers to the sector including:

- Bupa – care homes and home care
- Capita – business outsourcing
- Microsoft – software licensing
- Amey – highways
- Cambian – children's services
- Allied Healthcare – home care

Councillors can encourage participation in this project.

The Government has published guidance on assessing and monitoring suppliers' financial standing (guidance to support the Outsourcing Playbook – see Further Reading at the end) which includes warning signs of potential financial distress. Questions for councillors to ask in relation to financial distress have been incorporated into this Councillor's Guide.

# How is 'social value' delivered?

Councils have always used their purchasing power (both grants and contracts) to obtain social, economic and environmental benefits for their communities and today, with money so tight, it is more important than ever to maximise the impact of every taxpayer pound that is spent (known as securing 'social value' or 'community benefits' from council spending).

The Public Services (Social Value) Act 2012 enshrines this in law to a certain extent. Under the Act any council proposing to award a service contract or framework agreement for services above the financial threshold in the EU rules must consider how what they propose to procure will improve the economic, social and environmental well-being of the area and the council must consider how it will act to secure that improvement when undertaking the procurement. Councils have an obligation to consider whether to consult on their proposals before starting the procurement process.

Councils have embraced social value and often take practical steps that go far beyond the minimum requirements of the Act (for example, by applying it to construction contracts and lower value procurements). The Toolkit supporting the National Procurement Strategy looks in detail at what councils can do in this area depending on their level of ambition, including creating local employment and training opportunities and opportunities for SMEs and VCSEs.

The National Strategy encourages councils to consider using the national themes, outputs and measures (TOMs) at <https://socialvalueportal.com> in their procurement activity, as the basis of measuring social value.

## Embedding Social Value

Councils have far more to gain through procurement than just the services, goods or works that they are buying. Not only is Member involvement key to ensuring that the right goods and services are procured, their input in shaping the policies and the economic, social and environmental outcomes that can be sought, as defined by the Public services (Social Value) Act, is an essential element if the maximum value from procurement is to be secured.

With citizen wellbeing and local economic growth being prominent in our objectives, our drive for greater social value has seen more people being paid the living wage, hundreds of new apprenticeships being established, spend being recycled in the Birmingham economy and more SMEs benefitting from contracting opportunities. For example, the Peddimore development includes commitments of £200k of spend with the Third Sector, support to 10 schools and up to 3000 students, 70 individuals supported towards employment and £180k community fund.

The opportunity to deliver greater social value continues through projects including the Commonwealth Games, HS2 and Smithfield market development, which see us working in partnership to make Birmingham a City of growth, where every child, citizen and place matters.

### **Councillor Tristan Chatfield**

Cabinet Member for Finance and Resources, Birmingham City Council

## Modern slavery and council procurement

Councils are playing an important role in tackling the scourge of 'modern slavery' (human rights abuse). While the Modern Slavery Act 2015 does not oblige councils to take action on modern slavery in their supply chains (a position that could change in the future) over 100 councils have voluntarily embraced 'ethical procurement' alongside social value and initiatives in this area are championed by councillors.

Local government has the opportunity to use its extensive buying power to help mitigate the risks of it occurring in its supply chain by adopting new processes and procedures, in both procurement and supplier/contract management.

The LGA's Tackling Modern Slavery: A Council Guide<sup>1</sup> discusses the steps councils can take in the procurement and supply chain field including:

- gaining organisational commitment
- engaging with the council's suppliers
- collaborating with others
- prioritising risks
- responding to human rights abuse in a supply chain.

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1 [www.local.gov.uk/modern-slavery-council-guide](http://www.local.gov.uk/modern-slavery-council-guide)

# What is commercialisation?

'Commercialisation' essentially means taking a more commercial approach to council activities but with a social purpose in mind. Many commercialisation projects have income generation as an objective. They may make use of charging and trading powers or involve investment or property development. The purpose of these ventures is to generate resources that can be directed into council services or to bring wider social and economic benefits to the area.

As LGA's A Councillor's Guide to Commercialisation explains (see Further Reading), councillors have a vital role to play in the success of their council's commercialisation projects including setting policy objectives and taking key decisions. Typically, councillors sign off a commercial strategy which delivers council objectives and all commercial ventures must remain aligned to that. Councillors also need to ensure that appropriate risk management arrangements are in place.

Increasingly councils are using a commercialisation board or similar with councillor representation to look corporately at commercial ventures and take key decisions rather than do this at the service area level.

The commercialisation guide includes questions that councillors can use to engage with commercial ventures and these need to be considered alongside the procurement-related questions included in this guide.

The financial position of councils is driving innovation in this area and that includes the creation of new vehicles which provide an income stream for the council.

## Manchester Life

Manchester City Council has pioneered a number of commercialisation projects and councillors have been keen to see that the ventures deliver social value for the city.

One example is Manchester Life a joint venture between the City Council and Abu Dhabi United Group (owners of Manchester City FC). A development company, which has the Leader of the City Council on its board, is channelling much-needed investment into the regeneration of Ancoats and New Islington in East Manchester.

As well as creating more than 1,000 new homes in its first phase the initiative has social value firmly in its sights. That includes working closely with the DWP to create employment locally and collaborating with the College on apprenticeships in construction and other fields. Supply chain initiatives target local businesses for Tier 1 and subcontractor roles and consultants need to have a local base.

Commercialisation projects may have a procurement stage and may call for an innovative approach to procurement (See Encouraging Innovation in Local Government Procurement in Further Reading). As flagged in the National Procurement Strategy this is increasingly an area in which procurement professionals will be expected to contribute.

As mentioned above, while councillors should set the strategic objectives they should not be involved in negotiations or the evaluation of tenders.

## Good practice in commercialisation

General guidance on commercialisation can be found in the LGA's Enterprising Councils and additional resources are being developed in this area (see Further Reading).

Enterprising Councils includes council case studies. It looks at:

- developing a commercial strategy
- option appraisals, business case, decision making
- legislation on charging and training
- skills, capability and trading
- when to charge
- when to trade
- investment and property development
- scaling up
- markets and competition.

Councillors acting as directors of companies established as the vehicle for a commercialisation project need to be aware of the duties they owe to that company, particularly those which could lead to a conflict with their role as councillor (for example, directors have duties to promote the success of the company, to exercise independent judgement, and to avoid conflicts of interest). Councillors should be aware of the need to ask themselves whether they can perform their role on the board without compromising their duty to the council. Through training or other measures, councillors need to be able to recognise and address conflicts of interest.

# What questions should I ask?

## Corporate arrangements

Here are some questions that councillors might ask about their organisation's corporate arrangements for procurement:

- How much are we spending as a council?
- What are we spending the money on (categories)?
- Who are we spending the money with?
- Is the corporate procurement strategy aligned to the council's strategic objectives?
- Has the council assessed itself against the National Procurement Strategy 2018/ Toolkit?
- Are we working with other public sector organisations (especially health) on procurement, commissioning and contract management?
- Are we maximising our use of professional buying organisations and other collaborative arrangements (framework agreements)?
- Are we clear who our strategic suppliers are?
- Are we getting value for money in the major categories?
- Are we getting the outcomes (results) we want?
- Do we have a strategic approach to improving value for money by category?
- Do we have a strategic approach to social value?
- Are we sourcing from SMEs and VCSEs?
- Are our relationships with suppliers good?
- Do we have the necessary procurement, commissioning and contract management skills?
- Have we adopted procurement, commissioning and contract management best practices?
- Do our procurement processes focus on the 'value-adding' stages – stakeholder/ market engagement and contract management?
- Do we deliver major projects successfully?
- How well do we manage contracts?
- How well do we monitor our higher risk suppliers?
- Are we working at national and regional levels to manage strategic suppliers that we have in common?
- Are we tackling procurement fraud?
- Do we know what contribution procurement is making to our strategic objectives?

## Major projects

These are some questions councillors might ask at the relevant points in the procurement cycle for a major project:

- How have we identified needs?
- Do we know if service users and other stakeholders are satisfied?
- How good is the current service?
- What outcomes (results) do we want?
- What budget is available?
- Do we have good data on the service/ register of assets?

- Have all the options been considered including the 'make or buy' decision?
- Have we considered whether there are income generation opportunities?
- Have we considered the general duty to obtain best value, both during the procurement process and during contract performance?
- Have we consulted stakeholders?
- Have we consulted the market?
- Have we considered 'make or buy'?
- Can we afford it?
- Is there a healthy market?
- Is this the first time it has been done?
- Have we piloted the approach first?
- Is the timescale realistic?
- How are we packaging it? Is packaging encouraging SME and VCSE participation?
- What service standards are we setting?
- How will service standards be measured?
- What risks will be transferred to the supplier and what risks will sit with the council – is risk allocation optimal?
- What social value will be delivered, eg local employment, training and supply chain opportunities?
- How are we addressing equalities?
- How is health and safety built in?
- Will we meet our environmental objectives?
- Have staff been consulted?
- Who will be in charge of the project?
- Have we got the people to do this?
- How will we manage risk including the risk of supplier insolvency?
- Have we considered using an innovative procurement method?
- Does this project affect anything else we are doing?
- What will happen if things change during the contract?
- What incentives are there on the supplier to perform well/reduce costs/innovate?
- What reports will we receive on the progress of this project?
- What plans have we made to deal with supplier insolvency?

# Jargon buster

Assurance review	A way of providing assurance to senior managers that a procurement project is on track for successful delivery ('gateway review').
Commercialisation	Taking a more commercial approach to council activities with a social purpose in mind. Often the focus is on income generation. May include use of charging and trading powers or investment or property development.
Commissioning	A cycle of activities including strategic planning, budgeting, procurement and performance management. Originated in health and social care.
Framework agreement	An agreement between the council and one or more suppliers establishing terms for the award of contracts over a specified period (not normally exceeding four years). A council can also be in framework agreements that have been let by others.
Integrated commissioning	Commissioning which is aligned across social care and health budgets, whether pooled or not, focusing on outcomes.
Market engagement	Engagement with suppliers to test commercial viability and enable the market to gear up for the procurement.
OJEU	Official Journal of the European Union where notices for above-threshold contracts must be published under EU procurement rules. Now an online database-Tenders Electronic Daily (TED).
Procurement fraud	Fraud committed during procurement and/or contract management phases. As used here, includes competition law infringements ('bid rigging') etc.
Senior responsible owner	The senior manager responsible and accountable for the successful delivery of a major procurement project. May chair a project board.
Social value	Wider social, economic and environmental benefits delivered by a contract (eg local employment, training and supply chain opportunities).
Strategic supplier	A supplier is classified as strategic on the basis of the value of spend with them and the risk/dependency they present for the council. Suppliers may be strategic for a group of councils or for the whole local government sector.
Strategic supplier engagement	Engagement of strategic suppliers to improve performance, reduce costs, enhance social value and manage risks including the risk of failure due to financial distress. Can be done at local, regional and national levels via strategic supplier relationship management (SSRM).



# Further Reading

## Local Government

### **LGA (2013) Making Savings from Contract Management**

[www.local.gov.uk/making-savings-contract-management](http://www.local.gov.uk/making-savings-contract-management)

### **LGA (2015) Managing the Risk of Procurement Fraud**

<https://local.gov.uk/sites/default/files/documents/managing-risk-procurement-7fd.pdf>

### **LGA (2015) National Social Care Category Strategy for Local Government**

[www.local.gov.uk/sites/default/files/documents/national-social-care-cate-468.pdf](http://www.local.gov.uk/sites/default/files/documents/national-social-care-cate-468.pdf)

### **LGA (2015) Delivering Savings, Better Outcomes and Growth. Using the New EU Procurement Rules – A Guide for Councillors and Senior Managers**

[www.local.gov.uk/sites/default/files/documents/additional-guide-072.pdf](http://www.local.gov.uk/sites/default/files/documents/additional-guide-072.pdf)

### **LGA (2017) Enterprising Councils: Supporting Councils' Income Generation Activity**

[https://local.gov.uk/sites/default/files/documents/11%2054%20LGA\\_Enterprising\\_Councils\\_09\\_Web.pdf](https://local.gov.uk/sites/default/files/documents/11%2054%20LGA_Enterprising_Councils_09_Web.pdf)

### **LGA and others (2017) Encouraging Innovation in Local Government Procurement**

[www.local.gov.uk/sites/default/files/documents/4.35%20Encouraging%20Innovation%20in%20LG%20Procurement\\_v04\\_0.pdf](http://www.local.gov.uk/sites/default/files/documents/4.35%20Encouraging%20Innovation%20in%20LG%20Procurement_v04_0.pdf)

### **LGA (2017) Tackling Modern Slavery: A Council Guide**

[www.local.gov.uk/sites/default/files/documents/22.12%20Modern%20slavery\\_WEB.pdf](http://www.local.gov.uk/sites/default/files/documents/22.12%20Modern%20slavery_WEB.pdf)

### **LGA (2017) National Technological and Digital Procurement Category Strategy**

[www.local.gov.uk/sites/default/files/documents/11.29%20National%20technological%20and%20digital%20procurement%20category%20strategy%20v02\\_4.pdf](http://www.local.gov.uk/sites/default/files/documents/11.29%20National%20technological%20and%20digital%20procurement%20category%20strategy%20v02_4.pdf)

### **LGA (2017) Energising Procurement. National Energy Procurement Category Strategy**

[www.local.gov.uk/sites/default/files/documents/Energising%20Procurement%20National%20Energy%20Procurement%20Category%20Strategy%20-%20FINAL\\_0.pdf](http://www.local.gov.uk/sites/default/files/documents/Energising%20Procurement%20National%20Energy%20Procurement%20Category%20Strategy%20-%20FINAL_0.pdf)

### **LGA (2018) National Procurement Strategy for Local Government in England 2018**

[www.local.gov.uk/sites/default/files/documents/11.122%20-%20National%20Procurement%20Strategy%202018\\_main%20report\\_V7.pdf](http://www.local.gov.uk/sites/default/files/documents/11.122%20-%20National%20Procurement%20Strategy%202018_main%20report_V7.pdf)

### **LGA (2018) National Procurement Strategy for Local Government in England 2018: Toolkit**

[www.local.gov.uk/sites/default/files/documents/11.137%20NPS\\_V04.pdf](http://www.local.gov.uk/sites/default/files/documents/11.137%20NPS_V04.pdf)

### **LGA (2018) National Construction Category Strategy. 2018 Edition**

[www.local.gov.uk/sites/default/files/documents/Construction%20Category%20Strategy%20Final.pdf](http://www.local.gov.uk/sites/default/files/documents/Construction%20Category%20Strategy%20Final.pdf)

### **LGA and NHS Clinical Commissioners (2018) Integrated Commissioning for Better Outcomes: A Commissioning Framework**

[www.local.gov.uk/sites/default/files/documents/25.70\\_Integrated%20Commissioning%20for%20Better%20Outcomes\\_final.pdf](http://www.local.gov.uk/sites/default/files/documents/25.70_Integrated%20Commissioning%20for%20Better%20Outcomes_final.pdf)

See also integrated commissioning resources at: [www.local.gov.uk/our-support/our-improvement-offer/care-and-health-improvement/integration-and-better-care-fund/better-care-fund/integration-resource-library/integrated-commissioning-and-provision](http://www.local.gov.uk/our-support/our-improvement-offer/care-and-health-improvement/integration-and-better-care-fund/better-care-fund/integration-resource-library/integrated-commissioning-and-provision)

### **LGA (forthcoming) A Councillor's Guide to Commercialisation**

See also commercialisation resources at: [www.local.gov.uk/our-support/efficiency-and-income-generation/commercialisation](http://www.local.gov.uk/our-support/efficiency-and-income-generation/commercialisation)

### **Profit with a purpose – delivering social value through commercial activity**

[www.local.gov.uk/profit-purpose-delivering-social-value-through-commercial-activity](http://www.local.gov.uk/profit-purpose-delivering-social-value-through-commercial-activity)

### **Local Partnerships (2019) EU Exit Commercial Impact Assessment Toolkit**

<http://localpartnerships.org.uk/wp-content/uploads/2018/10/EU-Exit-Commercial-Impact-Analysis.pdf>

## Central Government

### **Department of Culture, Media and Sport (2018) The Public Services (Social Value) Act 2012. An Introductory Guide for Commissioners and Policymakers**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690780/Commissioner\\_Guidance\\_V3.8.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690780/Commissioner_Guidance_V3.8.pdf)

### **HM Government (2019) Government Functional Standard GovS 08: Commercial**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/789146/Gov-Functional-Std-GovS008-Commercial\\_Mar19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/789146/Gov-Functional-Std-GovS008-Commercial_Mar19.pdf)

### **HM Government (2019) Government Functional Standard GovS 02: Project Delivery**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/746400/Project\\_Delivery\\_Standard\\_1.2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746400/Project_Delivery_Standard_1.2.pdf)

### **Government Commercial Function (2019) Contract Management Professional Standards**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/683151/6.4006\\_CO\\_Commercial\\_Capability\\_Programme\\_Framework\\_Interactive.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/683151/6.4006_CO_Commercial_Capability_Programme_Framework_Interactive.pdf)

### **Government Commercial Function (2019) Outsourcing Playbook (and associated guidance)**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/780361/20190220\\_OutourcingPlaybook\\_6.5212.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/780361/20190220_OutourcingPlaybook_6.5212.pdf)

See supporting guidance at [www.gov.uk/government/publications/the-outsourcing-playbook](http://www.gov.uk/government/publications/the-outsourcing-playbook)

### **Cabinet Office (2019) Procurement Policy Note 02/19: Preparing for the UK Leaving the EU (and associated FAQ)**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/790425/PPN-0219.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/790425/PPN-0219.pdf)

## Other

### **National Audit Office (2016) Good Practice Contract Management Framework**

[www.nao.org.uk/wp-content/uploads/2016/12/Good\\_practice\\_contract\\_management\\_framework.pdf](http://www.nao.org.uk/wp-content/uploads/2016/12/Good_practice_contract_management_framework.pdf)

See the Social Value Portal <https://socialvalueportal.com> for national themes, outputs and measures (TOMs) and other social value resources

**Association for Public Service Excellence  
and Centre for Public Scrutiny (2019) Risk  
and Commercialisation: A Guide for Local  
Scrutiny Councillors**

[www.apse.org.uk/apse/assets/File/Risk%20  
and%20commercialisation%20pdf.pdf](http://www.apse.org.uk/apse/assets/File/Risk%20and%20commercialisation%20pdf.pdf)



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