

# Public good procurement

building better communities through conscious  
purchasing – a guide from the past to the future

**#Better**  
ForUs 2024

Placing people at the  
heart of procurement

**Aspire Community  
Works 2024**

[www.betterforus.org.uk](http://www.betterforus.org.uk)

# Contents

Addendum	1
Summary and recommendations	2
1. Introduction	13
2. Public good procurement matters	16
3. The UK procurement legal framework	29
4. Building better procurement	53
5. Working together for change	79
Bibliography	96
Appendices	98

# Addendum

Since we went into production, the Government announced on September 12 2024 that it had taken the decision to produce a new National Policy Statement in line with our first recommendation.

The Minister said that it was crucial that the new Act went live with a bold and ambitious statement that would drive delivery of the Government's missions and therefore the implementation of the Act has been delayed until February 24 2025, when the work on the Statement will be completed.

The Government has said that it will use the legal framework to deliver greater value for money and improved social value, which will help raise standards, drive economic growth and open up public procurement to new entrants such as small businesses and social enterprises.

Aspire welcomes the delay and the delivery of a new national policy statement and believes that the Government's missions can be linked to the sustainable development goals to provide consistency across the whole of the UK.

Real living wages and good working conditions should be the bottom line for all those who are employed on government contracts.

Most recently, we met with one of our ex-employees who had been TUPE'd over to a private contractor when Aspire lost a public authority contract.

TUPE had not prevented him from having no written contract, irregular pay and being told to accept cash in hand payments from his new employer.

Having Real Living Wage and Good Work Standards as a condition of for public contracts would help to stop this public scandal.

So too would making great use of reserve powers to support organisations that aim to tackle disadvantages created by existing labour market institutions.

**25 September 2024**

# Summary and recommendations

## Introduction – using our lived experience

This guide draws upon our lived experience of public procurement as a mission-led, community enterprise committed to Real Living Wages and Good Working Conditions and to tackling inequality and disadvantage within the UK labour market.

### The race to the bottom

Aspire's experience is that all too often cost remains the dominant factor in procurement decision-making, creating negative public value, dragging down local communities and impeding economic growth. Things need to change.

### Lack of access to justice

Our experience is that the ability to effectively challenge mistakes in procurement and the rights to redress are virtually non-existent for small organisations, acting as a barrier to effective partnership working and to continuous improvement in the system of procurement in the UK.

### Reasons to be cheerful

There is a growing body of thought, law, policy, campaigning and practice around public good procurement. The election of a new Government committed to economic growth and public service opens up new opportunities for change for the better.

## Section 2 – Using public good procurement to tackle poverty and inequality

### Public good procurement delivers wider public value

Public good procurement is concerned with consciously using the purchasing process to deliver wider public and social value and to address the wider, global challenges that face diverse communities.

### Using public good procurement to address poverty and inequality

Public good procurement should be an important lever in addressing poverty and inequality as part of a strategy for inclusive economic growth.

## Why things need to change

Recent scandals such as the collapse of Carillion and the purchase of PPE have added to public distrust of both government and the commercial sectors. Public trust in Government and public services is at an all-time low.

## How things need to change

The extent of the challenges that we face requires collaboration between government, the commercial sector, mission orientated organisations and our communities. Public bodies and commercial sector organisations can (and should) use their purchasing power as a force for community public good, helping to shape the everyday economy and local markets and connecting them to the needs of local people in ways which, in turn, help to strengthen local communities and public services, and not weaken them.

## Seizing the opportunity

With a new Government committed to public service now is the time for the public, commercial and not for profit sectors to work together to deliver public services fit for purpose that generate real public value and help build public trust.

## Section 3 – The UK procurement framework

### Key procurement regimes within the UK

Public procurement law intersects with various policies and laws within individual countries and across the UK. It also connects to international legislation and the Sustainable Development Goals. Procurement is a devolved matter and the key regimes are identified below.



## **Economic, social and environmental wellbeing**

All countries link procurement to the promotion of economic, environmental and social wellbeing. England is the only country not to have a direct link with the Sustainable Development Goals within its legislative framework.

## **Decent work and fair pay**

England is the only country that does not have some broader framework which mandates decent work and fair pay. In Northern Ireland fair work and the Real Living Wage is a condition of all government contracts. In Scotland Fair Works criteria are expected to be included in public sector contracts by the Scottish Government and in Wales social public clauses are expected to be introduced in late 2024/5.

## **Equalities and human rights**

All procurement law is subject to equalities and human rights laws. The Public Sector Equality Duty requires authorities to consciously consider the need to eliminate discrimination and advance equality of opportunity. Both Wales and Scotland are required to exercise their functions with due regard to the desirability of reducing the inequality of outcomes which result from socio-economic disadvantage.

## **Public procurement legal framework**

Works, services and supplies (apart from limited exemptions) are covered by procurement law if their contract value is over a specific threshold laid down by law.

Contracts can be reserved for supported employment and for economic operators whose "main aim is the social and professional integration of disabled or disadvantaged persons".

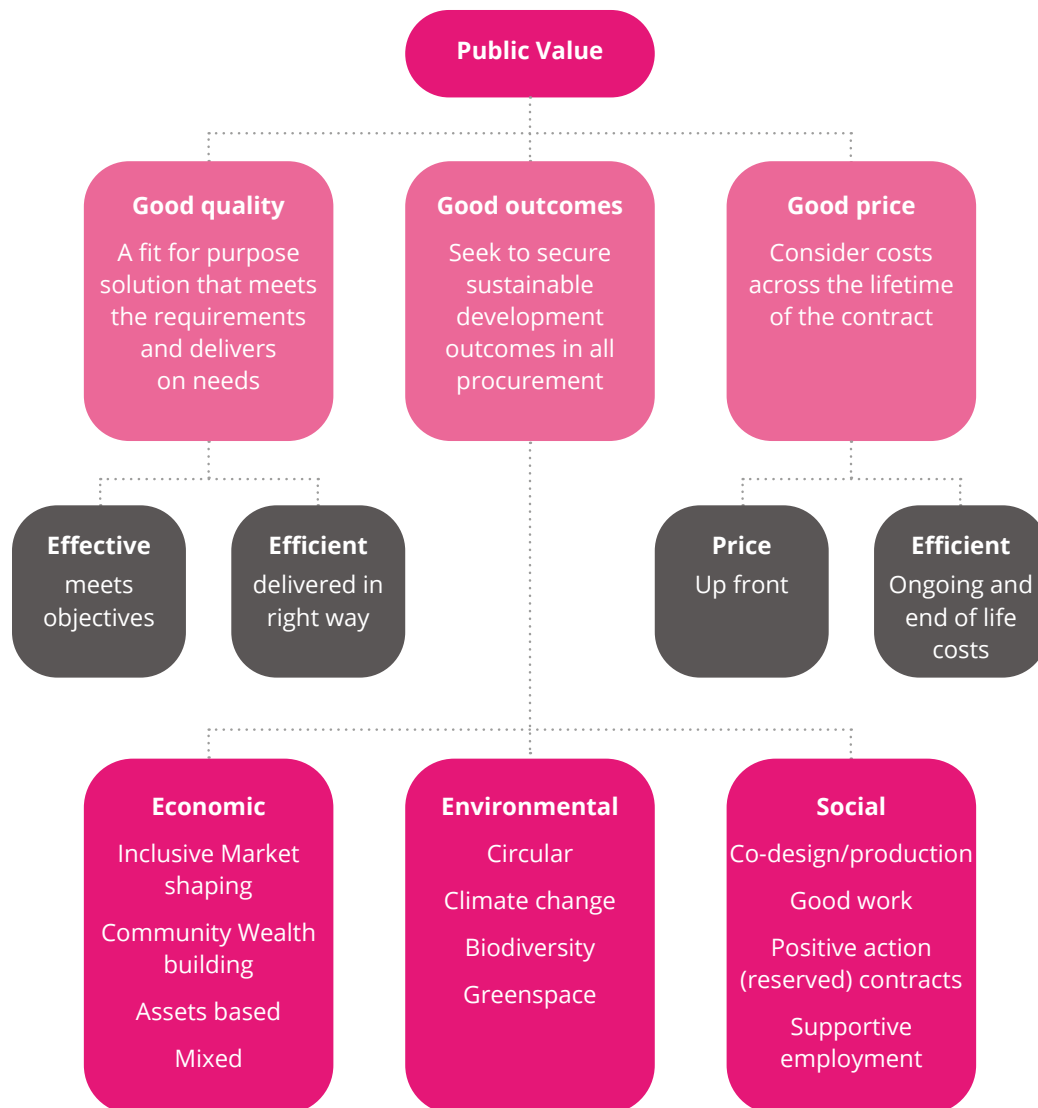
If suppliers wish to challenge a decision in all countries apart from Northern Ireland which has an Ombudsman, they need to challenge within the courts. Costs can be more than £300,000.

## **NHS Provider Selection Regime**

A new Provider Selection Regime came into force in January 2024 which removes competition, introduces greater transparency and provides for a system of complaints and independent review irrespective of the contract amount.

## Section 4 – Building better procurement

### Route map to success



### Developing a systematic approach

Developing a systematic and approach to public good procurement involves four key elements:

- maximizing public benefit through generating public value
- an effective framework in which procurement can fit
- a clear identification of public need
- a clear focus on public value outcomes.

### Public value creation

Public value creation involves the public sector setting a direction and public purpose for private and public actors to collaborate and innovate to solve societal problems.

## Sustainable Development Goals



### Thinking big and thinking small

The UN Sustainable Development Goals are a public value charter for all organisations. They are the framework in which good procurement should sit. Thinking big should be an integral part of local delivery. But, so too, should be thinking of the details that impacts on peoples' lives at an individual and group level. Think smaller, thinking local is also thinking smart.

### Key stages of procurement

#### Market-shaping

Progressive and strategic procurement seeks amongst other things to build inclusive economies and be market shaping through promoting diverse supply chains which address bias and current inequities within labour markets and the wider economy. There is enormous potential to make greater use of the reserve powers to support people back into employment and to maintain employment. Combining reserve powers with requirements for Good Work and Real Living Wages would help to break the cycle between low pay and no pay and the double disadvantage that many people have in the labour market.



## Analysing and preparing the market

- What is the problem we are trying to address?
- What is the state of the current public services market?
- What are the overarching policies that govern our commissioning?
- What are the key economic, social and environmental issues?
- How can we influence the market?
- What is the service we think we should be offering?
- Is this a service we can offer better in-house?
- Is there a procurement policy in place?

## Engaging communities

- Carry out market consultation
- Is this the service that we need?
- Do we or have we drawn upon the lived experience of users?
- Is there a ready market of suppliers?
- Is there a possibility that reserved contracts could create a better market in the long term?
- Should we consider an innovation partnership as part of a market shaping strategy?

## Transparency and accountability

- Draft specifications
- Consider the broader economic, environmental contract requirements – these must always be relevant and proportionate
- Consider whole life costs of contract
- Make sure advert includes all information
- Advertise opportunities on domestic websites
- Have a clear and consistent clarification process

## Selection and award of tenders

- Selection criteria
- Award criteria
- Evaluation
- Notification
- Complaints

## Compliance and review

- Implementation
- KPI and monitoring performance
- Developing service improvement plans
- Variations
- Closure
- Public value review

### **Engaging communities**

Pre-market engagement effectively targeted can open up the procurement process to new ideas drawn from local stakeholders and help to develop a partnership approach to procurement in which ideas are shared and solutions developed jointly. Drawing upon the lived experience of people is increasingly seen as an essential part of developing efficient and effective services. Dividing larger contracts into lots helps support women and black led business.

### **Transparency and accountability**

If we are to promote a more diversified Public Services Industry there have to be clear conditions of contract in relation to low pay and good work including making Good Work and Real Living Wage a condition of contract.

### **Below threshold business**

Following Brexit, the European principles of transparency and equal treatment no longer apply to below threshold tenders. Apart from Scotland there is virtually no regulation in how such funds are spent. As small businesses are more heavily reliant on this area of spend this is a cause of deep concern to us.

### **Selection and award**

An effective and well-functioning review system is central to the successful operation of public procurement. For the most part the only right of review is through the traditional court-based approach. This is not a path open to small mission based organisations, business or charities who do not have the available resources to buy justice. Contracting authorities themselves could introduce a time-limited, formal internal review similar to that provided in the Provider Selection Regime.

### **Compliance and review**

If public value is to be the golden thread that runs throughout the commissioning and procurement process then contract compliance and review is critical. This requires leadership from the top and clear criteria to be measured throughout the contract period.

## Section 5 – Working together for change

### Key recommendations

#### UK Government

##### Recommendation 1

The UK Government should Issue a new National Policy Procurement Statement which highlights the mission of public good procurement and links key objectives to the Sustainable Development Goals.

##### Recommendation 2

The UK Government should require good working conditions as the default position for all public contracts irrespective of value.

##### Recommendation 3

The UK Government should require the Real Living Wage as the default position for all public contracts irrespective of value.

##### Recommendation 4

The UK Government should introduce a target for supported employment provision within procurement specifically to support Good Works mission-led organisations that support people into employment and within employment.

##### Recommendation 5

The UK Government should establish a dynamic purchasing agreement for supported business along the lines of the Scottish arrangement.

##### Recommendation 6

The UK Government should continue a review of access to justice proposed by the previous Government with a view to consulting on and establishing either a tribunal for SMEs, a self-funded Ombudsman system similar to Northern Ireland or a system based on the NHS Provider Selection Regime. This should be available to all irrespective of contract value.

##### Recommendation 7

The UK Government should consider regulating below threshold contracts using the Provider Selection Regime as the template.

##### Recommendation 8

The UK Government should consider whether procurement should be taken out of the Cabinet Office and relocated within the Department of Business and Trade.

## Scotland, Wales and Northern Ireland

### Recommendation 9

In the context of high levels of economic inactivity, mental and physical ill health and increasing poverty and inequality amongst those already most disadvantaged by the traditional labour market, governments should introduce a target for supported employment provision in procurement across the country.

### Recommendation 10

Governments should consider regulating below threshold contracts using the Provider Selection Regime as the template.

## Scotland and Wales

### Recommendation 11

Governments should continue a review of access to justice with a view to consulting on and establishing either a tribunal for SMEs, a self-funded Ombudsman system similar to Northern Ireland or a model based on the NHS provider selection regime in England. This should be available to all whatever the contract value.

## Contracting authorities

### Recommendation 12

To maximise public benefit contracting authorities should use below threshold contracts to open up opportunities for new and diverse markets.

### Recommendation 13

Contracting authorities should consider where procurement is located within their organisations.

### Recommendation 14

All authorities irrespective of size that have a public procurement function should develop a responsible/sustainable procurement policy which is linked to the wider policies of the organisation, the SDGs and which has due regard to national policy and national policy statements against which performance and outcomes can be planned and evaluated.

### Recommendation 15

Contracting authorities should develop market shaping strategies as part of their responsible/sustainable procurement strategy to address inequalities and disadvantage within the labour market and deliver quality services.

### Recommendation 16

Contracting authorities should require Real Living Wage and Good Works standards as a default position as part of the conditions of the contract. Where these are not required the authorities should say why this is not the case.

**Recommendation 17**

Contracting authorities should introduce a target for supported employment within their procurement strategies.

**Recommendation 18**

Contracting authorities should consider the development of in-house positive action supported programmes working in partnership with trade unions and other organisations to address disability discrimination and disadvantage within their existing labour market structures.

**Recommendation 19**

Contracting authorities should consider adopting a good procurement championship programme within their organisations.

**Recommendation 19**

Contracting authorities should consider making sub-contracting to mission-led organisations and SMEs a condition of larger contracts.

**Recommendation 20**

Contracting authorities should encourage innovation within their public good procurement strategy.

**Recommendation 21**

Contracting authorities should consider developing a Good procurement charter which highlights their policies for suppliers.

**Recommendation 22**

Contracting authorities should consider bringing the management of the procurement process back in house particularly for smaller contracts where the process has been outsourced.

**Recommendation 23**

Contracting authorities could consider developing a public value fund to support good procurement initiatives.

**Commercial Partners****Recommendation 24**

Commercial partners should consider committing to Good Works Standards and Real Living Wages throughout supply chains and not only on contracts that require these.

**Recommendation 25**

Commercial partners should consider developing a public good procurement plan which is linked to their sustainable development policy with a clear implementation plan.

**Recommendation 26**

As part of that plan, commercial partners should identify key partners within the mission-led, not for profit sectors with whom they can develop strategic long-term relationships.

**Recommendation 27**

Commercial partners should consider using supported employment in their own organisations to support people who are disabled and suffer disadvantage within the labour market.

**Recommendation 27**

Commercial partners should ensure that KPI are in place for all key public value projects and report on them.

**Recommendation 28**

Commercial partners should use their public value experience and work in partnership with mission-based organisations to develop new proposals for forthcoming procurements. There is much more that we could save for another day!

**Community Bodies****Recommendation 29**

Adopt a champion for public good procurement.

**Recommendation 30**

Write a policy from your perspective and develop an action plan.

**Recommendation 31**

Brainstorm ideas for trading or refashioning services that are more responsive to community needs, consult with your communities, members and network with potential partners.

**Recommendation 32**

Work out the finances and build up a business plan and start the conversations – it's all to play for!

There is much more to be done, but let's make the start.

# 1. Introduction

“Our vision is of a world where economic, social and environmental wellbeing is linked to sustainable, accessible and flexible work activities, where people are treated with respect and dignity, and where their contribution is fully recognised.”<sup>1</sup>

Aspire’s primary mission is to create high-quality, sustainable employment opportunities for people who have been disadvantaged by existing labour market institutions, while campaigning to remove existing biases and to build wellbeing economies based on inclusive growth.

In 2021, Aspire published its Guide ‘Procurement for community public good’ as part of its #BetterForUs campaign.<sup>2</sup> The guide drew upon our organisation’s lived experience of the procurement process from the perspective of a social enterprise operating within the system. It focused on how procurement can be used as a positive force to address the growing poverty and inequality facing UK communities looking for work or in work.

Aspire’s experience was (and is) that all too often, cost is the dominant factor in procurement decision-making, with the lowest cost tender invariably being the chosen one. This places mission-led employers such as Aspire, which are Real Living Wage and Good Works accredited, at a disadvantage within the tendering process. This is because our labour costs are higher in industries which are typically low paid. The race to the bottom affects our employees and their future opportunities within the labour market because it pushes down wages and working conditions, resulting in poorer quality jobs and poorer services for local residents. Purchasing power is therefore being used to create negative public value through reinforcing poverty, inequality and disadvantage in the name of competition. This drags down local communities and impedes economic growth. This has to change.

---

<sup>1</sup> Aspire Community Works, Mission Statement

<sup>2</sup> Our #BetterForUs campaign is designed to add our voice – the voice of lived experience of procurement – to help shape the procurement markets rather than, as in the past, simply responding to them – to win hearts and minds for procurement that puts people first.

Our experience, too, is that mistakes can be made within the procurement process and the rights to redress are laughable for small organisations such as us. If procurement practice is to be improved, it needs to be challenged as part of a process of continuous improvement and the right to challenge should be one which includes all organisations, however, small, rather than those with the largest of purses.

On the ground, the appetite for progressive change that supports public good procurement appears weaker than when we first commenced trading over thirteen years ago. At the same time, the need for it is so much stronger as the cost of living crises affects the poorest of our communities and impacts hardest on small businesses with limited margins such as us. We are counting the costs of the heavy impact of the years of austerity, Brexit, the pandemic and the post-pandemic malaise that has affected individuals and institutions.

On the other hand, there is a growing body of thought, law, policy, campaigning and practice around public good procurement which makes us optimistic that significant change can be delivered at both a national and local level throughout the UK. The election of a new Government committed to economic growth and public service opens up new opportunities for change for the better.<sup>3</sup>

Public purchasing can be used as a source of public good if efforts can be focused on practical outcomes that make a difference to people's lives for the better, not the worse.

In our earlier Guide, we advocated a public value approach to public procurement in the UK, which considered wider social and economic value, not only in making purchasing decisions but in the commissioning and procurement process as a whole. After more than two years in the making, a new Procurement Act is to be implemented in October 2024. We are delighted that maximising public benefit is a principal objective of the Act in line with our recommendations.

The implementation of the Act provides a unique opportunity for commissioning bodies to work together with local communities to promote public good procurement and to inject new energy into working towards the UK Sustainable Development Goals in the UK. This will require new and developing forms of collaboration between contracting authorities, commercial sector providers, trade unions, mission-led organisations and local communities to make the policy a success.

---

<sup>3</sup> We presume at this stage that the Government will continue with the Procurement Act which is scheduled to go live on 28th October 2024. Our view is that there is nothing within the current legislation that prohibits any of the recommendations that we are currently making. We understand that the Government has an option not to proceed with the Procurement Act 2023. There is an argument that dropping the Act would keep our law more aligned with that of European countries and across the UK. Our concerns in relation to the Act is that the focus up to this time has been in relation to the many technical changes that have been introduced within the law, rather than the cultural change which is required to maximise public benefit – one of the key objectives of the Act.



Public good procurement makes a difference to ordinary lives by addressing issues such as growing inequalities and the cost of living crisis. Our new updated publication focuses primarily on public procurement but also makes recommendations about private purchasing. It aims to inform, influence and encourage debate and to encourage wider participation in a public services industry that often appears alien to mission-led organisations. We believe there is enormous potential for government, communities and businesses to work together to create public good procurement that promotes good work and addresses inequality and poverty within our local communities.

We needed to make sense of the system we found ourselves in, to understand its history and its context within the UK, to find out where we are now so that we could contribute to shaping the market to where it could be. This guide is intended for all those with an interest in public services: for commissioners who commission services; for decision-takers and makers who make important decisions within their communities; for commercial organisations that seek to work in new ways to deliver public and social value; for local organisations that wish to influence, engage and participate within the procurement process, either directly or indirectly; and for people with an interest in strengthening public services now and in the everyday economy in the interests of us all.

A clear focus is given within the publication on how procurement processes can be used to deliver good work for people who experience the double disadvantage of being disadvantaged by the labour market and are more likely if in work to be in low paid, low valued jobs that have a detrimental effect on wellbeing.

We hope that our lived experience can help inform the process and help build public good procurement in the UK providing communities with work that is fairly rewarded, that is built around the reality of people's complex lives and work in which personal and group contributions are recognised and valued. We think in particular of our and all workers in the everyday economy who kept society running during the pandemic, who remain undervalued and underpaid and who collaborated in the most difficult of circumstances, and still do. This is written for them.

## 2. Procurement for public good matters

“Contracting and outsourcing with the private sector is a permanent feature of governments in mature economies across the world and it will remain so, whichever government is in power. The Government must take the steps...so that it can ensure that the public gets the services they deserve from these companies, who themselves must demonstrate values the public can respect.”<sup>4</sup>

### Our lived experience

When our predecessor, the Aspire Foundation, a charity set up to finding training and employment opportunities for homeless and disadvantaged people in the labour market, found out in 2009 that it was to lose the majority of its grant funding, as a government stream of funding came to an end, the Aspire Board determined to do things differently.

The objective was to build a people-powered business where people could stay, develop and grow with the business.

No more shifting people from training pillars to no pay or low paid, insecure work. Our business success would be built on our people success; our success with people linked to our business success. The stronger the connections, the more sustainable our business would be, or so we believed back then in our innocent days.

All this would be underpinned by building a business for good, one that provided quality conditions and quality pay, including the London Living Wage, while strengthening public services and community wellbeing. This objective was well-meaning but incredibly naïve.

With two years notice of grant closure, it seemed that we had plenty of time to plan. We hired a Business Development Officer, appointed new Board members, agreed an ambitious business plan and sought to develop a sustainable community business, literally from scratch, and with no external support. Over thirteen years ago, we were lucky enough to get an initial break which helped us to set off on our journey.

---

<sup>4</sup> House of Commons Public Administration and Constitutional Affairs Committee, *After Carillion: Public Sector Outsourcing and Contracting*, 2018

We went on to win our first public procurement, a second and a third, then more – competing equally with the commercial sector to obtain horticulture, grounds maintenance, window cleaning and other outdoor spaces work.

We'd like to say that it all has been plain sailing; that life really does mirror a start your own business theory book; that financial rewards follow good work. We'd like to, but we can't.

Initially, we found that our services had been underpriced and negotiation to change things proved difficult. Getting paid on time was simply not part of our early years' vocabulary. Our business nearly went under, if not for the resourcefulness of our frontline workers – with little or no equipment, they instinctively kept a sinking ship afloat through sheer determination to survive.

Out of this experience, Aspire Community Works was born. Placing the needs of our frontline workers at the fore of the business, we converted from a charity into a community interest company, determined to be more risk-taking in the future. A new Board representing both sides of business was appointed and what little surplus available was invested in first class equipment and in-house quality development.

Almost as soon as we had commenced trading the years of austerity had set in. The race to the bottom started in earnest with local services, communities and workers paying the cost. We lost as many tenders as we won, and increasingly, as we got more experienced in the field and in bidding effectively, the feedback was that we had lost on "cost". Then there was the collapse of Carillion which created public distrust in the abilities of both the commercial and public sector. Then Brexit, and nothing else seemed to matter in terms of public debate. That is, until Covid. Then, the outcry about government procurement scandals including the use of a VIP lane for potential suppliers of personal protective equipment (PPE). And after that, the cost of living crisis and the further exposure of deep fractures within society. And then the Horizon scandal.<sup>5</sup>

As our knowledge of public procurement increased, we found our organisation in new spaces and new places. Faced with the loss of a major contract through the public procurement process, we embarked on a High Court Challenge, knowing full well that we did not have the resources to take the challenge beyond its initial steps. Eighteen months later we had successfully negotiated an agreement, taken a contract back and successfully won more in public procurement competition. We had survived. Just. More recently, we have used the Government's Review Service to challenge poor procurement and had our complaints upheld.

---

<sup>5</sup> The case highlighted not only the plight of people whose voices could or would not be heard, but the urgent need to review the common law position that the computer is always right when all too many of us know from experience that this is wrong.

Although most of our experience has arisen from our work within the public sector, over recent years we have also worked with commercial sector organisations particularly in delivering their social value commitments, but also interacting with commercial organisations that advise public service clients within the procurement process.

Our experience is that there is an enthusiasm from the commercial sector to be involved and engaged with organisations such as us to deliver social value, but all too often the importance of the commercial side of the relationship for its partner is not sufficiently recognised by the larger provider. Part of this problem arises from the nature of social value in England too often being treated as an added rather than an intrinsic part of delivery which can lead to a tendency to ‘vanity’ projects or tokenism. There are we believe so many forms of effective collaboration that can take place between the commercial sector and mission-led organisations which would help deliver public value and build a more successful and diverse economy and these can be developed through longer term partnerships based on mutuality and trust.

Our experience is that outsourcing “outsourcing” and an over-reliance on private sector external consultants can deliver negative public value: when these do not link procurement strategies to the wider missions of the contracting authorities; where the culture of the private sector consultant is more closely aligned to the private sector bidder leading to unintentional or unconscious bias against operators acting outside of the traditional, commercial sector model; and where there is an over-reliance on written bids without the necessary due diligence taking place.

While most contracting authorities claim to want quality services for their residents and users, too many continue to commission services with cost as the dominant factor, particularly in low paying sectors such as cleaning, grounds maintenance and social care.

Procurement based on cost, first and foremost, has implications for the workers, leaving them with poor working conditions, low minimum rates of pay and high levels of stress and impacts on wider family life. These workers may often be local to their communities. It is a story too often told within our vital public services and exposed by the very public problems of our social care sector. These commissioners are failing to think through how the commissioning authorities’ actions are detrimentally affecting their local communities.

At the same time there is increasing concentration of contracted work into larger lots, which can exclude large swathes of SMEs and mission-led businesses such as Aspire. In the absence of the Real Living Wage, these can lead to hidden public service costs in terms of wages subsidies through the tax and benefits systems – the bigger the company, the bigger the failure, the higher the subsidy.

There is also the rapid growth of framework contracts which, all too often, lack transparency and do not necessarily deliver public value while rewarding the growing number of consultancies within the public services industry.<sup>6</sup> Critics of these suggest that there is a conflict of interest for organisations that are commissioning services while at the same time aiming to get as many suppliers on to the frameworks as possible. Because the fees charged to suppliers are included in tender bids these can result in higher value contracts being awarded increasing the cost of tendered works.

Our experience is that these wasted opportunities (from our point of view) do not stem from some of contradictory public malevolence. It is simply that some organisations simply do not think very much about how procurement can support wider objectives, be mission-orientated and strategic; or that they lose control of the process by handing it over to external consultants; or that they simply do not understand the law and fail to carry out proper procedures; or that they plead lack of resources while employing increasing numbers of high-paid consultants.

These organisations have one thing in common. They are failing to use the public purse to shape and influence their markets and the services developed by providers in response to demand. We think they are missing a trick, and the public also because public money is not being used to maximise public value and benefit.

## The power of public purchasing

The power of purchasing is enormous. Last year, around £390 billion in the UK was spent by public authorities on works, services and goods through procurement. Every year as much as a third of their total revenue is spent by private companies on purchasing.

Public good procurement is concerned with using the purchasing process to deliver wider public and social value and consciously using procurement as a strategic tool to address the wider, global challenges that face diverse communities.

---

<sup>6</sup> Frameworks consists of a preapproved list of suppliers and enable work to be awarded either through direct award or by mini-competitions. Aspire has been on a number of framework contracts for some time and considers that only one provides genuine opportunities for small organisations such as us. This is a 100% publicly owned company that is owned by a number of local authorities. Some commercial framework providers charge fees upfront irrespective of whether any contract opportunities become available.

Purchasing for public good is increasingly accepted by government policy makers and leaders of industry as a legitimate, strategic goal across the world in tackling wider societal problems.<sup>7</sup>

### Commerce and responsibility

While private sector commissioning is not bound by the same laws as public commissioning, the private sector does not act within a social vacuum. It is widely acknowledged that it must respond to the social, environmental and ethical pressures of a changing world to create positive opportunities and to mitigate negative risks.

At the same time, commercial organisations competing for public business find increasingly that they will need to provide for sustainable procurement, community benefits and/or social value within their public sector contracts.<sup>8</sup> Most recently, the commercial sector's focus has primarily been given to the Sustainable Development Goals as in initiatives such as the UN Global Compact, the Global Reporting Initiative and the B Corps movement.

---

<sup>7</sup> The Procurement Act 2023 covering public procurement in England, Wales and Northern Ireland has maximising public benefit as a key objective for “covered procurement”. This allows contracting authorities to consider measures that improve the economic, social, and environmental wellbeing of the relevant area. The Act is due to come into force in October 2024. It provides an important opportunity for the progressive delivery of public good procurement so long as organisations seize the opportunity to put policy into practice. However, powers to incorporate social, economic and environmental wellbeing have been in place prior to this Act. See Section 3 on the UK procurement framework.

<sup>8</sup> The idea of responsible business in the modern age commenced in the 1970's with the establishment of companies such as BodyShop and Ben & Jerry's which claimed to be socially responsible companies. Stakeholder capitalism in the 1980's emphasised the importance of moving beyond shareholder concerns to include employees, customers, suppliers, and the broader community. The term Corporate Responsibility became commonplace in the 1990's along with the idea of the Triple Bottom Line as a framework that seeks to balance a company's social, environmental and economic impact. In 2000, the UN Global Compact was launched. It called upon companies to align their strategies and operation with ten accepted principles in the area of human rights, labour, environment, and anti-corruption. The same year the Millenium Development Goals were established by the UN to combat poverty. These were replaced by the Sustainable Development Goals in 2012. The FTSE Group launched the FTSE4Good index series In 2001. Its objective was to provide a benchmark for responsible investment, identifying companies that met globally recognised corporate responsibility standards. Initially, the criteria for inclusion focused on environmental sustainability, stakeholder relationships, human rights and supply chain labour standards. Companies involved in tobacco production, weapons manufacturing and nuclear power were excluded. In 2018 the index was amended to take account of the UN Sustainable Development Goals. At its inception the index included around 280 companies, by 2023 there were over 1700 companies on it. Considered as a fad by some when it was introduced, ESG (Environmental, Social and Governance – a set of standards) measuring a business's impact on society, the environment and how transparent and accountable it is, is now commonplace within financial investment.

Within the commercial sector, the number of executives saying that the sustainability business case is clear has risen from 21% in 2022 to 63%.<sup>9</sup> The World Economic Forum found that the fastest growing roles within the economy were unsurprisingly technology-related such as AI and machine learning specialists, but that sustainability specialist roles also followed close behind.<sup>10</sup>

Words, however, can appear performative, in the context of increasing inequality and poverty and the challenge of climate change. Research shows that there is an execution gap with only 19% of companies having successfully integrated environmental, social and governmental issues into their strategies.<sup>11</sup> This generates distrust and accusations such as greenwashing.

## The growth of outsourcing

### Marketisation of public services

There are now very few public services that do not rely to some extent on outsourced contractual relationships. This is partly a product of domestic policy, but it is also interconnected to international trade policy which the UK signed up to. The outsourcing of services has replaced services traditionally provided by central government, local authorities and other bodies such as housing associations within the UK. It is common in areas such as housing, construction and development; services such as prisons and probation, employment services, social and domiciliary care; healthcare, back office function; facilities management and products such as pharmaceuticals.

### Historical context

In the 1980's the New Public Management movement advocated radical changes to state-run and owned businesses including privatisation, outsourcing and/or the marketisation of services, combined with a strong focus on measurement and performance management.

Under the Conservative Government the introduction of compulsory competitive tendering led to a rapid development in public service marketisation in the 1980's. The Local Government, Planning and Land Act 1980 initiated the start of mandatory tendering for construction and maintenance work within local authorities. This was extended by further legislation which mandated that other local government services, such as refuse collection, cleaning, catering, and professional services should go out to tender. The supposition was that commercial companies, driven by profit, would deliver services that were cheaper by cutting costs but also more efficiently than public sector providers. There was no evidential base to support this.

<sup>9</sup> Cap Gemini Research Institute, *Embracing a brighter future: Investment Priorities for 2024*, January 2024

<sup>10</sup> World Economic Forum, *The Future of Jobs Report*, April 2023

<sup>11</sup> Digital Supply Chain Institute, APQC, *Environmental, Social and Governance Trends in Supply Chain Management*, February, 2024



Critics argued that compulsory competitive tendering led not only to a race to the bottom in relation to wages and working conditions, as contractors normally cut costs by reducing pay and conditions, but also resulted in a decline in service quality. The practice was deeply resisted by trade unions but in the context of globalisation, outsourcing and privatisation their influence appeared to wane from the 1980's, at least, that is, until recently.

When Labour came to power it relaxed competitive tendering legislation for local authorities through the introduction of the Best Value regime. Outsourcing, however, continued. The Private Finance Initiatives which had been introduced by John Major in 1992 also expanded.<sup>12</sup> These initiatives helped to establish the UK at the fore of the new “public services industry” (PSI) that was emerging.

In 2008, the Government commissioned DeAnne Julius to review the public services industry. Her report declared that the PSI in the UK was the “most sophisticated in the world”. The review found that the sector had grown in value by 130% in the past twelve years and argued that it delivered good value for the taxpayer. It recommended more of the same.<sup>13</sup>

Following the financial crisis in 2008, the age of austerity continued to see the expansion of the PSI. A number of high scale failures occurred raised increasing concerns about the effectiveness of both PFI and outsourcing. Nationally, contracts became larger and more complex and the industry was increasingly dominated by a number of prime contractors despite attempts to diversity the market and reach out to SMEs, the voluntary sector and social and community enterprise.

---

<sup>12</sup> PFIs involved private sector investment in public sector projects. The private sector designed, built, financed, and operated (DBFO) public infrastructure, such as schools, hospitals, and roads. In return, the public sector paid the private consortium over a long-term contract, typically 25-30 years. These schemes had particular attractions to politicians as the PFI liabilities were kept off government balance sheets. There are more than 700 operational PFI contracts in place in the UK with a capital value of £57 billion with majority due to expire in 2025. Concern has been expressed that there will be problems on return to the public sector with legal disputes rising – good for the legal industry but bad for public services.

<sup>13</sup> Department for Business, Enterprise and Regulatory Reform, *Public Services Industry Review: Understanding the Public Services Industry: how big, how good, where next? A review*, Dr. DeAnne Julius, July 2008



## The collapse of Carillion

“It is intolerable that the Government is spending £250 billion with little evidence that it is currently following its own procedures to secure value for money.”<sup>14</sup>

The collapse of Carillion was one of the largest corporate failures in the UK.<sup>15</sup> It led to the closure of the PFI initiative and a series of reports highlighting widespread concerns with the system of outsourcing and privatisation operating within the UK. Amongst other things, the Public Administration and Constitutional Affairs Committee of the House of Commons found that the UK government was not following its own procedures, that its preoccupation with price was a matter of grave concern and that its failure to assess the quality of services was “lamentable”. It stated that there was widespread agreement that “contestability (the credible threat of competition) is important to support an efficient market for public services and that the combination of limited competition and high barriers to entry worsens outcomes for Government”. The report also highlighted the inadequacy of data surrounding outsourcing.

## Covid procurement of PPE

The UK government procurement of personal protective equipment (PPE) during the COVID-19 pandemic in the UK was accompanied by allegations of cronyism, mismanagement and lack of transparency. The government introduced emergency procurement procedures to speed up the process for getting PPE. This included the direct award of contracts and the introduction of a VIP lane for companies referred by Ministers, MPs and government officials who were given priority for PPE contracts. Companies with no experience were awarded contracts and several resulted in the procurement of PPE that was unsuitable for medical settings, that could not be used and that were subsequently burnt. The National Audit Office raised issues not only relating to quality but also to accountability and transparency.<sup>16</sup>

<sup>14</sup> House of Common Public Administration and Constitutional Affairs Committee, op.cit.

<sup>15</sup> Demerged from Tarmac in 1999, the construction and facilities management grew rapidly gaining government contracts in the UK and internationally. It took on many low margin profits, underbid on contracts to win business and clocked up significant debts that were slow to be reflected in its annual accounts. The company went into compulsory liquidation in 2018 after the Government had refused to bail it out. The scandal led to the closure of the PFI initiative and a series of reports highlighting widespread concerns with the system of outsourcing and privatisation operating within the UK.

<sup>16</sup> National Audit Office, *Investigation into government procurement during the Covid-19 pandemic report – value for money*, November 2020. The NAO highlighted the fact that it had found specific examples where there was insufficient documentation on key decisions, or how risks such as perceived or actual conflicts of interest had been identified or managed; that a number of contracts had been awarded retrospectively or not published in a timely manner. This, it said, had diminished public transparency, and the lack of adequate documentation meant that it was unable to give assurance that the government had adequately mitigated the increased risks arising from emergency procurement or applied appropriate commercial practices in all cases.

## The problem of outsourcing

“Societies that embraced neoliberal economics are ill-equipped to deal with rising carbon emissions, income inequality, biodiversity loss, and many other harms inimical to long-term wellbeing. Market competition will of course continue to be a useful and valuable instrument for many policy challenges.”<sup>17</sup>

The shift of emphasis in policy away from the idea of the lowest cost to the incorporation of wider social, political and economic goals arose from the context in which procurement policy was situated both globally and nationally. In the service industry, procurement law has only been in place for around twenty two years, largely influenced by world trade agreements which promoted competition. As the 2008 recession and subsequent events highlighted the inadequacies of neoliberalism, this shifted policy towards addressing some of the wider issues facing society which neoliberalism did not address or that competition ignored. At the same time, the high profile scandals and the exit from the EU prompted the UK Government to propose changes in law.

Within the UK the penetration of the market and its ideology into public services has been highly controversial. Because data about the nature of the Public Services Industry is notoriously difficult to get hold of, debates about insourcing and outsourcing can sometimes be ideological and emotional rather than evidence-based and informational. That is because there are important issues at stake and in the UK the significance of the welfare state created at the end of the second world war can hardly be understated.

### Arguments for and against

Arguments against insourcing range from the philosophical – that markets leave their mark on communities, fundamentally affecting the relationships between the citizen and the state; that the profit motive is at odds with the public service ethos – to the practical – how far will contracting negatively affect quality, culture and communications of the public service provided and the levels of control over the service. Proponents for outsourcing invoke themes such as: promoting competition; providing value for money and creating efficient and effective services and generating savings in services. Such debates are sometimes framed in such a way that they ignore the potential role that mission-orientated organisations could play in the delivery of public services working collaboratively to strengthen them.

---

<sup>17</sup> Geoffrey Gertz, Homi Kharas, *'Radical pragmatism: policy making after Covid'* Democracy, a journal of ideas, October 2020

## Contestability of UK public services markets

The competitiveness and contestability of the UK public services market is increasingly questionable particularly in relation to central government contracts. The House of Commons Public Accounts Committee found that of 235 large contracts recorded on Find a Tender (the portal for large tenders) between January 2021 and January 2023, 20% of contracts using open competition received only one bid.<sup>18</sup> The report also highlighted the growth of framework contracts which have a pre-approved list of suppliers with terms and conditions agreed in advance which had risen from 16% to 68% of all contracts.<sup>19</sup>

This lack of contestability is also borne out by research carried out by Aspire analysing data from the European Audit Commission.<sup>20</sup> In 2021, no call for bids accounted for 15.8% of all EU procurement despite the fact that such an approach is only permitted in exceptional circumstance. In 2011, only 1% of UK procurement consisted of no call for bids but by 2020 18.1% of all procurement consisted of no call for bids. Whereas in 2011, the UK was eighth lowest, by 2020 only Romania, Slovenia, Cyprus and Bulgaria had higher rates in that order. The share of single bidders for procurement significantly increased in the EU, nearly doubling from 23.5 % (2011) to 41.8 % (2021) of all bids in the EU. At the same time the number of bidders fell from an average of 5.7 to 3.2 bidders per procedure. In 2011 just 5% of procurement in the UK was shared by single bidders, rising to 35% in 2017 and falling to 21% in 2020. The UK was ranked thirteenth out of 29 countries in the EU for procurement which attracted only one bid.

## Framework contracts and value for money

Most recently the Financial Times has reported how private companies are charging lucrative fees to manage framework contracts and the increasingly complex procurement process for public sector organisations pushing up overall costs to taxpayers through the charging of fees to suppliers with the value of framework contracts surging from £10 billion in 2019 to £35 billion in 2023.<sup>21</sup>

## Recent developments

In November 2019, newspapers reported that the new Conservative government would revise procurement laws, enabling a buy British approach, allowing more local authorities to spend procurement locally ploughing more money into the local economy and providing for greater opportunities for SMEs within the procurement process.

<sup>18</sup> House of Commons Committee of Public Accounts, *Competition in public procurement: Sixth Report of Session 2023–24*, December 2023, p.010

<sup>19</sup> Ibid, p.6

<sup>20</sup> European Court of Auditors, *Special report 28/2023: Public procurement in the EU – Less competition for contracts awarded for works, goods and services in the 10 years up to 2021*, 2023

<sup>21</sup> Financial Times, *'Private providers winning big fees on UK public sector contracts, experts warn'* June 7 2024

This set the context for the publication of the Government's Green Paper on Transforming Public Procurement in December 2020 overseen by Lord Agnew who later resigned from the Government. From January 2021 EU procurement law no longer applied to the UK. Following consultation, the Procurement Bill was introduced in the House of Lords in May 2022, with the Act finally receiving Royal Assent in October 2023 following unprecedented numbers of Government amendments. The Act does not apply to Scotland which has opted to maintain its own framework of law.

The Act is due to come into force in October 2024 and consolidates current procurement rules to create what is purported to be a single public procurement regime.<sup>22</sup> The aims are to simplify the existing system, open up public procurement to new entrants and embed transparency. Yet while the Act brings in some changes, the fact that the UK is signed up to the World Trade Organization Agreement (WTO) Government Procurement Agreement (GPA) means that the essential framework of procurement is based on the same key provisions that are contained within the current laws and competition remains the driving force.<sup>23</sup>

## Why purchasing for public good has never mattered more

“The 2019-2024 Parliament has witnessed unprecedented economic and political turmoil. The Covid-19 pandemic, the Russia-Ukraine war, and the associated ‘cost of living’ crisis have adversely impacted living standards and the economy.”<sup>24</sup>

We are faced with what for most of us is the deepest challenge of our lifetimes. Wherever we live in the UK, we see growing wealth in the hands of a minority accompanied by deep income inequality. Public trust in public services is at an all-time low. We have divided societies that are described as broken. These are issues that need to be fixed. Ironically as the system of outsourcing was supposed to strengthen and enhance our public services, austerity has brought them to their knees. Government has increasingly become detached from its communities as its roles and responsibilities of delivering public services through outsourcing have been diluted over the years.<sup>25</sup>

<sup>22</sup> Section 3 of this report highlights that claims that the Procurement Act creates a unified system for procurement are far from accurate partly but not only because of the devolved nature of procurement and the wider legal framework in which procurement sits.

<sup>23</sup> Janice Morphet, *Outsourcing in the UK: Policies, Practices and Outcomes*, 2021 – makes the point very clearly about the influence of international trade agreements on domestic policy

<sup>24</sup> National Centre for Social Research, *Five years of unprecedented challenges: the impact of the 2019-2024 Parliament on public opinion*, June 2024

<sup>25</sup> Morphet, op.cit.

The extent of the challenges that we face requires collaboration between government, the private sector, mission orientated organisations and our communities. Public bodies and private sector organisations can (and should) use their purchasing power as a force for community public good, helping to shape the everyday economy and local markets and connecting them to the needs of local people in ways which, in turn, help to strengthen local communities and public services, and not weaken them. While public good procurement on its own cannot deliver the extensive change that is required, it can contribute as part of a wider strategy, thereby delivering greater public value and reinvigorated public services.

### Growing inequality

Globalisation and financialisation of the economy and the decline of manufacturing combined with neo-liberalist policies have created profound changes throughout the UK, with the financial crises and age of austerity causing even greater damage to those local economies that have been described simply as being emptied out.

On the other hand, globalisation has fostered economic growth, with digitalisation and further advances in automation fueling wealth accumulation in record time. Such wealth, however, is focused on a small number of individuals, companies and countries across the globe.

All the trajectories are that the digital economy will continue to grow, and even accelerate as a result of AI, and with it further inequality, fostering greater satisfaction for the few and growing dissatisfaction for the larger many.

While Covid has helped expose the marked divisions within our society and provided a spotlight on the glaring inequalities that people face within the UK, the perception that the country has a problem with poverty has been on an upward trend since the financial recession of 2008.<sup>26</sup> Almost 75% of people in Britain consider that “there is quite a lot” of real poverty.<sup>27</sup>

### Tackling the trust deficit

“...trust and confidence in how the country is governed and by whom has fallen to as low as it has ever been...at the same time there is widespread dissatisfaction with the public services that government provides, most notably the NHS.”<sup>28</sup>

Public service institutions designed to provide cradle-to-grave services for people are an integral and essential part of the solution for tackling inequality and rebuilding trust.

---

<sup>26</sup> Ibid.

<sup>27</sup> National Centre for Social Research, op.cit. page 15

<sup>28</sup> National Centre for Social Research, op.cit page 30

But, at times, they present as part of the problem too. At the most extreme, public institutions have been hollowed and emptied out, ironically by a process of outsourcing that has weakened their identity, inhibited local innovation and lowered morale, with some at breaking point. People are pushed from pillar to post, algorithms rule, technology takes over; and human discretion, kindness and compassion are filed away, causing distress to residents, employees and their local communities.

UK public trust in government has sunk to a record low – a record high of 45% “almost never” trust governments to put the nation’s interests first-up from 34% in 2019. Satisfaction with the NHS and social care also fell over this period.<sup>29</sup> The number of people trusting British politicians to tell the truth has fallen to an all-time low of 5%, and around four in five people consider that the system of governing Britain needs “quite a lot” or a “great deal” of improvement.<sup>30</sup>

### **Building a better community**

Procurement and outsourcing are at a crossroads. With a new Government committed to public service and a new Act timetabled to come into force for some of the UK, now is the time for the public, private and not for profit sectors to work together to deliver public services fit for purpose that generate real public value and help build public trust.

Public Services should first and foremost, be about prevention and early intervention – including by citizens themselves – to address issues and problems escalating, while reducing inequality and promoting equality of outcomes for people irrespective of the social and economic inequalities and disadvantage that they face. The everyday economy plays a crucial role in this.

Organisations that maximise their public good help to reduce poverty and inequality within local communities: bring public services closer to the people they support; and help to build public trust in public institutions and services based on practical experience of participating within these and benefiting from them.

We need to revitalise, re-energise and connect our public services with local people, address growing wealth and income inequalities, restore people’s trust in UK public institutions and build vibrant local economies to mend our society’s divides.

Giving local institutions and places greater control in whether they insource or outsource will help to return power to local people, so too will thinking about how we can work together collaboratively and in different ways to redefine and reinvigorate public services fit for now and fit for the future.

How we procure our public services in partnership with local people can help to contribute to the revitalisation process and make the difference to public services that matters to local people. Aligning procurement with the delivery of public good is part of the solution for building a better UK.

<sup>29</sup> National Centre for Social Research, op.cit.page 9

<sup>30</sup> National Centre for Social Research, op.cit page 29

### 3. The UK procurement framework

“Understanding this broader policy and legal framework is crucial for developing a practical and consistent approach to public procurement that serves the public good across the UK.”

#### The wider legal framework

Public procurement law intersects with various policies and laws within individual countries and across the UK. It also connects to international legislation and the Sustainable Development Goals. Understanding this broader policy and legal framework is crucial for developing a practical and consistent approach to public procurement that serves the public good across the UK.

#### Devolution

Because public procurement law is a devolved matter under UK law – all contracting authorities acting within the separate nations are subject to the laws of that nation. Irrespective of when (and if) the new Procurement Act is implemented in the UK, there will be different frameworks of law depending on which part of the country the procurement is taking place. At the same time, even where the Procurement Act is in place there will be two separate systems within England as NHS clinical services are procured under a different system in England. The key procurement regimes are outlined below in the following table.

**Table 1 – key procurement regimes within the UK**

England and Northern Ireland	Scotland	Wales
England NHS clinical services	Northern Ireland	UK cross border and joint procurement



## Sustainable procurement

### Scotland

The Scottish Government says that procurement is a key part of its approach to creating a more successful country through increasing sustainable and inclusive economic growth.<sup>31</sup>

#### Procurement Reform Act

The Procurement Reform (Scotland) Act 2014 provides for regulated procurement for public contracts of £50,000 and over (works contracts £2,000,000).<sup>32</sup>

These include contracts commissioned by central government, government agencies, local authorities and housing associations.

- Under Section 8 the general principles of European law are built into Scottish law. These require contracting authorities to treat economic operators equally and without discrimination and in a transparent and proportionate fashion.
- Under Section 9 contracting authorities are required before carrying out any regulated procurement to consider how in conducting the procurement process they are able to:
  - improve the economic, social, and environmental wellbeing of the authority's area and, in particular to reducing inequality;
  - facilitate the involvement of small and medium enterprises, third sector bodies and supported businesses in the process, and
  - promote innovation.

In carrying out the procurement they should act with a view to securing such improvements.

- Health and social care contracts under a specific threshold may take into account other considerations and may be awarded directly by authorities subject to guidelines issued by the Scottish Government under Section 12 of the Act.<sup>33</sup> Notices must be published when contracts are awarded.

---

<sup>31</sup> Scotland regulates procurement through three pieces of legislation: the Procurement Reform (Scotland) Act 2014, the Public Contracts (Scotland) Regulations 2015 which implemented the 2014 European Directive, and the Procurement (Scotland) Regulations 2016. There is further discussion about the European Directives below.

<sup>32</sup> These figures are exclusive of VAT. Figures quoted throughout this guide are exclusive of VAT unless otherwise stated.

<sup>33</sup> The current threshold is that for the light touch regime (see below) which is currently £884,720.



- Under Section 15 authorities with an estimated procurement spend of £5 million or over must produce a procurement strategy outlining how they will contribute to the carrying out of their functions and achievements of their purposes including: delivering value for money and carrying out their sustainability duty under Section 9 of the Act. The strategy must also include statements on consulting and engaging with those affected by procurements; the use of community benefits and the payment of the Living Wage; health and safety; the purchase of ethically traded goods; policy in relation to food and wellbeing; and animal welfare policy.
- Community benefits have been part of Scottish law since 2008. All contracting authorities that are offering individual contracts with a procurement spend of £4 million or over are required to consider whether to include community benefit requirements within contracts. Community benefits may cover areas such as training and recruitment and the availability of sub-contracting opportunities or anything that is intended to improve the economic, social or environmental wellbeing of the authority's area in a way additional to the main purpose of the contract in which the requirement is included.<sup>34</sup> Where a contracting authority does not intend to include any such requirements, it must include in its tender notice its reasons for so doing, and where it has included community benefits they need to be referred to in the awards process.
- Under Section 18, authorities which are required to produce a procurement strategy must provide an annual report including detail on how the procurements have complied with their strategy and a summary of any community benefits required. Similarly, the Government is required to provide an annual report on procurement to be presented to Parliament. All authorities are required to establish contract registers which are made publicly available on websites which log details about all regulated contracts providing a level of transparency that is over and above the rest of the UK currently.

### Priorities and outcomes

The Scottish Government tracks its contribution to its overall purpose and priorities through the sustainable procurement duty. Its key priorities are defined in Scotland's Economic Strategy as:

- promoting inclusive growth and creating opportunity through a fair and inclusive jobs market and regional cohesion
- investment in our people and our infrastructure in a sustainable way
- fostering a culture of innovation and research and development
- promoting Scotland on the international stage to boost our trade and investment, influence and networks.

---

<sup>34</sup> There is nothing in the law to prevent contracting authorities requiring contracts of less than £4 million contracts to provide for community benefits.

As part of a structured approach to procurement, the Government has developed national outcomes and indicators based on the UN Sustainable Development Goals. According to the Government, the National Performance Framework is Scotland's way of localising and implementing the sustainable development goals and of ensuring that no one in Scotland is left behind in the achievement of the goals. The national outcomes are that people:

- grow up loved, safe and respected so that they realise their full potential
- live in communities that are inclusive, empowered, resilient and safe
- are creative and their vibrant and diverse cultures are expressed and enjoyed widely
- have a globally competitive, entrepreneurial, inclusive and sustainable economy
- are well educated, skilled and able to contribute to society
- value, enjoy, protect and enhance their environment
- have thriving and innovative businesses, with quality jobs and fair work for everyone
- are healthy and active
- respect, protect and fulfil human rights and live free from discrimination
- are open, connected and make a positive contribution internationally
- tackle poverty by sharing opportunities, wealth and power more equally.

These are used to help identify opportunities to include economic, social and environmental considerations in contracts and show how procurement activity contributes to the National Outcomes and, in turn, to Scotland's Economic Strategy.

### Evaluation

An independent review of Scottish sustainable procurement legislation was carried out in February 2023.<sup>35</sup> It concluded that Scotland was a leader in the way that it dealt with sustainable procurement within its governance framework and that the UK Procurement Bill was proposing changes already reflected in Scottish law.

Findings from qualitative research indicated that organisations considered the strengths of the Scottish approach were characterized by top-down commitment, an integrated approach enabled by high-level transparency and commitment to a continuous improvement process, as well as the provision of tools, support and training.

---

<sup>35</sup> Scottish Government, *Independent Review: Scotland's journey of achieving sustainable procurement outcomes (2002-2022)*, February 2023

It is generally agreed that opening up the markets to social enterprises and third sector organisations “continues to be a significant work in progress.”<sup>36</sup> A survey jointly carried out by Social Enterprise Scotland and the Scottish Council for Voluntary Organisations in 2023 had found amongst other things that the rhetoric and legal instruments were not being translated into real life practice, there was a lack of suppliers for commissioners and a lack of use of reserved contracts.<sup>37</sup>

Post legislative scrutiny of the Procurement Reform (Scotland) Act carried out by the Scottish Parliament Economy and Fair Work Committee heard that feedback for unsuccessful bidders was felt to be inconsistent. In some local authorities there seemed to be insufficient mechanisms to provide feedback, discouraging future bids, and on the other hand, some businesses were reluctant to seek feedback or challenge decisions in case it counted against them in future bidding rounds, or were unaware that they could request further feedback.<sup>38</sup> The Committee was pleased that, overall, businesses had found the 2014 Act to have improved transparency but it was concerned that inconsistency, bureaucracy and inflexibility were still creating challenges in navigating the public procurement landscape for some SMEs. It recommended improved links between commissioning bodies and the third sector and generating greater awareness of the reserved contract mechanism. It also recommended that more should be done to ensure reducing inequalities is taken account of in the procurement process through the strengthening of the sustainable procurement duty and the inclusion of specific references to the public sector equality duty and fair work obligations

## Wales

Although the UK government implemented the European Directives in Wales, the Welsh Government subsequently regulated government procurement law through the Wellbeing of Future Generations Act 2015 which is aligned with the sustainable development goals.

### The Wellbeing of Future Generations Act 2015

Section 2 of the Act requires public bodies to carry out sustainable development. The Act defines sustainable development as the process of improving the economic, social, environmental and cultural wellbeing of Wales by taking action, in accordance with the sustainable development principle aimed at achieving wellbeing goals.

---

<sup>36</sup> Social Enterprise Scotland, *Unlocking procurement for social enterprises: An evidence paper to inform policy-making*, October 2023

<sup>37</sup> Ibid

<sup>38</sup> Scottish Parliament Economy and Fair Work Committee, *Post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014*, June 2024

The principle outlined in the Act is defined in Section 5 as acting in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This involves:

- balancing short term and long term needs;
- taking an integrated approach to how goals and objectives are met;
- involving people with an interest reflecting the diversity of Wales;
- collaborating with different people to achieve objectives;
- taking a preventative approach to addressing problems and meeting objectives.

The wellbeing goals are outlined in the Table 1 below.

**Table 2 - Welsh Wellbeing goals**

Goal	Description of the goal
A prosperous Wales	An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.
A resilient Wales	A society in which people's physical and mental wellbeing is maximised and in which choices and behaviours that benefit future health are understood.
A healthier Wales	A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio-economic background and circumstances).
A more equal Wales	A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio economic background and circumstances).
A Wales of cohesive communities	Attractive, viable, safe and well-connected communities.
A Wales of vibrant culture and thriving Welsh language	A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, and sports and recreation.
A globally responsible Wales	A nation which, when doing anything to improve the economic, social, environmental and cultural wellbeing of Wales, takes account of whether doing such a thing may make a positive contribution to global wellbeing.

To fulfil their duties public bodies set and publish wellbeing objectives which must maximise their contribution to the wellbeing goal and must take all reasonable steps to meet their objectives and report annually. Public bodies are also required to participate in public service boards to develop local places strategies that promote economic, social and environmental wellbeing. Similarly, the Welsh Government has established national indicators for wellbeing and reports on progress annually. The Auditor General for Wales is statutorily required to examine public bodies to assess the extent to which they have acted in accordance with the sustainable development principle when setting their wellbeing objectives and taking steps to meet them. The Act set up a Future Generations Commissioner who oversees the sustainable development principle and supports public bodies in making progress.

Delivery of Community Benefits through public sector procurement is aligned to the Well Being of Future Generations Act and delivers against its goals. Procurers must identify any of the following for carrying out during the course of the contract:

- job opportunities for economically inactive
- training opportunities for economically inactive
- retention and training opportunities for existing workforce
- promotion of open and accessible supply chains that provide opportunities for SMEs to bid for work; and promote social enterprises and supported businesses
- contribution to education in Wales through engagement with school, college and university curriculums
- contributions to community initiatives that support tackling poverty across Wales and leave a lasting legacy within the community
- opportunities to minimise the environmental impact of the contract and to promote environmental benefits.

The latest Wellbeing report shows that progress towards reducing inequality has been slow with few of the indicators making any progress in the past five years.<sup>39</sup>

### **The Social Partnership and Public Procurement (Wales) Act 2023**

This creates a new socially responsible procurement duty for certain contracting authorities, requiring them to seek to improve the economic, social, environmental and cultural wellbeing of their areas by carrying out public procurement in a socially responsible way in accordance with the sustainable development principle, aimed at achieving the wellbeing goals in the 2015 Act.<sup>40</sup>

The provisions are not yet in force and are not likely to be introduced until late 2024 or until 2025. The purpose of the public procurement duty is to give wider prominence to socially responsible procurement.

<sup>39</sup> Welsh Government, *Wellbeing of Wales*, September 2023

<sup>40</sup> The Act has much broader aims in relation to social partnership which are dealt with below under decent work.

The Act requires some contracting authorities to set and publish objectives in relation to their public procurement designed to maximise the authorities' contributions towards the wellbeing goals. The contracting authorities that are required to do this are major construction contracts of £2 million or more, outsourced services and any other public contract described in regulations by the Welsh Ministers. Contracting authorities are required to consider whether "social public workforce" clauses should be included in the contracts and to inform the Minister if they are not and their reasons.

The Minister can make directions for the authorities to take all reasonable steps to include social public work clauses in the contracts and to publish their directions or reasons for not making directions if they are satisfied with the public authority's reason for not including such clauses.

Contracting authorities are required to produce procurement strategies setting out how they intend to carry out public procurement in a socially responsible way, how they intend to take reasonable steps to meet their objectives and how they intend to make payments promptly. They must maintain contract registers, provide annual reports along with a summary of their planned procurements for the next two years. The Welsh Minister is given powers to investigate the procurement practices of public authorities and to make recommendations.

## Northern Ireland

The Central Procurement Directorate within the Department of Finance holds responsibility for procurement policy.

Under Section 25 of the Northern Ireland (Miscellaneous Provisions) Act 2006 government departments and district councils must act in a way they consider best calculated to contribute to the achievement of sustainable development in Northern Ireland, except to the extent that they considers that any such action is not reasonably practicable in all the circumstances of the case

In 2008 the Executive recognised the importance of incorporating sustainable development and equality of opportunity into all stages of the procurement process from the outset and throughout the process, working in partnership with contractors to deliver outcomes in line with the Government's overall Sustainable Development Plan.<sup>41</sup>

---

<sup>41</sup> Equality Commission for Northern Ireland, Central Procurement Directorate, *Equality of Opportunity and Sustainable Development in Public Sector Procurement*, May 2008

Guidance issued explained the importance of considering equality of opportunity and sustainable development as part of the selection process as well as the specification and award criteria and described partnership working as moving away:

“from old fashioned style contracts of performance managing and contract monitoring to working in partnership, shoulder to shoulder with contractors, managing the risks to achieve the objectives which have been set.”

### Public value

Subsequently, the Northern Ireland Executive issued a policy note on social value mandating that Government and associated bodies should include a minimum of 10% of the total award criteria to social value for above threshold contracts from June 2022.<sup>42</sup>

The Executive mandates that public authorities as part of their pre-procurement deliberations Departments **must** consider the potential to reserve a contract under Regulation 20 of the Public Contracts Regulations 2015, enabling authorities to deliver social value by reserving the right to participate in procurement procedures to supported businesses and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons, or provide for such contracts to be performed in the context of sheltered employment programmes.

From 2021, fair work conditions are a requirement for all contracts – these are aligned to the Carnegie Trust definition of fair work and include the following: terms of employment, pay and benefits, job design and nature of work, social support and cohesion, health, safety and psychological wellbeing, work/life balance and voice/representation. The payment of the Real Living Wage is a condition of contract from June 2022.

The Social Value Unit assists the Government bodies and associated bodies to maximise the delivery of social value through public contracts. This stresses the importance of addressing social value at pre-procurement stage and the importance of consulting with local communities. A broker system has been set up. This links suppliers of Government contracts with organisations in Northern Ireland (brokers) who work with people and communities to secure employment and skills, build ethical and resilient supply chains, deliver net zero or promote wellbeing. This helps to provide supply chain opportunities for voluntary and community organisations and social enterprises.

---

<sup>42</sup> Northern Ireland Finance Department, *Procurement Policy Note PPN 01/21 Scoring Social Value*, revised October 2022



A report carried out by the National Audit Office for Northern Ireland sheds some light on some of the practical issues facing procurement both in Northern Ireland.<sup>43</sup> These include a culture of risk averse and process driven approaches employed by contracting authorities which prevents innovation and creates supplier frustrations; a paucity of data on which procurement performance can be judged and the lack of an overarching strategy.<sup>44</sup>

## Social value (England and Wales)

The Public Services (Social Value) Act 2012 came into force in 2013. It applies to England and Wales. It requires relevant public authorities to consider social value when making procurement decisions about services. Works contracts are exempt. It was introduced prior to the transposition of the European Directives into UK law.

Under the Act, public authorities are required to consider how what is proposed to be procured through the European procedures might improve the economic, social and environmental wellbeing of the relevant area, and how, in conducting the process of procurement, they might act with a view to securing that improvement. The authority must consider whether to undertake any consultation on economic, social and environmental wellbeing. Before they start the procurement process, commissioners should think about whether the services they are going to buy, or the way they are going to buy them, could secure economic, social and environmental wellbeing for their area or stakeholders. The Act does not say how procurement models should incorporate social value or how they should be measured. It applies only to procurements that fall above the European threshold.

The Act has been criticised for being ill-defined and limited in scope with limited influence over decision making. On the other hand, an industry of consultants has developed advice and consultancy on the Act. A government review (the Young Review) of the Act took place in 2015. It found that awareness and take up of the Act contained a mixed picture; that there was varying understanding of how to apply the Act which could lead to inconsistent practice, particularly around knowing how to define social value and how and when to include it during the procurement process; and that measurement of social value was not fully developed. In 2017, a further review took place carried out by Chris White, the originator of the Private Members' Bill which led to the Act along with Social Enterprise UK. It found that "significant progress" had taken place since the Young Review and claimed that, in 2017, the Social Value Act is "already shaping £25 billion worth of public sector spend", which equates to about 9 per cent of total public sector spending.

---

<sup>43</sup> Northern Ireland Audit Office, *Public Procurement in Northern Ireland*, April 2023

<sup>44</sup> Ibid



Two key frameworks have been developed to support authorities using social value awards in procurement.

The first, the National TOMs (Themes, Outcomes and Measures) was introduced by the Local Government Association in 2016. This is used by a number of local authorities to measure social value both quantitatively and qualitatively.

In 2018 the UK government announced that it would mandate social value in future contracts and the Social Value Model was introduced by the Cabinet Office in 2020. All Central Government Departments, Executive Agencies and Departmental bodies are mandated to use the Model rather than simply consider social value. The Social Value Model measures social value only qualitatively similar to the approach that the Scottish and Welsh authorities have taken and specifically links outcomes to the Sustainable Development Goals. The Cabinet Office says that measuring on a qualitative basis only means that larger organisations cannot win on scale alone which is an inherent danger in measuring social value on a quantitative basis. This is an issue that has been pointed out by a number of mission-led organisations who are concerned that the intrinsic nature of mission-led organisations is not taken into account in procurement.

## Decent work

Both Scotland and Wales have developed significant agendas around decent work and social partnership despite the fact that employment law is not devolved in the UK (apart from in Northern Ireland). This area is crucial in addressing the race to the bottom.

## Scotland

In Scotland, The Fair Work Convention (FWC), established by the Scottish Government in 2015, acts as an independent advisory body to Scottish Ministers on fair work. The FWC produced a Fair Work Framework for Scotland in 2016. The Framework defines fair work as: “Fair work is work that offers effective voice, opportunity, security, fulfilment and respect; that balances the rights and responsibilities of employers and workers and that can generate benefits for individuals, organisations and society”. The Scottish Government states that fair work must be at the core of the approach any employer takes, not only to address inequalities, but also to maximise the opportunities presented by a fairly rewarded, healthy, diverse and inclusive workforce.

Scotland's Fair Works First applies fair work criteria to public sector contracts, grants and other funding across the public sector, "where it is relevant to do so".<sup>45</sup> It aims to support employers who adopt fair working practices, specifically: payment of at least the real Living Wage; providing appropriate channels for effective workers' voice, such as trade union recognition; investment in workforce development; refraining from inappropriate use of zero hours contracts; taking action to tackle the gender pay gap, the disability gap and on racism and creating a more diverse and inclusive workplace; offering flexible and family friendly working practices for all workers from day one of employment; and, opposing the use of fire and rehire practice.

## Wales

In Wales, an independent Fair Work Commission (FWC) was established in 2018. Its recommendations led to the Social Partnership and Public Procurement (Wales) Act 2023. The Act provides for a framework to promote the wellbeing of the people of Wales by enhancing sustainable development (including by improving public services) through social partnership working, promoting fair work and socially responsible procurement.

The Act creates a Social Partnership Council (SPC) which brings together representatives from the Welsh Government, employers, and trade unions to advise and inform Government on the wellbeing objectives. It also establishes a social partnership duty for public bodies to seek compromise and consensus with their recognised unions when setting wellbeing objectives or taking strategic decisions about these. A similar duty is imposed on the Welsh Ministers to consult with the SPC. The Act replaces the reference to "decent work" in the wellbeing goals for a prosperous Wales to "fair work". The Act also provides for public authorities and Welsh Ministers to report on how they have complied with this duty on an annual basis.

## UK Equalities Legislation

All public procurers in the UK (except in Northern Ireland for the most part) are required to comply with The Equality Act 2010 and, in particular, the Public Sector Equality Duty contained within the Act.<sup>46</sup> The Act sets out anti-discrimination law in the UK. It identifies "protected characteristics" of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, pregnancy and maternity and marriage and civil partnerships.

### Public Sector Equality Duty

The Public Sector Equality Duty requires public authorities to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct;

<sup>45</sup> Scottish Government, *Fair Work First Guidance Supporting the implementation of Fair Work First in workplaces across Scotland*, March 2023

<sup>46</sup> Equalities and discrimination are transferred matters under the Northern Ireland Act 1988

- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

### The socio-economic duty

Section 1 of The Equality Act 2010 provides that public bodies, specified in the Act, when making decisions of a strategic nature about how to exercise their functions, must have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage. Section 1 has been implemented in Scotland and Wales but not yet in England.<sup>47</sup>

The Fairer Scotland Duty came into effect in April 2018. To fulfil their obligations, public bodies have to actively consider how they could reduce inequalities of outcome in any major strategic decision they make; and to publish a written assessment, showing how they have done this. The duty is set at a strategic level and includes major public procurements. Wales followed with the introduction of the duty in 2021.

### Human rights

The Human Rights Act 1998 came into force in October 2000. It incorporates the majority of rights set out in the European Convention on Human Rights (ECHR). The ECHR contains seventeen key articles relating to rights and fundamental freedoms related only to civic and political rights, as opposed to social and economic rights.

The Modern Slavery Act 2015 was designed to tackle slavery in the UK and also consolidates previous offences relating to trafficking and slavery. All companies with a turnover currently of £36 million must make an annual statement describing what they are doing to prevent slavery in their business and within their supply chains. Organisations found guilty of offences under the Act should be excluded from procurement.<sup>48</sup> A recent report has highlighted the deficiencies within the procurement system for tackling modern slavery and recommends a series of measures to overcome these shortcomings.<sup>49</sup>

---

<sup>47</sup> The Labour Party has pledged within its election manifesto to implement the duty. In addition to Scotland and Wales a number of local authorities such as Newcastle, Hackney Council, Salford, Oldham Council and the North of Tyne combined authority have introduced it on a voluntary basis.

<sup>48</sup> This is subject to self-cleansing where a company could submit that it has rid itself of all the factors that led to the misconduct and to ensure that it is not repeated. Procurement regulations provide for both mandatory and discretionary exclusions.

<sup>49</sup> Michael Rogerson, Johanne Grosvold, Kyle Alves, *Climate change and modern slavery in public procurement*, January 2024

## Local Government legislation

Section 17 of the Local Government Act 1988 prohibited local authorities from taking non-commercial matters into account when awarding contracts. These “non-commercial matters” included:

- Employment matters such as workforce terms and conditions; use of subcontractors and involvement in industrial disputes
- Political matters such as disagreement with wider government policies, location of the supplier and affiliation of the supplier or their customers.

Section 17 therefore effectively restricted local government from incorporating broader social, environmental, or employment-related considerations into their procurement processes. However, both the Equalities Act 2010 and subsequent legislation in Scotland, Wales and England enabled local authorities to take account of equality issues and wider social, economic and environmental issues to the extent that the authority considers it necessary or expedient to do so to enable or facilitate compliance with the relevant duty.

In England and Wales, the Best Value Duty introduced by the Local Government Act 1999, replacing the previous compulsory competitive tendering regime requires authorities to promote continuous improvement in local government services in terms of economy, efficiency, and effectiveness. The latest guidance suggest that driving social and environmental value in their place through mechanisms like procurement is a sign of successful partnership working.<sup>50</sup>

## Public procurement legal framework

“Now, with a new government in place, committed to growth, public service and enhanced devolution, there is a chance to put law and policy into practice in a way where people can perceive the difference and which makes the difference to the reality of people’s lives.”

### Public procurement and the European legacy

Prior to Brexit, the UK was subject to European law on public procurement. The European Union (EU), with its objective of a single European Market and the removal of national barriers to the supply of goods, works and services within Europe, was a key driver for UK procurement law. The EU had signed up to the World Trade Agreement and the Agreement on Government Procurement (GPA in 1994).

---

<sup>50</sup> Department for Levelling Up, Housing and Communities, *Statutory guidance Best value standards and intervention: a statutory guide for best value authorities*. May 2024

European law sets out the procedures and practices to which public bodies must follow when buying goods and services above a certain threshold. The legal framework includes the obligations of the Treaty, Directives and case law.

The law is designed to ensure that all bidders are treated equally and that contracts are awarded fairly, transparently and without discrimination on grounds of nationality, as well as ensuring that the principles of mutual recognition and proportionality are recognised.

This is the current framework of procurement law currently in place for the whole of the UK. It will be replaced by the Procurement Act 2023 if and when implemented in October 2024 in all countries, apart from Scotland.

### **Incorporating social and environmental issues into European Law**

Significant changes were made to EU law in 2014 to reflect the European Commission's approach to building inclusive growth partly as a result of the financial crisis in 2008.<sup>51</sup> These changes aimed to make better use of procurement to promote integrity and equal treatment, and to make it easier for SMEs to participate in public contracts.<sup>52</sup> Key changes comprised:

- including environmental, social and innovation policy goals in procurement procedures
- enabling the reserving of competition for organisations that supported people who are disadvantaged in the labour market
- a light touch regime for social and health and some other services
- making it easier for SMEs to participate in tendering through encouraging contracts to be divided into lots.

According to the European Commission, an essential part of building an inclusive society was employment and occupation according to the European Commission. It argued that social businesses could play a significant role in integrating or reintegrating disabled and disadvantaged people who are socially marginalized. It argued that reserving rights to participate or reserve performance of the contract was appropriate. Effectively, it was contending that competition had to be balanced against promoting opportunity and taking positive action to address institutional disadvantage and build inclusive growth.

---

<sup>51</sup> Directive 2014/24/EU, February 2014

<sup>52</sup> The European Commission saw procurement as being an essential part of the strategy for delivering smart, sustainable and inclusive growth.

### Purchasing for public good and the Directives

The Directives and their subsequent implementation into the legal frameworks of UK provided ample opportunity for contracting authorities to deliver public good purchasing in terms of selection criteria and the award criteria. The European Court of Auditors' report of 2023, however, found that the 2014 Directive has had no "demonstrable effect" and that the procedures still create significant administrative burdens, that the share of small and medium-sized enterprises participating in public procurement has not significantly increased, that strategic (e.g. environmental, social and innovative) aspects are rarely considered in public tenders and that the lowest price tender is that most likely to win.<sup>53</sup>

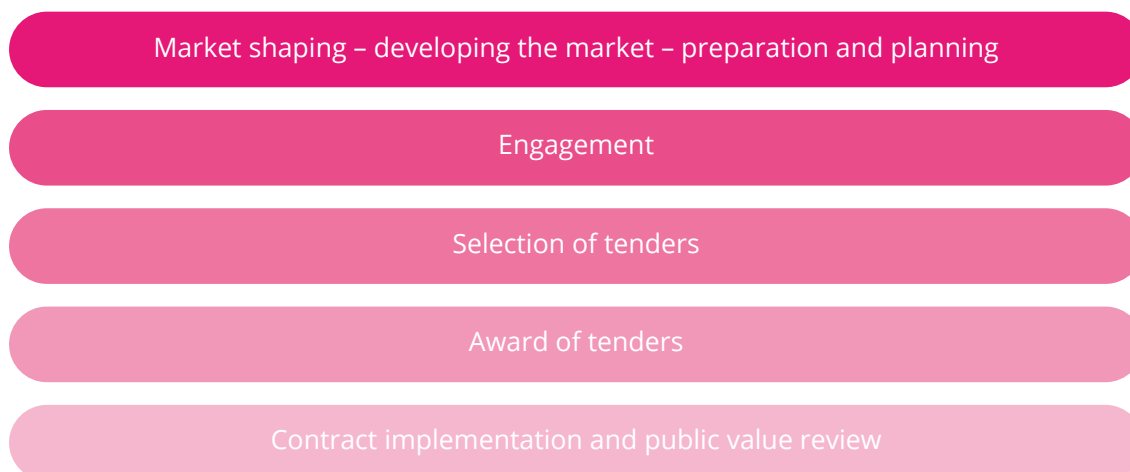
### Putting policy into practice

The Public Contracts Regulations 2015 ("PCR") implemented EU law into UK law for England, Wales and Northern Ireland, as well as providing UK specific regulations. Scotland introduced its own national laws and regulations in 2014-2016 to cover procurement and to transpose the Directive. The Cabinet Office holds overall responsibility for procurement policy in England and the UK. The Crown Commercial Service (CCS) is responsible for the legal framework for public sector procurement and leads on the development and implementation of procurement policies for government.

### A quick guide to the current public procurement procedures

The main stages of procurement are highlighted in Table 3 below.

**Table 3 – Public good procurement – the main stages**



<sup>53</sup> European Court of Auditors op.cit

## Thresholds

Works, services and supplies (apart from limited exemptions) are covered by procurement law if their contract value is over a specific threshold laid down by law.

Once it has been established that the contract is covered by procurement law, the opportunity must be published and the procedures below followed. The current thresholds are indicated below in Table 3.

In Scotland, procurements of £50,000 are subject to regulation and all are bound by the Sustainable Procurement Duty but there is a simplified procedure for contracts between £50,000 – the thresholds in Table 4 below.

### Table 4 – Current Thresholds

<b>The Public Contracts Regulations</b>	
Supplies & Services (except subsidised services contracts)	
Central Government bodies	£139,688
Others	£214,904
Subsidised services contracts	
All bodies	£214,904
Works (including subsidised works contracts)	
All bodies	£5,372,609
Light Touch Regime for Services	
All bodies	£663,540

## Procedures

There are currently a number of procedures for tendering including those that provide for negotiation, but the most commonly used ones are the open tender and the restricted procedure.

Under the open tender process, tenders are advertised and are open to any organisation that meets the tender minimum capacity requirements and wishes to submit a tender through submitting an expression of interest. This is a one stage process but there are two distinct stages of selection and award.

Where the restricted procedure is used only pre-selected tenderers are invited to submit a tender. There are two distinct stages within the process: a pre-qualifying stage of selection followed by an invitation to tender to at least five short-listed bidders where this is possible.

### Reserved contracts

There is provision to reserve contracts for supported employment and for economic operators whose “main aim is the social and professional integration of disabled or disadvantaged persons”.<sup>54</sup> There is no restriction on the number of years that contracts can be for.<sup>55</sup>

In all countries other than Scotland, contracting authorities are able to reserve contracts for particular health, social and cultural services to not for profit employee owned organisations or mutuals.<sup>56</sup> This is so long as the organisation has not had a contract for the services concerned reserved to it by this contracting authority in the previous three years. The contract term can be no longer than three years.

### Light touch regime

A number of social and health services delivered to individuals are subject to the light touch regime which has a much higher threshold than for other contracts.<sup>57</sup> Procurements need only to comply with general principles of equality and transparency and contracting authorities are bound to advertise the opportunity and to publish an award notice. This leaves the contracting authority with considerable flexibility in running the procurement, so long as it is consistent with equality and transparency.<sup>58</sup>

---

<sup>54</sup> Appendix A provides a breakdown of the current procedures and their pros and cons from our perspective.

<sup>55</sup> Research carried out by Aspire suggests that there are huge opportunities for public bodies, commercial organisations and VCSEs to work together to deliver public value in this area to address institutional disadvantage in the labour market. See Section 4 for more information.

<sup>56</sup> Excluding those which fall under NHS regulations – see below for a discussion on the Selection Provider Regime

<sup>57</sup> The services include health, social and related services; administrative, social, educational, health care, and cultural services; compulsory social security services; hotel and restaurant services; legal services, to the extent that they are not excluded altogether from the Directives; investigation and security services; international services; and postal services.

<sup>58</sup> Under the new Procurement Act 2023 the new competitive flexible procedure will be similar to the light touch regime and will be available for all procurements covered by the Act, along with the current open procedure.



## Selection

The aim of the selection process is to assess the candidates' ability to deliver the contract requirements. Selection criteria are generally backward looking and assess a supplier's track record and aim to ensure that tenderers have economic and financial standing and technical or professional ability. It is possible, however, depending on the nature of the contract and the policy of the authority to stipulate selection conditions relating to broader social, environmental and economic conditions as Northern Ireland has done in relation to the Real Living Wage and Fair Wage Conditions. This also provides protection for the authorities against receiving abnormally low bids (see below).

## Award

Public contracts must be awarded on the most economically advantageous tender. This can be identified on the basis of a price-equality ratio or the lowest price. Where the former is used criteria must be used which are linked to the subject matter of the contract in the assessment of tenders; the weightings of criteria should be disclosed; and questions should relate to how the tenderer will carry out the contract rather than their economic and financial standing.

## Abnormally low tenders

Any tender that appears to be abnormally low may be investigated by the public authority and rejected if the evidence supplied is not adequate to explain the price.<sup>59</sup>

## Standstill periods

Once an award decision has been taken, all tenderers must be informed of the decision using a standstill letter. The standstill period is ten days for electronic notifications.<sup>60</sup>

## Legal challenge

A tenderer has thirty days to make a legal challenge and if this happens and the contract has not been entered into, the contract is automatically suspended until the parties come to an agreement or the courts rule that the suspension should be lifted.<sup>61</sup> In Northern Ireland it is also possible to take a case to the Northern Ireland Ombudsman following exhausting the complaints procedure of the contracting authority.

---

<sup>59</sup> The law does not define what is abnormally low, however, it is generally considered to be where the price offered by an economic operator raises doubts as to whether the offer is economically sustainable and can be performed properly. There are different ways of assessing whether a price is abnormally low, the first port of call is to examine the relationship between the submitted price and the contract value specified in the notice.

<sup>60</sup> The key elements that should be included in a standstill letter are: the name of the successful tenderer, the criteria for the award of the contract, the reasons for the decision, including the characteristics and relative advantages of the successful tender, details on the scores obtained by the bidder and the successful bidder and the date when the standstill period is expected to end.

<sup>61</sup> The cost of taking a case to the High Court in England is at least £300,000.

## England Health Services

The NHS long term plan for England set out the need to transform health and care services and remove the internal market in healthcare services. Consequently, the purchase of clinical health services is not subject to the existing procurement regulations and is excluded from the new Procurement Act 2023.

A new Provider Selection Regime came into force in January 2024. This differs in a number of ways from the public procurement procedures: it removes competition, introduces greater transparency and provides for a system of complaints and independent review irrespective of the contract amount.

### The Provider Selection Regime (PSR)

The Health Care Services (Provider Selection Regime) Regulations 2023 state that when authorities are carrying out procurement they must act with a view to:

- i) securing the needs of the people who use the services
- ii) improving the quality of the services and
- iii) improving efficiency in the provision of the services.

The key criteria for making decisions are quality and innovation; value; integration, collaboration and service sustainability; improving access, reducing health inequalities and facilitating choice and social value.<sup>62</sup>

### PSR processes

The PSR has introduced three provider selection processes that commissioning authorities can use to award contracts for health care services. These are:

**Direct award processes (A, B, and C)** – awarding contracts to providers when there is limited or no reason to seek to change from the existing provider; or to assess providers against one another, because:

- the existing provider is the only provider that can deliver the health care services (direct award process A)
- patients have a choice of providers and the number of providers is not restricted by the relevant authority (direct award process B)
- the existing provider is satisfying its existing contract, will likely satisfy the new contract to a sufficient standard, and the proposed contracting arrangements are not changing considerably (direct award process C).

**Most suitable provider process** – awarding a contract to providers without running a competitive process, because the relevant authority can identify the most suitable provider.

**Competitive process** – running a competitive process to award a contract.

---

<sup>62</sup> Social value is defined as : “whether what is proposed might improve economic, social and environmental wellbeing in the geographical area relevant to a proposed contracting arrangement”.

## Transparency

All authorities are required to publish an online summary of their contracting activities which must include amongst other things the number of contracts awarded under the different regimes, the number of framework agreements concluded and number of contracts awarded, any urgent awards made under the regulations, the number of representations made and a summary of the nature and impact of the representations. In addition, the authority must monitor its compliance with the regulations and publish online its compliance or lack of compliance.

## Competitive process

To follow the competitive process authorities must: develop a service specification and consider pre-market engagement; determine award criteria based on key and basic selection criteria; advertise the bidding opportunity with sufficient response time and evaluation details; assess bids fairly using established criteria, possibly in stages; identify and notify the successful provider(s) and inform unsuccessful bidders; publish intent and final award notices; observe standstill periods and respond to complaints; and maintain records of the selection procedure and rationale.

## Rights of redress

One of the most significant part of the new NHS regime is that it provides a model for complaints for other parts of the procurement system operating throughout the UK.<sup>63</sup>

Where a competitive process is carried a tenderer (“provider”) may make written representations within the standstill period. The contracting authority must enable the provider any further opportunity to explain or clarify the representations as they see fit. The contracting authority must provide any information required by the provider that it is under a duty to keep including the reasons for the decision, the description of the way in which the key criteria were taken into account, how the basic selection criteria were assessed and contract or framework award criteria were evaluated when making a decision, and the identity of the people making the decisions.<sup>64</sup> The contracting authority must review the decision, taking into account the representations made, and make a further decision to either enter into the contract as originally decided, go back to an early step in the selection process and repeat the step or abandon the procurement.<sup>65</sup>

---

<sup>63</sup> Where a direct award is made there are no rights of complaint, although judicial review may be possible in some circumstances.

<sup>64</sup> However, provision of information is not require where it would “prejudice the legitimate commercial interests of any person, including those of the relevant authority” or might prejudice fair competition between providers or would otherwise be contrary to the public interest.

<sup>65</sup> Statutory guidance recommends that relevant authorities should, where possible, ensure that decisions are reviewed by individuals not involved in the original decision. Where this is not possible, they should ensure that at least one individual not involved in the original decision is included in the review process.

## The independent panel

Where the provider remains unsatisfied with the response of the relevant authority and believes that the PSR has not been applied correctly, the provider may submit a representation to the Independent Patient Choice and Procurement Panel.<sup>66</sup>

Providers who wish to make a complaint must use a pro-forma form to submit the information provided to the authority. They can use legal representation but they do not need to. Where the panel accepts a representation for review, it will try to respond within 25 working days. The Panel can throw out claims that are trivial, vexatious, or an abuse of the Panel's procedure.

The Chair appoints the panel which consists of one to two people supported by a caseworker. The case panel can request information or request to meet with the provider and/or the relevant authority to reach a conclusion on its advice. The Chair can also provide for a light touch review with a single panel and no meeting. At the end of the review the panel will decide one of the following and take one of the following actions:

- the regulations were followed and no advice is to be given to the Authority
- the regulations were not followed but the Panel considers the breach not to have had a material impact on the selection of the provider
- the regulations were not followed, and the authority is advised to return to an earlier step in the process to rectify the issue(s) identified
- the regulations were not followed, and the authority is advised to abandon the current provider selection process.

The panel will also publish its advice, or a summary of its advice.

## Reporting

Authorities are required to publish on an annual basis details of any reviews by the Independent Patient Choice and Procurement Panel including the following: number of requests for consideration received, accepted and rejected, number of times where the Panel advised the relevant authority to re-run or go back to an earlier step or abandon a process, and the number of times the advice was followed.

---

<sup>66</sup> Panel members are independent experts who are appointed by the NHS, but operate independently. They must recuse themselves from providing advice on any provider selection processes where they have a conflict of interest or a perceived conflict of interest.

## Statutory guidance

The regulations are backed up by statutory guidance.<sup>67</sup>

## Social value

In assessing social value, NHS England's guidance suggest that authorities are expected to think about how the arrangements with providers under consideration impact on:

- environmental issues and sustainable development, including addressing climate change, making and meeting commitments around reducing emissions, air pollution and consumption and waste, through promoting circular economy principles as well as enhancing the natural and built environment as applicable;
- inclusive and 'good' employment that increases equality of opportunity in the workplace and supports a diverse workforce, designs in equity, provides fair terms and conditions and supports staff wellbeing, physical and mental health, supports opportunities for local people and/or population groups experiencing health or other inequalities and eliminates modern slavery;
- local inclusive and sustainable economies that decrease economic inequality and poverty, including through employment as an economic and health intervention and payment of a living wage;
- community cohesion and the wider health and wellbeing of the population, including by helping communities to manage and recover from the impact of COVID-19;
- social determinants of health (e.g., employment, income, housing, local environment, food, transport, community, safety).

The Health Service Procurement (Wales) Bill received Royal Assent in February 2024.<sup>68</sup>

It seems likely that the Welsh Government will introduce an aligned approach to that of England, but that key objectives will be adapted to take into account the wider aims of Wales in relation to social procurement.

---

<sup>67</sup> The guidance expects that the contracting authority's knowledge of the market should go beyond knowledge of existing providers and to be a general feature of planning and engagement work, developed as part of the commissioning or subcontracting process rather than only at the point of contracting. The guidance also makes clear that relevant authorities may engage in dialogue or negotiate with all bidders or with shortlisted bidders prior to determining who to award a contract and with a view to improving on initial offers, provided that they do so in a fair and proportionate way and treat all bidders equally.

<sup>68</sup> This provides Wales with an option for its health services to be opted out of the Procurement Act 2023 should the Welsh Government choose. The Welsh Government consulted on whether a new regime should be aligned with, or diverge from, changes introduced in England under the UK Government's Provider Selection Regime. The consultation closed in February 2024

## Where are we now?

It is likely that the new Procurement Act 2023 will go ahead in October of this year or later. This will provide greater flexibility in tendering for organisations within England, Wales and Northern Ireland, enabling authorities to share from the policies and practices across the UK and to work towards procurement policies that best suit their local communities.

Contracting authorities are important parts of their supply chains and can play a market shaping role in generating good employment with Real Living Wages within their supply chains to as one part of tackling inequality and poverty within their local areas.

The new Provider Selection Regime focuses on social value that addresses the poor health of local communities which is made worse by bad work and low pay. It eliminates competition as a fundamental feature of procurement. It also provides a model for dealing with individual complaints and reviews within the system, which could be reproduced elsewhere.

The legal powers are there for contracting authorities to address poverty and inequality through their supply chains and to reduce and balance competition with social, economic and environmental wellbeing as part of a public value approach. Research shows that this has only been achieved at slow progress, particularly in England, which has failed to incorporate the sustainable development goals into its procurement processes.

Now, with a new government in place, committed to growth, public service and enhanced devolution, there is a chance to put law and policy into practice in a way where people can perceive the difference and which makes the difference to the reality of people's lives. This is the start of something new.

## 4. Building better procurement

“...public sector commissioning and procurement approaches need to be bolder, more risk pragmatic than risk averse – and create the conditions for a more mixed economy of provision, valuing the local third sector as partners in design and delivery.”<sup>69</sup>

### Introduction

Starting afresh, means reviewing the past and planning for the future in how we do and what we do. If we are to build better procurement that meets people’s needs, we need new relationships and route maps for success.

Public services are all our services. Purchasing for public good means that public bodies put their money where their mouths are. Good procurement supports public services which addresses poverty and inequalities while working towards wider economic, environmental and social wellbeing.

There’s the law, there’s policy, there’s social, economic and environmental well-being, and then there is the practical lived experience of individuals and organisations on the ground which all too often tells a different story of institutional discrimination, bullying, hardship, unaccountability and decision-making that cannot be countered.

If people are to regain trust in public institutions, and we are to build an economic recovery together, those of us who too often feel left behind, ignored or stigmatised need to be part of a genuine commitment to change the economy so that it works for us, not against us.

This means changing the way of doing things that have become commonplace over recent years. We need to revitalise, re-energise and connect our public services with local people, address growing wealth and income inequalities, restore people’s trust in UK public institutions and build vibrant local economies to mend our society’s divides.

---

<sup>69</sup> Glasgow CVS, *Response to Scottish Economy and Fair Work Committee Post legislative scrutiny of the Procurement Reform (Scotland) Act 2014*, 2023

Making procurement decisions is never neutral as spending impacts on the wider community. Good procurements that proactively support Good Work measures help to promote inclusive economies and support people's wellbeing, address labour shortages and help to build successful local economies. Poor procurements that drive down cost and people's wages can add to additional costs such as social security and NHS. Low paying employers use the State to subsidise low wages; working environments can all too often be a cause of stress and ill health and lack of investment leads to poorer economies.

Procurement is multi-layered, complex and involves large organisations and smaller ones to a greater or lesser extent. But it does not need to be as complicated as it sometimes appears to be. Nor does procurement need to be designed with only those with large pockets in mind. Too often risk aversity within the system stifles innovation throughout the supply chains and particularly at a community level, preventing community innovation and real partnership working at a time when the contracting authorities need to engage with local communities as never before.

Moving procurement from an executive functioning process to a process to deliver societal goals and sustainable development to deliver public good, needs a radical shift away from the lowest cost which drives communities down to an understanding of the wider public value considerations that need to be taken into account as a public purchaser. This is conscious purchasing that takes account of the policy framework of local places, the needs of local people, the objectives of national governments and the global challenges that we face.

## **Communitising procurement**

Yet, it takes two to tango. There are responsibilities on both sides. Providers – both large and small – need to be able to offer and innovate services that take these wider considerations into account.

These are not new issues for large commercial providers who have operated in the context of the debate about responsible business for many years, but who are open to criticism that their organisations are performative.

They are bread and butter issues for charities and other mission-led organisations where public benefit guides their activities but their position as a service provider may have compromised their original missions.



We need to increasingly communitise our public procurement processes so that:

- they are more closely aligned with the needs of our local communities across the extent of our country
- make the most of our local assets including our people – their hopes and aspirations, their skills and talents
- respond to the broader economic, environmental and social challenges that we face as outlined in the sustainable development goals.

At the same time, we need to strengthen our public services, and develop our community and public service capacity to respond to the broader challenges of the times. Giving local institutions and places greater control in whether they insource or outsource helps to return power to local people, but so does requiring that our public services promote good work and decent working conditions to prevent state subsidies to poor paying organisations.

### **Collaborative governance**

Procurement is often thought of in terms of contractors and suppliers. Yet good procurement which involves local communities requires new forms of collaborative governance and innovation that bring together government and public bodies with both responsible business and the not for profit sector to promote maximum public value.

Giving local agents greater involvement and control over how local purchasing power is exercised should be an essential part of the nation's economic recovery aimed at building stronger, more resilient, more equal economies. This involves government, communities and business working differently together to shape the markets to promote inclusive growth and the everyday economy, in partnership and mission driven to deliver outcomes that make a difference to people on the ground. We need our communities to engage, consent and participate in public services in new and positive ways and for commercial organisations to work in innovative ways to maximise public good while enhancing their own corporate reputation through demonstrating responsible business practice.

Collaborative relationships focus on problem-solving and are open, inclusive and voluntary. They include a range of stakeholders and may involve private and public resources to tackle a range of issues from neighbourhood to international level. They may support public innovation through crafting new solutions to existing practices or to meet unfulfilled demands. Innovation defines problems, generates ideas, selects ideas, implements new solutions and helps to diffuse new ideas and practices. Collaborative governance is one way of promoting public innovation.

## Road map to success

Our simple route map to success maps out how good priced, good quality services can be developed to deliver good outcomes that address wider economic, environmental and social issues taking us through the main procurement process. We use it to make sense of a process which is often described in technical terms, where service outcomes are all too often the afterthought rather than the end goal.

Table 3 reproduced below highlight the key elements of the procurement process.

Table 5 breaks down the element of the procurement process into a range of simple questions, tasks and bullet points that we think could be considered. There could be more but we have tried to keep things simple.

Table 6 demonstrates a simple road map for delivering public value.

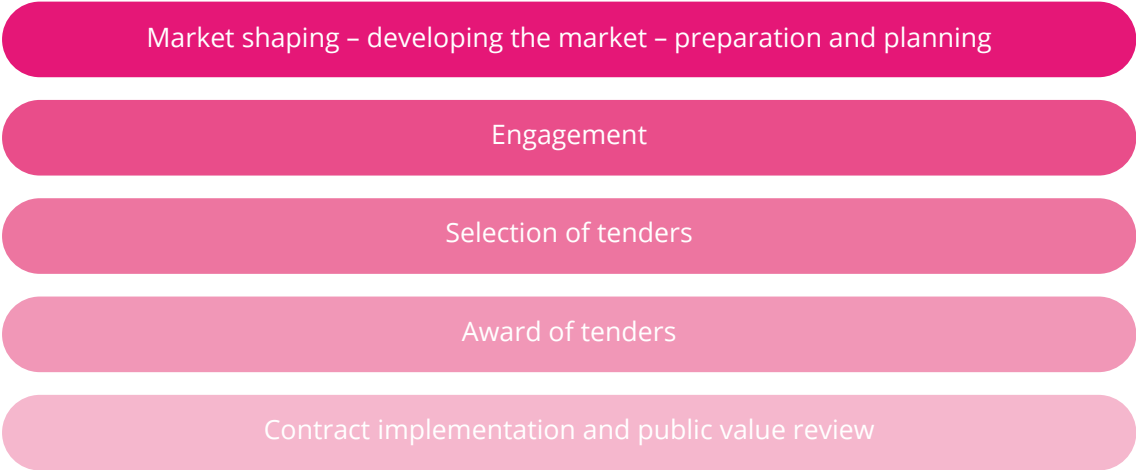
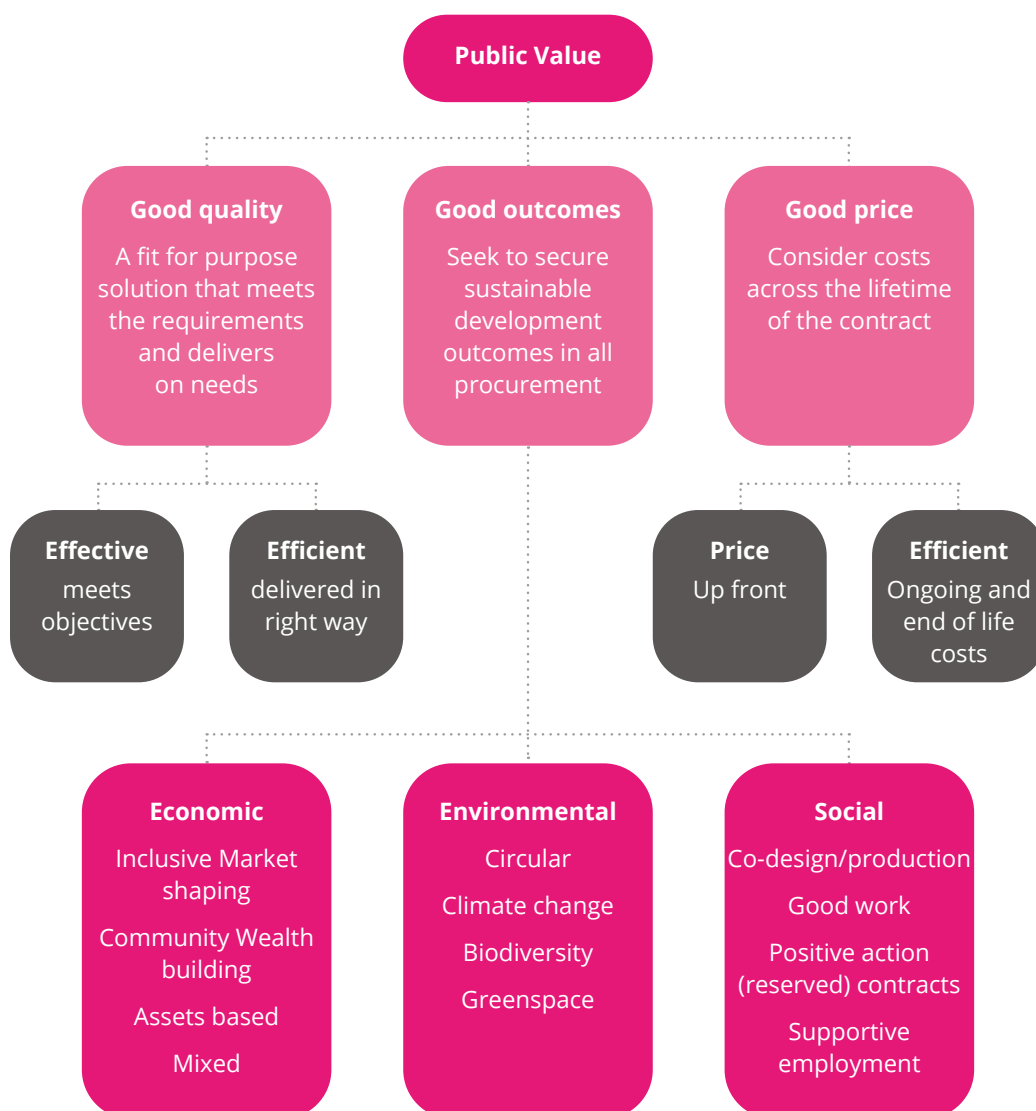


Table 5 – Main stages of the procurement process

Analysing and preparing the market	<ul style="list-style-type: none"> <li>• What is the problem we are trying to address?</li> <li>• What is the state of the current public services market?</li> <li>• What are the overarching policies that govern our commissioning?</li> <li>• What are the key economic, social and environmental issues?</li> <li>• How can we influence the market?</li> <li>• What is the service we think we should be offering?</li> <li>• Is this a service we can offer better in-house?</li> <li>• Is there a procurement policy in place?</li> </ul>
Engaging communities	<ul style="list-style-type: none"> <li>• Carry out market consultation</li> <li>• Is this the service that we need?</li> <li>• Do we or have we drawn upon the lived experience of users?</li> <li>• Is there a ready market of suppliers?</li> <li>• Is there a possibility that reserved contracts could create a better market in the long term?</li> <li>• Should we consider an innovation partnership as part of a market shaping strategy?</li> </ul>
Transparency and accountability	<ul style="list-style-type: none"> <li>• Draft specifications</li> <li>• Consider the broader economic, environmental contract requirements – these must always be relevant and proportionate</li> <li>• Consider whole life costs of contract</li> <li>• Make sure advert includes all information</li> <li>• Advertise opportunities on domestic websites</li> <li>• Have a clear and consistent clarification process</li> </ul>
Selection and award of tenders	<ul style="list-style-type: none"> <li>• Selection criteria</li> <li>• Award criteria</li> <li>• Evaluation</li> <li>• Notification</li> <li>• Complaints</li> </ul>
Compliance and review	<ul style="list-style-type: none"> <li>• Implementation</li> <li>• KPI and monitoring performance</li> <li>• Developing service improvement plans</li> <li>• Variations</li> <li>• Closure</li> <li>• Public value review</li> </ul>

**Table 6 – Public value route map**



**Developing a systematic approach**

However small the public procurement, it is an integral part of public services. It should be considered as part of a broader programme of delivering public good that provides maximum public value. Developing a systematic and approach to public good procurement involves four key elements:

- maximizing public benefit through generating public value
- an effective framework in which procurement can fit
- a clear identification of public need
- a clear focus on public value outcomes.

Thinking big should be an integral part of local delivery. But, so too, should be thinking of the details that impacts on peoples’ lives at an individual and group level. Think smaller, thinking local is also thinking smart.

## Public value

Public value as a term was originally associated with the New Public Services Management as originated by scholars from Harvard University in 1995. The narrative was taken up by the UK Government and other public institutions such as the BBC and the Arts Council to assess the success or failure of public sector organisations. It was taken up again as a focus for measuring public productivity in 2017 when the UK government commissioned Sir Michael Barber to review public service productivity. He drew upon the original academic work of Mark Moore to develop a public services framework to assess public spending outcomes and public sector productivity. He posed over 150 questions for Departments to answer. In 2019 a simpler Public Value framework was incorporated into UK Single Departmental Planning which now poses thirty five questions. While public value was originally adopted by New Public Services Management, it has more recently been resurrected by economists and others who have argued persuasively for a rethink of the concept of public value, rejecting the market failure framing under which it was originally developed.

Rather than seeing public value as something that occurs when the public sector corrects market failures or successfully mediates the trade-off between democracy and efficiency, public value creation should involve the public sector setting a direction and public purpose for private and public actors to collaborate and innovate to solve societal problems.<sup>70</sup>

This approach is an inherently positive role which is a market shaping and market-creating role, rather than a market-fixing role.

So public service organisations should take a pro-active role in developing new approaches to the economy which include progressive procurement and commissioning.

As we see it, public services are very different from private services and the notion of public value is important in making that distinction. Reframing public value to be market shaping while delivering outcome-based public services which maximise the wider economic, environmental and social impact of services could help to create better public value and services that are closer and nearer to local communities.

---

<sup>70</sup> Mazzucato, M. and Ryan-Collins, J. *'Putting value creation back into 'public value': From market fixing to market shaping.* UCL Institute for Innovation and Public Purpose, Working Paper Series, 2019

## Thinking Big

### Sustainable Development Goals



The UN Sustainable Development Goals are a public value charter for all organisations. They are the framework in which good procurement should sit. They are based on the principle that no-one should be left behind and all of the 17 goals are equal. They aim to stimulate action up to 2030 in areas of critical importance for humanity and the planet. These are big issues to think about.

The UN believes that there must be promotion of sustainable, inclusive and equitable economic growth, creating greater opportunities for all, reducing inequalities, raising basic standards of living, fostering equitable social development and inclusion, and promoting integrated and sustainable management of natural resources and ecosystems. The seventeen goals agreed in 2015 address some of the widest challenges of our time. The goals are universal and apply to all countries. The goals reflect human rights standards, with 92 per cent of the associated 169 targets linked to international human rights instruments.

The UN is conscious that the implementation and success of the goals relies on the world's countries' own sustainable development policies, plans and programmes. It is also abundantly clear to them and to many others that a much deeper and more ambitious response is needed to achieve the 2030 goals. It has been estimated that between US\$3trn and US\$5trn will be needed every year to meet the goals by 2030.

Using the sustainable development goals as a wider framework within the public procurement process helps to identify broader community needs within which specific public services are set, and should help to inform and frame these services provided by public bodies. Developing an approach to using the SDGs in planning performance does not mean applying them all, but picking those most relevant to the organisation and working towards and developing appropriate targets just as the Scottish and Welsh Governments have done.

### **Thinking smaller and the importance of place**

Identifying community needs requires thinking that is public; thinking about people, places and the problems so that nobody is left behind or left out, with organisations and individuals working together to identify problems and solutions at a local level in the context of local government policies and national policy.

Resolving areas of common needs requires a common approach to the public good not only from public services, but also from local public services working in partnership with the commercial and not for profit sectors and civic society.

This requires new forms of collaborative governance which tackles institutional discrimination within our governing and institutional structures which provides for the voice of lived experience and provides an asset based approach.

Local public services working in partnership with the commercial, not for profit sectors and civic society can identify specific community needs identifying people, places and problems that require local solutions and collaborative working.

These needs should help to frame the services provided by public bodies and organisations such as housing associations that provide public services.

Working on these requires addressing the detail that constructs individual and daily lives, and thinking that is smaller, less ambitious for scale and more ambitious to make a difference to the lives of real people. Proper engagement could lead to local government piloting and scaling new models. What sometimes appear to be on the margins could be the building blocks for the future.

## Key stages of procurement

### Analysing and preparing the market

- What is the problem we are trying to address?
- What is the state of the current public services market?
- What are the overarching policies that govern our commissioning?
- What are the key economic, social and environmental issues?
- How can we influence the market?
- What is the service we think we should be offering?
- Is this a service we can offer better in-house?
- Is there a procurement policy in place?

### A market shaping approach

Poor procurement helps to reinforce inequalities and contradict wider placed-based strategies. Organisations that seek to drive cost down to support residents do them a disservice by reinforcing in-work poverty and low pay. This needs to be replaced by strategic and progressive procurement which amongst other things seeks to:

- link procurement to the overall strategic objectives of the contracting authority
- establish clear objectives for reducing existing socio-economic inequalities and addressing institutional discrimination
- promote good work and strengthens employees' rights through the development of good works standards on all contracts
- build inclusive economies and be market shaping through promoting diverse supply chains which address bias and current inequities within labour markets and the wider economy
- deliver wider social, environmental and economic value linked to national and local policies
- re-invest public money to transform the local economy in ways that contribute to community wealth building
- adopt a mission-based approach with aims established and outcomes to be achieved in areas where innovation is required
- encourage community participation and engagement within the process
- have clearly articulated procurement policies in place
- encourage larger contractors within the commercial sector to use their supply chains to promote good work and diversity within supply chains.



## Understanding the market

Obtaining a deep knowledge of the market is an important part of becoming a market shaping authority. Market analysis should be carried out which may include desk research, benchmarking and other methods as simply carrying out site visits to particular organisations. Market analysis can identify particular issues or risks for the contracting authority which require a relevant and proportionate approach. For example, areas of spend may encompass traditionally low paying and insecure work with high levels of in-work poverty with markets dominated by large commercial sector operators or fragmented numbers of smaller providers as in social care, cleaning and grounds maintenance, or there may be industries which are racially and occupationally segregated where maintaining the status quo will result in perpetuating inequality and poverty.

Market influencing and innovation strategies could be used to help shake up predominant business models and behaviours of the market. Making good work and Real Living Wage a condition of contract or having a clear public value objective to address occupational segregation are important steps in delivering an inclusive economy.

Consideration could also be given to reframing contracts for renewal or services going back in house to address labour shortages or issues of occupational segregation. As an example, reframing traditional horticultural services to reflect resident concerns into 'clean and green' services could help to achieve better outcomes for residents, while helping to break down the occupational segregation that exists within horticulture through building in a requirement for a cleaning element of the service in which typically more women are employed.

## Diversifying the market

An awful lot of activity has focused on supply side measures for people who are disadvantaged by the labour market including training and CV presentation. Yet all too often the pathway of many is to move into low paid, insecure, "bad employment" which can intensify previous reasons why people are absent from the labour market for health and wellbeing reasons, for example.

Providing public support to "good" employment organisations could help overcome in-work issues that arise for people who have been previously inactive in the labour market, acting to prevent churn in the labour market. Commissioners can make use of existing laws to influence the market through promoting the social economy and innovation through Regulation 20 of the Public Contract Regulations 2015 and Regulation 21 of the Public Contract Regulations (Scotland) 2015.

Under the regulation there are two ways in which contracting authorities can support disabled people and employment and community enterprises and tackle disadvantage.

Contracting authorities can reserve the right to participate in public procurement procedures to supported employment organisations whose main aim is the “social and professional integration” of disabled or disadvantaged persons provided that at least 30% of their employees are disabled or disadvantaged workers.

Procurers can also make provision for such contracts to be performed in the context of “supported” employment programmes provided that at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.

Combining this element of the law with good work and Real Living Wage conditions would help to tackle the double disadvantage that faces people, supporting them into good work conditions rather than bad work conditions while helping to tackle inequality, labour market shortages and economic inactivity.

### **Making use of the law to diversify markets**

Research carried out by Aspire indicates that there is enormous potential to make greater use of the powers which have narrowly been constructed by those who currently use them, but which have real relevance to today’s labour markets.

Making effective use of the law could help build up a mixed economy and tackle disadvantage caused by the labour market through:

- using it as an adjunct to existing in-house provision to support people disadvantaged by the labour market into sustainable and good employment – e.g. carving out a small contract where people could be transitioned into the main workforce or could remain with continued support for as long as they chose;
- addressing the issue of disability discrimination in terms of both access to employment and the terms of employment experienced by disabled people;
- taking positive action to reserve contracts for businesses led by black and minoritised communities, disabled people, women and others disadvantaged by existing labour market institutions
- reserving contracts for people with lived experience, for example, to support the co-production of services;
- promoting “Good works” suppliers as part of an economic development strategy designed to promote inclusive growth;
- incorporating their use as in larger contracts e.g. local authority waste contracts to establish neighbourhood reuse centres as part of the circular economy.

Typical areas where contracts could be reserved include provision of care and support services to people in need, training and consultancy, marketing, IT, facilities management, open spaces work, employment and training programmes, manufacturing, waste removal, furniture reuse and transport services.<sup>71</sup>

In Wales, public procurement guidance suggests that public services could work with their main contractors to collaborate with supported businesses to deliver a specified element of the contract. This requires contracting authorities to have knowledge of the market but could be linked into community benefits so that commercial partners would have clear KPI for delivery. Under one option the contractors would be left to explore the market for such businesses. A further option suggested is for the contracting authority to 'nominate' specific businesses with whom to work. Championing smaller community businesses in this way could help to bring public authorities closer to the communities that they serve.<sup>72</sup>

Within the UK, Scotland has made the most use of this provision. The Scottish Government has a dynamic purchasing system (DPS) for requirements reserved for supported businesses. This replaced a previous framework agreement for supported business. This ensures that supported employers can enter the list and supply the services. There is a two part test for organisations who wish to go on to the DPS – the first relates to their mission evidenced by for example their constitution, and the second links to providing evidence that their workforce consists of at least 30% disabled or disadvantaged. Disadvantage is not defined purposely but a list of potential disadvantages is supplied:

---

<sup>71</sup> The city of Gothenburg has been one of the leaders in the field in using reserved procurement to support people who are disadvantaged in the labour market since 2017. It started off with low fruit which included the providing of training to people in the labour market. A Procurement Officer commented to researchers that: "It was difficult to find opportunities because we are a very big municipality, and therefore we have very large contracts while WISE {work integration social enterprises are small...yet we have tried to find ways to split up larger bids in smaller parts, and in this way reserved a larger procurement with WISE". Crucial to building the market was to ensure dialogue at an early stage: "It's always a bit scary, procurers think, who have been long in the game, to talk too much about procurement before it is announced. They are afraid to say things they are perhaps not allowed to say. But you can keep a dialog [sic] very open, and if you invite all to a dialog [sic], even commercial actors, if they are interested. It is rather obvious that it helps in our work, and it is nothing you are not allowed to do".

<sup>72</sup> Welsh Government, *Welsh procurement policy note WPPN 02/21: Reserving contracts with businesses with a public service mission*, November 2021

<b>Disadvantaged Criteria</b> – Please also list all the criteria you have used to make this determination of your employees. Examples of disadvantage may include, but not be limited to	<b>Number of Employees</b>
<b>Criteria 1</b> – Barriers which impact on an individual’s ability to find and retain work, e.g., caring responsibilities, care leavers, ex-offenders	
<b>Criteria 2</b> – Previously long term unemployed i.e., > 12 months unemployment within the previous 2 year period	
<b>Criteria 3</b> – English is their second language	
<b>Criteria 4</b> – Employees who do not have any recognised educational or vocational qualifications	
<b>Criteria 5</b> – Homeless employees	
<b>Criteria 6</b> – Employees who are resident in the Scottish Index of Multiple Deprivation 5% most deprived areas	
<b>Criteria 7</b> – Additional Other Criteria	

Source: Scottish Government, Scottish Procurement Supplier Guide Requirements Reserved for Supported Businesses Dynamic Purchasing System (DPS) Ref: SP-23-011, 2023

In Scotland, the health service has created a framework agreement for the supply of office and patient furniture consisting of three lots: Lot 1 Office Furniture, Lot 2 Patient Furniture and Lot 3 Reserved for Supported Businesses only.<sup>73</sup> This provides an opportunity for supported business already in the market to bid for government business and mitigates any risk that there will not be enough suppliers. However, because frameworks are not open to new entrants this restricts new entrants into the market. The benefit of this approach is that it minimises risk for the health service if it is unable to find providers in the third lot. There is no reason such an approach could not be applied more broadly across the UK or outside of the framework context across a wider range of activities to generate new positive action providers within the supported business category.

In Scotland public authorities are required to report annually on their support for supported business. There are no such reporting provisions in the rest of the UK, and a provision that was meant to reduce the effects of competition and meet people’s needs has been left underutilized by commissioning authorities.

<sup>73</sup> Frameworks normally last for only up to four years but during that time they are closed to prospective suppliers. Concerns are raised about the transparency of contracts awarded under the contracts and more generally.

Contracting bodies sometimes point to the lack of supply of supported providers but this seems to miss the point that authorities can help to shape the market to generate demand. It is worth noting that before the services were outsourced there were no outsourced providers and that the public services industry has grown exponentially over recent years. There is no reason why good community business cannot grow with the right form of social investment in terms of resources, capital and bold thinking. Why could there not be a national network of “Goodwork” companies and cooperatives set up to tackle institutional disadvantage and help build more inclusive economies within local areas, if there was social business available. This is the point of market shaping.

## Engaging communities

### Engaging communities

- Carry out market consultation
- Is this the service that we need?
- Do we or have we drawn upon the lived experience of users?
- Is there a ready market of suppliers?
- Is there a possibility that reserved contracts could create a better market in the long term?
- Should we consider an innovation partnership as part of a market shaping strategy?

### Pre-market engagement

Pre-market engagement effectively targeted can open up the procurement process to new ideas drawn from local stakeholders and help to develop a partnership approach to procurement in which ideas are shared and solutions developed jointly. It can help identify innovative solutions and new products or services which the contracting authority may not have been aware of or even thought of.

The Welsh Government proposes that where it is required to include supported employment in larger contracts, it is recommended that this requirement is explained in the premarket engagement phase to allow prospective bidders the time to consider the needs of the body and to research the market to strengthen their bid. This interaction between larger commercial organisations and supported organisations would help to build and support the market as would new forms of patient finance and a new social contract between people and places.<sup>74</sup>

<sup>74</sup> Welsh Government, Welsh procurement policy note WPPN 02/21 op.cit.

In Northern Ireland there is a brokerage system composed of third sector organisations that are able to work with suppliers to help them meet their social value requirements.

Engaging the community organisations with existing stakeholders and contractors could bring a range of ideas about how services could be refreshed or reframed to address labour shortages or issues of occupational segregation, as well as to inform the process of whether to go out to market or to insource.

Stakeholder mapping can help to identify all the people that could help to inform the commissioning of services, whether they are currently users or suppliers. There is no reason why the initiative needs to come from the public authority, trade unions, mission-led organisations or commercial organisations seeking to build their public value programmes could individually or collectively take a lead in carrying out such activity.

In Scotland the contracting authority is required beforehand to consider how they can facilitate the involvement of small and medium enterprises, third sector bodes and supported employment under its sustainable procurement duty.

In England and Wales contracting authorities must consider whether to consult about how what is proposed to be procured might improve the economic, social and environmental wellbeing of the relevant area under Section 1 (7) Public Services (Social Value) Act. Whether or not considerations are made, it appears to be rare that consultations are carried out with local communities under this provision. Yet if there is a large contract within the pipeline which could be divided into a range of different contracts (lots) to provide for a mixed economy, to mitigate risk and to generate demand then this seems a sensible and proportionate approach to take if authorities wish to engage their local communities in the design and delivery of services.

### **Incorporating lived-experience**

Drawing upon the lived experience of users during the public procurement process in the UK is increasingly viewed as essential to ensure that the procured goods and services meet the actual needs and preferences of the end users. Some housing associations have used residents extensively to help shape their future procurements. For example, by conducting stakeholder workshops and resident surveys designed to test what residents like and dislike about current services and what they would like for the future; training residents in procurement and using them as part of the evaluation team; and setting ongoing resident inspections and involvement in the management of the contract.

## Using lots to promote equality

Under the law contracting authorities are bound to consider whether the contract can be divided into lots and state their reasons for not contracting out in lots. This should be included in their procurement information but in our experience is rarely referred to. We can do very little without simple complaints procedures to rectify such errors which may appear to be minor but could be indicative of a wider malaise in how the market is approached by contracting authorities.

The Equalities and Human Rights Commission recommends introducing small lots to encourage smaller organisations to submit tenders; identifying opportunities where smaller organisations already working with particular communities can provide specialist support to larger contractors; and encouraging and supporting small suppliers to join or form consortia so they can bid for larger contracts, meet pre-qualifications requirements, and become more competitive by reducing their overheads.<sup>75</sup>

Our experience is that pre-market engagement normally takes place after various decisions about the format of contracts have already been made including whether or not the contract will be divided into lots.<sup>76</sup>

## Transparency and accountability

### Transparency and accountability

- Draft specifications
- Consider the broader economic, environmental contract requirements – these must always be relevant and proportionate
- Consider whole life costs of contract
- Make sure OJEU advert includes all information
- Advertise opportunities of £25,000 on domestic websites
- Have a clear and consistent clarification process

<sup>75</sup> Equalities and Human Rights Commission, *Mainstreaming equality considerations into procurement, a guide for public authorities in England*, February 2019

<sup>76</sup> For instance, when one authority chose to engage with the market over a large maintenance contract, it was already envisaged that the contract would not be divided into lots. While Aspire indicated its interest and made a presentation about reserved employment and social value, it was clear that the decision had already been made about the nature of the contract, as well as the use of Social Value indicators where the authority had chosen to use TOMs.



A business case for the procurement should normally be prepared outlining the rationale and broader outcomes to be achieved. These should be linked to wider policy objectives which take account of economic, environmental and social factors in contract performance conditions and contract award criteria and clearly demonstrated in the tender documentation. All notices published should contain relevant information including broader social, environmental and economic conditions to ensure that there is transparency.

Specific conditions can be established to deal with particular issues such as modern day slavery. For example, conditions can be made which require suppliers to provide the contracting authority with information to demonstrate their approach to modern slavery and human trafficking, details of their ongoing supply chain monitoring and action plans; and conditions could be introduced to enable unannounced inspections of supplier premises with the right to speak directly to employees, as well as whistle-blowing provisions.

### **Real Living Wage and Good Work Conditions**

If bad work is to be eradicated within much of our outsourced public services, the adoption of Real Living Wage and Good Work criteria need to be introduced as contract conditions in the UK, wherever there are low pay and poor working conditions apparent in the sector.

We prefer this approach rather than an approach in which these factors are considered as part of public or social value at a later stage. It seems to us that the public sector should not be supporting low pay or poor working conditions in its contract specification by omission of consideration of such matters at this stage and where successful tenders may be based on the undercutting of wages within the local economy. This encourages the race to the bottom which is counterproductive to local economies. In drawing up specifications we propose a default position of posing the question “is there a reason why the Real Living Wage and Good Work criteria should not be introduced in industries which have reputations for poor pay and working conditions?” Similarly default positions could be established for trade union membership as in Wales.<sup>77</sup>

The Scottish Government suggests that if any of the following questions can be answered then it would be proportionate to introduce Fair Wages as a requirement of contract or as part of the evaluation of the award:

- There is a risk that workers working on the contract might be subject to exploitative practices. Examples are given as follows:
- There is any history of discriminatory, unequal and low pay in that sector that is impacting on the quality of the contract to be delivered

---

<sup>77</sup> See discussion on Wales below



- Contractors are seeking to cut their costs through driving down staff terms and conditions, including pay
- There has been inappropriate use of zero-hours contracts
- There has been Fire and rehire practice for the purpose of diminishing terms and conditions
- There is unnecessary distancing of the employer-worker relationship, for example, by inappropriate use of an “umbrella company”
- There is evidence through pay and hours arrangements that deny workers stability of employment or hours of work, for example, by failing to pay wages for travel time within working time
- There is employer opposition to trade union recognition and access
- There is evidence that working conditions are making recruitment and retention problematic.<sup>78</sup>

### Clarifications

The clarification process in public contracting enables bidders to raise questions in a formal process and to highlight any problems or issues arising from the contract.

Using the clarification process to highlight shortcomings or issues within the procurement procedure is important as all questions raised are shared amongst bidders.<sup>79</sup> Answers to questions raised form part of the contract. This can and does lead to changes within the contract specifications that then form part of the contract.

A typical question that Aspire often asks is whether or not the contract is covered by the Real Living Wage. There have been occasions where information has not been supplied with the tender documentation, but where the answer given is positive. Such an omission is quite significant given its impact on the pricing of a contract particularly in low paying industries.<sup>80</sup>

### Calculating and communicating value

Contracting authorities cannot set turnover requirements that are more than two times the contract value except where there is a specific justification. You would think that calculating and communicating value of a contract would be relatively easy.

---

<sup>78</sup> Scottish Government, *Procurement Reform (Scotland) Act 2014: statutory guidance*, May 2022

<sup>79</sup> Unless the bidder requests that the matter be kept confidential and there is agreement on behalf of the contracting authority that this should be the case.

<sup>80</sup> See Appendix 2 for some thoughts on the Real Living Wage in procurement

As a result of leaving the EU and signing up to the GPA the calculation of value for the threshold now includes VAT. This has led to confusion as the actual prices submitted for tenders traditionally have been normally exclusive of VAT. Similarly, those who are required to advertise on Contracts Finder now must calculate their value including VAT.<sup>81</sup>

Our experience has been that this had led to mistakes by commissioning authorities who have failed to apply the right procedures to contracts. In one case, for example, a commissioning authority had forgotten or did not know that

VAT should be included in the calculation and failed to provide the necessary feedback in an unsuccessful bid where Aspire considered that the law had been broken as it was above the threshold.<sup>82</sup> Other problems that we have encountered including contracting authorities providing an annual amount in the notice, rather than the amount over the extent of the contract plus any possible extensions. Getting value right would appear to be basic.

### **Below threshold contracts**

It is calculated that as much as eighty per cent of procurement spend is below the public procurement threshold.<sup>83</sup> Given that these lower value contracts are of more importance to smaller organisations issues of fair practice impact on them more and these contracts are of particular importance in diversifying public services market.

Prior to Brexit, the general principles of transparency, equal treatment, open competition, and sound procedural management applied to below threshold procurement. Following the UK's departure from the EU this is no longer the case and in England, Wales and Northern Ireland the procurement process is largely unregulated.

---

<sup>81</sup> Under procurement regulations in England and Northern Ireland all opportunities of £12,000 and over (for central government) and £30,000 for other public authorities should be published on Contract Finder if the contracting authorities chooses to advertise these. In Wales all opportunities of £30,000 or more must be advertised on Sell 2 Wales, and in Scotland all opportunities of £50,00 or more on Public Services Scotland.

<sup>82</sup> The authority initially stated that it was not above the threshold. The case was taken to the Public Procurement Review Unit and initially accepted but the contracting authority claimed "exclusive cognisance". We did, however, receive an apology later from the commissioning authority that accepted its mistake.

<sup>83</sup> Sigma, *Below-Threshold Contracts*, September 2016

While some contracting authorities have published procurement rules governing their procedures with different rules applying to the value of the contract on offer, the below the threshold system across the UK is lacking in transparency. According to research carried out by the OECD most member states have regulation in place that either mirrors above threshold legislation or simplifies it. In the UK, only Scotland has regulation for contracts over £50,000 that follow the same transparency procedures as for above threshold contracts. The failure to provide regulation for below-threshold contracts arguably suggests a bias against small business who are more likely to rely on them than larger organisations. While a change in law would be welcome, there is nothing to stop contracting authorities from setting up their own rules and regulations for spends of these natures which provide for equal treatment and transparency.

## Selection and award of tenders

### Selection and award of tenders

- Selection criteria
- Award criteria
- Evaluation
- Notification
- Complaints

### Reserving contracts for below the threshold contracts

Following its exit from Europe, the Cabinet office issued guidance PPN 11/20 enabling public sector bodies in England to reserve below-threshold contracts by location in specific geographic areas such as UK only, London borough based or county regions or reserving contracts for Voluntary, Community, and Social Enterprises (VCSEs).<sup>84</sup> The Welsh Government issued similar procurement advice for its contracting authorities pointing out, however, that Section 17 of the Local Government Act prohibited local authorities from using the provision in relation to location.<sup>85</sup>

Research carried out by Aspire suggests that this has been more widely used than positive action under Regulation 20/21 of the relevant regulations and has been used by local authorities who took a wider view of the context of Section 17 within the legal framework. Our concern however, is that if Fair Working conditions and Real Living Wage are not written into the contract conditions that this could become another part of the race to the bottom with local firms or charities undercutting on price to win business, thus creating negative public value rather than positive public value. That said, encouraging greater use of the provision is an important part of building up more diverse markets within local supply chains.

<sup>84</sup> Cabinet Office, *Procurement Policy Note – Reserving Below Threshold Procurements Action Note PPN 11/20*, December 2020

<sup>85</sup> Welsh Government, *WPPN 05/21*op.cit.

## Distinguishing the separate stages of procurement

It is important that the tender documentation clearly distinguishes between exclusion grounds, selection criteria and award criteria. This can easily be done by asking questions such as: Who must be excluded from the procedure? Who is capable of carrying out the works? Whose proposal will deliver the expected results in the best possible way?

## Selection criteria

We have noted that it is quite permissible for contracting authorities to lay down conditions related to the way the contract is carried out, including economic, environmental or social considerations. In Scotland, for example, authorities are provided with a model question for Real Living Wages.

**Question:** Bidders are asked to confirm that they will pay workers that are involved in the delivery of the [framework agreement / contract, and/or any subsequent call off contract] (including any agency or sub-contracting workers) directly involved in the delivery of the [framework agreement / contract, and/or any subsequent call off contract]), at least the real Living Wage.

**Answer:** Yes/No

Please note that bidders who fail to answer “Yes” to this question will not have their tender considered further or proceed to the Price/Quality ratio calculation.

This has the effect of excluding bidders who do not comply early in the process saving administrative time in the procurement process and flushing out “bad employers” at an earlier stage.

After publication of the procurement documents, only minor changes to the main selection criteria are acceptable, such as changes in the wording or the address to which applications should be submitted.

## Award criteria

Economic, environmental and social requirements can be specified as award criteria provided that they relate to the contract. The award criteria should not be amended during the procurement procedure. In Scotland Fair Work criteria form part of the award criteria where it is relevant and proportionate.

Community Benefits should be determined on a case-by-case basis, (to ensure they are proportionate), and evaluation of community benefit requirements should include evaluation of the bidder’s proposed approach to meet the requirement.

Contracting authorities must base the award of contract on the most economically advantageous tender. The best price quality ratio is the one most commonly used.

### **Assessing public value in procurement**

In most cases public value/social is assessed as part of the award criteria, but as we have indicated above this does not mean that it cannot be part of the selection criteria or that conditions can be laid down within the contract on a case to case basis where bidders can be judged on a pass/fail basis.

Continuous improvement in measuring public value is an ongoing task. One of the most controversial area is whether monetary or non-monetary means should be used to measure public value.

The Scottish Government rejects a monetary approach for measuring quality for a number of reasons including factors such as social impact is not fixed or easily transferable; impact arises from the interaction between supply and demand, and is specific to the individual, community, and place and impact measurements may create a barrier for business. Success in social value outcomes is measured in terms of outcomes and these outcomes are aligned to the National Performance Framework and the UN Sustainable Development Goals.

A similar approach has been adopted by the UK Government which introduced the Social Value model in 2020 and explicitly linked policy objectives to the sustainable development goals. This must be used by all Central Government Departments, Executive Agencies and Non-Departmental Public Bodies. In contrast, in England the National TOMs measures social value both qualitatively and quantitatively.

Critics of adopting a quantitative approach suggest that it may lead to oversimplification and loss of context leading to short-termism and the cherry picking of that which is measurable over that which is meaningful in terms of longer term public value.

## Notification

There is no regulation for below the threshold contracts in most of the UK. In Scotland, however, the Scottish Government supplies useful template models for letters to be sent out to unsuccessful and successful bidders for tenders below £50,000 and above £50,000.<sup>86</sup> All contracting authorities within the UK that are involved in tenders above the threshold must send out detailed reasons for the decisions to unsuccessful bidders along with the comparative advantages and disadvantages of the winning bid, and the name of the bidder. Sometimes this is not automatically carried out and tenderers should follow up to get this information as it provides useful information about how tenders could be improved for the future and it is normally possible to work out the contract price awarded although this should be published as a Notice, at a later date, though again this may not happen.

## Dealing with complaints

An effective and well-functioning review system is central to the successful operation of public procurement. Its purpose is to deal with any breaches of rules by contracting authorities and to provide the rights of redress for bidders. For the most part the only right of review is through the traditional court based approach which has no fast track approach for small claims or for lower valued contracts.<sup>87</sup> This is not a path open to small mission-based organisations, business or charities who do not have the available resources to buy justice.<sup>88</sup> Nor do the courts provide a quick and simple method for dealing with practical problems.

In Northern Ireland however suppliers have the right to make a complaint to the independent Northern Ireland Ombudsman. The new Provider Selection Regime also provides a complaint and independent review model which is available to all irrespective of the contract value.

Aspire has advocated for access to justice for small business within the procurement process previously calling for a small business tribunal or an independent Ombudsman that could be based on a self-funded model. The current situation arguably contravenes the World Trade Organisation GPA and the European Human Rights Convention.

---

<sup>86</sup> For contracts below £50,000 it makes clear that brief reasons should be given. For contracts over £50,000 public authorities must advise any unsuccessful tenderer of the contract award outcome, the criteria used to award the contract and their scoring against those criteria (these should include any decision that the goods or services do not meet the performance or functional requirements), and must confirm the name of the successful tenderer, and the score of the successful tenderer. If requested, public authorities also have to provide the characteristics and relative advantages of the successful tender, within 30 days of request.

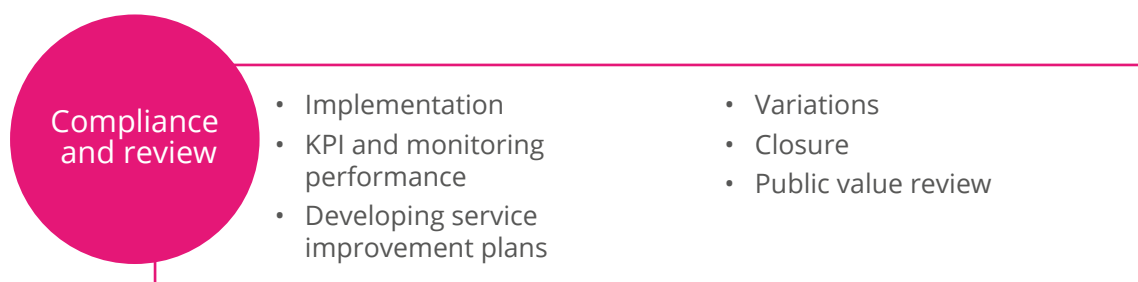
<sup>87</sup> Aspire has limited success in requesting a review of the decision from authorities, although in one case it successfully agreed with the authority to carry out a review and a settlement was amicably reached but to achieve this it had to invoke court proceedings which it could ill afford to do.

<sup>88</sup> The average cost of challenging a case through the courts in the UK is at least £300,000.

There has been little research into the current (lack of) enforcement regime and its effects on companies and community business. While Scotland does provide feedback to unsuccessful bidders, a recent report by the Scottish Parliament Economics and Fair Work Committee indicated that feedback for unsuccessful bidders was felt to be inconsistent. In some contracting authorities there seemed to be insufficient mechanisms to provide feedback, discouraging future bids. On the other hand, some businesses were reluctant to seek feedback or challenge decisions in case it counted against them in future bidding or rounds, or they were simply unaware that they could request further feedback.<sup>89</sup>

If there is to be continuous improvement, the right of effective challenge is crucial and contracting authorities themselves could introduce a time-limited, formal internal review similar to that provided in the Provider Selection Regime. Like other areas of public service, this should not be seen as an additional bureaucratic layer but a mechanism for engaging with suppliers and for continuous improvement within the procurement system as well as helping to remove some of the barriers for small business.

## Compliance and review



Our experience is that of all the areas within the public procurement process this is the area least developed in relation to delivering public value. As a public value provider this can be disillusioning as a mission-orientated approach is fundamental to our approach. When we work with public services we want to see them strengthened and continuous improvement provided to the users and publics that rely on public services.

Our experience also is that there is a lack of culture of working in partnership with external organisations to deliver joint outcomes and that relationships are often based on traditional transactional lines consisting of us and them. Given the history of outsourcing and its overall delivery over recent years, this is hardly surprising.<sup>90</sup> The expectation seems to be that contractors will operate poorly and that the Authority's Contract Manager's job is to chase up complaints rather than to receive compliments.

<sup>89</sup> Scottish Parliament Economy and Fair Work Committee, op.cit

<sup>90</sup> We remember with surprise how one contracting authority showered praise on us for simply turning up!

This can lead to a downward spiral where problems are not seen as shared or issues addressed in partnership and good works go unmentioned.

If public value is to be the golden thread that runs throughout the commissioning and procurement process then contract compliance and review is critical. This requires leadership from the top and clear criteria to be measured throughout the contract period.

Pressures on operational staff within the contracting authority can create a tension with public value, if they are judged on their ability to deliver basic services rather than value added services particularly in the context of cut backs in public services as part of the low as you can go ethos.

Open and trusted communications are vital to good contract management throughout the duration of the contract and towards the end of the contract. Broader requirements must be measured and monitored if they are not to be meaningless. Public value should be considered as an integral part of the quality assessment process.

There should be adequate feedback channels and review meetings – including relevant community stakeholders which will help to ensure a service that is responsive and builds up the information base within the contracting authority. Learning should be taken from past success into future commissioning and procurement. This is an ongoing journey on which there is a need to continue, collaborate and continuously improve as the industry slowly changes to more diversified markets.



## 5. Working together for change

“Thinking needs to be big, and thinking needs to be small. And above all we need to be ambitious for practical achievement in tackling the global and everyday issues of our times.”

### Introduction

A new Government at Westminster offers the possibility of a step change in traditional procurement to procurement for public good that tackles inequality and economic insecurity within our local communities.

Public good procurement contributes to the process of rebalancing our economy: away from regional inequality; tackling disadvantage and providing fair pay and decent work for people across the UK.

Public good procurement can help to make a practical difference to the lives of people and deliver more responsive and localised services, designed and delivered with and for our diverse communities, whether delivered in-house or in partnership with external organisations. It should incorporate the lived experience of those who have been left behind.

While Government can state the mission, we all can play our part.

We need to maximise the billions spent by public bodies to generate maximum public value. Working in new and exciting ways and in partnership is fundamental to this approach, as well as working to shared goals for change. Public good procurement involves public bodies, the community and contractors working together to deliver value for money services while addressing structural inequalities and working towards wider economic, environmental and social wellbeing. We live in times of change. All of us can work to strengthen the public services that we cherish as co-designers, users, contractors, suppliers and collaborators.

We do not need to wait for new laws as a fast way to secure quick wins and public service improvement is to identify what works, and adapt and change to local contexts. The delivery of public good procurement rests on practical outcomes achieved through practical action. The fundamental change that is required is in the practice of procurement rather than the legal framework. This is not a matter for governments alone.

## Reframing the Public Service Industry

While its corporate reputation has taken a battering, the growth of the PSI has gone on unabated as inequality and poverty have increased. Dominated by large commercial business, lawyers and professional consultants, using language that is largely technical and adopting an overtly legalistic approach. risk aversity and lack of innovation remains the dominant culture intensified by the years of austerity at all levels of the procurement business. Mission-led business and small business effectively have to accept the system or opt out, as they have no ability to challenge procedures or processes. This acts as a barrier to their participation. Those years need to be left behind.

A Public Service Industry needs to deliver the public value that the Government expects and the public need and demand. It needs to put public service at the heart of what it does.

The commercial sector understands the importance of corporate reputation. is often praised for its ability to innovate and respond to new challenges. If we are to build a Public Services Industry of which we can be proud, it needs to use such qualities to develop public value programmes that are meaningful. long lasting and that connect with local communities, while signing up to the inclusive economy through reinforcing its commitment to fair and good work for people in the community. Tier 1 organisations working directly with public bodies need to develop solid commercial relationships with civil partners. The rigours that are brought to commercial performance must be reproduced in developing public value programmes of work.

Many of us working within the community sector feel battered and bruised by our experiences of recent years. Yet if we are to serve our missions, we should not ignore the opportunities that public good procurement offers to build innovative services that address poverty and inequality and developing longer term partnerships within the public and commercial sector working to shared goals and outcomes. We need to stop being responsive and be more proactive about developing joint solutions. And we need to make our voice heard in the debate.

Sharing learning and proposing changes is part of the process of change in reframing a public services industry that provides value to the public.

In the pages that follow we summarise some local examples of good practice and make summary recommendations for change.

## Shared learning

All over the UK there are examples of innovative practice from which more can be developed.

In Scotland, Wales and Northern Ireland significant achievements have been made by Governments in developing a sustainable framework in which maximum public value can be achieved through clearly linking policy to sustainable development and by incorporating decent work and living wages into government contracts. Now the focus must be on practical action that makes a difference.

In England, initiatives which focus on economic development and good work and fair wages have come largely from the bottom up with the development of community wealth building approaches, local charters and standards for good works and sectoral initiatives.

### Focus 1 – Community wealth building

In all parts of the UK, local authorities and other anchor institutions are developing community wealth building approaches which support progressive procurement. The Preston Model see the local authority acting as place leader with other key anchor organisations such as education, housing, police and health authorities encouraging organisations amongst other things to use their procurement powers so that more local wealth is retained in the local areas and to support progressive procurement.

One of the key points in community wealth building is the importance of opening up supply chains to local people, giving them a stake and ownership in the economy which has hitherto been denied, a share of the procurement wealth of an industry that has left the people it was supposed to serve behind. This is where the market shaping role of local anchor institutions is vital and where practical initiatives such as carving larger procurements into lots make all the difference in delivering new supply chains committed to public service and standards. But to avoid a race to the bottom, contracting authorities needs to ensure that Real Living Wages and Good Work conditions are built into tender requirements.

Within the UK a number of local authorities are adopting policies and practices in relation to community wealth building including Wigan, Newham, Islington and Hackney. The Scottish Government is committed to introducing a Community Wealth Building Bill and had six pilot projects in development starting with Ayrshire. The recent change of leadership has cast some doubts about whether the Scottish Government will continue with this approach.

## Focus 1

This approach highlights the importance of local anchor institutions (large local public, social and commercial organisations) and how their purchasing power can support local supply chains by creating local benefits in the form of local employment, developing skills of the local workforce and generally enhancing the sustainability of local business.

The Preston Model has perhaps had the greatest profile (at least in England) in developing the community wealth building approach. Here the local council acts as place leader to a number of anchor organisations from education, housing and police and others, encouraging them to use their purchasing power to influence their pattern of spending so that more wealth stays within Preston.

The most recent spend analysis found that the procurement from institutions rooted in Preston retained within the city was £112.3m – a rise of £74m from 2012/13. In its lessons learned, the City Council says that one of the key reasons why the Preston Model has been successful is because it has been collectively built by the range of stakeholders who have all brought different ideas about how to create a good local economy.

There are five key strategies concerned with community wealth building:

### Plural ownership of the economy

Community wealth building seeks to develop a more diverse blend of ownership models returning more economic power to local people and local institutions. It posits that small enterprises, community organisations, cooperatives and forms of municipal ownership are more economically generative for the local economy, than large or public limited companies. In this way more money is retained in the local area.

### Making financial power work for local places

Community wealth building seeks to increase flows of investment within local economies by harnessing the wealth that exists locally, as opposed to attracting national or international capital. For example, local authority pension funds can be encouraged to redirect investment from global markets to local schemes. Mutually owned banks are supported to grow and regional banks – charged with enabling local economic development – should be established. All of these channel investment to local communities while still delivering a steady financial return for investors according to the supporters of community wealth building.

### Fair employment and just labour markets

As large employers, the approach that anchor institutions take to employment can have a defining impact on the prospects and incomes of local people. Recruitment from lower incomes areas, commitment to paying the living wage, and building progression routes for workers are examples of actions that anchor institutions can take to stimulate the local economy and bring social improvements to local communities.

### Progressive procurement of goods and services

Progressive procurement can be used to develop local supply chains, SMEs, employee owned businesses, social enterprises and cooperatives and other forms of community business. Supporters argue that these types of businesses are more likely to back local employment and retain wealth and surplus at a local level.

### Socially productive use of land and property

Anchor institutions are often major local asset holders. These assets represent a base from which local wealth can be accrued. In community wealth building the function and ownership of these assets is deepened to ensure that any financial gain is harnessed by citizens. There is also a desire to develop and extend community use of those assets.

## Focus 2 responsible procurement

There are a growing number of local authorities developing responsible procurement across the country and linking these to good works standards.

### Focus 2

#### Responsible procurement in London

In London, the Mayor's Responsible Procurement Policy and its implementation plan have set out priorities up to 2024. The policy has five main themes:

- improving supply-chain diversity
- embedding fair and inclusive employment practices
- enabling skills, training and employment opportunities
- promoting ethical sourcing practices
- improving environmental sustainability.

The policy seeks to remove barriers in the procurement approach that inhibit micro and SMEs, community sector organisations, diverse enterprises and under-represented groups. It seeks to maximise relevant opportunities to work with voluntary and community sector organisations including social enterprises in supply and service delivery. It aims to "secure the Mayor's Good Work Standard as a key part of our dialogue with suppliers" and require that all suppliers have fair terms of pay, including the London Living Wage "to the extent permitted by law".

The policy is supported by an implementation plan which allocates a weighting of 10 per cent of the total evaluation score to social value and responsible procurement for above threshold contracts. A new implementation plan published in 2022 aligns with the Sustainable Development Goals which "provide a universal language for sustainability, and so can have a key role in engaging with international businesses and supply chains...they can only be achieved through local action..."<sup>91</sup> The GLA uses the TOMs to measure social value.

<sup>91</sup> Mayor of London, *Responsible Procurement Plan: GLA Group Implementation Plan*, August 2022

### Good Employment Charter Manchester

In Greater Manchester, the Good Employment Charter Supporters' Network was launched in 2019. It supports employers to develop good jobs, deliver opportunities for people to progress, and help employers in the city-region grow and succeed. The public, private and voluntary sectors are all involved. The model for the Charter has been co-designed by employers, trade unions and employees from across Greater Manchester, and involved two public consultations to develop and agree the proposals. The purpose of the Charter is to support employers to raise standards across a number of areas including: secure work, a real living wage and recruitment and progression, with a tiered approach to help them progress. The Supporters' Network is the first of those tiers. The Charter has been embedded in public procurement through the city region's social value framework – which gives additional weighting to bids delivering social value in procurement processes. Businesses receiving investment through the Greater Manchester Combined Authority's investment funds will also be required to become Charter supporters.

The three tiers of the Greater Manchester Good Employment Charter are:

**Tier 1:** Supporters – for those employers who support the aims of the Charter and Greater Manchester Strategy, but are not yet in a position to meet the requirements of accreditation.

**Tier 2:** Membership – requiring employers to demonstrate excellent practice in key characteristics of employment practice, these are secure work; flexible work; a real living wage; workplace engagement & voice; excellent recruitment practices & progression; excellent people management; a productive & healthy workplace.

**Tier 3:** Advocates – employers who meet high standards in all the key employment characteristics to be Members, and then go out to other employers to encourage them to raise employment standards and join the Charter process.

The Charter has a whistle-blowing service enabling employees who are concerned that their employers who have signed up to the standards are not adhering it to contact it after it has raised the issue internally.

Other Good Work Standards and charters that are in operation include Liverpool and the North of Tyne Combined Authority.

### Focus 3 sectoral charters

Trade unions have developed their own specific charters such as the Ethical Care Charter developed by Unison or are member of others such as the Steel charter whose members include Unite, GMB and Community.

The UK Steel Charter has helped to focus attention on public procurement and its role in industrial strategy through a partnership approach involving employers and unions working together in the interests of the steel industry and its local communities as a whole.<sup>92</sup> This is the kind of innovative partnership approach we would like to see developing within the Public Services Industry involving also mission-based organisations, perhaps a Public Services Industry charter that addresses issues of public trust with a clear commitment to maximizing public benefit.

#### Focus 3

The UK Steel Charter is aimed at maximising opportunities for the UK economy and UK steel producers by encouraging and promoting measures that can be taken in relation to the procurement of steel for major projects. Building upon earlier UK, Scottish and Welsh government initiatives, the Charter aims to support steel jobs and communities, strengthen manufacturing supply chains and increase UK GDP through purchasing more steel from UK producers.

The UK Steel Charter asks organisations to sign up and commit to a range of simple procurement steps. According to the union Community, these simple steps could transform the way the UK purchases steel and other materials, ensuring decisions are not simply made on the basis of lowest upfront cost, but take into account longer term strategic aims such as social and environmental considerations, and the UK's long-term economic growth.<sup>93</sup>

The Charter was launched in May 2019 with UK government support, with the Welsh Government its first signatory. Since then, signatories have included the Scottish Government; the Heathrow Expansion Programme; the unions: Community, Unite and GMB; the TUC; a number of local councils including Sheffield and Newport; and other industrial and private sector organisations.

<sup>92</sup> This is the kind of innovative partnership approach we would like to see developing within the Public Services Industry involving also mission-based organisations, perhaps a Public Services Industry charter that addresses issues of public trust with a clear commitment to maximizing public benefit.

<sup>93</sup> Community has a recognition agreement with Aspire.

### **“The UK steel charter**

We commit to the following:

- Establish clear and simple criteria to identify which projects are in the scope of our charter commitments
- Develop a future steel pipeline
- Monitor and produce data on the levels of UK-produced steel used in our projects
- Place a requirement in our appropriate contracts requiring the origin of steel to be provided
- Stipulate use of steel products accredited to BRW Standard BES 6001
- Advertise opportunities for steel providers and/or require our contractors/sub-contractors to do so
- Introduce a requirement for tender applications to include a supply chain plan
- Host engagement meetings/events for major projects in advance of procurement decisions being made
- Develop our organisation’s approach to the ‘most economically advantageous tender’
- Appoint a ‘UK supply chain champion’ to manage engagement with steel sector, and other suppliers
- Use UK-produced steel to meet KPIs for our organisations corporate social responsibility commitments
- Use British quality standards of steel when detailing steel requirements in project plans”.



## Summary recommendations

The UK Government now has full control of procurement policy subject to any agreements it enters into. Our summary recommendations are made to UK government, contracting authorities, commercial businesses and mission-led organisations. They arise from our lived experience.

### Sustainable Development

The framework of law and the overarching policy in which procurement sits is just as important as the body of procurement law itself.

We recommend a coordinated and devolved approach across the UK.

It seems to us that the Sustainable Development Goals are the glue that bonds the devolved procurement approach and should be the Golden Thread that is sewn throughout the commissioning and procurement process. The Sustainable Development Goals are fundamentally missions to which national policy, local policy and organizational objectives can be linked and from which detailed action plans with specific outcomes can be measured and reported. Organisations themselves can pick the ones most relevant to their goals and plan accordingly.

In England, Wales and Northern Ireland new procurement legislation is set to come into place. Our view is that there is ample opportunity to develop progressive procurement within the current framework of law and that more important than a change of law, what is required is a shift in gear with a focus on practical outcomes to achieve maximum public value.

The UK government can set the overall direction through a new National Procurement Policy statement which outlines its key agenda. It could do this without a change of law, with additional regulations for specific areas as and when required. This would negate the need for overworked procurement officers to understand largely technical guidance that has been issued from the Cabinet Office and would also provide stability for suppliers, while maintaining the alignment of law within a European context.

The Public Services Industry is in need of urgent reform. All of its partners working together need to work together to strengthen public services and support local people in their communities with high quality services that they can trust to deliver according to their needs to prevent poverty and address inequality. This means opening up the market to Good Works organisations that provide supported work and work alongside people giving them more control of the design and delivery of services as well as ensuring that Good Work and Real Living Wage are respected throughout its supply chains.

Our recommendations below are drawn from our lived experience of the procurement industry of which we have been a part. They are not meant to be comprehensive but highlight some key areas for reform or improvement in practice. If they provoke a shake of a head, or a conversation, they have made a point.

## UK Government

The UK Government can set the tone and steer the direction towards progressive procurement. With heavy demands already being made on it, we suggest a light touch approach can be achieved by empowering local communities and setting the overall direction.

---

### Recommendation 1

The UK Government should Issue a new National Policy Procurement Statement which highlights the mission of public good procurement and links key objectives to the Sustainable Development Goals.

The National Procurement Policy Statement sets the strategic priority for procurement from the UK Government.

The current one was intended to last to the end of the last government and so, theoretically, there is nothing now in place.

A new National Procurement Policy Statement has been published for when the Procurement Act comes into force, but the new Government should take the strategic lead in laying down the priorities for public procurement.<sup>94</sup>

---

### Recommendation 2

The UK Government should consider that in the context of the high levels of poverty and inequality, the high levels of economically inactivity caused by mental and physical ill health, labour shortages and the cost of living crisis, it should require good working conditions as a default in all public contracts irrespective of value to be the default position for contracting authorities. While each procurement should be considered in its own context, contracting authorities that choose not to make good work a condition of contract should provide reasons why Good Work has not been included as a condition.

This should be included in the new National Procurement Policy Statement. Good work includes fair works and decent works.

A supplier would be able to evidence this through signing up to the various Good Works Standards across the UK or through self-certification including the Good Business Charter.

Contracting authorities would need to ensure that there are effective enforcement rights including providing whistleblower rights.

---

<sup>94</sup> The procurement policy statements do not apply to Scotland, Wales or Northern Ireland. Under the Procurement Act 2023 before publishing a policy statement the Minister must carry out any consultation they consider appropriate. Public bodies are required to have regard to the national policy statement.

---

### Recommendation 3

The UK Government should consider that in the context of the high levels of poverty and inequality, the high levels of economically inactivity caused by mental and physical ill health, labour shortages and the cost of living crisis, it should require the Real Living Wage to be paid in all public contracts irrespective of value to be the default position for contracting authorities. While each procurement should be considered in its own context, contracting authorities that choose not to make the Real Living a condition should provide reasons why not.

This should be included in the new National Policy Procurement Statement.

Suppliers could provide evidence of this through becoming accredited Real Living Wage employers or certifying that the Real Living Wage would be paid.

Contracting authorities would need to ensure that there are effective enforcement rights including providing whistleblower rights.

---

### Recommendation 4

In the context of high levels of economic inactivity, mental and physical ill health and increasing poverty and inequality amongst those already most disadvantaged by the labour market, the UK Government should introduce a target for supported employment provision within procurement across the UK and within UK government contracts.

This should be included in the National Policy Procurement Statement. It would be open only to those who qualify under the 30% rule and could apply to above and below threshold contracts.

Contracting authorities should be advised to have due regard to this target and to take measures to achieve it including by way of Community Benefits where these apply. If just a 1% target was introduced in the minority of contracts above the threshold this would amount to a new pipeline of £390 million, the turnover of a large business in the UK and would help to leverage investment for Good Works across the country.

---

### Recommendation 5

The UK Government should establish a dynamic purchasing agreement for supported business along the lines of the Scottish arrangement.

This would enable Good Works supported employment providers to offer their services and for potential contractors on larger contracts to build up relationships with a view to joint bidding in contracts.

---

### Recommendation 6

The UK Government should continue a review of access to justice proposed by the previous Government with a view to consulting on and establishing either a tribunal for SMEs, a self-funded Ombudsman system similar to Northern Ireland or a system based on the NHS Provider Selection Regime.

The lack of an effective administration of justice for small organisations within the procurement system is a barrier for small organisations within the procurement system. Where lack of fair play is suspected, or evidenced there are no remedies that can easily be taken especially where the cost of taking a High Court case can be over the annual turnover of companies.

While the Public Procurement Review Service provides a service for complainants and promotes continuous improvement, its procedures for review and/or improvement are not as rigorous as those provided by tribunals or ombudsman services that makes findings of act on submissions and are able to award compensation.<sup>95</sup>

---

### Recommendation 7

The UK Government should consider regulating below threshold contracts using the Provider Selection Regime as the template.

Below tender contracts are an important way for micro business, start-ups and those new to the public sector market to develop a foothold in the industry. Through regulation, the Government could provide new opportunities for authorities to develop and deliver market shaping policies and practices.

---

### Recommendation 8

The UK Government should consider whether procurement should be taken out of the Cabinet Office and relocated within the Department of Business and Trade.

If procurement is to become more strategic then there is an argument that it should be more closely linked to economic policy and should work with the commercial sector in closer partnerships. In New Zealand, for example, procurement is to be found within the Ministry of Business, Innovation and Employment. This would more closely align the system with the Government's commitment in the King's speech to provide a genuine living wage for all.

---

<sup>95</sup> This view is based on direct experience of using the service.

## Scotland, Wales and Northern Ireland

---

### Recommendation 9

In the context of high levels of economic inactivity, mental and physical ill health and increasing poverty and inequality amongst those already most disadvantaged by the labour market, governments should introduce a target for supported employment provision across the country.

We need a labour market that responds to the changing needs of people and serves the real economy. There is a need to change the structures of the labour market which are all too often based on past century models of production. Building work around the realities of people's lives, that is flexible to their needs, requires new models of working organisations that provide positive support and positive action to address institutional disadvantage. Establishing a target would support current policies and open up tangible opportunities within the markets for existing or new organisations to step into.

---

### Recommendation 10

Governments should consider regulating below threshold contracts using the Provider Selection Regime as the template.

These contract represent a significant proportion of contract and are of more importance to smaller organisations. Failure to fully regulate such contracts acts as a barrier to small businesses and smaller mission-based businesses within the process.

## Scotland and Wales

---

### Recommendation 11

Governments should continue a review of access to justice with a view to consulting on and establishing either a tribunal for SMEs, a self-funded Ombudsman system similar to Northern Ireland or a model based on the NHS provider selection regime in England. This should be available to all whatever the contract value.

Giving provider organisations within Scotland and Wales the rights to take cases to an independent review body would help to build greater trust in the system and provide accountability and greater transparency within the system. Both the Supplier Feedback Service in Wales and the Single Point of have limited powers. In Wales, the Supplier Feedback Service can request information from the different parties involved but cannot insist that the information requested is provided. Both have no authority to require the contracting authority to refrain from awarding a contract irrespective of whether they make findings that procurement law has been broken.

## Contracting authorities

---

### Recommendation 12

To maximise public benefit contracting authorities should use below threshold contracts to open up opportunities for new and diverse markets.

Local authorities should consider the processes for below threshold contracts and work with local community bodies to open these up to more diverse markets and monitor and report on progress. Contracting authorities should make maximum use of reserve powers in order to build up public services pipelines for diverse businesses. Authorities should consider whether it is appropriate as in Scotland to send out reasons for decisions for all contracts irrespective of the contract value and consider introducing review procedures as a mechanism for continuous improvement.

---

### Recommendation 13

Contracting authorities should consider where procurement is located within their organisations.

For larger local authorities would procurement be better suited under an economic development function so that they can build up a market shaping function and make the links with diverse supply chains.

---

### Recommendation 14

All authorities irrespective of size that have a public procurement function should develop a responsible/sustainable procurement policy which is linked to the wider policies of the organisation, the SDGs and have due regard to national policy and national policy statements against which performance and outcomes can be planned and evaluated.

Research carried out by Aspire across the London Boroughs found that approximately one in three London Boroughs did not have a responsible procurement policy despite the fact that the Social Value Act in England has been in place for well over ten years. A policy framework is an essential part of establishing fair procurement which is open and transparent and mission-led.

---

### Recommendation 15

Contracting authorities should develop market shaping strategies as part of their responsible/sustainable procurement strategy to address inequalities and disadvantage within the labour market and deliver quality services.

Contracting authorities need to address geographical inequalities and encourage innovation in service delivery, consult with local people about the shape of public services and encourage greater collaboration between the commercial and community sectors in building new approaches. Some may need to take greater control of procurement through reducing spending on external commercial consultants and all should consider how they can best consult with the voice of “lived” experience.

---

### Recommendation 16

Contracting authorities should require Real Living Wage and Good Works standards as a default position as part of the conditions of the contract. Where these are not required the authorities should say why this is not the case.

Every authority has its part to play in addressing poverty and inequality and opening up the procurement market to new entrants but this must not be done at the cost of a race to the bottom which creates negative public value. Having a floor for good wages and minimum employment conditions will create a good market rather than a poor market.

---

### Recommendation 17

Contracting authorities should introduce a target for supported employment within their procurement strategies.

There are a range of mechanisms that have been or can be used such as opening up a proportion of the procurement to reserved contracts through the use of lots or requiring Tier 1 suppliers to reserve a proportion of the contract to supported positive action employment or creating dynamic purchasing system for supported employment providers.

---

### Recommendation 18

Contracting authorities should consider the development of in-house positive action supported programmes working in partnership with trade unions and other organisations to address disability discrimination and disadvantage within their existing labour market structures.

For public services to become more responsive, they need to be more representative of the people that they serve. “Them and us” needs to be replaced by “nothing about us without us”. Contracting authorities should seek to deliver wider equality and diversity work through work integration initiatives including working with community organisations and social enterprises that support people who are disadvantaged by the labour market.

---

### Recommendation 19

Contracting authorities should consider adopting a good procurement championship programme within their organisations.

The purpose of this is to communicate the policy, collaborate with organisations, network and share information and to put policy into practice through collaboration with key stakeholders. This could include the development of a good procurement hub where information can be shared, ideas received and networking can take place between suppliers, trade unions and community bodies.

---

**Recommendation 20**

Contracting authorities should consider making sub-contracting to mission-led organisations and SMEs a condition of larger contracts.

In large contracts, providing for a proportion of the work to be carried out by mission-led organisations or SMEs would help create more diverse markets and transfer the risk to the Tier 1 contractor.

---

**Recommendation 21**

Contracting authorities should encourage innovation within their public good procurement strategy.

This is the start of the journey rather than the end. Innovation encourages new ways of relating and working with individuals and organisations to reach shared goals. New ideas should be welcomed and tested.

---

**Recommendation 22**

Contracting authorities should consider developing a Good Procurement Charter which highlights their policies for suppliers.

Such an initiative would help to build and garner support for the policies and explain why the race to the bottom is not the way to build a diversified supply chain that is sustainable.

---

**Recommendation 23**

Contracting authorities should consider bringing the management of the procurement process back in house particularly for smaller contracts where the process has been outsourced.

An over-reliance on private sector outsourcing consultants without checks on quality can lead to poor quality in decision-making and lack of control over the procurement process.

---

**Recommendation 24**

Contracting authorities could consider developing a public value fund to support good procurement initiatives.

Funds such as these could help to support Good Procurement initiatives and encourage good work in local communities on a small scale basis. These could be derived in part from contracts requiring community benefits.



## Commercial Partners

---

### Recommendation 25

Commercial partners should commit to Good Works Standards and Real Living Wages throughout supply chains and not only on contracts that require these.

---

### Recommendation 26

Commercial partners should develop a public good procurement plan which is linked to their sustainable development policy with a clear implementation plan.

---

### Recommendation 27

As part of that plan, commercial partners should identify key partners within the mission led, not for profit sectors with whom they can develop strategic long term relationships.

---

### Recommendation 28

Commercial partners should consider using supported employment in their own organisations to support people who are disabled and suffer disadvantage within the labour market.

---

### Recommendation 29

Commercial partners should ensure that KPI are in place for all key projects and report on them.

---

### Recommendation 30

Commercial partners should use their public value experience and work in partnership with mission-based organisations to develop new proposals for forthcoming procurements.

## Community Bodies

---

### Recommendation 31

Adopt a champion for public good procurement.

---

### Recommendation 32

Write a policy from your perspective and develop an action plan.

---

### Recommendation 33

Brainstorm ideas for trading or refashioning services that are more responsive to community needs, consult with your communities and network with potential partners.

---

### Recommendation 34

Work out the finances and build up a business plan and start the conversations – it's all to play for!

# Bibliography

- Cap Gemini Research Institute, *Embracing a brighter future: Investment Priorities for 2024*, January 2024
- Cabinet Office, *Procurement Policy Note – Reserving Below Threshold Procurements Action Note PPN 11/20*, December 2020
- Department for Business, Enterprise and Regulatory Reform, *Public Services Industry Review: Understanding the Public Services Industry: how big, how good, where next? A review*, Dr. DeAnne Julius, July 2008
- Department for Levelling Up, Housing and Communities, *Statutory guidance: Best value standards and intervention: a statutory guide for best value authorities*, May 2024
- Digital Supply Chain Institute, APQC, *Environmental, Social and Governance Trends in Supply Chain Management*, February, 2024
- Equalities and Human Rights Commission, *Mainstreaming equality considerations into procurement, a guide for public authorities in England*, February 2019
- Equality Commission for Northern Ireland, Central Procurement Directorate, *Equality of Opportunity and Sustainable Development in Public Sector Procurement*, May 2008
- European Court of Auditors, *Special report 28/2023: Public procurement in the EU – Less competition for contracts awarded for works, goods and services in the 10 years up to 2021*, 2023
- Geoffrey Gertz, Homi Kharas, 'Radical pragmatism: policy making after Covid' *Democracy*, a journal of ideas, October 2020
- Glasgow CVS, *Response to Scottish Economy and Fair Work Committee Post legislative scrutiny of the Procurement Reform (Scotland) Act 2014*, 2023
- House of Commons Committee of Public Accounts, *Competition in public procurement: Sixth Report of Session 2023–24*, December 2023
- House of Commons Public Administration and Constitutional Affairs Committee, *After Carillion: Public Sector Outsourcing and Contracting*, 2018
- M. Mazzucato, J. Ryan-Collins, 'Putting value creation back into 'public value': From market fixing to market shaping', UCL Institute for Innovation and Public Purpose', Working Paper Series, 2019
- Janice Morphet, *Outsourcing in the UK: Policies, Practices and Outcomes*, 2021 – makes the point very clearly about the influence of international trade agreements on domestic policy
- National Audit Office, *Investigation into government procurement during the Covid-19 pandemic report – value for money*, November 2020
- National Centre for Social Research, *Five years of unprecedented challenges: the impact of the 2019-2024 Parliament on public opinion*, June 2024
- Maria Norbäck, María José Zapata Campos, 'The market made us do it: Public procurement and collaborative labour market inclusion governance from below', *Social Policy & Administration*, Volume 56, Issue 4, July 2022
- Mayor of London, *Responsible Procurement Plan: GLA Group Implementation Plan*, August 2022
- Northern Ireland Audit Office, *Public Procurement in Northern Ireland*, April 2023
- Northern Ireland Finance Department, *Procurement Policy Note PPN 01/21 Scoring Social Value*, revised October 2022
- Michael Rogerson, Johanne Grosvold, Kyle Alves, *Climate change and modern slavery in public procurement*, January 2024

Scottish Government, *Fair Work First Guidance Supporting the implementation of Fair Work First in workplaces across Scotland*, March 2023

Scottish Government, *Independent Review: Scotland's journey of achieving sustainable procurement outcomes (2002-2022)*, February 2023

Scottish Government, *Procurement Reform (Scotland) Act 2014: statutory guidance*, May 2022

Scottish Parliament Economy and Fair Work Committee, *Post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014*, June 2024

Sigma, *Below-Threshold Contracts*, September 2016

Social Enterprise Scotland, *Unlocking procurement for social enterprises: An evidence paper to inform policy-making*, October 2023

Welsh Government, *Wellbeing of Wales*, September 2023

Welsh Government, *Welsh procurement policy note WPPN 02/21: Reserving contracts with businesses with a public service mission*, November 2021

Welsh Government, *Welsh Procurement Policy Note WPPN 11/21: Ethical employment practices in public sector supply chains – advice for the Welsh Public Sector*, November 2021

World Economic Forum, *The Future of Jobs Report*, April 2023

# Appendices

## Appendix 1

Table 1 highlights the pros and cons of the two key procedures within the procurement process that exist currently, along with information about reservation of contracts. There are currently six key procedures: open, restricted, innovation partnerships, competitive procedure with negotiation, competitive dialogue and use of the negotiated procedure without prior publication.

Our experience is that the open procedure is the least bureaucratic but that there is no room for discussion and negotiation between the partners to a contract leaving little room for innovation.

When the Procurement Act is introduced there will be a new competitive, flexible procedure which could open up the opportunities for wider community innovation and the six procedures will be replaced by two: open and competitive flexible procedure. Whereas Scotland will continue with the existing procedures.<sup>96</sup>

There is great potential for organisations to make wider use of reserved contracts if they wish to support a mixed economy of providers including voluntary and community organisations, social and community enterprises who are seeking to build a more inclusive community and address disadvantage. We have to declare an interest here, as we are one of the organisations that would benefit from their enhanced use.

---

<sup>96</sup> Public Contracts (Scotland) Regulations 2015

**Table 1 – a review of procedures and reserved contracts**

<b>Procedure</b>	<b>Characteristics</b>	<b>Pros</b>	<b>Cons</b>
<b>Open</b>	All tenders must be considered Exclusion, Selection and Evaluation carried out in stage Award carried out after submission	Simple Open to all	May generate high workloads for contracting authority May generate low response Low transparency risk Most community friendly
<b>Restricted</b>	Two stage process Only pre-selected tenderer's invited to tender – at least 5	Managed award procedure with limited number of candidates	Longer process Transparency risk Subject to more complaints
<b>Reserved Section 20</b>	Ring fence participation in tendering for supported workshops and work integration organisations where 30% of workforce are disabled or disadvantaged Or Require that contact is carried out by a supported workshop Published opportunity must refer to reservation	Market shaping Promotes positive action for disabled people and those disadvantaged by the labour market Can make use of any of the existing procedures	Lower workloads for contracting authority Lower response rates could lead to low or no response
<b>Reserved Section 77</b>	Reserved contracts health, social services and other contracts (not in Scotland) Light touch regime Three years only for each contractor	Market shaping Promotes social enterprises and mutual	Lower workloads for contracting authority Low transparency risk

## Appendix 2

### The Real Living Wage – getting it right in procurement

Following an unhappy procurement experience we have put together best practice guidelines for Living Wage procurers who want to ensure that their supply chain guarantees workers a Living Wage.

- Make it a condition of contract and make sure that it is flagged up in all paperwork and most importantly in the contract.
- Advertise it as a condition of contract in and in all other adverts and relevant notices. This is because Living Wage employers in low paying industries may not be drawn to procurement opportunities where it appears that the National Living Wage is the default condition (because they are likely to be undercut by these contractors). If it is not advertised as a condition of contract, it is potentially altering the pool of organisations that will tender.
- Consider whether there are ways in which you can encourage smaller non-Real Living Wage employers to pay the Real Living Wage.  
For example, smaller suppliers very often face major problems of low pay, as well as cash flow difficulties – guaranteed prompt payment within fourteen days, and up-front payment of the contract may be sufficient inducements for the supplier.
- Make sure that the contract makes provision for the annual up-rating of the London Living Wage or alternatively that the tenderer costs the up-rating as part of their price submission.  
Failure to do this runs the risk that suppliers seeking a profit may reduce relative wages over the lifetime of the contract and the Real Living Wage contracting authority could face reputation risk if their supply chain receives below the Living Wage.
- Make provision for checking the rates of employees on an annual basis through self-certification or other mechanisms.
- Gold plate this requirement by requiring contractors to be accredited with the Living Wage Foundation throughout the duration of the contract.
- Consider what sanctions should apply if non-compliance is discovered – a simple one would be requiring each individual employee affected to be paid back-pay and receive interest.
- Consider having whistleblowing clauses for employees if they consider that they are not being paid the Real Living Wage and publicising these
- Encourage suppliers to develop similar supply chain requirements when sub-contracting.
- Encourage suppliers to advertise their commitment to the Living Wage.

This publication was funded by Trust for London. The views and opinions expressed are those of the authors and do not necessarily reflect those of the funder.

© Aspire Community Works  
ISBN number 978-1-0687079-0-2

**For more information  
about Aspire contact:**

[info@aspirecommunityworks.com](mailto:info@aspirecommunityworks.com)

[www.aspirecommunityworks.com](http://www.aspirecommunityworks.com)

[www.betterforus.org.uk](http://www.betterforus.org.uk)



**#Better**  
ForUs 2024

Placing people at the  
heart of procurement