



# Procurement and Contract Management Strategy

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By

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## Background

Following Brexit, the Government announced its intention for a radical overhaul of public procurement law and a green paper was published on this topic in January 2021. The Government has stated its aim is to provide the UK with a modern, fit for purpose set of rules, to minimise the bureaucratic burden for contracting authorities and businesses, and to facilitate innovation and the participation of SMEs.

However, any change to procurement law is not expected until “at least 2023” but it is important that in the meantime, our procurement activities are undertaken consistently to a high standard and in line with best practice to achieve economic, social benefits for all our communities.

This Strategy will be further updated as and when new legislation becomes available.

## I. Introduction

Publica provides Procurement Services to its Partner Councils, Ubico and Cheltenham Borough Homes. The Services include

- Supporting and guiding officers in line with best practices and Procurement principles;
- Commissioning – considering **all** options before a decision has been made to provide a service;
- Assisting with Procurement of the appropriate goods, services or works in line with internal and external policies;
- Effective supplier and contract management;
- Disposal of assets (if necessary)

Demand for local public services is rising, and cost pressures are increasing, yet government funding to councils has reduced markedly and looking forwards there is great uncertainty surrounding the future of local government funding. It is therefore important that Procurement deliver better results for public services by

- Maximising the value – including the ‘social value’ achieved from every £1 spent;
- Generating income (‘commercialisation’) – where possible;
- Being Innovative and working with Innovative suppliers;

In addition, Local Authorities and their communities are faced with many Economic, Social and Environmental challenges.

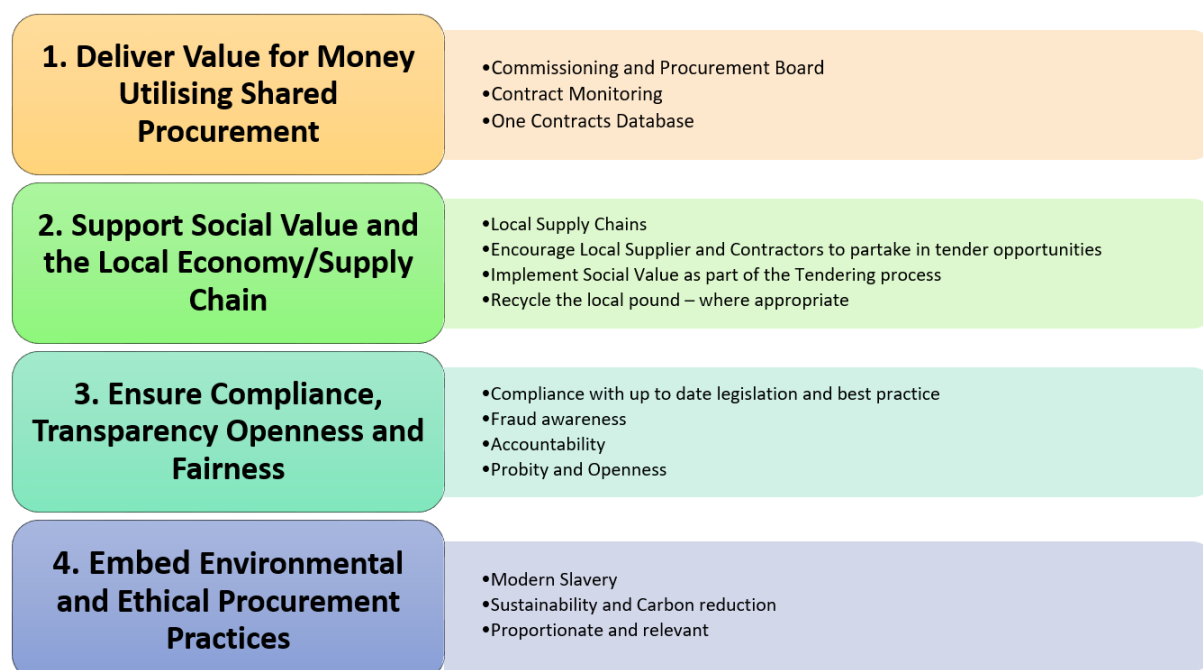
The Procurement team will provide leadership and make best use of resources through partnership, being effective commissioners and working with budget holders, suppliers and other stakeholders. We will aim to develop a common approach to procurement across all partners ensuring the processes and documentation are standardised and establishing a joint contracts database which will lead to effective commissioning, improved practises and financial savings.

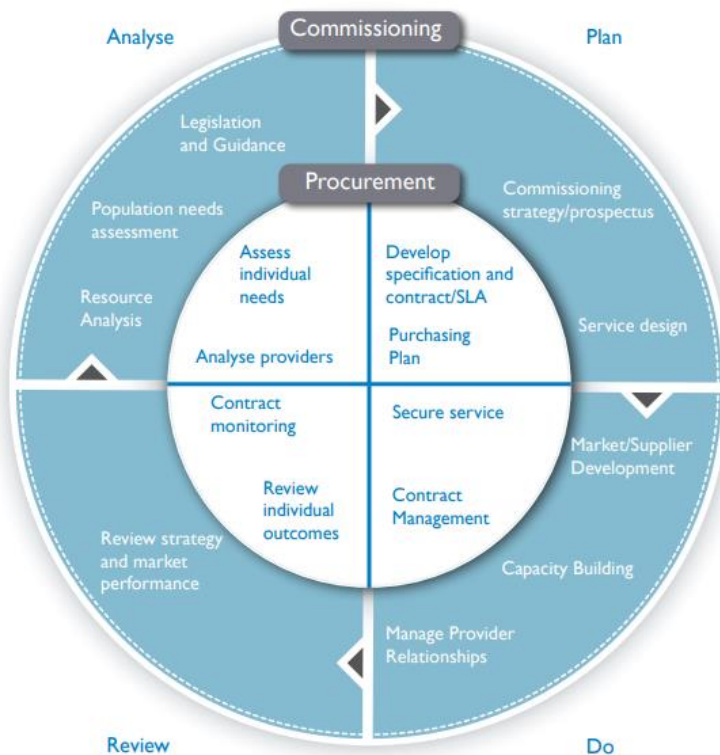
This document sets out the Councils strategic approach to procurement and contract management. It is not intended to be a procurement or contract management manual; however, the principles contained within the strategy should be applied to all procurement activity. Consideration of this strategy is not optional and it should be read in conjunction with the Contract Procedure Rules, Commissioning and Procurement User Guide and other relevant organisational policies.

## 2. Our Vision

Our vision for Procurement and Contract Management over the term of this strategy is to demonstrate value for money through the effective Commissioning and Procurement of goods, services and works on a whole life basis in terms of generating benefits to the community and Councils, whilst minimising the impacts to the environment.

Meeting this vision and ensuring success of this strategy will depend on the implementation and effectiveness of all of the following key principles.





### 3. Effective Commissioning and Procurement

A key Council Priority is to deliver Services to the highest standard under the principle of value for money for our residents and businesses.

In addition, Procurement by its very nature is well placed to support delivery of all of the Councils Priorities.

The Council is mindful that the impact of procurement is far greater than processes, objectives, principles, and that effective Commissioning and Procurement can incorporate a wide-ranging socio – economic agenda.

To ensure the Council carries out effective Commissioning and Procurement the Procurement team will maintain a forward plan with details of upcoming relevant procurements. The forward plan will be a discussion point at Commissioning and Procurement Board who meet on a monthly basis. The Board includes representatives from the Councils Local Management Team and Senior Managers within Publica.

### 4. Procurement and the Climate Emergency

There is now a renewed focus on environmental issues, due to the Climate Emergency, statutory obligations and local authority targets as well as clear links from climate change to economic recovery, jobs, skills, protecting the vulnerable and healthy communities.

The Council has declared climate emergency and is faced with local targets to achieve 'Net Zero' or be 'Carbon Neutral' by 2045. A vital mechanism to respond and contribute to these challenges is **Effective Commissioning, Procuring and Contract Management**.

Supply chains are the biggest contributor to the overall carbon output of local councils and often it is an accumulation of small factors that add up to make a difference. An example of this might be the carbon emissions due to transport of products by suppliers. This often is not something that the councils can control, but it certainly influences the levels of emissions the council contributes to as a whole. One way in which procurement will make a significant change is through influencing the supply chain, and encouraging climate action by suppliers.

Engaging with suppliers at the earliest opportunity to make climate intentions and ambitions clear at the pre-procurement stages is key to reducing the Councils carbon footprint. To contribute to this challenge, Procurement will

- Promote and embed best practice for sustainable procurement across all service areas;
- Where appropriate, require our suppliers and contractors to reduce the impact of goods, works and services by considering the carbon impacts associated with goods, works and services;
- Require information from potential suppliers on how they will help us to progress our environmental objectives as part of contract delivery;
- Regularly review consumption of goods and services, especially those that have specific impact on the environment, and take measures to prioritise alternative recycled methods and materials that are non-polluting and environmentally friendly;
- Ensure that, where appropriate and permissible under legislation, sustainability criteria are part of the supplier evaluation process and award of contracts;

Championing sustainability in the first instance will allow the Council to set expectations and give suppliers the chance to adapt or discuss how they might make improvements. It equally gives suppliers the opportunity to share their climate innovations and insights, and for THE council to learn from them.

## 5. Modern Slavery

Procurement Regulations make certain modern slavery offences grounds for mandatory exclusion of bidders from public procurement. (This forms part of the tender evaluation exercise). Standard procurement documentation requires bidders to self-certify their compliance with the Modern Slavery Act 2015.

We are committed to ensuring the suppliers with whom we do business understand the risks of modern slavery in supply chains, and take appropriate action to identify and address those risks, with particular focus on supporting victims of modern slavery.

Modern slavery risks will be addressed during the procurement process: -

- When identifying the need, approach to be taken and the market - **pre-procurement**
- When deciding the requirement - **specification stage**
- When selecting suppliers to invite to tender - **selection stage**
- When awarding the contract - **award stage**
- In the performance of the contract - **contract conditions and contract management**

## 6. Social Value

The Council will take a holistic approach when considering its activities and take into account the wider economic, social and environmental effects of their actions.

In essence, Social Value serves as an umbrella term for these broader effects, and organisations, which make a conscious effort to ensure that these effects are positive, can be seen as adding social value by contributing to the long-term wellbeing and resilience of individuals, communities and society in general.

The Council will consider Social Value through policy and spending decisions to maximise the benefit for their communities.

See Appendix I for the Councils Social Value statement

## 7. Contract Management

Contract Management is concerned with the continuous review and management of the contractual terms and/or service level agreement secured through the procurement process to ensure suppliers and partners deliver the outcomes agreed. Managing the contracts and relationships with our delivery partners, is imperative to ensure that:

- the strategic priorities agreed at the outset are delivered in a cost effective and timely manner;
- non-compliance or variation is identified early for escalation and resolution
- risks and costs are managed;
- contract reviews are undertaken and lessons learnt inform the commissioning and procurement process to ensure continuous improvement.

Officers responsible for managing and monitoring contracts must ensure:

- a copy of the original contracts is accessible to them and reviewed regularly, to ensure they are aware of the contracted terms.
- that contractors' business continuity plans are in place and are reasonable. Periodic reviews of these plans should be undertaken.

## 7.1 Contract Management Principles

The following principles will underpin the Councils approach to contract management

- **Ensure that contracts are known and understood by all those who will be involved in their management** – Make sure that adequate resource are identified and appointed well before award of contracts and that there is an effective handover or transition from sourcing to contract management.
- **Be clear about accountability, roles and responsibilities** - Ensure contract ownership, management processes and governance mechanisms are clear with defined roles and responsibilities at appropriate levels of seniority. Make sure contracts have a documented Contract Management Plan.
- **Establish and use strong governance arrangements to manage risk and enable strategic oversight** – ensure that governance structures are proportionate to size and risk of contracts, are suitably empowered and support the business outcomes and objectives.
- **Adopt a differentiated approach based on risk** – distinguish between tactical and strategic contracts and direct the strongest resource to contracts where the risks and rewards are highest. Consider a self-managing approach for lower risk contracts.
- **Manage contracts for business/public service outcomes** – the owners of the required outcomes should be accountable for successful contract performance and should work closely with procurement to manage contracts.
- **Accept that change will happen and plan for it** – develop flexible approaches to change through joint working with suppliers; accept that change will affect both parties during the contract life, but control costs with robust change control mechanisms. Ensure that controls are in place to prevent changes from altering the strategic intent of the contract.
- **Measure and report on performance and use KPI's and data efficiently to incentivise good performance** – administer contracts proactively and efficiently, making maximum use of benchmarking and performance measurement data. Ensure KPIs and incentives are appropriate and proportionate to the contract.
- **Drive continuous improvement, value for money and capture innovation** - actively use contract tools and provisions to leverage the relationship, continually drive value for money and seek out and implement innovative ideas for improvement.
- **Accept that successful delivery of major projects is best achieved through a single fully integrated team** – where the supplier and client work as a single team with one focus, delivery of the successful outcomes.



## 8. Fraud

The Council is committed to countering fraud and corruption and officers who procure goods, services and works must be fully aware of the rules and procedures that support this aim.

Successful counter fraud and anti-corruption arrangements should be the consequence of effective business systems, governance practices and controls, specifically the:

- Contract Procedure Rules
- Financial Rules
- Whistle Blowing Policy
- Employee's Code of Conduct or Business Conduct Policy, and
- Counter Fraud and Anti- Corruption Policy and Fraud Response Plan

Please see Appendix 2

## 9. Freedom of Information Act 2000

The Freedom of Information Act 2000 (FOI) may affect suppliers and contractors to the Council. Procurement related information is likely to be the subject of a number of requests under the FOI Act.

That information must be provided unless it is covered by one of the Act's exemptions.

Requests for information are retrospective which means that any information an external party has provided in the past or may provide in the future will be subject to FOI e.g. contracts, tender documents, development proposals. Personal data is exempt under FOI, because it is already within the terms of the Data Protection Legislation.

## 10. Data Protection

The Data Protection Legislation consist of the UK- General Data Protection Regulation (GDPR) and Data Protection Act 2018(DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426).

Article 28 of the Data Protection Legislation adds a requirement upon controllers (the organisation who determines the purposes and manner in which personal data is processed) to ensure that certain provisions are included in contracts where there is personal data being passed from one party as the controller to another acting as a processor of that personal data.

The aim of the Article is to ensure that a controller of data who passes personal data to the processor controls how that processor can use that data. In order to achieve this, the Article stipulates that any processing of personal data by a processor shall be governed by a contract containing certain Information.

Procurement will therefore ensure that Data Protection Legislation is addressed where required at each stage of a regulated procurement and recorded appropriately on the Contract register by:

- ascertaining what type of personal data will be held as part of the contract and where that data will reside
- identify how the data will be obtained, how it will be stored and who it will be shared with
- identify which suppliers are affected by Data Protection Legislation and record accordingly on the Contract register

## 11. What is next?

Over the past number of years, the Procurement team have made a lot of service improvements to the Procurement service, however there is still a lot to do. Strategic actions over the coming years include but are not limited to the following;

Task	Details
Category Management	Improve our strategic approach to category management so that we can segment spend into areas which contain similar or related products and services enabling opportunities for consolidation and efficiency.
Regulation	Prepare and adapt to upcoming changes to regulations following publication of the Post Brexit green paper and upcoming white paper.
Spend Analysis	Introduce spend analysis as a process to analyse the historical spend (purchasing) data across Publica to provide answers to questions concerning spend visibility, compliance and control.
Further improve self-serve provision.	Improve self – service provision by establishing in-house frameworks and Dynamic Purchasing Systems for key areas of spend. This will release the procurement team to concentrate on strategic areas of procurement.





## Appendix I - Social Value Statement

## Background

The Public Services (Social Value) Act 2012 (the Act) provides a legal obligation on public bodies to consider how the services they commission and procure, over the thresholds provided for in the Public Contract Regulations, might improve the social, economic and environmental well-being of the local area and how, in conducting procurement it can secure Social Value.

Whilst the obligation only applies to above threshold procurements for services (or mixed contracts where services is a large part of the contract), Officers should consider Social Value in all of the Councils procurement requirements when it is proportionate and relevant to do so.

The aim of the Act is not to alter the commissioning and procurement processes, but to ensure that, as part of these processes, the Council consider the wider impact of the services delivered. This also includes encouraging Officers to talk to stakeholders, including the local community, to design better services, and explore finding new and innovative solutions.

The Council has a significant annual spend on a range of goods and services. The Act provides a significant opportunity to think creatively about how we can secure wider social, economic and environmental benefits from this spend.

In addition, the Council wants this statement to be the start of a conversation about how we use our wider processes, resources and influence to support value in our local areas.

### 1. What is Social Value?

The Social Value Act does not define what 'Social Value' means. Therefore, the Council has proposed the following definition of Social Value that links back to the Councils vision:

*Social Value is the wider social, environmental and economic benefits that we will secure from commissioning and procuring activities.*

### 2. The Social Value Model

The Social Value model sets out the Governments Social Value priorities for Procurement. There are five themes and eight policy outcomes, which flow from these themes. These are

Themes		Policy Outcomes
Theme 1	COVID -19 recovery	Help local communities to manage and recover from the impact of COVID-19
Theme 2	Tackling economic inequality	Create new business, new jobs and new skills
		Increase supply chain resilience and capacity
Theme 3	Fighting climate change	Effective stewardship of the environment
Theme 4	Equal opportunity	Reduce the disability employment gap
		Tackle workforce inequality
Theme 5	Wellbeing	Improve health and wellbeing
		Improve community cohesion

There should be a clear ‘golden thread’ from the government priorities to the development of strategies and business cases for programmes and projects, through to our Procurement specifications.

### 3. How we will deliver Social Value

The Council procures a wide range of goods and services, and it is recognised that there can be no ‘one size fits all’ model. This statement should be applied in a proportionate manner and be tailored to reflect the service, goods or works that are being procured. It is the role of commissioners and procurement leads to consider, on a contract-by-contract basis, the potential Social Value outcomes that could be delivered through the procurement exercise and the most appropriate procurement strategy to achieve these.

We will apply Social Value in a way that is fair and transparent to all providers.

In addition, the Council aspire to ensure that the concept of Social Value is considered in all our organisational change activities including those applying to how we assess services that are delivered directly by the Council.

The Councils Contract Rules dictate the procurement process to be followed above specific thresholds. Therefore, our approach to Social Value will be as follows:

**Informal – all procurement below £25,000**

Officers will ensure that the specification/statement of requirement takes in to account our Social Value priorities and that all bidders are given the opportunity to contribute to Social Value regardless of the category of the procurement.

#### **Formal – all Procurements above £25,000**

Officers will ensure that the specification/statement of requirement takes in to account our Social Value priorities and include relevant and proportionate Social Value outcomes that the Council wishes to see from the procurement exercise. Officers may wish to include consultation with community groups to ensure that any practical support is not prescribed but co-created with the community.

Officers will also consider making Social Value a contractual obligation within the specification/statement of requirement where it is appropriate to do so. Examples could include

- Reducing carbon footprint
- Recruiting apprentices for a specific project
- Community wellbeing

Social Value can be included as evaluation criteria and be assessed in line with Price and Quality.

#### **4. Consultation**

It is important that the local communities are engaged in shaping and deciding what is important to them, as well as engaging with the market to understand their ideas for how they can contribute our Social Value policy outcomes. In order to ensure our proposed ideas really do add Social Value we need to engage with communities to understand their existing assets and then use this information to build the Social Value requirements. This will ensure that we are adding and not simply duplicating the value already existing within the community as this could have an adverse impact.



## Appendix 2 - Fraud Awareness



Fraud can occur at all stages of the procurement cycle and can be internal, external or both where there is collusion. Officers must be aware of the risks, detailed below, and the fact that they apply not just to large, high value contracts but also to low level spend. Officers engaged in all stages of the process need to be alert to the possibility of abuse when raising or approving requisitions, when writing or evaluating specifications, as well as further on in the process once the contract has been awarded.

Pre-tendering risks:

- **Needs assessment** – Need or timing tailored to benefit a specific supplier
- **Bid tailoring** – Narrow, broad or vague specifications
- **Bid splitting** – To circumvent approval thresholds.
- **Contract waivers** – To circumvent a fair and proper tendering process.
- **Abuse of position/conflict of interest/bribery** –Officers, Members or Suppliers acting inappropriately and for personal gain.

Tendering/bid evaluation risks:

- **Leaking confidential information** – staff providing details to contractors for unfair advantage.
- **Influencing the evaluation** – staff influencing an outcome for a preferred supplier.
- **Fictitious companies bidding** – to mislead and influence the evaluation process.
- **Cartels/collusive bidding/inflated bids** – suppliers colluding to influence the outcome.
- **Cover pricing** – obtaining artificially inflated prices to give a misleading impression of the extent of competition

Post-tendering risks:

- **Poor Contract Management** – allows abuse and possible fraud by the supplier.
- **Claims for fictitious services/goods** – charging for goods not supplied.
- **Charging for different quality goods/product substitution** – inferior goods supplied for inflated prices and altered contract terms.
- **Fictitious companies/staff/contractors** – diverting payments.

Fraud awareness and training for all staff involved in the procurement process is mandatory and includes training on the fraud indicators officers must be alert to.

To manage the risk of bribery and corruption, procedures for declaring gifts and hospitality and conflicts of interest are also mandatory and the organisation encourages a culture of transparency that is supportive of whistleblowing.

Segregation of duties, a centralised contract register and proactive contract management further mitigate the risk from fraud.