An Introduction to Public Procurement

Contents

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1. Purpose of the guidance

The public sector spends over £150 billion a year on the goods and services needed to deliver public services. To achieve value for money (VFM) for the taxpayer, effectively managed procurements – properly planned and executed – are essential.

This guidance sets out the key concepts and principles of good procurement and is intended for senior officials with limited experience of public procurement. Although it focuses primarily on activities in central departments and closely associated bodies, it is also relevant where central government provides commercial governance, advice or support to what is described here as the 'wider network' (i.e. all devolved public sector bodies, including those in health, education, local government and the emergency services).

The Introduction is a component of OGC's Policy and Standards Framework which covers all the key procurement policies to which contracting authorities are expected to adhere as part of *Transforming Government Procurement*, which set out, in 2007, the Government's priorities for public procurement reform.

Much of the Introduction is relevant to the process of "Commissioning". Commissioning is where the public sector decides the services or service outcomes (e.g. in adult social care or children's services) or the products that it needs, acquires them and makes sure that they meet requirements. There is much debate about whether commissioning is synonymous with procurement or merely includes procurement. What is certain is that for procurement to be effective as a business tool, organisations need to cover the same activities as commissioning – identification of needs, acquisition and management of benefits – all of which are discussed in this document.

2. Background: Why good procurement matters

Public procurement is the process whereby public sector organisations acquire goods, services and works from third parties. It includes much that supports the work of government and ranges from routine items (e.g. stationery, temporary office staff, furniture or printed forms), to complex spend areas (e.g. construction, Private Finance Initiative projects, aircraft carriers or support to major change initiatives).

It also includes a growing spend where the private and third sectors provide key services directly to citizens in areas such as welfare-to-work, further education, social care and health. Such services may also be provided by the public sector directly, and in some cases even this public provision can be handled through procurement mechanisms. A public body may bid for government work against private sector firms through a formal competitive process.

Why Procurement Matters

- Effective public procurement is essential for good public services and good government. The public sector in the UK spends well over £150 billion a year on the goods and services necessary to deliver public services.
- Government must apply the highest professional standards when it spends this money on behalf of taxpayers, to ensure it gets a good deal and to provide appropriate and necessary goods and services to the quality required to meet user needs.
- The procurement process spans a life cycle from identification of the need, through the selection of suppliers, to post-contract award management, including disposal.
- There is a duty on procurers in central government to apply the key principles of public procurement. These require the delivery of value for money (VFM), appropriate quality and service to meet business needs, and appropriate governance (ie, adherence to HM Treasury rules concerning the use of public money in procurement) as described in Managing Public Money, Annex 4.4.
- Public sector procurement is governed by the UK regulations that implement the EU procurement directives. These apply to the majority of procurements with a total value over a specified threshold. Procurements which are below threshold are not covered by the UK regulations, but are still subject to EU Treaty principles. This is described in more detail in the *Policy and Standards Framework*.
- Contracting authorities need to deploy strong personal and organisational commercial leadership, and, in most cases, procurement activities need to be led by professionally trained staff.
- The procurement approach and procedure must be relevant and appropriate for what is being purchased, and the market must be able to provide it at an affordable price.
- Contracting authorities are required to promote sustainable development objectives through procurement in a way that is consistent with value for money and the legal framework for public procurement. In particular, they must contribute to achievement of the targets and commitments on *Sustainable Operations of the Government Estate* and in the *Government's Sustainable Procurement Action Plan*. Authorities should also incorporate social issues into procurements where they are relevant and proportionate to the subject matter of the contract. For further information on delivering other policy objectives through procurement please refer to the *Policy and Standards Framework*.

Fig. 1: Why Procurement Matters

3. Strategic context of procurement

The starting points for government's activities are *policy outcomes*. These are the desired 'deliverables' – a tolerant, safe society; well-educated citizens and so on. Government then develops policies to meet these outcomes and engages in operational activities to deliver them.

It is not always obvious how procurement contributes to these policies and outcomes. It may be indirect – for example, buying stationery. In this case, procurement is supporting staff who are key to policy delivery. In other cases, the link between policy and procurement is clearer; it is hard to imagine, for example, well-educated citizens without school buildings and equipment, which all have to be procured.

In some cases, it is the actual development or delivery of the policy outcomes that are procured – the market provides the solution and delivers it to citizens. Here, procurement is absolutely central.

Often, procurement is only one of a number of mechanisms which could be used to deliver government policy. For example, rather than procuring a policy-delivery solution, the Government could introduce a new tax or subsidy; it could regulate or prohibit something; it could use persuasion techniques through advertising or marketing to influence behaviours in society. If procurement is selected as the most desirable policy delivery mechanism, this should be justified against the other options.

Whether the driver is strategic policy delivery or support for ongoing operations, authorities must adhere to government procurement policy, which is to buy the goods and services that it needs to deliver world-class public services, through a fair and open procurement process, guarding against corruption and seeking to secure value for public funds with due regard to propriety and regularity.

The procurement process spans the whole life cycle, from the identification of the need to purchase, through supplier selection and contracting, to the delivery of the required goods or services and (where relevant) the underlying policy outcome through to the disposal of the asset(s) or service closure or recompetition exercise. Its success can only be ultimately judged or measured when the product has been disposed of, or sold on, or when the service contract has been delivered in full.

Example: The London congestion charge

The desired policy outcomes were chiefly to reduce congestion and pollution in London.
There were a number of possible options:

- introduce a new **tax** on cars or increase petrol taxation
- use a marketing campaign to **persuade** people to drive less
- **increase expenditure** on public transport
- **regulate** (e.g. only red cars are allowed to drive on Mondays)
- implement a **congestion charging** system; developed either in-house or by the market.

Several of these options would have involved procurement in some way, in some cases in a supporting role; in others, as an integral part of the solution. Government's job was to establish which of the options would best meet the policy objectives, taking into account issues such as overall strategic alignment, deliverability, VFM and acceptability to citizens and users.

Once congestion charging was chosen as the preferred option, key strategic considerations included:

- could this be implemented in-house or would the market be required?
- if the market were required, what would be the balance between in-house and external input, through development and into operations?
- was there an existing market capable of providing the solution?
- were there existing contracts in place that could be used?
- did the public sector have the right skills and capabilities to manage the contracting and delivery processes?
- who was best placed to manage the key risks (public sector or supplier?).

The chosen option relied strongly on the market to deliver the solution, and on a blend of the market and in-house provision to operationally deliver that solution.

Fig. 2: Example: The London congestion charge

4. Procurement processes and the spectrum of activities

Government buys everything from routine, low value items to highly complex policy solutions – *"build and operate a congestion charging system for me that delivers me these outcomes."*

Clearly, procurement processes, techniques and issues differ greatly across this spectrum. A number of factors drive the different approaches, and it is important to consider the nature of each procurement requirement and then decide on the appropriate approach.

Some key factors that can affect the decision on the approach include:

- Repeatability: is the procurement going to be **repeated** – i.e. is there an ongoing requirement (e.g. personal computers) or is it a 'one-off', such as a bespoke software development project?
- Complexity: how **complex** is the procurement; perhaps in terms of a technical specification (a warship) or the range of services required (a major property outsource across a varied estate)? See Fig.3 below.
- Value and risk: the **value** of the procurement or the risk to the authority – a procurement may be low in value but may still carry significant reputational risk.
- Commonality: the **commonality** of what is being procured; is the authority the only one that requires the item (e.g. warships again for MOD) or is it something many authorities require, such as temporary labour or furniture.

At one end of the spectrum, a low value, low risk, non-repeatable purchase requires little process, governance or expertise. It is therefore probably best handled through the use of a Government Procurement Card (GPC).

At the other extreme, buying an aircraft carrier or outsourcing an entire ICT operation requires a strong project structure, considerable expertise, governance and processes, advanced tools and probably several years' worth of effort. Options may include the Private Finance Initiative (PFI) (except for ICT) or other Public Private Partnerships (PPP), which in themselves present options for the funding of major capital projects, as well as options for project and operational delivery. Less positively, an authority may be faced with a situation where the market is limited or even non-existent, which then requires a

Factors which might make a project complex or high risk

- It is not possible to define upfront the technical means capable of satisfying the objectives or the financial make-up of the project.
- The specification is complex and/or innovative.
- The procurement is novel to the authority or there are high risks in delivery; whether technical, geographic spread or reputational risk.
- The contract will be long term.
- Competition is restricted or there are only a few dominant suppliers.
- The capabilities and skills required to deliver the procurement are scarce or not understood.
- The contract will be based on unusual or innovative commercial models (e.g. a PFI or PPP variant).
- There are significant integration elements with existing business requirements.
- Please refer to *OGC's Competitive Dialogue guidance* for the definition in the EU Procurement Directives of what makes a contract complex.

Fig. 3: What makes a procurement complex or high risk?

very informed approach if value is to be achieved. (These competition issues are discussed further in section 7).

Between these two extremes, there are many variations of approach. For instance, awarding rail franchises is now a repeated activity, and has benefited from the procuring authority developing strong market understanding, and using complex procurement tools and techniques (as well as very capable staff) to achieve significant value improvement over time.

Goods and services bought regularly, with significant aggregate value, are often appropriate for collaborative **Category Management**. This is the process that brings together procurement professionals, buying organisations, suppliers, industry bodies, and users (the stakeholders) who are engaged in the procurement of a particular category of commodity expenditure. Category management means applying a structured approach to analyse and review the spend in that category, and to identify and implement the most appropriate and effective approach to sourcing, supplier selection and contracting, and contract management.The resulting strategy is likely to include the development of strong market and supplier knowledge, a deep understanding of specification and demand, a strong focus on competition, and a drive for continuous improvement – all of which lead to improving VFM.

Typical spend categories include management consultancy, travel services, furniture and fleet management and many of them are common across government and lend themselves well to collaboration (see below).

5. Collaboration

Acting collaboratively is an important driver for VFM, and is particularly relevant in areas of common spend like commodity goods and services. Aggregation of demand (but not necessarily supply) can often lead to greater leverage with suppliers, greater commonality of specification and a reduction in administrative costs – all leading to better VFM for the authority.

Authorities should collaborate with each other, following OGC's policies and guidance, in order to ensure VFM, unless they can demonstrate that better value can be achieved in some other way. There are a number of pan-government Framework Agreements already established which should always be considered before an independent procurement is originated.

The cost of an independent procurement is often under-estimated. Even a small procurement is likely to involve internal staff and administrative costs. But any procurement required to follow a full EU procedure could run into tens of thousands of pounds (including the use of legal or other professional services). A medium-sized contract of, for example, £2m can easily cost £100,000 or more to let; and the largest procurements have costs that run into millions. Additionally, ongoing contract management costs can be reduced when provided elsewhere or shared collaboratively. Collaboration should also drive the development of some critical markets and supplier relationships, and the management of the government estate.

So, using an existing collaborative contract – even if it is slightly more expensive in pure price terms than what might be achieved locally – is often justified.

For more information, contact OGC.

6. Complex project procurement

The remainder of this guidance focuses on the complex end of the spectrum, with the emphasis on major procurements, usually of a one-off (or at least irregular) nature. Clearly, these are the areas where the greatest risks and opportunities lie, where public scrutiny is strongest, and where senior non-specialists are most likely to have a key role to play.

The three key stages (described generically) of a typical complex procurement process are shown in Fig. 4.

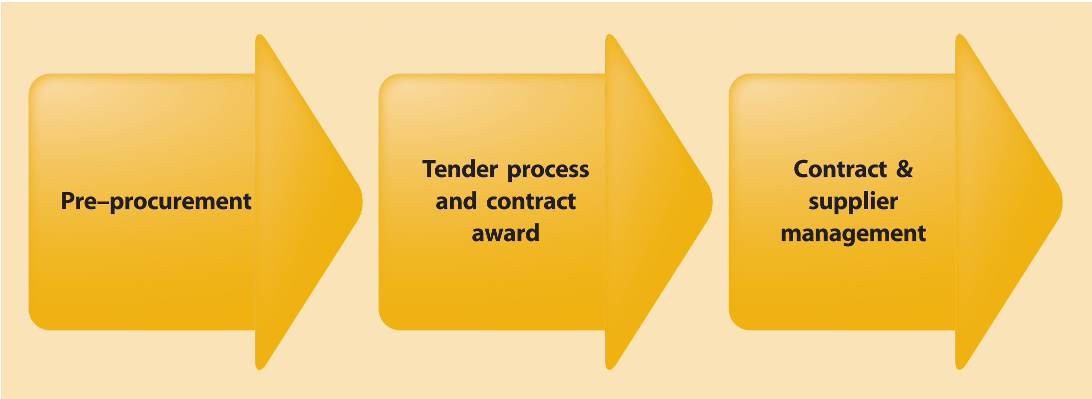

Fig. 4: Three stages of a procurement process

The key issues at each stage are described below:

i) Stage 1 – Pre-procurement

Pre-Procurement Planning

It is essential effective planning is carried out prior to a procurement. This planning should include :

- consultation with stakeholders about what is needed and the budget that is available to fulfil the need
- engagement with the market to understand the solutions that may be available and to get feedback on how the requirement may be best met
- establishment of effective governance arrangements and resourcing plans
- if necessary because the department does not have the necessary expertise, appointing advisers to help ensure novel or difficult projects are established on a sound footing

Developing Specifications

It is important to provide sufficient detail to allow the market to respond to requirements, whilst leaving room for innovation where appropriate. Output- or outcome-based specifications should normally be used. These focus on what authorities want to achieve, not how a supplier is to provide it. This challenges suppliers and gives them the scope to develop innovative solutions.

In certain circumstances it will be essential to specify exactly what is required in detail (e.g. for specialised laboratory equipment). Specifying an accepted industry standard for a technical solution is also good practice; specifying non-standard or 'gold-plated' solutions will always lead to higher costs.

For complex or novel requirements, developing the specification is likely to be an iterative process. Starting with a high-level statement, the requirement is progressively refined to arrive at the level of detail needed for the final specification. Such an approach, however, does not obviate the need for good clarity on the required outputs and outcomes from the start. Suppliers also need to have a good understanding of the key constraints within which they will have to work. Many failed procurements can be traced back to a lack of clarity on specifications or desired outcomes.

Project and Programme Management (PPM) and Skills

Authorities, through their accounting officers, are responsible for the selection and appraisal of projects and programmes, and they should run their procurements as projects. The procurement project may be stand-alone or be one of a number of interlinked projects contributing to a programme, which will deliver a set of business change outcomes.

A consistent and systematic approach to PPM is essential. HM Treasury's *Green Book – Appraisal and Evaluation in Central Government*, is intended to ensure consistency across government in appraisal and evaluation practice and it should be applied to all projects and to the evaluation of alternatives. An effective PPM approach, such as OGC's Gateway™ process, ensures that the procurement project's processes are systematically assessed, are on track or, where necessary, adjusted to maintain progress. This is explained in more detail in chapter 3 of HM Treasury's *Managing Public Money*.

For major or complex projects, a senior responsible owner (SRO) should be appointed at the outset, and PPM best practice tools and techniques applied as appropriate. The SRO should clearly define the required outputs of the procurement project, which must contribute to the overall business objectives.

There must be access to personnel with the appropriate professional skills, knowledge and experience. A major procurement will require, as a minimum, skills in project management, procurement, law and finance. It may also need specialist input in areas such as security, HR or risk management. Such resources, if not available in-house, may need to be bought in.

For more information on PPM best practice, including Gateway Reviews and PPM standards (e.g. PRINCE2, Managing Successful Programmes), refer to the Policy and Standards Framework.

Investment Appraisal for a Procurement

A business case should justify the procurement activity and expenditure, and communicate whether the investment is worthwhile in VFM terms, assessing objectives, benefits, strategic fit, deliverability, affordability, options and suitable commercial approaches.

Later decisions will focus on whether the investment continues to offer VFM in light of any changed circumstances, and the delivery of anticipated benefits. For major and complex projects, the business case should be continually revisited at key points in the procurement life cycle, to ensure that the project's original aims, objectives, user requirements and benefits continue to be met.

For further information, refer to the HM Treasury Green Book.

Market Engagement

It is always useful to involve the market in the early processes around establishing requirements, procurement strategy and approach. Care must be taken however, to avoid giving unfair advantage to one or more suppliers and to ensure that all exchanges are transparent and compliant with the procurement regulations. In particular cases, authorities may need to engage with suppliers to ensure effective competition or to consider long-term capacity issues. The right approach can help, for example, in creating capacity where previously none had existed – perhaps by encouraging suppliers in an associated sector to develop the new capabilities required.

Further discussion of related issues is given in section 7 under the 'Competition' heading.

Procurement Strategy

The procurement strategy should contain options analysis and recommendations around a range of issues depending on the precise nature of the procurement. Typically, for a complex procurement, it would include discussion of the contracting process itself; the number and nature of the suppliers required; the length and type of contract; contract and supplier management issues.

Consideration might also be given as to whether an existing contract could be used, either one let by the authority or whether another government contract could be available for wider use. This can be an effective and efficient route, saving time and money in the procurement process. However, care must be taken both from a legal point of view (can the contract be used given how its scope was originally defined?) and VFM (would a competitive process drive a better deal?).

Funding and risk transfer options such as *PFI/PPP type arrangements* (e.g. for prisons, schools or other major construction projects) may also be considered. These are often complex due to the financing mechanisms required and specialist advice may be needed.

PFI should be used where it can be shown to deliver VFM. It can offer VFM for certain investments through a long-term focus on whole-life costs, risk management or risk transfer expertise, and greater certainty for the public sector that services will be delivered to the specified standard. In all procurements, but most critically in PFI, it is imperative that risks associated with a project or contract are borne by the party best able to manage them. Transferring risk for the sake of it, and at greater cost than if it were retained, is never desirable. Please refer to HMT's new document *Infrastructure Procurement: Delivering Long Term Value* which sets out the next steps Government is taking to secure value for money in its procurement of significant assets, infrastructure and long-term service provision. These measures are being taken in recognition of the continually evolving needs of the public sector, and also the changing approaches to complex procurement that have been developed over the past 15 years, many building on experience of the Private Finance Initiative. [hyperlink]

Other strategic issues can include whether and how to use *Prime Contracting*, whereby a lead supplier manages sub-contractors as part of the delivery chain. This has advantages of clear contract ownership, but requires a Prime Contractor capable of doing this effectively; otherwise the authority can become involved in difficult arguments in the supply chain.

Long-term operational service contracts will require strategies for handling the inevitable changes through the life of the contract, so should incorporate effective change control processes, and will usually require supplier performance incentivisation mechanisms.

Major outsourcing arrangements will also require the management of employment issues and TUPE considerations.

ii) Stage 2 – The Tender Process

Authorities are responsible for achieving VFM, normally through fair and open competition. In addition, they must comply with their legal obligations under the EU procurement rules, and adhere to the EU Treaty principles, the most important of these being:

- equal treatment
- non-discrimination
- mutual recognition
- proportionality
- transparency.

These are described in detail in the Policy and Standards Framework

Procurement projects with a value over a stipulated threshold for goods and services and in certain spend categories (most, but not all, of government's key spend areas) are fully subject to the EU Procurement Directives. These procurements must be advertised in the Official Journal of the EU (OJEU) and meet set timescales, from the initial notice to contract award, and define, for example, the minimum time during which suppliers must be allowed to respond. The Directives also provide for four main procurement procedures to be used by authorities.

For straightforward procurements, for example of commodity goods and services, they may choose between the open and restricted procedures.

For complex procurements contracting authorities are normally expected to use the Competitive Dialogue procedure, which is where a contracting authority wishes to award a particularly complex contract and considers that the open or restricted procedure will not allow the award of that contract. The EU Procurement Regulations define "particularly complex contract" as a contract where a contracting authority is not objectively able to:

- define the technical means...capable of satisfying its needs or objectives; or
- specify either the legal or financial make up of a project.

a) The Open Procedure

Under the open procedure, all interested candidates who respond to an OJEU advertisement must be invited to tender. This procedure does not allow any form of pre-qualification or pre-selection.

b) The Restricted Procedure

Under the restricted procedure, interested candidates are invited to respond to an OJEU advertisement by submitting an expression of interest in which they reply against defined criteria relating to their organisation's technical capability and financial standing. A shortlist of candidates is then drawn up and invited to tender. There is no scope to negotiate with tenderers following receipt of bids.

Authorities normally prefer the restricted procedure. The separate selection and award stages allow them to restrict the number of candidates who will be invited to tender, which reduces cost and improves manageability.

c) The Competitive Dialogue Procedure

For complex procurements, the restricted procedure is usually too inflexible as it allows only limited discussion and dialogue with bidders. Authorities should therefore normally follow the competitive dialogue procedure, unless there are exceptional circumstances that would justify the negotiated procedure.

The competitive dialogue procedure (see Fig. 5) is a flexible procedure, suitable where there is a need for authorities to discuss aspects of the proposed contract with candidates. For example, the procedure would be used where authorities cannot define clearly in advance the technical means capable of satisfying their needs or objectives, or where there is a range of options for the legal and/or financial structure of a project.

Under competitive dialogue, a similar pre-selection procedure is undertaken to that used for the restricted procedure. Shortlisted parties are then invited to participate in dialogue, which may have several stages. This helps to refine the requirement through supplier input and gives the opportunity for meaningful negotiations. Once this stage is concluded, suppliers are invited to submit a final tender. There is only one provision for the contracting authority to ask bidders to *"clarify, specify and fine-tune"* their final bids before a preferred bidder is chosen.

Further guidance can be found at:

http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_specific_application_issues.asp

d) Competitive Negotiated Procedure (with a call for competition)

This procedure is limited to very specific circumstances and should only be used where other procedures will not work. It may be valid when: competition is not viable or appropriate; other procedures have not produced an acceptable tender; work is needed for research and development purposes; or where prior overall pricing is not possible. There are also circumstances where this procedure can be used without call for competition. The European Commission is likely to look closely at the rationale for any negotiated contracting exercise.

Evaluation of Tenders

Tenders are assessed against the criteria set out in the OJEU advertisement or tender documentation. The assessment should follow the pre-defined evaluation strategy and be consistent with the ultimate objectives of the project/procurement. The financial and qualitative elements of tenders are assessed separately. Weightings may be applied to the criteria to allow price and non-price factors to be scored to reflect their importance to the project and to arrive at a final VFM judgment. For complex procurements, this process requires skilled and experienced staff. The final selection should be the tender which offers best overall VFM. VFM considerations for the evaluation process are discussed in detail in section 8.

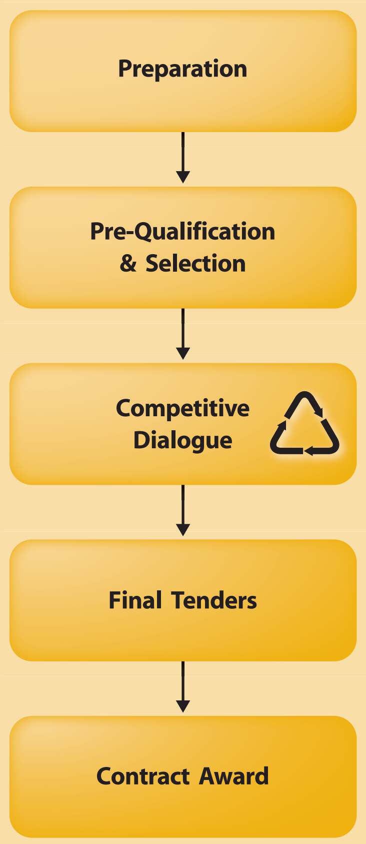

Fig. 5: A typical Competitive Dialogue process

iii) Stage 3 – Contract and supplier management

Contractual relationships play a central and fundamental part in the delivery of public sector services and touch the lives of every citizen. Suppliers' actions are often critically important, and when things go wrong, the failure can be expensive in human, financial and reputational terms. Good management of the operational phase of the procurement is therefore key to successful service delivery. Contract management activities can be broadly grouped into three areas:

Service delivery management – ensures that the goods or services are being delivered as agreed, to the required level of performance and quality, and are supporting the business and operational need for the contract.

Relationship management – keeps the relationship between the two parties open and constructive, and aims to resolve or ease tensions and identify problems early.

Contract administration & change management – handles the formal governance of the contract and changes to the contract documents.

This phase of the procurement cycle is typically the most lengthy, and for a PFI type contract can last for up to 20 years. The potential impact on VFM and overall effectiveness can be substantial, and therefore it is vital that authorities dedicate the right level of resources, skill and expertise into this critical function.

Even if a contract offers good VFM and performance when it is first placed, the lack of intelligent client capability can destroy that value remarkably quickly as the contract term progresses (e.g. to manage and deliver value through a major ICT outsourcing contract will require a client with strong technical and service management skills).

Deployment of supplier and contract management resources with the right technical and commercial skills should be considered throughout the procurement life cycle. It is good practice for the contract manager to be involved from the early procurement phases, rather than being brought in only after the contract is awarded.

For the largest suppliers, the most complex contracts and the longest contract terms, significant client/supplier relationship effort will be required. Continuous improvement in performance and VFM is necessary to generate benefits for both the client and supplier. Merely aiming to maintain performance is the equivalent of standing still. This generally requires a win:win approach and a willingness to use mechanisms such as innovation workshops, shared process improvement and value engineering. An effective and close relationship from the outset between the Senior Responsible Owner (SRO) and the Senior Responsible Industry Executive (SRIE) – the supplier equivalent – is also vital to success.

However, senior officials should never forget that private sector suppliers have a primary duty to maximise returns to their shareholders. 'Partnership' has become an over-used word. Development of good, collaborative relationships with suppliers is the right strategy for many major contracts, but an element of challenge, competition (potential at least) and focus on value must be retained in such relationships. 'Partnership' must not mean doing only what the supplier asks.

7. Managing competition issues

Competition is the cornerstone of public sector procurement. It underpins the pillars of fairness and transparency, and is the primary driver of VFM in virtually all procurements.

Where a competitive procurement is selected as the right strategy, there is therefore a need to understand: the commercial drivers for suppliers; competition issues; and the marketplace (i.e. is it inherently competitive, is it global, local or national?). The following table illustrates how competition issues should be considered at key stages of the procurement process.

Procurement stage	Key competition factors to consider
Pre-procurement: requirements definition market engagement procurement strategy.	■ Aim to market to the supply side, to stimulate and maintain their interest – particularly where there isn't a well-established and competitive market already. Be open to novel approaches and give consideration to alternative technical and commercial options for meeting the requirements. ■ Stimulate and encourage competition against the incumbent where the market isn't strong – for example, by maintaining a level playing field in terms of knowledge across suppliers. ■ Where there is no competition, or competition is very limited, undertake market soundings and be prepared to adapt the requirements to the capacity and capabilities of the marketplace. ■ Advertise and market contracting opportunities as broadly as possible – e.g. through the use of market briefings, supplier days, press articles or advertising. Consider breaking down large requirements into smaller packages of work which may be more open to competition.
Tender process/ contract preparation	■ Ensure the same, relevant information is available to all bidders to demonstrate that the bid is winnable. ■ Consider optimal contract duration to achieve best competitive leverage. ■ If competition is good, consider shorter contracts with break clauses to allow for regular competitions, thus realising the potential for optimal prices in a market that is dynamic and competitive. ■ Include benchmarking provisions within the contract terms so that the contractor is incentivised to minimise costs, respond to market movements and maintain efficient performance levels.
Contract management	■ For complex arrangements, consider closer strategic relationships, so that there is a strong understanding of the supplier's incentives, commercial model and profit margins. ■ During this phase the authority should seek to continually work to improve the competition environment prior to renewal of the contract. ■ Ensure that IPR and asset ownership provisions allow for a smooth transition to a new supplier.

Fig. 6: Key competition factors

8. Why value for money matters

Given the limited resources available to government, ensuring VFM in procurement is key to ensuring the optimum utilisation of scarce budgetary resources. VFM is the primary driver for procurement. It usually means buying the product or service with the lowest whole-life costs that is 'fit for purpose' and meets specification. Where an item is chosen that does not have the lowest whole-life costs, then the additional 'value added' benefit must be clear and justifiable. Assessment of supplier bids should be conducted only in relation to a published set of evaluation criteria, which must be relevant to the subject of the contract, and any 'added value' that justifies a higher price must flow from these defined criteria.

VFM also incorporates affordability; clearly, goods or services that are unaffordable cannot be bought. This should be addressed as soon as possible within the process, ideally at the business case stage before procurement commences. In order to address this issue, a change in procurement approach, specification or business strategy may be required.

VFM is often primarily established through the competitive process. A strong competition from a vibrant market will generally deliver a VFM outcome. But where competition is limited, or even absent, other routes may have to be used to establish value. These can include benchmarking, the construction of theoretical cost models or 'shadow' bids by the authority. For major contracts, this can require considerable financial expertise and external support may be justified.

VFM should always be assessed over the whole life of the project to take into account sustainability issues. This should include disposal (either sale proceeds or decommissioning costs) and take into account all costs and benefits to society as a whole, not simply those directly relevant to the purchaser – e.g. environmental impact – as set out in HM Treasury's *Green Book – Appraisal and Evaluation in Central Government*. At award stage of a procurement however, authorities may only assess on criteria relevant to the subject of the contract This approach ensures that all factors are understood before a purchase or investment decision is made.

For further information on approvals, see Appendix.

9. Delivering excellent procurement

Authorities, and primarily their accounting officers, are responsible for achieving VFM in public procurement, normally through competition. However, it is important to remember that accounting officers have a responsibility to deliver VFM for the Exchequer as a whole which may, for example, be achieved through collaboration with other procuring authorities.

The responsibility of the accounting officer to deliver VFM procurement is essential to good government. With limited resources available to the public sector, ensuring VFM procurement results in the optimum utilisation of scarce budgetary resources.

The following table provides a checklist for SROs and other senior managers who want to help ensure best VFM and successful outcomes from major procurement activities.

- Apply Best Practice PPM techniques and disciplines to the procurement process, and ensure people running it have the necessary capabilities (procurement and PPM, change management etc.).
- Ensure strong leadership, governance arrangements and scrutiny (e.g. Gateway Reviews) are in place.
- Define a procurement strategy with clear options, deliverables, objectives, outputs or outcomes at the start. Ensure the interests of the authority and the contractor are aligned.
- Engage with the market at the earliest opportunity, stimulate and encourage competition, particularly where there is a strong incumbent.
- Wherever possible, develop outcome-based specifications that encourage innovation to describe the requirements – ensuring that they are as 'standard' as possible in the eyes of the market (bespoke solutions have a high price).
- Allocate risk optimally between the authority and supplier(s), with risks carried by the party best placed to manage them.
- Use a competitive, efficient, fair and transparent procurement process, focusing on whole-life costs and with evaluation of bid proposals from a qualitative, as well as quantitative, perspective.
- Agree a fair but flexible contract to ensure that any changes to the original requirements, or changing technology, can be accommodated during the life of the project to ensure VFM.
- Ensure the contract gives the supplier real incentives to deliver, and has strong mechanisms to take meaningful action where they do not.
- Develop a strong 'intelligent client' function that can handle contract and supplier management issues professionally, and considers strategic future options well before the end of the contract.

Fig. 7: Checklist for successful major procurements

Capability and Procurement Capability Reviews

The OGC Procurement Capability Reviews (PCRs) are designed to assess how far procurement in central government meets the demanding standards required to deliver Government policy and achieve value for money now and in the future.

The reviews challenge departmental procurement activities at a strategic and structural level, covering the widest definition of procurement from commodities through to complex PFI projects. They assess how far government procurement in each Department meets the demanding standards required to achieve value for money now and in the future. The outcomes from the reviews will drive improvements in procurement capability where the greatest impact can be achieved.

PCRs are intended to provide an overall assessment of departmental performance in procurement, based on the underpinning *PCR Assessment Model*, which aims to assess against World Class procurement standards and practice.

The Procurement Policy and Standards framework feeds into and is aligned with the PCR Assessment Model. The model guides the reviewers when they assess the capability of each department and supports the key requirements contained in the Policy and Standards framework. The PCR model is based on three key areas of capability, and nine more specific indicators; it is structured as follows:

Leadership	1. Visibility and impact of leadership 2. Vision, aspirations, business and policy alignment 3. Stakeholder and supply base confidence levels
Skills development and deployment	4. Effective resourcing of procurement activity 5. "Intelligent client" capability
Systems and processes	6. Governance and organisation 7. Strategic and collaborative approach to market engagement and sourcing 8. Effective use of procurement and PPM tools and techniques 9. Knowledge and performance management

For more information on capability and Procurement Capability Reviews, please refer to the *Policy and Standards Framework* and the *Procurement Capability Review assessment model*.

11. Ethics and propriety

Government and private sector procurement suffers from fraud and similar issues; not often, but it does happen. Suppliers have been known to operate cartels (to restrict competition or drive up prices), and some suppliers and staff have, on occasion, committed fraud. That may include; falsifying invoices; business awarded unfairly in return for bribes or suppliers inflating prices in collusion with staff and/or competitors.

Senior officials should be aware of these issues; strong processes and governance are the best routes to guard against most potential problem areas.

In terms of ethics and propriety, officials should consult the HM Treasury guidance *Regularity, Propriety and Value for Money*, the *Civil Service Code of Conduct* and their own department's policies. The Chartered Institute of Purchasing and Supply's *Professional Code of Ethics* is also a useful guide (see below for links).

Key points to note include the need to be aware of, and respond appropriately to, conflicts of interest (for instance, major shareholdings in a potential supplying firm), and the need for great caution regarding supplier hospitality, particularly if a supplier is currently engaged in a procurement process. Gifts are very rarely acceptable and it is important to note that merely recording gifts or hospitality in a 'hospitality book' does not make them inherently acceptable!

Further guidance can be found at:

- *http://www.hm-treasury.gov.uk/media/A/2/Reg_Prop_and_VfM-November04.pdf*
- *http://www.civilservice.gov.uk/documents/doc/cscode/cscode.doc*
- *http://www.cips.org/aboutcips/whatwedo/professionalcodeofethics/*

Appendix: Key roles and responsibilities

Office of Government Commerce (in Central Civil Government)

OGC is an office of HM Treasury, responsible for improving VFM by driving up standards and capability in procurement, from commodities buying to the delivery of major capital projects, maximising the effective use of 60% of government spending and a £30 billion property estate.

A new Government strategy launched in January 2007, *Transforming Government Procurement*, highlighted the central importance of procurement in delivering high-quality public services and best VFM. OGC is tasked with delivering this transformation, and with driving up standards and procurement capability across central government. OGC does this through:

- setting procurement standards and monitoring performance and capability
- developing a cadre of skilled procurement professionals across government
- driving VFM through collaborative procurement
- playing a strong role in the successful delivery of major projects
- improving management and use of the government estate.

HM Treasury

HM Treasury sets PFI policy, approves projects over contracting authorities' delegated authority levels, supports departmental Private Finance Units and chairs the Project Review Group (for PFI projects).

Departmental Finance Units

DFUs are responsible for the implementation of PFI policy in the context of the Departmental Investment Strategies, provide strategic management of the department's portfolio of PFI projects, and are centres of expertise for PFI policy etc.

Partnerships UK

PUK is a Public Private Partnership, incorporated as a private sector company. It was created to ensure access to procurement expertise for the public sector with special regard to PFI and PPP programmes and projects.

Major Projects Review Group

MPRG is a scrutiny committee for major central government projects, sponsored by HM Treasury, and briefed by OGC. It aims to deliver better VFM for the taxpayer by challenging projects on deliverability, affordability and VFM. It consists of a pool of government commercial experts from which scrutiny panels are selected. It places departments' most significant projects under an effective enhanced review process in the early stages.

Approvals process

HM Treasury delegates limits of expenditure approval for public procurement to departments, via accounting officers, who are ultimately responsible for approvals within these delegated limits, and for ensuring that expenditure is consistent with VFM policy and the rules set out in *Managing Public Money*.

Delegation levels vary between departments according to size, capacity, nature of operation and maturity etc.

HM Treasury agreement is needed for:

- procurement proposals outside the authority's delegated limits
- expenditure relating to novel or contentious proposals even if they appear to offer VFM in isolation.

These proposals will normally be dealt with by HM Treasury spending teams.

Proposals relating to the most significant projects that are high risk, precedent-setting or in excess of departmental authority limits may also be subject to the MPRG process prior to business case approval and at subsequent key stages of the project life cycle.

Below delegated authority levels, contracting authorities must develop their own structured approvals process, and individuals must understand their own delegation levels and discharge their responsibilities correctly and appropriately. The approval process for each authority must be documented and transparent. Authorities are expected to sign off and approve their own projects internally.

Contracting authorities

Contracting authorities, through their accounting officers, are responsible for achieving VFM in procurement, normally through competition. They must comply with legal obligations under EU rules and other international obligations, and follow OGC policies and standards on public procurement as set out in the Policy and Standards Framework.

Commercial Directors and Heads of Procurement

The commercial director is accountable for the contribution the commercial function makes to the overall corporate strategy. The function acts as the interface between the department and external markets, delivering via suppliers the combination of value, customer service, innovation and assurance that enables a department to meet its overall vision and strategy. The commercial director defines and implements (through their team) the commercial strategy for all contracts, manages relationships with key suppliers, and advises on other commercial issues and contracts. They provide clear leadership, develop the commercial team and drive key initiatives, e.g. e-procurement programmes, major outsourcing and PFI contracts.

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About OGC

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OGC Service Desk

OGC customers can contact the central OGC Service Desk about all aspects of OGC business.

The Service Desk will also channel queries to the appropriate second-line support. We look forward to hearing from you.

You can contact the Service Desk 8am – 6pm Monday to Friday

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