

Good practice guidance

Managing the commercial lifecycle



National Audit Office



July 2021

This guidance draws on twenty years of NAO reports to provide focused advice on how to best manage each part of the commercial lifecycle. It provides examples of good practice to support the advice at each stage and is developed with input from commercial experts across government and our other stakeholders.

We are the UK's independent public spending watchdog

Foreword

The government's response to the COVID-19 global pandemic has drawn renewed, and possibly unprecedented, attention to public procurement practice and commercial outcomes. Given that annual public expenditure on goods and services routinely exceeds £206 billion per year, the risks and opportunities to deliver value for money for the taxpayer merits ongoing focus by all public authorities.

The National Audit Office (NAO) is publishing this good practice guidance now to reflect upon findings and recommendations drawn from 209 reports concerning 350 commercial arrangements that it has published over the past 20 years – including recent examinations of commercial activities triggered in response to the global pandemic.

By 'commercial lifecycle', we mean the entire process starting with the identification of a requirement that may be delivered by a supplier to government through to the selection and appointment process, contract management activity, and ending with contract termination or transition to alternative arrangements.

This is a revised and condensed edition of commercial good practice guidance that we have updated regularly since 2008 and most recently in 2017. It remains essential reading for policy and commercial staff involved at all levels of public procurement and commercial activities – including senior leaders and non-executive board members of public authorities.

We have presented our guidance in 10 sections, addressing both strategic and procedural considerations. We provide a definition for each section, list our expectations based on the lessons we have drawn from our reports, and give our view as to what needs to improve. Each section is also supported by case studies from our reviews to provide relevant context.

The government has continued to update its own guidance in support of some of our recommendations and lessons learned from its own management of commercial activities. Therefore, for the first time, we also signpost relevant sections of guidance issued by the Government Commercial Function.

Contents

Introduction

Government expenditure on goods and services **3**

The development and purpose of this guidance **4**

How this good practice guidance complements our recent publications **5**

The good practice guidance for managing the commercial lifecycle **6**

Guidance

Details of each stage of the guidance and case studies **7**

Appendix

Supporting materials **27**

The NAO scrutinises public spending for Parliament and is independent of government and the civil service. We help Parliament hold government to account and we use our insights to help people who manage and govern public bodies improve public services. The Comptroller and Auditor General (C&AG), Gareth Davies, is an Officer of the House of Commons and leads the NAO. We audit the financial accounts of departments and other public bodies. We also examine and report on the value for money of how public money has been spent. In 2020, the NAO's work led to a positive financial impact through reduced costs, improved service delivery, or other benefits to citizens, of £926 million.

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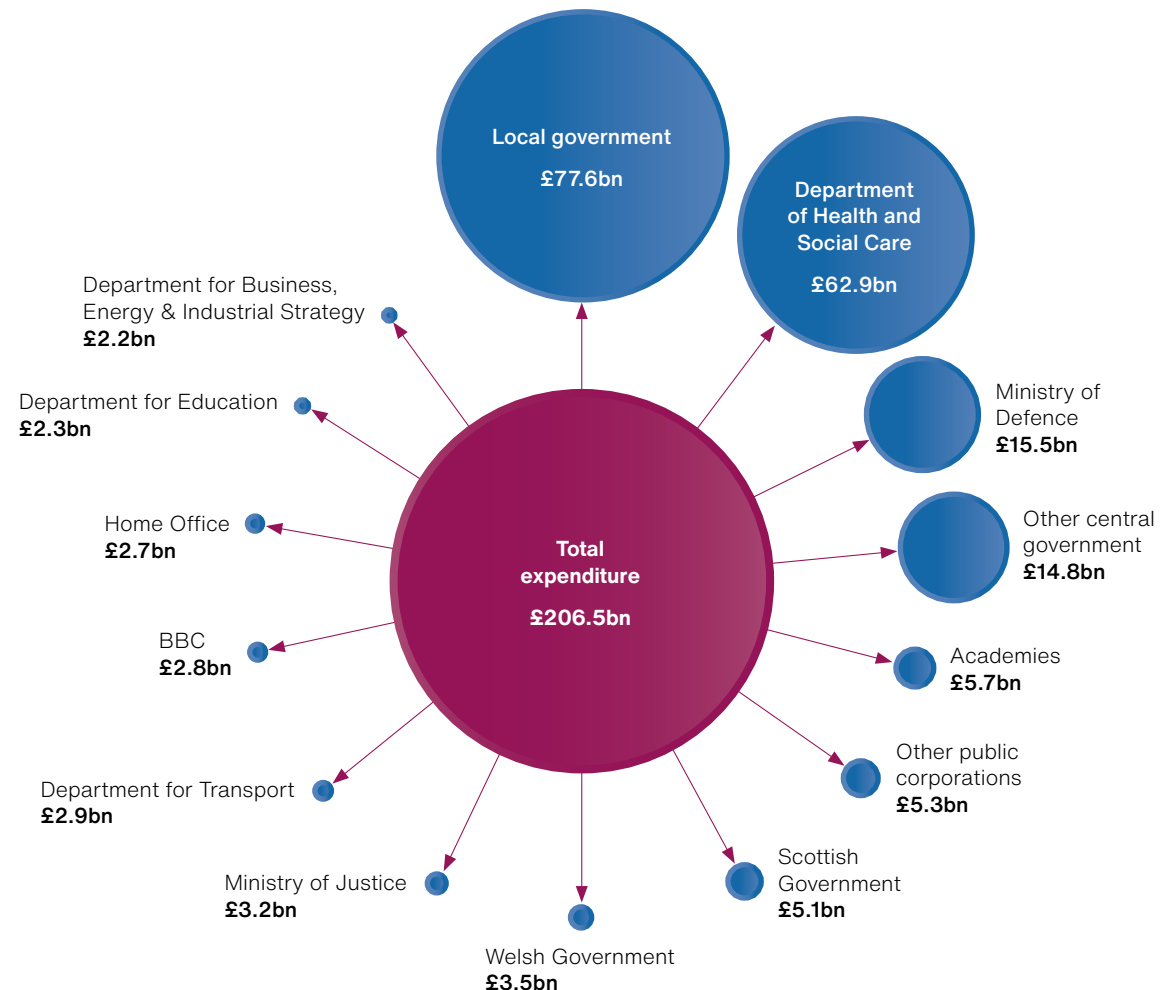
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Introduction

Government expenditure on goods and services exceeds £206 billion per year

- The government incurs significant expenditure on goods and services supplied by commercial partners. The 2018-19 Whole of Government Accounts (WGA) shows that total spend on the purchase of goods and services for that financial year was £206.5 billion, and includes an analysis by major departments.
- Local government expenditure totalled £77.6 billion, while the Department of Health and Social Care incurred the largest expenditure on goods and services at £62.9 billion. The second largest spend at £15.5 billion was made by the Ministry of Defence, with the remaining £50.5 billion spread across the BBC, Scottish and Welsh governments, other large departments, and central government bodies.
- While the WGA analysis does not include capital expenditure, it represents a significant proportion of commercial contracts for goods and services across the public sector. The government paper, *Transforming public procurement*, gives a procurement expenditure figure of £292 billion. This is based on 2018-19 figures from the Public Expenditure Spending Analyses, which include capital expenditure but do not have a departmental split.
- Some contractual arrangements involve substantial commitments to future expenditure. For example, at the end of the 2018-19 financial year, the balance of financial commitments from non-cancellable contracts that were neither leases nor Private Finance Initiative (PFI) contracts and due to expire in future years was £59.8 billion.
- This significant expenditure and commitment to future spending underpins the importance of effective management of commercial relationships and contracting arrangements.

Purchase of goods and services by department



Source: Whole of Government Accounts 2018-19

The development and purpose of this guidance

How our good practice guidance has evolved

The guidance represents an evolution to our prior publications on the commercial lifecycle – including those on [insights and emerging best practice in commercial and contract management](#) published in 2016, the [Good practice contract management framework](#) published in the same year and the [short guide to commercial relationships](#) published in 2017 as part of a suite of guides for Parliament.

To support our revised guidance, we have reviewed our findings and recommendations to identify good practice, drawing on our extensive evidence base. We have published some [209 reports concerning 350 commercial agreements](#) between 2000 and 2021.

We have also reviewed a range of guidance issued by the Government Commercial Function and relevant professional bodies, including the Chartered Institute of Procurement & Supply and World Commerce & Contracting. We consulted a range of stakeholders in central and local government, and relevant professional bodies, to identify current and emerging best practice.

2016

Insights and emerging best practice



2016

Good practice contract management framework



2017

Short guide to commercial relationships



2021

Good practice guidance for managing the commercial lifecycle



The challenge for the government's commercial activities

The government has made sustained progress to develop its commercial profession, improve commercial guidance and learn lessons from past performance. However, its established processes have lacked resilience under the pressure of responding to the global pandemic. While committed to an ambitious legislative change programme, the government encounters frequent legal challenges in relation to its adherence to existing regulations.

Our numerous reviews of commercial activity confirm that departments fall short of good practice too often. It remains likely that substantive reviews of procurement and commercial activity will continue to be a mainstay of our investigations and value for money work to challenge and support the government and enable Parliament to hold it to account.

The purpose of this guide and the opportunity for the government

Our revised guidance for managing the commercial lifecycle is intended to support public bodies to implement effective arrangements and processes. A proportionate approach is required, corresponding to the risks and complexities of commercial activities under consideration.

There are also opportunities to make better use of the government's commercial data and digital solutions to improve efficiency, promote social value, respond to climate change, enhance transparency, facilitate new techniques to audit, and assure value for money across the entire annual expenditure on goods and services.

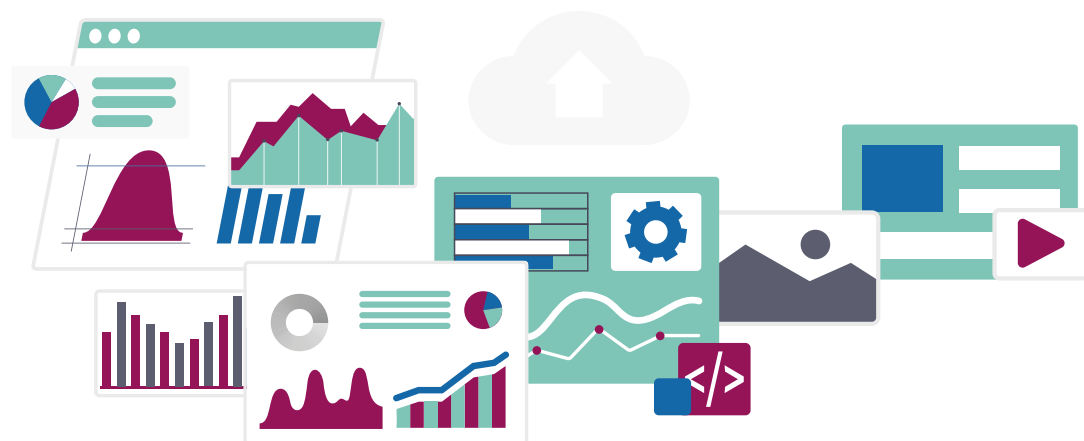
How this good practice guidance complements our recent publications

The publication draws on the NAO's extensive record of publishing substantive reviews of government commercial activity.

This guidance is part of a series of good practice guides released by the NAO and aimed at those interested in the insights and expectations for accountability and transparency in government activities and arrangements. It provides updated insights on managing the commercial lifecycle and supports public authorities to adopt a strategic approach to public procurement. It complements other NAO guidance that supports best practice in specific categories of spend and wider programmes, including:

- [Good practice guidance: Fraud and Error](#), published in March 2021. Every commercial process needs a mitigation system to minimise the risk of fraud and error. This guidance sets out the increased level of fraud and error risk, and how the NAO will ensure accountability and transparency over the level of risk through its audits. The guidance is also intended to help organisations understand how best to tackle the level of risk.

- [Improving operational delivery in government](#), also published in March 2021, shares insights on how to improve performance on operational delivery in government and includes examples of good practice, such as aspects of delivery that could improve. Effective operational delivery is an important consideration when engaging external suppliers on government programmes.
- [Framework to review programmes](#), published in April 2021, sets out audit questions that have been developed based on the NAO's learning from auditing major programmes and, it considers those factors that have proved vital to the successful delivery of programmes. Many contracts are part of a wider government programme and so the framework to review programmes complements our guidance focused on commercial activity.
- [Initial learning from the government's response to the COVID-19 pandemic](#), published in May 2021, draws out the learning from the reports that we have published to date and sets out the learning across six themes: risk management; transparency and public trust; data and evidence; coordination and delivery models; supporting and protecting people; and financial and workforce pressures.
- [Principles of effective regulation](#), published in May 2021, is a useful tool for policymakers and regulators overseeing any given market, sector or regulatory issue.



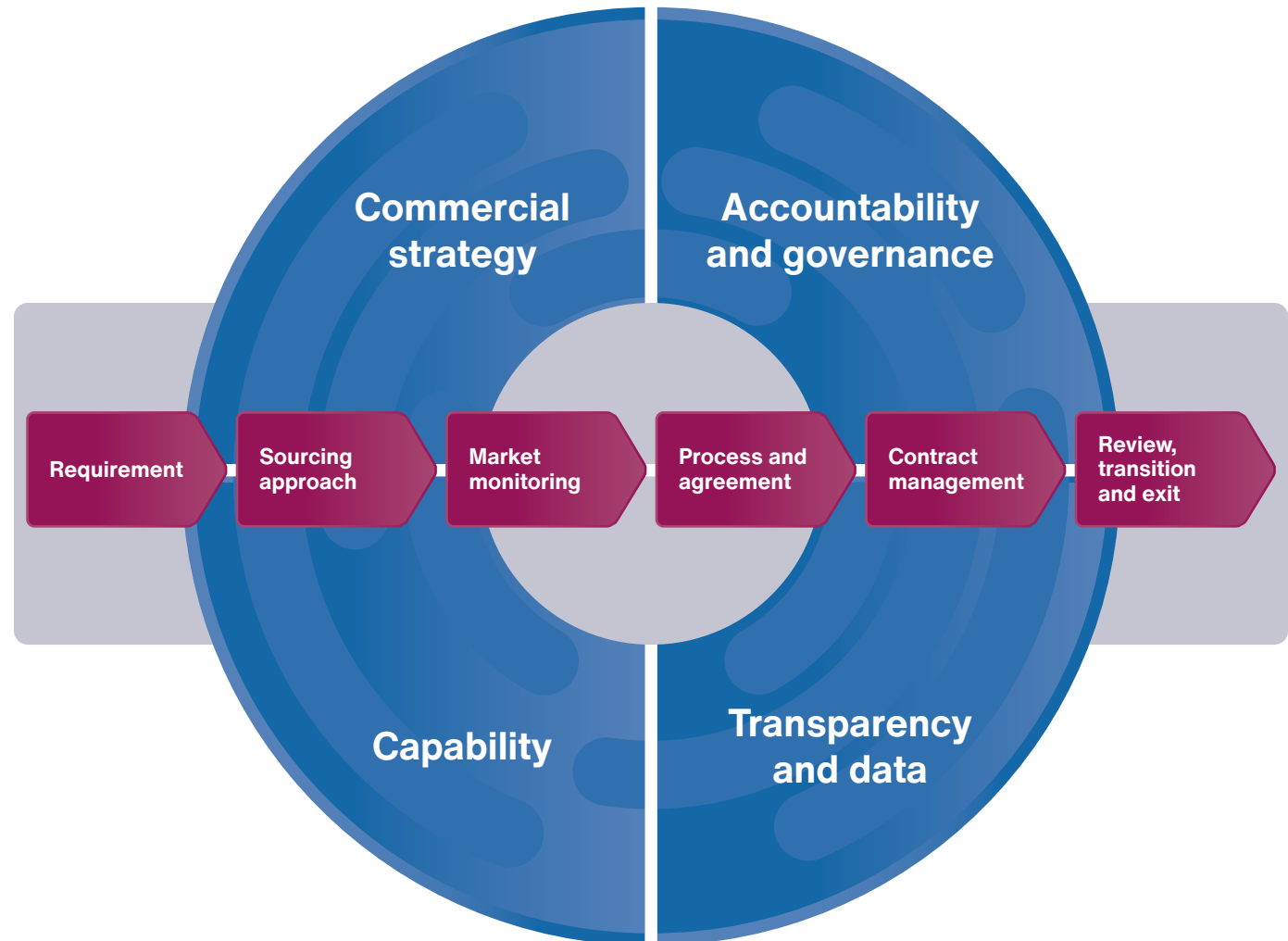
The good practice guidance for managing the commercial lifecycle

The guidance has 10 sections:

- Four strategic sections address arrangements that public bodies should have in place to support effective commercial activities at both project and programme levels. They are presented as a supportive wrapper around the six procedural stages.
- Six procedural sections address the practical and statutory requirements that support effective public procurement. Although the sections are presented in the order in which they are likely to be encountered during the commercial lifecycle, users of this guidance should recognise that there are inter-relationships between all 10 sections of the guidance.

Each section of the good practice guidance is structured as follows:

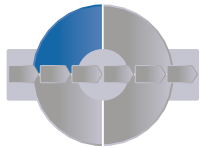
- A description of what we mean by each stage
- Expectations based on lessons from NAO reports
- What needs to improve
- Case studies
- Relevant government guidance.



Guidance

Commercial strategy

Definition



In our view, this means the overall approach that a public body adopts to ensure that its procurements and commercial activities provide the

intended outcomes in line with value-for-money requirements, public procurement regulations and other policy objectives – including social value and sustainability. The commercial strategy establishes the organisation's approach to risk management, and the organisational capacity and capability to respond and adapt to uncertainty. It may outline the approach to managing major categories of spend and strategic suppliers and the approach to maintaining sourcing flexibility. The strategy reflects the specific functions of the public body and its operating environment, and potentially wider economic considerations, including the approach to small and medium-sized enterprises, innovation, the overall supplier landscape and possible sovereign capability.

What needs to improve

Commercial strategies should demonstrate more consistently how each commercial agreement aligns with wider strategic objectives at an organisational, or wider regulation and public policy level. The strategy should establish the approach for managing commercial risks and incentives throughout the commercial lifecycle.

Case studies

- [Preparations for potential COVID-19 vaccines](#) – Maximising security of supply
- [Government's spending with small and medium-sized enterprises](#) – Aligning with wider strategic priorities

Expectations based on lessons from National Audit Office reports

- There is adherence to overarching principles of public procurement (transparency, proportionality, equality of treatment and mutual recognition).
- There is clear alignment between policy and intended outcomes within the commercial strategy
- The strategy is informed by early engagement with commercial, operational and business teams and the market, and is linked to the business case.
- The business case is clear and contains a realistic appraisal of the commercial options and strategy.
- There is consideration of how the commercial strategy and contract will react under different scenarios.
- The strategy incorporates the extent to which innovation, social value and the use of Small and Medium-Sized Enterprises should be considered.

Relevant government guidance:

- Section 1 (Pipelines and market management) – [Sourcing Playbook](#)
- Practice area 1.1 (Commercial strategy and plan), Theme 8 (Policy) – [Continuous Improvement Assessment Framework](#)
- Section 3 (Strategy and policy development) of the [People Standards for the commercial profession](#)
- Risk allocation in devising the commercial strategy – [Government Commercial Function guidance on risk allocation](#)



Commercial strategy | Case studies

Preparations for potential COVID-19 vaccines

The government made a strategic decision to place orders ahead of regulatory approval to maximise its potential to secure its supply, accepting that some investment may be lost if the vaccine failed to achieve regulatory approval

Extremely high global demand, coupled with scarcity of vaccine resources, put added pressures on the government to make fast-paced decisions to secure access to potential vaccines.

The government decided to purchase different types of vaccines from different pharmaceutical companies to create a diverse set of options, in recognition of the uncertainty over which ones would be approved as safe and effective.

The government agreed up front payments of £914 million to start manufacturing and support clinical trials. Contracts varied on the extent to which payments could be refunded should the vaccines fail to receive regulatory approval. The government, therefore, accepted the risk of investment write-off if some of the vaccines purchased were not approved by the regulator.

This case example highlights the following expectations:

- There is clear alignment between organisational policy and intended outcomes with the commercial strategy.
- The strategy is informed by early engagement with commercial, operational and business teams, and the market, and is linked to the business case.

Government's spending with small and medium-sized enterprises

Strategies need to align wider strategic considerations and individual approaches

We reported in 2016 on the government's spending with small and medium-sized enterprises (SMEs). The government recognised that SMEs can offer a number of benefits to the public sector, compared with other providers – for example, by offering more flexibility, innovative approaches and better value for money due to lower overhead costs. The Cabinet Office told us that SMEs, particularly voluntary and community sector entities, can also offer value in the public sector marketplace in terms of local investment and improved social outcomes. The government had previously introduced initiatives aimed at reducing barriers to participation.

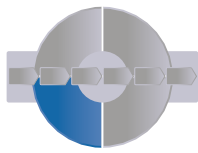
We recommended that the government takes a more focused approach, identifying where SMEs could bring the most benefit, and assess the feasibility of an integrated cross-government procurement platform to support its commercial strategy. The government has since introduced [guidance for SMEs applying for contracts](#) and promised to invest in joining up the different procurement systems to drive the commercial benefits from better sharing of data – as part of its changes to procurement following the country's exit from the European Union.

This case example highlights the following expectations:

- The strategy incorporates the extent to which innovation, social value and the use of SMEs should be considered.
- There is clear alignment between policy and intended outcomes within the commercial strategy.

Capability

Definition



Capability covers both organisational and personal effectiveness. Senior commercial leaders require the

capability to implement the organisation's commercial strategy in accordance with public procurement obligations. Investment in people and processes builds capability. Capability can also be sourced through collaboration with specialist functions in government. Organisational capability should be proportionate to scale, complexity and need for operational resilience. Relevant knowledge and experience of underlying commercial agreements should be retained by organisations throughout the commercial lifecycle, recognising that contracts may last for many years.

What needs to improve

Organisations should ensure that appropriate skills are in place and that teams work collaboratively to apply relevant expertise and remain effective throughout the commercial lifecycle.

Case studies

- [Managing the HMRC Estate](#) – Using specialist capability to improve its supplier relationship
- [Progress report: Terminating the Magnox contract](#) – Understanding the capability needed to manage risks



Expectations based on lessons from National Audit Office reports

- Commercial, policy, operational and business teams work together to develop a clear understanding of the contracts and produce required outcomes.
- Commercial activity is supported by capability appropriate to manage the risks and complexity identified in the strategy.
- Each contract staffing model is developed early, regularly reviewed and tailored to different contract stages.
- Capability plans include operational resilience to address unplanned demands.
- Knowledge and experience of underlying contract issues is retained throughout the lifecycle of a commercial relationship.
- Contract managers have appropriate skills and authority to engage with stakeholders.
- There is investment in the organisation and its people to ensure adequate access to training and development to support commercial awareness and expertise.

Relevant government guidance

- Theme 2 (Commercial capability and resourcing) and practice area 1.4 (Commercial leadership and senior ownership) of the [Commercial Continuous Improvement Assessment Framework](#)
- Section 2 (Leadership skills and capability) of the [People Standards for the commercial profession](#)
- One of the key principles of the [Government Functional Standard for Commercial](#) is that work is undertaken and assigned to people who have the required capability and capacity to undertake it.



Commercial strategy

Capability

Accountability and governance

Transparency and data

Requirement

Sourcing approach

Market monitoring

Process and agreement

Contract management

Review, transition and exit



Capability | Case studies

Managing the HMRC estate

The government used specialist capability to improve its supplier relationship

In our 2009 report we recommended that HM Revenue & Customs (HMRC) should strengthen its management of its Strategic Transfer of Estate to the Private Sector (STEPS) estate management contract and that senior managers should work directly with the provider's board to resolve issues, agree strategies and manage risks. HMRC employed a specialist team to oversee the contract, adapting resources as required for different stages of the remaining term. Both HMRC and the provider told us that they had generated a good working relationship, being open and honest with each other about performance, future plans and requirements. The contract ended in April 2021.

This case example highlights the following expectations:

- Contract managers have appropriate skills and authority to engage with stakeholders.
- Commercial, policy, operational and business teams work together to develop a clear understanding of the contracts and produce required outcomes.

Progress report: Terminating the Magnox contract

Managing the end of a nuclear decommissioning contract involved assessing required capability

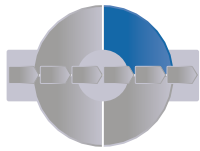
In 2014, the Nuclear Decommissioning Agency (NDA) awarded a 14-year, multi-site reactor decommissioning contract. In July 2016, the High Court ruled that the NDA had wrongly decided the outcome of the procurement process. In March 2017, the Secretary of State for Business, Energy & Industrial Strategy announced that the NDA had decided, based on legal advice, to terminate the contract with Cavendish Fluor Partnership due to a "significant mismatch" between the work specified in the tendered contract and the work that needed to be done. The NDA decided to renegotiate the contract with the incumbent, with the contract ending in 2019, nine years earlier than originally planned. The NDA strengthened its executive team, including a new commercial director, and increased the capacity of its day-to-day contract management team, increasing complement from 18 to 34, including 16 contracted commercial specialists. The NDA also commissioned a review of the delivery plan to improve its intelligent client capability in advance of transition to new management arrangements.

This case example highlights the following expectations:

- Commercial activity is supported by capability appropriate to manage the risks and complexity identified in the strategy.
- Each contract staffing model is developed early, regularly reviewed and tailored to different contract stages.

Accountability and governance

Definition



By 'accountability', we mean supporting the Accounting Officer to fulfil their duties with respect to managing

public money and reporting to Parliament. By 'governance', we mean arrangements that oversee commercial activity at an organisational level. To be effective, governance arrangements should facilitate open discussion and continuous improvement. Management reporting, arrangements to review contract and risk registers, and lessons learned exercises should be subject to regular oversight by the Audit and Risk Committee and others charged with governance to ensure that effective tools and techniques are in place to manage contracts and commercial risks, and to maintain operational effectiveness. These should be subject to periodic independent assurance.

What needs to improve

Public bodies should demonstrate robust, effective, independent oversight of both their contractual arrangements and overall commercial portfolios.

Case studies

- [Initial learning from the government's response to the COVID-19 pandemic](#) – Setting up governance that supports resilience
- [Improving local bus services in England outside London](#) – Achieving accountability within a deregulated model

Expectations based on lessons from National Audit Office reports

- Accountability is defined and responsible officers are appropriately empowered.
- There is effective independent scrutiny of commercial activity.
- Lessons learned promptly feed into the wider strategy and plans for other contracts, and are integrated into needs assessment and the list of strategic suppliers.
- Reliable, timely management information is used for rapid diagnosis of issues and prompt action.
- The organisation's own performance against obligations and the supplier's view of performance are known and considered.
- Industry expertise is valued and used, subject to robust independence controls.
- Business cases should be approved at appropriate levels.
- Appropriate assurance regimes are in place and there is clarity over responsibilities for internal governance.

Relevant government guidance

- Practice area 1.3 (Commercial governance and management framework) of the [Continuous Improvement Assessment Framework](#)
- Key principles of the [Government Functional Standard for Commercial](#) include the following:
 - Governance frameworks and controls are proportionate and appropriate to the level of prevailing risk
 - Accountabilities are defined, consistent and traceable across all levels of management
 - Lessons are captured, shared and used to promote performance improvement



Commercial strategy

Capability

Accountability and governance

Transparency and data

Requirement

Sourcing approach

Market monitoring

Process and agreement

Contract management

Review, transition and exit



Accountability and governance | Case studies

Initial learning from the government's response to the COVID-19 pandemic

The COVID-19 response showed the importance of data and effective governance with clear responsibilities and accountabilities in rapidly responding to an emergency situation

We reported on our initial thoughts on the learning that the government could draw from its response to the pandemic to date. Our work has repeatedly emphasised the importance of evidence-based decision-making at all levels of government activity and the problems that arise with inadequate data. The pandemic has again highlighted the role of high-quality data in enabling effective service delivery, monitoring and improvement. We also highlighted that effective governance and clear responsibilities and accountabilities are important for an effective rapid response in an emergency.

This case example highlights the following expectations:

- Reliable, timely management information is used for rapid diagnosis of issues and prompt action.
- There is effective independent scrutiny of commercial activity.

Improving local bus services in England outside London

The management of bus services requires a strategy with consideration of how to define accountability

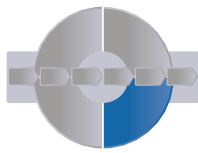
In 2020, we reported on value for money in the local bus service system overseen by the Department for Transport (the Department), including the effectiveness of the government's support for local bus services and the extent to which the enablers to improve local bus services are in place. The Department is not accountable for delivering bus services but it has national policy responsibility. We found that, during the COVID-19 pandemic, the Department came together with local authorities and operators, intervening rapidly to target the weakest areas and keep buses running, which offers learning for the future.

This case example highlights the following expectations:

- Accountability is defined and responsible officers are appropriately empowered.
- Appropriate assurance regimes are in place and there is clarity over responsibilities for internal governance.

Transparency and data

Definition



By 'transparency', we mean publishing relevant information on a timely basis to improve

supplier engagement throughout the commercial lifecycle, enhancing market effectiveness and upholding public confidence. By 'data', we mean having good-quality, relevant information available on a timely basis, and the expertise to interpret and act on it effectively. Commercial data may relate to a procurement process, a contract, supplier, department, industry or market. The data may be derived from multiple sources, including suppliers, finance and accounting systems, or market data and price indices. Organisations may derive benefits from investment in data analytics and automation capability.

What needs to improve

Government must address the issues with late and incomplete disclosure of statutory requirements for transparency in full. A significant opportunity exists to make better use of the government's commercial data and digital solutions to improve value for money throughout the commercial lifecycle.

Case studies

- [Improving VFM in non-competitive defence procurement](#) – Using contract and compliance data to reduce costs
- [Government procurement during the COVID-19 pandemic](#) – Publishing statutory returns on time

Expectations based on lessons from National Audit Office reports

- Transparency rules and guidance are consistently followed in full.
- Transparency principles are applied to what is procured and how, as well as to performance and changes to the contract.
- Where appropriate, open book options are understood and used consistently to provide transparency in the contract process and increase confidence.
- The collection of data is transparent, proportionate and timely to support the understanding of processes and the market.
- Data specification makes the data easy to share and use – consider open data standards, including common taxonomies and unique contract identifiers.
- Data protection guidelines are followed with clear and consistent and agreed principles for what is commercially sensitive.
- Price indices, benchmarks and market intelligence are used to establish what things should cost and how supplier profit margins or measures of return relates to risk.
- Supplier performance reports are triangulated with other information and used to actively manage performance.
- Sufficient assurance processes are undertaken on information provided through performance reporting.
- Expertise is used to interpret and act on information to improve contract management and outcomes.

Relevant government guidance

- Section 5 (Preparing to go to market) of the [Sourcing Playbook](#)
- Theme 7 (Commercial systems, reporting and information) and practice area 1.2 (Commercial pipeline and planning) of the [Continuous Improvement Assessment Framework](#)
- [Procurement Policy Note 07/21: Update to Legal and Policy requirements to publish procurement information on Contracts Finder](#)



Commercial strategy

Capability

Accountability and governance

Transparency and data

Requirement

Sourcing approach

Market monitoring

Process and agreement

Contract management

Review, transition and exit



Transparency and data | Case studies

Non-competitive procurement of defence equipment

The Ministry of Defence's management of non-competitive procurement demonstrated the power of improving data on contracts

In 2017, we reported on how the Ministry of Defence (the Department) had responded to the need to deliver better value for money for the taxpayer for non-competitive procurement, including through working with the Single Source Contract Regulations. We recommended that the Department should develop standard analytics to allow it to absorb and challenge information quickly on non-competitive procurement. These would cover, for example, contract status, details of contracts excluded and exempted from the Regulations, the extent of suppliers' compliance with the Regulations, action taken or planned in response to Single Source Regulations Office referrals and the timelines of future contracts.

This case example highlights the following expectations:

- Where appropriate, open book options are understood and used consistently to provide transparency in the contract process and increase confidence.
- The collection of data is transparent, proportionate and timely to support the understanding of processes and the market.

Government procurement during the COVID-19 pandemic

Awards of contracts under emergency procedures highlighted the importance of maintaining a transparent process

Our 2020 report on the government's procurement in response to the COVID-19 pandemic identified transparency as a key control for ensuring accountability in procurement decisions; and for mitigating risks associated with increased use of direct awards. Risks included potential unequal treatment of suppliers and a lack of documentation around key procurement decisions due to procuring at speed.

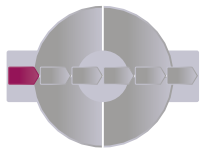
Looking at contracts awarded in early 2020 in response to the pandemic, we found that many of the contracts had not been published in a timely manner. We recommended that awarding bodies should publish basic information on contracts in a reasonable time, and in line with guidance.

This case example highlights the following expectations:

- Transparency rules and guidance are consistently followed in full.
- Data specification makes the data easy to share and use – consider open data standards, including common taxonomies and unique contract identifiers.

Requirement

Definition



The requirement is the outcomes to be delivered and their purpose.

The underlying policy objectives establish the

outcomes, which may require the delivery of goods or services. We would expect the commercial lifecycle to start by forming this understanding. Focusing mainly on the intended outcomes gives potential suppliers more opportunity to offer alternative solutions, whereas providing a detailed specification of how outcomes will be delivered may make it easier to compare offers. The commercial strategy will dictate the overall approach.

What needs to improve

Organisations should be clear about what outcomes they are seeking to achieve, to help set out their requirements when entering into commercial agreements.

Case studies

- [Increased ventilators available to the NHS in response to COVID-19](#) – Defining requirements to drive a faster process
- [The new generation electronic monitoring programme](#) – Understanding requirements and costs and benefits

Expectations based on lessons from National Audit Office reports

- The requirement is defined in business cases, with evidence to support appropriate gateway reviews and approvals. The business case also demonstrates all the points below.
- The requirement is designed based on an evidence-based consideration of the purpose of the arrangement and its anticipated outcome.
- When developing requirements, organisations engage users and the market to help understand what can be delivered and how.
- Sustainability assessments are undertaken that clearly demonstrate the consideration of risk, uncertainty and capability.
- There is a clear and realistic assessment of what flexibility is required to meet the outcome, updated as conditions change.
- The Full Business Case includes a review that the requirement is still appropriate.
- The strategy demonstrates sufficient consideration of the complexity and demands of the requirement.

Relevant government guidance

- Section 2 (Approvals process); Section 3 (Delivery model assessments) – [Sourcing Playbook](#)
- Theme 3 (Define: pre-procurement) of the [Commercial Continuous Improvement Assessment Framework](#)
- Section 4 (Understanding needs and sourcing options) of the [People Standards for the commercial profession](#)
- Prepare your draft requirements – [Buying through the Digital Outcomes and Specialists framework](#)





Commercial strategy

Capability

Accountability and governance

Transparency and data

Requirement

Sourcing approach

Market monitoring

Process and agreement

Contract management

Review, transition and exit



Requirement | Case studies

How the government increased the number of ventilators available to the National Health Service in response to COVID-19

The government took a flexible approach to meeting developing requirements

At the beginning of the pandemic, scientific advice led the government to believe that it needed to massively increase the nation's capacity to build and deliver new medical ventilators. The Cabinet Office realised that traditional procurement would not achieve this alone. Instead, it decided to work with multiple teams of industry consortia to develop multiple new products and supply lines against changing requirements for the volume and mix of ventilators required. It worked with industry to develop new or modified designs to meet the standards that the Medicines and Healthcare products Regulatory Agency (MHRA) developed for rapidly manufactured ventilators.

The MHRA updated the ventilator specification several times, reflecting growing clinical experience of treating COVID-19 in the UK. Later iterations of the specification emphasised more sophisticated features such as suction and assisted breathing. The Cabinet Office convened a 'technical design authority' to assess ventilators and

inform decisions. The design authority supported 17 participants and gradually reduced this number as each device proceeded through the regulatory testing process, considering the developing picture of demand and the government's targets at the time. Those consortia whose products and production facilities met the regulatory standard first were commissioned to provide ventilators, creating a more sophisticated competitive process over speed and quality but not price.

This case example highlights the following expectations:

- The requirement is designed based on an evidence-based consideration of the purpose of the arrangement and its anticipated outcome.
- There is a clear and realistic assessment of what flexibility is required to meet the outcome, updated as conditions change.
- When developing requirements, organisations engage users and the market to help understand what can be delivered and how.

The new generation electronic monitoring programme

Organisations need to understand the requirement and consider its potential costs and benefits

In 2017, we reported on the Ministry of Justice's (the Department's) programme to replace its contracts for electronic monitoring ('tagging') services. The Department assumed that there would be high demand for location monitoring from those who sentence offenders but it did not run a pilot to test this before launching the programme. It also did not understand the potential financial costs and benefits of expanding location monitoring.

The Department identified from early discussions with industry that achieving all its objectives would need new software and hardware that were not available in the market. Over time, the Department developed some 900 prescriptive requirements for the new tags but did not sufficiently appreciate that it could not have all that it wanted.

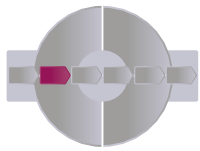
The NAO recommended that the Department ensured that it had a robust, well-evidenced business justification for developing new applications for technology before starting procurement, and clearly understood the complexities of delivering the programmes.

This case example highlights the following expectations:

- The requirement is designed based on an evidence-based consideration of the purpose of the arrangement and its anticipated outcome.
- The strategy demonstrates sufficient consideration of the complexity and demands of the requirement.

Sourcing approach

Definition



By 'sourcing approach', we mean the assessment of how the requirement may be met using in-house capability or that from an external supplier.

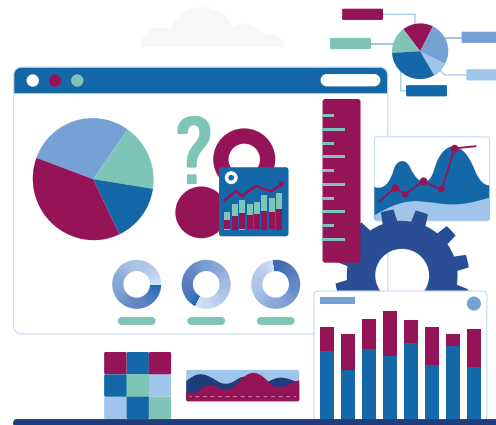
This includes how the authority applies public procurement regulations, and the specific procurement tools and procedures that it adopts – including the use of framework agreements, open competition and other approaches. This good practice guide is aimed primarily at public procurement processes, but recognises that an authority's commercial strategy and the specific requirement may support other approaches that are not the main focus of this guide. These include public sector delivery models that operate as market participants, entering into public partnerships and other long-term agreements. The approach will also determine the nature of any engagement with suppliers, which should reflect the overall procurement principles of transparency, equal treatment and non-discrimination.

What needs to improve

There should be better consideration of all sourcing alternatives and of how effective competition supports value for money. When direct awards and/or urgent procedures are used, a robust justification for doing so should be recorded.

Case studies

- [Free school meals voucher scheme](#) – Using framework agreements for rapid procurement
- [Transforming Rehabilitation: Progress review](#) – Creating sustainable delivery models



Expectations based on lessons from National Audit Office reports

- An appropriate sourcing approach is chosen, aligned with risk management, procurement principles and an assessment of the market.
- Trade-offs are assessed in a review of the required commercial outcomes.
- Procurement processes and a contract management plan are defined alongside a sufficient knowledge base to support the approach.
- The commercial case sets out the nature of the product/service, commercial relationship, and supporting arrangements.
- Pilot schemes are used when appropriate to inform commercial aspects of the approach ahead of mass roll-out.
- Sourcing adopts practices that address the equality, diversity and inclusion agenda in procurement.
- The approach incorporates measures of social value when appropriate.

Relevant government guidance

- Section 3 (Delivery Model Assessments) and Section 4 (Piloting First Generation Outsourcing) of the [Sourcing Playbook](#)
- Practice area 3.3 (Developing and analysing commercial options) of the [Commercial Continuous Improvement Assessment Framework](#)
- Section 4 (Understanding needs and sourcing options) of the [People Standards for the commercial profession](#)
- [Procurement Policy Note 01/21: Procurement in an Emergency](#)



Sourcing approach | Case studies

Free School Meals Vouchers

The government prioritised speed of procurement and adapted an existing framework agreement to appoint a known supplier

When the government announced that schools would close to most pupils in response to the COVID-19 pandemic, the Department for Education (the Department) said that it expected schools to continue to provide free school meals during term time to pupils eligible for benefits-related free school meals. The government considered options and concluded that a national electronic voucher scheme was the most viable and cost-effective solution that it could put in place quickly. To get the scheme-running quickly, the Department looked first to existing framework agreements and suppliers. A Crown Commercial Service framework agreement for employee benefits, created following a competitive tendering exercise in 2019, included electronic voucher provision. The Department awarded the contract to the sole provider on that framework agreement. It recognised that there were risks arising from the speed of procurement, including the provider's capacity to deliver and its financial standing for the potential £473 million contract.

This case example highlights the following expectation:

- Trade-offs are assessed in a review of the required commercial outcomes.

Transforming rehabilitation

The Ministry of Justice learned from reviewing its reforms and revised its sourcing approach

In 2019, we published a progress update on the Ministry of Justice's (the Department's) transforming rehabilitation reforms. We found that the Department had limited time to procure new contracts, and would need to manage risks posed by the interfaces between different organisations.

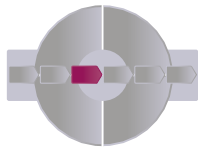
Following our work and a report from the Chief Inspector of Probation, the Department acknowledged some of the challenges in its original approach, such as using Payment By Results, and took the decision to move supervision of those on probation back into the public sector – supporting this with a Dynamic Purchasing Framework to award over 110 contracts to provide access to specific rehabilitation services.

This case example highlights the following expectations:

- An appropriate sourcing approach is chosen, aligned with risk management, procurement principles and an assessment of the market.
- The commercial case sets out the nature of the product/service, commercial relationship and supporting arrangements.

Market monitoring

Definition



This is the process of monitoring and engaging with potential suppliers throughout the commercial lifecycle, including transparency of

the procurement pipeline and awareness of the structure of the supplier landscape and supply chain. Consideration of the supply chain should include small and medium-sized enterprises (SMEs) and the overall financial resilience of the sector. We would expect market monitoring to be a continuous process that informs ongoing contracts as well as planning for future ones.

What needs to improve

There should be consistent awareness of when and how to engage with the market, including improving understanding of competition and financial resilience of the commercial landscape.

Case studies

- [Improving broadband](#) – Engaging with SMEs
- [The adult social care market in England](#) – Assessing the financial health of suppliers

Expectations based on lessons from National Audit Office reports

- Knowledge of the market is used to inform operational requirements.
- Procurement is transparent on the requirement and includes uncertainties and likely variations.
- The convenience of established relationships and framework agreements is balanced with developing competitive markets.
- The capacity and capability of potential suppliers are analysed in wider context, including the impacts of planned contracts on the market.
- Market capability and diversity are assessed and managed to avoid sole supply or low competition situations when other options may be available.
- Market monitoring is undertaken to support the development of successor contracts when appropriate.
- The government monitors the financial health of suppliers and develops appropriate contingency plans to maintain service delivery.

Relevant government guidance

- Section 5 (Preparing to go to market), Section 6 (Routes to market) and Section 8 (Formal engagement with the market) of the [Sourcing Playbook](#)
- Practice area 3.2 (Supply market analysis and early market engagement) of the [Commercial Continuous Improvement Assessment Framework](#)
- [Procurement Policy Note 03/15: reforms to make public procurement more accessible to SMEs](#)





Commercial strategy

Capability

Accountability and governance

Transparency and data

Requirement

Sourcing approach

Market monitoring

Process and agreement

Contract management

Review, transition and exit



Market monitoring | Case studies

Improving broadband

The government is reforming its approach to encourage wider participation from smaller suppliers, while acknowledging the risks this creates

The government believes that the locally administered contracts on the Superfast Broadband Programme were too lengthy and covered too many premises, discouraging smaller suppliers from participating. For its £5 billion Project Gigabit, some intervention areas will feature more, smaller, local contracts with shorter duration and involving fewer premises alongside its larger and cross-regional offering. These are aimed at encouraging greater competition and innovation on broadband infrastructure. The government will need to manage risks around integration issues created by more suppliers offering competing infrastructure. It will also need to monitor the potential complexity of managing increased numbers of contracts centrally. It has acknowledged the approach also brings risks around the long-term financial stability of smaller providers, and their ability to deliver on contracts, though all suppliers including those for these smaller contracts will be subject to financial scrutiny.

This case example highlights the following expectations:

- Market capability and diversity are assessed and managed to avoid sole supply or low competition situations where other options may be available.
- Knowledge of the market is used to inform operational requirements.

The adult social care market in England

Stakeholders do not have sufficient visibility of sustainability across the entire market

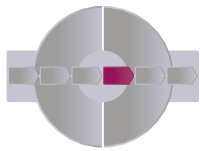
The adult social care market depends upon the financial resilience of care providers operating within it. In 2020, consultants commissioned to analyse provider viability advised the Department of Health and Social Care (the Department) to improve the quality of financial data and its internal processes to track provider finances in real-time. While social care is mainly funded by local authorities and some individuals purchasing their own care, the Care Quality Commission (CQC) has a statutory responsibility for overseeing the financial sustainability of around the 65 most difficult to replace care providers. The CQC is required to give local authorities advance notice if it considers that there is likely to be a disruption to continuity of care caused by likely business failure. The legal requirement to only focus on larger providers means that some smaller, but regionally significant providers, will be excluded from national oversight. We recommended that the Department should assess the performance and cost data it needs to gain assurance over the system's performance as a whole and the potential costs to the sector of providing the data and explore how best to increase visibility of, and transparency over, providers' financial sustainability and costs.

This case example highlights the following expectations:

- The capacity and capability of potential suppliers are analysed in wider context, including impacts of planned contracts on the market.

Process and agreement

Definition



By 'procurement process', we mean the end-to-end public procurement

process from issuing documentation, handling supplier engagement, bidder evaluation and award decision, standstill and formal notification to all bidders, and public transparency. Adherence to procurement processes minimises the risk of challenge, and digital systems support efficient workflow. By 'agreement' we mean the negotiation and agreement of the legally binding contract, which sets out the expectations and obligations on each party, including the requirement, services, price, risk and incentives, payment mechanisms, key performance indicators, provision of information to the customer and access rights, warranties and indemnities, dispute mechanisms, and transition and termination provisions. Agreeing contracts that are clear about the

requirement, allocation of risk and rewards, and appropriate flexibility and exit arrangements are foundations of successful contracts, and appropriate expertise should be applied by authorities to get things right.

What needs to improve

There should be consistent adherence to the established public procurement processes and timetables in order to realise the benefits of the procurement process, including competition.

Case studies

- [Asylum accommodation and support](#) – Producing a sustainable bid
- [Protecting the clinically extremely vulnerable during lockdown](#) – Negotiating alongside rapid service mobilisation

Expectations based on lessons from National Audit Office reports

- Requirements are specified clearly so that they can be assessed properly by all potential suppliers.
- Potential conflicts of interest and how to address them are considered, acted on and documented.
- The procurement approach is structured according to established procedures, reflecting risk tolerance.
- Processes balance speed and agility with the benefits of competition derived from participation by a range of potential suppliers.
- The procurement process attracts capable suppliers and includes appropriate due diligence activities.
- The contract establishes suitable incentives and mechanisms to drive the desired relationship and act in the interest of the organisation.
- Performance measures focus on key strategic outcomes linked to the requirement.
- Processes encourage ways of working and operational delivery to achieve social value objectives.
- Procurement and transparency rules and principles are followed in full.

Relevant government guidance

- Section 7 (Model Services Contract), Section 9 (Due diligence) and Section 10 (Evaluating bids and contract award) – [Sourcing Playbook](#)
- Theme 4 (Procure: procurement and contracting) – [Commercial Continuous Improvement Assessment Framework](#)
- Section 5 (Procurement process) of the [People Standards for the commercial profession](#)
- [Procurement Policy Note 06/20 – taking account of social value in the award of central government contracts](#)
- Key principle of the [Government Functional Standard for Commercial](#): goods, works and services are procured via legally compliant, fair and open processes.



Commercial strategy

Capability

Accountability and governance

Transparency and data

Requirement

Sourcing approach

Market monitoring

Process and agreement

Contract management

Review, transition and exit



Process and agreement | Case studies

Asylum accommodation and support

The government used lessons learned to select a more appropriate procurement process and risk transfer arrangement

We reported that the 'reverse auction' process used by the Home Office (the Department) to award previous COMPASS asylum accommodation contracts had produced unsustainably low bids. When re-procuring the service, the Department's analysis of average rents estimated that, on a like-for-like basis, the replacement contracts should cost at least 20% more. The Department designed the new contracts to be more sustainable by transferring risk away from providers through the pricing mechanism. Changes included more fixed price elements, longer contracts, and greater scope to renegotiate prices.

This case example highlights the following expectations:

- The contract establishes suitable incentives and mechanisms to drive the desired relationship and act in the interest of the organisation.
- The procurement process attracts capable suppliers and includes appropriate due diligence activities.

Protecting the clinically extremely vulnerable during lockdown

The government used provisional contracting arrangements to allow rapid service mobilisation while still negotiating price

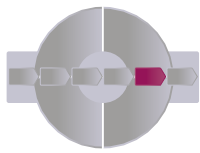
The government signed provisional agreements with suppliers to allow food box deliveries to start three days after beginning negotiations. Three further provisional agreements were signed before full contracts were signed a month later. During that time, the government used information from industry consultants and cost benchmarks to negotiate reductions on the initial pricing quoted by providers. In return, the government took on more of the financial risk involved in maintaining sufficient stock levels to meet uncertain demand.

This case example highlights the following expectations:

- Processes balance speed and agility with the benefits of competition derived from participation by a range of potential suppliers.
- The procurement approach is structured according to established procedures, reflecting risk tolerance.

Contract management

Definition



Contract management covers all activities relating to the

performance and monitoring of a contract. This includes formal and informal monitoring and taking action as required. A constant underlying factor across good practice is building consistent knowledge and understanding of the contract, requirements, supplier and costs and retaining this knowledge throughout the commercial lifecycle.

These support organisations to assess and approve contract delivery against agreed milestones, contract amendments and variations, and other change requests. There should be regular review of delivery and key performance indicators,

and contractual provisions for change requests. Open-book access should be applied to scrutinise and assure commercial performance and actual profits or returns, supporting effective contract delivery.

What needs to improve

Organisations should give active attention to the quality of performance and delivery throughout the commercial lifecycle to supplement routine monitoring.

Case studies

- [Managing infrastructure projects on nuclear-regulated sites](#) – Creating performance incentives
- [Mental health in prisons](#) – Using performance management mechanisms

Expectations based on lessons from National Audit Office reports

- Strategic relationship management is used to provide leadership and use relationship levers alongside formal contract mechanisms.
- Levers are used to ensure that the contract provides what is wanted, including when this differs from what was originally defined.
- Organisation and supplier obligations and responsibilities are clearly set out, and both parties work closely and flexibly together.
- Contract management is informed by a good knowledge base (including understanding reasons for variations to expected costs and outcomes).
- Contracts have a bespoke compliance programme aligned to risks, and key performance indicators are used to provide a rounded view of performance.
- Information provided is subject to sufficient targeted assurance.
- Processes for meeting contractual obligations are formalised, and incentives and penalties are used consistently and appropriately.
- There is an appropriate administration infrastructure in place and managers can draw on the right support including more senior people.
- Mechanisms in the contract are used to create the desired relationship between client and supplier.

Relevant government guidance

- Section 11 (Resolution Planning and Ongoing Financial Monitoring) and Section 12 (Building and Maintaining Successful Relationships) of the [Sourcing Playbook](#)
- Theme 5 (Manage: contract management) of the [Commercial Continuous Improvement Assessment Framework](#)
- Section 6 (Contract and supplier management) of the [People Standards for the commercial profession](#)



Commercial strategy

Capability

Accountability and governance

Transparency and data

Requirement

Sourcing approach

Market monitoring

Process and agreement

Contract management

Review, transition and exit



Contract management | Case studies

Managing infrastructure projects on nuclear-related sites

Major nuclear contracts had limited performance incentives

In 2020, we reported on the Ministry of Defence's (the Department's) management of its large and complex infrastructure projects at nuclear-regulated sites. These included a long-term single-source contract for core production capability (CPC) facilities. We found that the contract had limited incentives to improve contractor performance such as key performance metrics linked to costs and profit. The Department had limited termination opportunities should performance deteriorate and could not exit the contract without decommissioning the facilities. It recognised the challenges and aimed to address them in the second phase of the CPC facilities project.

This case example highlights the following expectations:

- Mechanisms in the contract are used to create the desired relationship between client and supplier.
- Processes for meeting contractual obligations are formalised, and incentives and penalties are used consistently and appropriately.

Mental health in prisons

Organisations need to use performance management mechanisms to identify and address performance issues

In our 2017 report on mental health in prisons, we found that NHS England had developed a standardised set of measures called the 'health and justice indicators of performance (HJIPs)' for its prison contracts. HJIPs contained the only national level data on mental health care in prisons. However, the performance indicators reported to NHS England did not contain any measures of quality, or outcomes, such as improvement in a prisoner's health.

We recommended that NHS England ensured that contracts for mental health services were underpinned by appropriate performance management mechanisms. We also reported that NHS England needed to ensure that it robustly validated performance data to identify and address areas of poor performance. We understand that the current programme is to transfer all healthcare to the NHS.

This case example highlights the following expectations:

- Contracts have a bespoke compliance programme aligned to risks, and key performance indicators are used to provide a rounded view of performance.
- Information provided is subject to sufficient targeted assurance.



Commercial strategy

Capability

Accountability and governance

Transparency and data

Requirement

Sourcing approach

Market monitoring

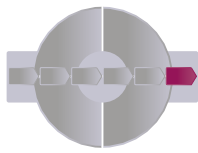
Process and agreement

Contract management

Review, transition and exit

Review, transition and exit

Definition



Review, transition and exit encompasses the factors that inform a decision

in relation to the extension or re-procurement of a requirement. This also involves the process by which a contract is transitioned to a new supplier or ended. Authorities should monitor their contract registers regularly to review how and when they return to the market for a given requirement. In some circumstances, an authority may decide to extend contracts via their standard provisions, but this is generally for a short period when operational flexibility provides clear benefits. Authorities need to have the information necessary to manage transitions to new arrangements, including reversion of assets to the public sector, and to respond to supplier failure if required.

What needs to improve

Planning and preparation for a range of future options should always be in evidence from the outset, and built into cost estimation.

Case studies

- [Government's handling of the collapse of Carillion](#) – Addressing supplier failure
- [Managing PFI assets and services as contracts end](#) – Planning for the end of contracts

Expectations based on lessons from National Audit Office reports

- Plans for potential routes to end a contract are built in from the start, including logistical requirements, governance and reporting.
- Information that will be needed to transition is understood and arrangements made for its availability.
- Capabilities and data are effectively transferred from the supplier.
- Required levels of flexibility are built into the contract process at all stages and agreed changes are formally written into the contract.
- Contingency plans are put in place for supplier failure, and coordinated where suppliers work across government.
- Performance continues to be benchmarked against market measures throughout.
- Suppliers are incentivised to maintain performance, and performance risks are actively managed and assured.
- There is a plan for digital and technological changes including the obsolescence of legacy systems.
- Lessons learned are built into the plan for the contract review and transition.

Relevant government guidance

- Section 13 (Expiry, Extension, Transition and Termination) of the [Sourcing Playbook](#)
- Theme 6 (Managing categories, markets and supplier relationships) of the [Commercial Continuous Improvement Assessment Framework](#)
- Use knowledge of requirements to set up an exit plan and draw on experts to review it ([Contract Management Professional Standards](#))
- Record and share lessons to help drive improvement ([Principles for project success](#))



Commercial strategy

Capability

Accountability and governance

Transparency and data

Requirement

Sourcing approach

Market monitoring

Process and agreement

Contract management

Review, transition and exit



Review, transition and exit | Case studies

The government's handling of the collapse of Carillion

The Cabinet Office oversaw the establishment of contingency measures to ensure that almost all services continued uninterrupted when Carillion went into liquidation

In the summer of 2017, when talk first started about the possibility of Carillion's financial failure, the Cabinet Office coordinated contingency planning across central government bodies, appointing advisers and requesting information on government contracts with Carillion, including whether contingency plans were in place. The Cabinet Office received 65 contingency plans from 26 public bodies. This meant that, when Carillion asked for £223 million of financial support from the government in January 2018, the government was able to say no. The Cabinet Office carried out an options appraisal and concluded that the best result for the government would be a trading liquidation rather than providing financial support. Although work stopped on Carillion's hospital construction projects, the Cabinet Office arranged for and financed the Insolvency Service to ensure that Carillion continued to provide services until other arrangements could be made for each contract, ensuring minimal disruption to public services.

This case example highlights the following expectations:

- Contingency plans are put in place for supplier failure, and coordinated where suppliers work across government.
- Information that will be needed for transition is understood and arrangements made for its availability.

Managing PFI assets and services as contracts end

The government planned for contract expiry and how to revert assets to the public sector

We looked at the management of Private Finance Initiative (PFI) contracts as they came to an end and what could be learned from cases where this had already happened. We found that early preparations and a collaborative approach between public and private stakeholders can help to ensure a successful exit from PFI contracts. These will require all parties seeking to understand each other's goals, establishing a partnership approach on each PFI project, and sharing experiences on how to manage contract expiry across all levels of government.

This case example highlights the following expectations:

- Plans for potential routes to end a contract are built in from the start, including logistical requirements, governance and reporting.
- Suppliers are incentivised to maintain performance, and performance risks are actively managed and assured.

Appendix

Developments since the last version of our good practice guidance

Since 2017, when the National Audit Office's most recent publication on the commercial lifecycle was published, it has become apparent that the government has taken on board some of our insights and recommendations, and has developed a range of guidance to support its commercial activities. Some of this guidance is outlined on this page.

The Crown Commercial Service continues to provide guidance to interpret current procurement legislation by publishing *Procurement Policy Notes* and the government's legislative agenda was outlined in its recent green paper, *Transforming public procurement*. The *Queen's speech* on 11 May 2021 introduced the Procurement Bill, which will bring about laws to simplify procurement in the public sector. Professional bodies continue to expand their membership offers towards commercial and procurement specialists in the public and private sectors. There appears to be a genuine and concerted effort to improve procurement practices and this guide is intended to support that process of continuous improvement.

A selection of commercial guidance published by the government

Last updated	Main author(s)	Guidance	Scope
March 2019	Government Commercial Function	Government Functional Standard – GOVS 008: Commercial	Sets out the expectations and drives consistency in the planning, management and execution of commercial activities, ensuring that contracts and relationships with suppliers realise value for money and result in delivery of high-quality public services. This is currently being updated and it is planned to be reissued in July 2021.
May 2021	Cabinet Office and Government Commercial Function	The Sourcing and Consultancy Playbooks	Sets out key policies and guidance for making sourcing decisions for the delivery of public services, including specific guidance on sourcing consultancy services.
May 2021	Government Commercial Function, Cabinet Office and the National Health Service	Commercial Continuous Improvement Assessment Framework	This framework is designed to help drive continuous improvement in commercial practices across the public sector.
May 2021	Cabinet Office and Government Commercial Function	People Standards for the Commercial Profession	Sets out the standards expected from commercial professionals in government and lists requirements for each of the different professional levels. It is intended to help with recruitment or career development.
May 2021	Cabinet Office	Findings of the Boardman review into government procurement activity during the COVID-19 pandemic	Reports into the government procurement activity during the COVID-19 pandemic and accompanying statements from government.
June 2021	Cabinet Office	Procurement Policy Note 05/21: National Procurement Policy Statement	Sets out the information and guidance for contracting authorities covering the National Procurement Policy Statement that will require contracting authorities to have regard to national strategic priorities for public procurement.

Reference material

Cabinet Office/Government Commercial Function/Crown Commercial Service/Infrastructure and Projects Authority	The Chartered Institute of Public Finance & Accountancy	Chartered Institute of Procurement & Supply	Committee of Public Accounts	HM Treasury	National Audit Office	World Commerce & Contracting
The Sourcing Playbook	A Practical Guide to Contract Management in the Public Sector	Procurement & Supply Cycle	Strategic Suppliers (2018)	Managing Public Money	Government Commercial and Contracting: an overview of the NAO's work (2016)	A Procurement Path to Equity
Government Functional Standards	A Risk-based Approach to the Audit of Procurement (2015 Edition)			The Green Book: appraisal & evaluation in central government	Commercial & contract management – insights & emerging best practice (2016)	Faster contracts. Better Contracts. Eliminating the fiction points in contracting
Commercial Continuous Improvement Assessment Framework (2021)	A Practical Guide to Outsourcing in the Public Sector			The Orange Book: management of risk – principles & concepts	Good practice contract management framework (2016)	Building the case for digital procurement
Buying through the Digital Outcomes and Specialists framework					A short guide to commercial relationships (2017)	Improving the Performance of Contracts Post-Award
Principles for project success					Managing government suppliers	Most negotiated terms 2020
					Framework to review programmes (2021)	
					Successful Commissioning Toolkit	

Stakeholders we engaged with in developing this guidance

Central government	Other public bodies	Professional bodies	Advisers
Crown Commercial Service	Institute for Government	Chartered Institute of Procurement & Supply	A number of professional advisers and audit firms
Government Commercial Function	Local Government Association	World Commerce & Contracting	
	Procurement Research Project Group (a collaboration of universities)	The Chartered Institute of Public Finance & Accountancy	
		Institute of Chartered Accountants in England & Wales	