

# Best Value

Making Choices

Volume One:

**A Manager's Guide to the Strategic Framework for Best Value,  
Procurement and Competitiveness**

## **PREFACE**

The Scottish Executive commissioned this study from Michael Hughes and Kate McLaughlin of the Institute of Local Government Studies to assist local authorities in Scotland. It is aimed at senior managers making strategic decisions about how Best Value services will be delivered to local people. The guidance is based on research conducted by the Institute of Local Government Studies at the University of Birmingham. It is produced with the assistance of the Convention of Scottish Local Authorities and Audit Scotland (working on behalf of the Accounts Commission for Scotland). The guidance covers the main issues that local authorities will face in deciding how, and when, to use competition to choose future service providers; and how to ensure the continuing competitiveness of services (whether or not they have been subject to competition). It also covers the issues raised as authorities develop a strategic approach to Best Value and competition within the context of an overall procurement strategy.

Michael Hughes and Kate McLaughlin of the Institute of Local Government Studies at the University of Birmingham conducted the background research for this study between February and March 2001.

### Footnote to preface

The study originally comprised one full report covering both the strategic issues and all the practical guidance. It was felt that the first five sections were primarily aimed at those who have a strategic overview of local authority management and objective setting and monitoring. The remaining more practical sections were considered to be a helpful tool for service managers tasked with reviewing and appraising the options available to them.

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## SECTION 1            OVERVIEW BY THE SCOTTISH EXECUTIVE

1.1. This study, comprising two volumes, has been produced to assist local authorities in Scotland to develop their approaches to competition and procurement (in its widest sense) under Best Value. It covers the main issues that local authorities will face in deciding how, and when, to use competition to choose future service providers; and how to ensure the continuing competitiveness of services (whether or not they have been subject to competition). It also covers the issues raised as authorities develop a strategic approach to Best Value and competition within the context of an overall procurement strategy.

1.2. The use of the term procurement in the study should not be interpreted in its narrowest sense. The introduction of Best Value, and forthcoming legislative changes in Scotland, mean that there is an increasing variety of means by which effective services can be provided, and a variety of tools to use in assessing them. The wide definition of procurement used within this study is intended to encourage local authorities to consider *all* of the possible options for future service delivery rather than focusing on a limited discussion set around the polarities of ‘make or buy’. These options include joint commissioning of services with another public body.

1.3. This first volume can be used at a strategic level to develop and monitor a local authority procurement policy in which Best Value plays an integral part. The second volume offers a great deal of practical advice to service managers faced with the need to review their practices, to identify and appraise the options available to them, and to manage sometimes difficult change. The result of every Best Value review should be a clear set of recommendations to elected members, based on clear analysis of the evidence collected and the legal options available to the authority.

1.4. In making decisions upon those recommendations, elected members must begin with a firm understanding of the wider context within which the authority works – a context which includes the obligations that accompany the authority’s status as a public body, policies and initiatives announced by or involving central government, strategies agreed with Community Planning partners, and efforts between authorities to achieve economies of scale.

1.5. Such a strategic approach to procurement follows from the logic of Best Value, Community Planning and the Performance Management and Planning Framework. It is based on a relatively simple test: “*how does this procurement support the achievement of the authority’s objectives?*” It should lead to the development of a procurement strategy. This should go further than considering what governs the decision to purchase goods, services and works from the private or not-for-profit sectors. It should be a record of the authority’s objectives for procurement and measure the outcomes considered necessary to achieve and test achievement.

1.6. A procurement strategy can enable an authority to put its own stamp on the approach taken to identifying possible options, appraising those options, and putting them into practice. A procurement strategy can support an authority in taking an innovative approach to partnership, making sensible decisions about the management of risk, and identifying where the authority’s efforts are best directed.

1.7. Even prior to a full statutory framework, local authorities can align their procurement strategy with policies for sustainable economic development, environmental policies (green

purchasing), equalities, and ‘fair contracts’ with small businesses and the not-for-profit sector.

## **DEVELOPING A BEST VALUE CULTURE – COMPETITION AND COMPETITIVENESS**

1.8. Best Value expects that the attitudes taken toward public service provision within the local authority reflect modern practice. This is especially the case where attitudes toward competition and competitiveness are concerned. Both are formalised approaches to choice, but there is an important distinction between competition (a process of choosing the provider of a service or activity which assesses evidence of future performance) and competitiveness (an attribute of a service or activity that is judged by evidence of past or current performance).

1.9. In many authorities negative views toward competition arose as a result of the experience of Compulsory Competitive Tendering (CCT), but there is no place for dogmatic attitudes within any organisational culture where Best Value is a priority. Local authorities in Scotland must make a reasoned choice between a variety of service providers and methods, including in-house delivery. That choice must be based on a reasoned options appraisal.

1.10. There are five key principles for managing procurement under Best Value:

- Any decision about the future organisation and management of services must fit into an overall service design and management process which is built on the principles of Best Value.
- A Best Value procurement strategy will encompass services traditionally provided in-house *and* contracts let after competition for works, utilities and goods, *and* services that have never been provided internally by the local authority.
- It will also encompass hybrids of all of these. There should be no polarised consideration of in-house vs. externalisation: already this does not represent reality for most local authorities.
- Where the choice involves *competition*, it must be managed within national legal and policy frameworks and within the policy framework of the authority.
- What matters is what works – and what ‘works’ is judged against what an authority is trying to achieve as a result of its community leadership and policy-making roles. With clear objectives for social inclusion, equalities, sustainability, regeneration, etc. an authority knows what it wants ‘to work’ and has the basis of the tools that will enable it to monitor and evaluate progress.

1.11. Research into change management suggests that resistance to change is frequently a product of how change is introduced and managed rather than the change itself. Local authorities need to develop appropriate methods of communicating with staff about the change process and involving staff as far as possible in supporting decision making. An effective Human Resource Strategy can be an important tool in supporting Best Value.

## **ENSURING CONTINUOUS IMPROVEMENT**

1.12. Best Value provides a challenge for procurement. Not only must the authority obtain Best Value service provision, it must also ensure that provision incorporates mechanisms for continuous improvement. This is one reason why an authority's requirements should, as far as practicable, be stated in terms of the *outcomes* (or *impacts*) of a service or activity. An authority is more likely to be able to specify such outcomes when it has a clear view of its *objectives*.

1.13. Although defining an 'activity' may need to specify *outputs* (numbers of claims processed in a set period), *processes* (to minimise fraud and comply with national standards) and *inputs* (minimum requirements for staff working with vulnerable children), these should be kept in the context of the overall *objectives* for the activity and the *outcomes* the authority, and local people, require.

1.14. In addition, as local authorities develop a spectrum of ways in which services are delivered it will be necessary to monitor and evaluate the success of their procurement effort. For the most part monitoring can be based on the success of different services in meeting their targets. The performance of procured services (whether internally or externally provided) is the outcome of the procurement activity of the authority.

## **OPTION APPRAISAL: DIFFERENT APPROACHES**

1.15. The term 'option appraisal' covers a range of decision-making techniques used to assist in assessing the claims of competing approaches. In the case of Best Value service reviews, these will be competing approaches to the future management and delivery of local authority services.

1.16. At each stage the process of option appraisal can become more detailed and more focused on comprehensive, specially collected, data. In the early stages the process for option appraisal will be the guarantee of consistency of approach. At the final stages it will be both process and data that are important. If that final stage is one of tender evaluation in a competitive bidding process it will be possible to undertake sophisticated analysis of financial and quality data that simply did not exist at the early stages.

1.17. Any decision-making tool provides support to the process – it does not provide the *answers*. Best Value review teams, senior managers and elected members still have to make judgements and it may be necessary to explain those judgements to others. The value of decision-making tools is that they take people through the process stage by stage, and they assist in making sure that everything relevant is taken into account.

1.18. The use of these tools in discussion with others provides one way of testing judgements. A decision that has been carefully deliberated in discussion with others should carry more weight than one where the deliberation was done alone.

## **IMPLEMENTATION**

1.19. After option appraisal and final recommendations the local authority will need to consider how to implement the changes recommended. A vital part of effective implementation of change will be the involvement of staff and their representatives (as key stakeholders) in discussions about how the authority will implement changes, and in the implementation of the changes themselves.

## SECTION 2 USING THIS DOCUMENT

2.1. This study has been commissioned to assist local authorities in Scotland develop their approaches to procurement and competition under Best Value. This part (Volume One) is designed to set out the policy and strategic framework within which local authorities will make decisions about the future of services and of service delivery. Volume Two is primarily designed to assist in the processes of decision making and option appraisal.

2.2. Local authorities can use both volumes of the study or focus on specific parts. Volume One deals with policy and strategic issues that will need to be considered in developing an authority's overall approach to procurement and competition. It can also be used to support discussions about the links between Community Planning, Best Value, and Procurement. Volume Two can be used to assist in designing a framework for Best Value reviews – and provides tools to be used in those reviews, informing the implementation strategies that should follow each Best Value review and its acceptance by elected members.

2.3. **Section 3: The policy framework** provides an outline of current progress on the introduction of Best Value in Scotland, and the policy bases on which Best Value rests. It briefly describes the key management disciplines underpinning Best Value and describes the links between Best Value and Community Planning. It stresses the importance of staff involvement in Best Value and the role of the Performance Management and Planning Framework in supporting Best Value.

2.4. **Section 4: Best Value, and procurement** describes 'procurement' and its links to competition and competitiveness in Best Value. It sets out how competition under Best Value will be significantly different from that under CCT and suggests how important it is for local authorities to develop a clear, policy-led approach to Best Value procurement.

2.5. The theme of Best Value procurement is developed in **Section 5: A strategic approach to procurement and competition**. This section outlines the key factors in developing a local authority procurement strategy. It emphasises how a procurement strategy must link to an authority's key objectives. It describes, for example, how local authorities may incorporate objectives for sustainable development, equalities and fair contracts in their procurement approach. This section also identifies how authorities can develop innovation and assess risk as part of a strategic approach to procurement. Section 5 concludes with a discussion on the difference between a procurement strategy and strategic procurement, and the importance of a clear approach to managing procurement within a local authority.

2.6. **Section 6: Conclusions** reminds authorities that the choice of a service delivery framework to deliver Best Value is increasingly complex: it certainly is not a simple choice of 'make or buy'. The test of the effectiveness of any choice is ultimately whether the outcomes are considered satisfactory after the scrutiny of the Performance Management and Planning audit process, the Public Performance Reporting process and, ultimately, the experience of local people.

2.7. This study was researched and written at a time of great change in local government in Scotland. While it was being written, the Scottish Executive was discussing and developing its approaches to Best Value and community planning. It is inevitable, therefore, that some parts of this study will have a shorter shelf-life than others. In the main, however, it is based on good practice in Scotland, in the UK and, sometimes, further afield.

## SECTION 3 THE POLICY FRAMEWORK

### THIS SECTION

3.1. This section provides an overview of Best Value and the objectives developed by the Scottish Executive, COSLA, and the Accounts Commission to take Best Value forward in Scotland. It makes the links between Best Value, Community Planning, and the Performance Management and Planning Framework. It stresses the importance of developing a Human Resource Strategy to support Best Value and the review process.

### BEST VALUE

3.2. Best Value has been progressing in Scottish local government since late 1997. The Best Value Task Force set out the attributes of a Best Value local authority in its final study<sup>1</sup>. These have now been fully accepted in principle by Scottish Ministers<sup>2</sup>.

The central processes of Best Value are:

- A Performance Management and Planning Framework (PMP framework),
- Best Value reviews
- Public Performance Reporting (PPRg)

3.3. The essential *attributes* of a Best Value local authority<sup>3</sup> are:

- *Commitment to Best Value and acceptance of four key principles:*
  - accountability
  - ownership
  - continuous improvement
  - *transparency*
- *Political and senior management leadership*
- *Performance Management and Planning Framework*
- *Programme of reviews*

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<sup>1</sup> Scottish Executive (1999) *Best Value in Local Government: Long Term Arrangements*. Edinburgh: Scottish Executive.

<sup>2</sup> Scottish Executive (2000) *Best Value in Local Government: Next Steps*. Edinburgh: Scottish Executive.

<sup>3</sup> Scottish Executive (1999) *Best Value in Local Government – Long-Term Arrangements*. Edinburgh: Scottish Executive. ISBN 0-7480-9227-7

- *Framework for Public Performance Reporting.*
- *Commitment to equality issues*

3.4. These processes and attributes are based on an over-riding policy objective of better services for local people.

3.5. The final Report of the Task Force, and the Scottish Executive’s response to consultation, the ‘*Next Steps*’ in developing Best Value<sup>4</sup>, notes three additional objectives within which local authorities will consider Best Value options. Figure 1 describes how this study supports those objectives.

**Figure 1 Best Value and competition**

| <b>Objective</b>  | <b>Note</b>  |
|---|--|
| Clear guidance on options appraisal and the use of competitive principles   | This study provides such guidance  |
| Expanding local authority freedoms to trade within the principles of Best Value and especially openness and transparency and the objectives of the intended trading | This study provides a framework for openness and transparency  |
| Best Value opens up a spectrum of possibilities for new relationships between service providers.  | This study provides an outline of the different points on the spectrum. It suggests methods for assessing the costs and benefits of different types of relationship. |

3.6. These objectives, and the other issues discussed in this study, provide a framework within which Scottish local authorities can make choices about how services will be delivered and who will deliver them. There are boundaries to this framework. For the most part these boundaries are set at the highest level: the policies of the UK government and the Scottish Executive; existing statute law (including the implementation of EU Directives); and civil law. Practically, they should also be set at the level of each local authority’s policies and aspirations.

### **The ‘mixed economy’**

3.7. Scottish Ministers support the principle that ‘*what matters is what works*’. There is no place in Best Value for dogmatic approaches for, or against, the in-house delivery of services. Local authorities in Scotland must make a *reasoned* choice between a variety of service providers and methods. That choice must be based on an appraisal of the information collected through Best Value reviews, or collected in response to other factors that trigger a decision to review service management and delivery.

3.8. The Scottish Executive made it clear, in the ‘*Next Steps*’ consultation on Best Value that:

<sup>4</sup> Scottish Executive (2001) *Best Value Next Steps: Responses to Consultation*. Edinburgh: Scottish Executive.

*“Our views on the need for greater competition do not mean that we expect to see every service being tendered, outsourced, or privatised. [...]. Our preference is for a ‘mixed economy’ wherever possible, by which we mean services being obtained / delivered in various ways: directly, in partnership, outsourced, or contracted. Each council must find **and justify** the mix appropriate to its area for each service. [... ]”<sup>5</sup>*

This study provides local authorities with a framework for making the choices about service delivery options within that ‘mixed economy’. It outlines the range of options available and sets out the evidence that can be used to justify options chosen by authorities.

## **Figure 2 A mixed economy of provision: Falkirk**

### A mixed economy

In 1997 Falkirk Council advertised its intention to issue tenders for Housing General Maintenance work for its stock of houses and lock-up garages. The work was split into three geographical areas with an average of 7,700 properties in each area, with contractors able to bid for any or all of the areas.

Falkirk Council awarded one contract to Mowlem Building Maintenance and two contracts to the Council’s own Contract Services. All three contracts have been extended (on the basis of successful performance) to 31 March 2002. The next contracts will be let after the Council has completed a Best Value review.

The split of contracts between two providers gave the Council an opportunity to develop and benchmark financial and service performance indicators – contributing to the maintenance of a high overall standard of service delivery.

## **Community, corporate and service objectives**

3.9. The Task Force definition of Best Value focuses clearly on the importance of ‘leadership’ and ‘strategy’. Corporate leadership and a clear strategic approach in turn require objectives at three levels which should inter-relate:

- The local community: arising from the needs and aspirations of local people and organisations; and expressed through community planning
- The local authority as an organisation, expressed through Best Value and the PMP framework at the corporate level
- The services provided by the local authority expressed through Best Value and the PMP framework at the operational level

3.10. The proposed **Power of Community Initiative** and the proposed statutory basis for **Community Planning** (Scottish Executive 2000a)<sup>6</sup> both recognise the importance of setting clear objectives at different levels and of joint working. The proposed power of community

<sup>5</sup> Scottish Executive (2000b) *Best Value in Local Government: Next Steps*. Edinburgh: Scottish Executive.

<sup>6</sup> Scottish Executive (2000a) *A Power of Community Initiative, Community Planning, Political Restrictions on Council Employees: A consultation paper*. Edinburgh: Scottish Executive. ISBN 1-84268-080-3

initiative will allow local authorities to develop a leadership role in promoting the well-being of local communities. This goes beyond (but will often incorporate) service delivery - allowing authorities to develop cross-cutting strategies in partnership with other agencies.

*“It will help underpin a more innovative culture leading to the delivery of better services”*: (Scottish Executive. 2000a, p.5)

The proposed statutory basis for community planning is based on four key concepts:

- Community leadership
- A strategic vision for the whole area
- Community involvement
- Partnership working

Best Value itself encourages an authority’s approach to providing services for local people to be developed within the wider picture of Community Planning. A Best Value authority consults and listens to local people and it reports back to them on its performance. It aims to achieve Best Value by ensuring that its resources (including human resources) are used effectively. It makes sure that it is aware of the overall views of citizens and other stakeholders. Through the Best Value review process it tests its focus on particular issues, themes or services. To assist this process, the promised power of community initiative can provide an environment in which authorities break out from the restrictions of a ‘make or buy’ choice to consider a wider range of options for meeting the needs of local people.

3.11. If local authorities are clear about their objectives at both the corporate and the service level, they are more likely to be clear about how they will achieve those objectives. In making decisions about service delivery this objective-led approach should mean that authorities look for the options that can deliver the *outputs* and *outcomes* that enable them to meet their objectives and aspirations. Through Public Performance Reporting, the Best Value authority is able to *demonstrate* to local people how it is meeting those objectives through its own actions or the actions of its partners or contractors.

### **Best Value reviews**

3.12. A fundamental part of the delivery of Best Value to local people is the service review programme. This ensures that all local authority activities are regularly and rigorously subject to the test of the ‘4Cs’:

- **Challenge:** of current policies and approaches either to identify alternatives or to justify their retention
- **Compare:** with other providers to identify and stimulate best practice
- **Consult:** with stakeholders to identify issues of concern and to influence future approaches
- **Compete:** demonstrating the competitiveness of existing approaches or providers and assessing future options for service management and delivery

Best Value reviews should include a full analysis of existing performance, and take account of the views of stakeholders and evidence from other providers about alternative approaches: The impact of alternative policy options on equality and inclusion issues must be considered. Other factors that may need to be taken into account are the use of cost reduction, reprioritisation, and quality improvement methods, as well as the need for new investment. The reviews should take account of future levels of need and demand. To ensure that the ‘challenge’ element is dealt with rigorously, the review should also include an *independent* element of challenge,

3.13. The result of every Best Value review should be a clear set of recommendations to elected members. The recommendations should be based on clear analysis of the evidence collected (including an appraisal of the options available to the authority). Where reviews identify poor performance the emphasis should be on early remedial action *as well as* longer-term proposals for fundamental improvement. Recommendations should cover:

- targets for **future performance**;
- the **preferred option(s)** for service management and delivery to achieve the recommended targets;
- arrangements for **monitoring and reporting** on the success of the preferred options in meeting the targets;
- an **implementation plan** as to how, and when, the new management and service delivery approach(es) will come into effect.

3.14. Audit Scotland (Audit Scotland 2001a,<sup>7</sup> 2001b<sup>8</sup>) recommends that each authority should have a systematic, corporate approach to managing Best Value reviews.

3.15. Reviews have four clear perspectives: looking *backwards* at the authority’s performance; looking *outwards* at the performance of others and at the views of service users and other stakeholders; looking *inwards* to challenge and test current methods and approaches; and looking *forwards* to set targets for future performance and the methods that will be used to achieve those targets. The first three perspectives require evidence to be collected and evaluated. Looking forwards requires an additional skill: the appraisal of evidence from the other three perspectives and using that appraisal to plan for the future. This is *option appraisal*.

3.16. Option appraisal requires choices to be made. Those choices then have to be presented to elected members along with the evidence, and the evaluation, that supports those choices. More detailed guidance on option appraisal is outlined in Volume Two, Section 3.

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<sup>7</sup> Audit Scotland (2000a) *Corporate Level PMP Audit Guide*. Edinburgh: Audit Scotland.

<sup>8</sup> Audit Scotland (2000b) *Service Level PMP Audit Guide*. Edinburgh: Audit Scotland.

## Managing people through change in the Best Value review process

3.17. Best Value reviews can cause considerable uncertainty and anxiety, as well as additional workloads for staff within the authority. A Best Value review can be time-consuming, yet the existing service still has to be provided. Best Value itself is based on the idea of changing and challenging existing work practices, with the added possibility of externalisation as an outcome of the review itself. All of this can create a perception of threat to existing jobs and terms and conditions of employment. It can make local authority employees feel vulnerable in facing up to change.

3.18. The *threat* of change can be aggravated in several ways. Too often managers can increase the perception of threat by not considering the implications of how they communicate with staff. For example, if employees are given partial, or no, information about the change process they are more likely to be suspicious of, and resistant to, any changes. Best Value has to be understood broadly by management as part of a *change management* process.

3.19. Research into change management suggests that resistance to change is frequently a product of *how change is introduced and managed* rather than the change itself<sup>9, 10</sup>. Local authorities need to develop appropriate methods of communicating with staff about the change process *and* involving staff as far as possible in supporting decision making.

3.20. An effective Human Resource Strategy can be an important tool in supporting Best Value reviews (see Volume Two, paragraph 3.35) particularly if it sets out the following:

- How the local authority consults and involves staff in the development of service reviews and strategy
- The opportunities which the council offers employees for personal development around the objectives of Best Value
- How Best Value links into appraisal and advancement for employees
- The local authority's commitment to work alongside trade unions as part of the Best Value review process
- Communication mechanisms for feeding the findings of review processes back to staff in the options appraisal process

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<sup>9</sup> Newman, J. (1994) 'Beyond the vision: cultural change in the public sector', *Public Money and Management* 14 / 2.

<sup>10</sup> Morgan, C. and Murgatroyd, S. (1994) *Total Quality Management in the Public Sector*. Buckingham: Open University Press.

**Figure 3      Group SWOT exercises**

Engaging staff in scoping

Some authorities in England and Wales include a staff involvement element in the early scoping of the Best Value review. This often involves a group-based SWOT analysis in which staff are asked to judge the Strengths and Weaknesses of their service and the Opportunities and Threats that it faces.

Operational and support staff, managers and the review team are able to work together to create a picture of the organisation, ‘warts and all’, that can be used as a basis for future discussions around innovation and options.

**Figure 4      Involving staff: Stirling Council**

Engaging staff in the options appraisal process

Stirling Council's Technical Services Division is pioneering a new approach to options appraisal that actively engages staff in the review process by getting them to present their performance profile to a range of stakeholders. This involves staff in the analysis of performance data and its presentation and subsequent interpretation.

The benefit of this approach is that it builds a high level of awareness among staff of the issues, such as skills acquisition and flexible working, that will need addressing in the implementation phase.

**Figure 5 Involving staff in reviews: Moray Council**

#### Involving staff in Best Value reviews

This checklist is taken from Moray Council's Best Value guidance.

#### CHECKLIST

This checklist is a summary of the stages and issues to consider when carrying out service/activity review under the Best Value review model. It relates to the stages in the model, and reference should also be made to the Guidance Notes.

##### 1.0 Alternative methods

1.1 What are the options for delivering your service?

**1.2 Are there implications for your employees?**

**1.3 Have you consulted the staff on your proposals?**

##### 2.0 Improvement period

2.1 Can improvements be made within the service?

2.2 Develop an improvement plan for a period of 12 months

2.3 How will you measure these improvements?

##### 3.0 Measurements of success

3.1 Service standards are in place

3.2 Service level agreements are in place

3.3 Local performance Indicators are in place

3.4 Information for the public performance report is available

3.5 Activity-based costing is in place, where necessary

3.6 A continuous improvement plan is approved

3.7 Staff have been involved in the process

3.8 Trade Unions have been involved in the process, where necessary

3.9 You have notified participants in the customer surveys of the outcome of the service review

#### Developing a Best Value culture

3.21. Best Value involves modernising attitudes and values toward public service provision within the local authority. This is especially the case where attitudes toward competition are concerned. In many authorities negative views toward competition arose as a result of the experience of CCT. These attitudes may now be deeply ingrained in the organisational culture. As a consequence attention has to focus on managing the existing culture within the authority so as to create a culture which is supportive of Best Value.

3.22. Organisational cultures can act in two ways:

- they can add an extra dimension of empowerment and motivation for staff and act as a powerful catalyst for continuous improvement; and
- they can create barriers to change

3.23. Clearly the challenge for local authorities lies in creating a sustainable culture to support the authority's Best Value framework and to manage the challenges involved in culture - change exercises.

Research into culture change<sup>11</sup>, <sup>12</sup> offers the following lessons:

- Accept that culture change is a complex undertaking and be realistic about the time required to create a new culture
- Understand the existing culture and be clear about its strengths and weaknesses
- Do base line research to map the existing culture. This is important to be able to understand the challenge faced in culture-change exercises and provides a benchmarking for monitoring progress
- Identify the mechanisms and opportunities for challenging the negative features in the existing culture
- Talk about the new culture that the organisation wishes to create in terms that are meaningful to staff and avoid the use of management clichés and jargon
- Describe the new culture to staff and communicate the new cultural values clearly and unequivocally
- Involve staff in creating a vision for the new culture
- Involve staff in developing criteria for measuring successful progress in embedding the new culture and recognising the symptoms of culture-change inertia and how these can be overcome
- Make sure that managers 'lead by example'

3.24. When judging the success of a culture-change programme local authorities should bear in mind the observation that you can only change the culture of an organisation if you change the stories that people tell about "*what we do here and how we do it*"!

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<sup>11</sup> Morgan, C. and Murgatroyd, S. (1994) *Total Quality Management in the Public Sector*. Buckingham: Open University Press. Chapter 8.

<sup>12</sup> Atkinson, P. (1990) *Creating Culture Change: The Key to Successful Quality Management*. Bedford: IFS Ltd.

**Figure 6 Working together for Best Value**

The local authority associations and trade unions in England have recently published research and best-practice guidance on promoting employee and trade union involvement in Best Value<sup>13</sup>.

Good-practice examples included:

A strong corporate framework for staff and trade union involvement with departmental and team managers taking responsibility for ensuring involvement is consistently applied

A strategy where the involvement of employees is an extension of existing employee and trade union representation and the existing consultation machinery

Trade union representatives and front-line employees being involved in Best Value review teams

Joint Best Value training for front-line staff, managers and trade union representatives

Workplace meetings, jointly organised with trade unions, to investigate service improvement options. These have included focus groups, self-assessment using the EFQM framework, and working groups set up to examine particular problems or improvements

Providing opportunities for women, part-time workers and staff working at dispersed locations to take part in discussions

Regular evaluation of employee / trade union involvement

Employee and trade union involvement in the outcome of reviews, including implementation and action plans

## **COMMUNITY PLANNING**

3.25. Scottish Ministers believe that Community Planning will mean better delivery of local services. Local authorities, other parts of the public sector, the private sector, and voluntary and community organisations can work in partnership to develop a plan that sets out a common community vision and priorities for change. The Scottish Executive sees a key role for local authorities in leading the development of community plans to the benefit of local communities.

3.26. The proposed Community Plan will have a pivotal role in setting the agenda for local authority action, and for the choice of Best Value service delivery option. Community Plans in Scotland will be:

- led by local authorities, working co-operatively with other agencies, to develop a common vision for improving the lives of the people they serve;

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<sup>13</sup> I&DEA (2001) *Working together for Best Value*. London: Improvement and Development Agency.

- developed out of a process of consultation that creates a document setting out how organisations will work separately and together to achieve the vision they have agreed on;
- supported by local business, the voluntary sector and local communities.

3.27. The evaluation of the Community Planning Pathfinder Projects<sup>14</sup> summed up the main features of Community Planning in Scotland as:

- *A strategic vision for the whole area* – a means of creating a holistic approach to the social, economic and environmental needs of the area and its communities
- *Community consultation and involvement* – resulting in the extension of representative government into more participative forms of government and ensuring that the agreed vision should be that of the community as well as that of the public, private and voluntary sector agencies in the area
- *Partnership* – between not just the main public-sector organisations but also the private and voluntary sectors. It has also been recognised that it is important that the commitment of partners needs to be expressed not just through agreement with a strategic vision but also through an action plan expressing the actions that each partner agrees to undertake to achieve the vision
- *Community leadership* – essentially the belief that local authorities, while needing to act increasingly in partnership, have a key role for their communities in general and for the Community Planning process in particular. This role is based on two premises:
  - a. that as democratically elected bodies their position in relation to the communities they serve places them apart from all other public service organisations;
  - b. that because of their wide-ranging powers and responsibilities for planning and services they are the local organisations most suited to having an overall concern for the social, economic and environmental well-being of the area.

3.28. Community Planning, therefore, has three key influences on Best Value reviews and the choice of service delivery option:

- Setting a ‘vision’ or framework that will ultimately provide the test of whether any service delivery option ‘works’

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<sup>14</sup> Rogers, S. Sullivan, H., Smith, M. and Clarke, M. (2000) *Community Planning in Scotland – An Evaluation of the Pathfinder Projects*. Convention of Scottish Local Authorities & Scottish Executive.

- Extending community expectations of real involvement in setting priorities and influencing decisions
- Providing a context for service management and service delivery partnerships

## **THE PERFORMANCE MANAGEMENT AND PLANNING FRAMEWORK**

- 3.29. The purpose of Best Value is to ensure that councils provide services that meet the needs of their customers and citizens and provide value for money. They must also demonstrate that they are accountable and delivering continuous improvement. Performance Management and Planning (PMP) is a means to help achieve these objectives by establishing clear standards and targets for all activities, identifying where and how improvements can be made, and reporting on performance.
- 3.30. Audit Scotland has developed an audit approach for both the *corporate* processes that support Best Value and the *service* processes that deliver it. There are features of both audit approaches that relate directly to an authority's approach to procurement, competitiveness and option appraisal.
- 3.31. The Performance Management and Planning Framework is based on 10 criteria:
1. *Clear leadership for a Best Value approach is provided by elected members, the service head and the senior management team.*
  2. *We understand the needs, expectations and priorities of all our stakeholders.*
  3. *We carry out effective Best Value reviews.*
  4. *We have detailed and realistic plans for achieving our goals.*
  5. *We make best use of our people.*
  6. *We make best use of our assets.*
  7. *We have sound financial control and Reporting.*
  8. *We actively support continuous improvement.*
  9. *We monitor and control our overall performance.*
  10. *We have an effective approach to public performance reporting.*

*Audit Scotland, Corporate Level PMP Audit Guide, 2000*

3.32. Audit Scotland's guidance<sup>15</sup> includes detailed advice on how authorities can assess themselves against these ten criteria. Volume Two, Section 5, applies the PMP self-assessment criteria to local authority procurement activities.

3.33. Performance Management and Planning provides a practical management and accountability framework for local authorities to develop the policies arising from Best Value and Community Planning.

## **SUMMARY**

3.34. This section has reviewed the policy bases for Best Value, Community Planning and the Performance Management and Planning Framework. These, taken together with other policies of Scottish Ministers for the modernisation of local government, provide the framework within which local authorities in Scotland will make decisions about their priorities for Best Value services, about how services are to be managed and delivered in future, and their accountability for value for money.

3.35. The following sections of this volume discuss the policy and management issues involved in making those decisions, and Volume Two sets out good practice guidelines emphasising points to follow, and pitfalls to avoid.

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<sup>15</sup> Audit Scotland (2000a) *Corporate Level PMP Audit Guide*. Edinburgh: Audit Scotland.

## SECTION 4 BEST VALUE AND PROCUREMENT

### THIS SECTION

4.1. This section explains what procurement is, and how it links to Best Value. It describes how competition and competitiveness have their distinct contributions to the decision about who delivers Best Value services to local authorities in future, and it highlights the important differences between Best Value procurement and CCT competition. The section concludes with five principles for effective Best Value procurement.

### WHAT IS PROCUREMENT?

4.2. Over the last few years there has been increasing attention paid to ‘procurement’ of services by public authorities. In this study we have taken a ‘wide’ view of procurement. A wide definition of procurement includes the circumstances when services, supplies or works are purchased from an ‘agent’ or contractor, but it *also* includes joint commissioning of services with another public body, *and* it includes the organisation and management of in-house provision.

4.3. A wide view of procurement allows local authorities to consider *all* of the possible options for future service delivery rather than focusing on a limited discussion set around the polarities of ‘make or buy’. It also ensures that discussions are not limited by a view that some options are not ‘real’ procurement. This was the approach taken by the DETR / LGA Task Force in England<sup>16</sup>:

#### *Definition of 'Commissioning and Procurement'*

*The Review will adopt a broad definition of commissioning and procurement. This will encompass the whole process of acquisition of goods, services and works, from the initial assessment of business need through to the end of the life of the asset or service. It will look at both acquisition from third parties and from in-house providers.*

4.4. A narrower definition of procurement is that it starts once an authority has decided to use another, independent, body to supply works, goods or services. The Department of Trade and Industry, for example says that:

*Procurement, [...], covers the process of acquisition of goods, services, and works projects from third parties (including logistical aspects), from initial concept and definition of business needs through to the end of the useful life of a procured asset or services contract<sup>17</sup>.*

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<sup>16</sup> DTLR (2001) Delivering Better Services for Citizens – A Review of Local Government Procurement in England. London: DTLR.

<sup>17</sup> DTI (no date) About Procurement. London: Department of Trade and Industry. [http://www.dti.gov.uk/about/procurement/pro\\_man.htm](http://www.dti.gov.uk/about/procurement/pro_man.htm)

The review of public procurement in Wales defined procurement as:

*The whole process of acquisition from third parties, covering goods, services and capital projects. The process spans the whole-life cycle from initial concept through to the end of the useful life of the asset (including disposal) or the end of a services contract. Both conventionally funded and more innovative approaches such as PPP/PFI are included.*<sup>18</sup>

The European Procurement Directives also start from the position that ‘procurement’ is a process that ends in the award of a contract<sup>19</sup>.

4.5. Both the wide, and the narrower, definitions see procurement as extending for the ‘whole life’ of the works, goods or services. This provides an important link back to the important issue of *purpose* – how does procurement support the authority’s objectives? It also raises the question of when *competition* is an appropriate means of *choosing* a service provider and how a local authority tests the *competitiveness* of services. In this study we take the ‘wider’ view of procurement as the basis for guidance about how local authorities should manage procurement for Best Value.

## COMPETITION AND COMPETITIVENESS

4.6. A local authority framework for Best Value competitiveness and competition should both *challenge* the economy, efficiency and effectiveness of services, and lead to *choice* about the most appropriate means of managing and delivering services. There is an important distinction between *competitiveness* (an attribute of a service or activity that is judged by evidence of past or current performance) and *competition* (a process of choosing the provider of a service or activity which assesses evidence of future performance).

4.7. A *test of competitiveness* demonstrates a level of performance against tests of economy, efficiency and effectiveness. Alongside other information collected in the review process it demonstrates the quality and value for money of the service, and provides information that can be used to develop future standards and an action plan for improvement.

The *process of competition* is one process that may be used to implement the action plan for improvement. Competition is a formalised approach to *choice*.

4.8. A focus on *competitiveness* is more likely to ensure that:

- the strategic focus of Best Value is on the *objectives* rather than on *processes* as it was too often with CCT;

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<sup>18</sup> The National Assembly for Wales (2001) Better Value Wales: The Review of Procurement in the Welsh Public Sector. Cardiff: National Assembly for Wales.

<sup>19</sup> The Public Works Contracts Regulations 1991 (as amended by Directive 97/52/EC of the European Parliament and Council) (HMSO).

The Public Services Contracts Regulations 1993 (as amended by Directive 97/52/EC of the European Parliament and Council) (HMSO).

The Public Supply Contracts Regulations 1995 (as amended by Directive 97/52/EC of the European Parliament and Council) (HMSO).

The Utilities Contracts Regulations 1996 (as amended by Directive 98/4/EC of the European Parliament and Council) (HMSO).

- an existing provider must clearly demonstrate *competitiveness* and *capacity to improve* in order to survive;
- ‘*what matters is what works*’.

4.9. There will be some occasions when competition is the *only* appropriate method for choosing a future service provider. There will be others where it is *clearly not* an appropriate method. At the extremes these circumstances are absolute. In most cases, though, there will be a *judgement* about the costs and benefits of competition alongside other options. Volume Two describes the different approaches that are available for managing and delivering Best Value services and the evidence that local authorities can use in **option appraisal** (see Volume Two, Section 3).

4.10. There are five key issues about tests of competitiveness that should inform an authority’s approach to Best Value reviews.

- 1) Tests of competitiveness must be used and evaluated alongside the other diagnostic tests of the fundamental performance review in order to get a full picture of existing services (and to judge effectiveness).
- 2) Tests of competitiveness must be objective and transparent.
- 3) If a service or activity fails the tests of competitiveness, the local authority will have to decide if the failure is significant, whether it applies to the whole service or activity or to part of it, and its performance against other diagnostic tests.
  - It will also have to assess whether existing methods can be improved.
  - If existing methods cannot be improved, the authority will have to decide how to choose an alternative supply.
  - Competition (market testing and/or competitive tendering) is one route to choosing an alternative means of supply.
  - The decision to use competition, or an alternative, must be objective and transparent.
- 4) The choice of competition (or an alternative) should be explained on the basis of:
  - policy objectives;
  - the results of the fundamental review;
  - economic factors, such as the costs and benefits of finding and working with a new supplier, and the probability of levering-in capital or expertise;
  - risk factors: relative risks and likelihood of service failure - especially where local authorities are under a statutory duty to provide services;

- the balance of short-term and long-term costs and benefits.
- 5) The form of competition (or any alternative) will differ according to the results of the review, the authority's objectives, its legal obligations, and the nature of the service.

4.11. The government's agenda for modern local government, taken as a whole, supports innovation, partnership, and community leadership. This provides a framework for Best Value services that are managed and delivered through a *combination* of more traditional procurement routes (in-house, market testing, competitive tendering) *alongside* stimulation of community action, local business, and partnerships with the commercial or not-for-profit sectors. The creation of a *mixed economy of provision* is a real alternative to the experience of CCT.

### **Competition, CCT and the treatment of non-commercial considerations**

4.12. The 'Next Steps' consultation (see page 7) noted that debates about competition tended to be '*emotive and polarised*'. There is no doubt that the experience of CCT served to fire those emotions. In CCT, competition was both a means to an end and an end in itself.

4.13. CCT *required* formal competition for certain 'defined' activities. Those activities were set in both primary and secondary legislation, as were detailed rules about how that competition was to be managed. The opportunities for authorities to choose alternate means of achieving the same ends were virtually non-existent.

4.14. CCT had several negative consequences:

- The creation of strict client / contractor splits whether the contractor was external or in-house encouraged antagonistic and low-trust relationships. In the private sector in the 1990s, more businesses were investigating how to soften the split between client and contractor and build co-operative relationships.
- The use of cost as the *only* measure of competitiveness. Yet the European Procurement Directives established *two* key measures of competitiveness: lowest cost; and 'economically most advantageous tender'. The latter allowed transparent assessment of factors other than cost to be used in the processes for awarding contracts.
- Successful lowest cost bids that could not sustain performance over the life of a contract.
- Local authorities, successful contractors, and potential suppliers in the private and non-profit sectors argued there was no 'level playing field'.
- Failure to learn from successful progressive practices by authorities that tried to make CCT work for their own objectives.
- The 'all or nothing' approach that denied the validity of alternative approaches to achieving value for money in service delivery.

- Separation of the experience of the defined activities from that of other parts of local authorities that were also developing new relationships with markets.

4.15. Part II of the Local Government Act 1988 introduced the concept of ‘non-commercial considerations’. No decisions about inviting bids, accepting contractors or subcontractors, awarding contracts or terminating contracts can be made on the basis of these ‘non-commercial considerations’.

**Figure 7 Non-commercial considerations**

|  |
|--|
| <p>A contractor’s workforce (Section 17(5)(a)):</p> <p>Terms and conditions of employment</p> <p>Composition of workforce</p> <p>Opportunities for training, transfer, promotion</p> <p>Whether individual sub-contractors are self-employed (Section 17(5)(b))</p> <p>A contractor’s involvement in ‘irrelevant fields of Government policy’ (Section 17(5)(c)). This is defined in Section 17(8) as defence or foreign, or Commonwealth policy.</p> <p>A contractor’s involvement in their own, or other businesses’, industrial disputes (Section 17(5)(d))</p> <p>The country of origin of supplies, or the location of contractors’ business activities or interests (Section 17(5)(e))</p> <p>The business or sectarian affiliations of contractors, their directors, partners, or employees (Section 17(5)(f))</p> <p>A contractor’s financial support (or lack of financial support) to any organisation the authority supports, or does not support (Section 17(5)(g))</p> <p>A contractor’s choice about using the authority’s services provided under the Building (Scotland) Act 1959 (Section 17(5)(f))</p> |
|--|

4.16. Part II also lists an important exception to the idea of non-commercial considerations: local authorities can ask ‘approved questions’ about race relations matters. In furtherance of their duties under the Race Relations Act 1971 (promoting good race relations), they can also include relevant terms relating to workforce matters in draft contracts. To meet the requirements of the Race Relations (Amendment) Act 2000, it might be necessary for further clarification by central government to reflect local authority obligations on this issue.

4.17. Finally, Part II includes a piece of simple good procurement practice. Section 20 requires local authorities to tell contractors:

- Why they have been excluded from an approved list

- Why their request to be invited to tender was rejected
- Why their tender submission was rejected
- Why they were not awarded a contract
- Why sub-contractors were not accepted
- Why an existing contract was rejected

4.18. In England and Wales the government has abolished the competition and accounting requirements of CCT. It has left Part II in force although new regulations have been developed <sup>20</sup> to provide some of the flexibility that Best Value requires. These allow local authorities to take workforce (Section 17(5)(a)) and conduct in industrial disputes (Section 17(5)(d)) matters into account *only* for the purposes of Best Value, or for the purposes of TUPE transfers.

4.19. At the time of this study, Scottish Ministers had established a moratorium on the competition requirements of CCT but the accounting requirements of CCT and Part II were still in force. Various options for legislative change are being considered. It is likely that new flexibilities will be introduced but it is also likely that they will be supported by a continued emphasis on good practice, either directly or as part of statutory guidance.

**Figure 8      The change from CCT to Best Value**

Reflections on the change from CCT to Best Value

*“CCT has brought some benefits to the procurement process, most notably in encouraging the council to look critically at what it was doing and why, and improved business skills. Implementing the principles of best value will require the council to have objective and transparent processes in place to demonstrate procurement competitiveness based on quality, price and customer satisfaction . In addition, robust service review and option appraisal programmes using competitive disciplines ranging from benchmarking, continuous improvement, partnerships and full market place competition are all techniques which the council will use as appropriate as part of the procurement process.*

*“All of the above are no more than good procurement practice which we have adopted, particularly in relation to balancing price and quality when considering the award of contracts for a wide range of services across all of the council’s functions. The important point here is not to focus exclusively on one procurement option as the only way to deliver best value as no option is automatically better than any other.”*

From interviews with Scottish local authority officers, March 2001.

<sup>20</sup> The Local Government Best Value (Exclusion of Non-commercial Considerations) Order 2001. London: HMSO. ISBN 0 11 018896 9. (These apply to England and to police and fire authorities in Wales.)

## THE CONTRIBUTION OF BEST VALUE TO THE PROCUREMENT PROCESS

4.20. Best Value provides authorities with an opportunity to take control over decisions about competition and competitiveness. The framework approach of this study and of the Scottish Executive's overall approach to Best Value encourages decisions that meet an authority's objectives for economy, efficiency, effectiveness and continuous improvement. It is for each authority to decide the best ways to meet the objectives set by community planning and Best Value processes within the broad framework set nationally. Best Value allows authorities to innovate in their approach to service delivery and to assess the different options in terms of risk.

*“1.16 A FIRM PRINCIPLE of the on-going work on Better Government is that we should all be looking afresh at our work from the outside in, putting the needs of users first. For public procurement, this means we should become much more pragmatic and innovative about how goods and services are provided, and who should do this, guided by best value and not by pre-set views on public versus private ownership. It means working in closer partnership with colleagues in other parts of the public sector and also with suppliers – small and medium sized as well as large. This puts procurement at the forefront of delivering this government's agenda for effective services through public/private partnership. It will also require careful work on the management of supplier and partnership relations and consequently on the implication for propriety and accountability<sup>21</sup>.”*

**HM Treasury / Cabinet Office, 1998**

4.21. The Best Value framework enables local authorities to take a 'wide' view of procurement. The *challenge* element of the review process encourages a critical assessment of current methods of service delivery and the ways in which they can be improved. *Consultation, comparison* and tests of *competitiveness* support the challenge by providing the evidence that supports decisions about the choice of future supplier: the procurement choice.

### Ensuring continuous improvement and reporting on performance

4.22. Best Value also provides a challenge for procurement. Not only must the authority obtain Best Value service provision, it must also ensure that provision incorporates mechanisms for continuous improvement. This is one reason why an authority's requirements should, as far as practicable, be stated in terms of the *outcomes* (or *impacts*) of a service or activity. Specifications *may* need to specify *outputs* (numbers of claims processed in a set period), *processes* (to minimise fraud and comply with national standards) and *inputs* (minimum requirements for staff working with vulnerable children), but in all cases these should be kept to a necessary minimum. When an authority has a clear view of its *objectives* it is more likely to be able to specify the outcomes or impacts that will meet those objectives. Where inputs, processes and outputs do need specifying they should be kept in the context of the overall objectives for the activity and the outcomes or impacts that the authority, and local people, require.

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<sup>21</sup> HM Treasury / Cabinet Office (1998) *Efficiency in Civil Government Procurement* (the Gershon Report). London: HM Treasury. ISBN 0 947819 592

## Figure 9 Approaches to continuous improvement

**Specifying performance milestones** to be achieved during the lifetime of a project, agreement or contract. The milestones may arise directly from the Best Value review.

**Developing outcome-based requirements** with agreed financial incentives to meet performance milestones.

**Using outcome based requirements** with performance milestones set by, or negotiated with, the service supplier.

**Agreeing inflation indexation** set at RPI (or other index) minus x% (to encourage efficiency).

**Considering a two-part contract** with award of the second part (or contract extension) dependent on performance during the first part.

4.23. Best Value, the PMP framework and Public Performance Reporting all require *information* about *performance*. To meet the requirement for information there will inevitably be a need for authorities to specify processes for collecting performance information and outputs in terms of the information to be provided. This will be true *whoever* provides the service. The aim of collecting performance information should be twofold: to ensure that service providers meet the authority's requirements; and to ensure that the local authority meets the requirements of local people.

### Triggers for improving procurement

4.24. In addition to the Best Value review process there will be other influences on an authority's approach to procuring services, goods and works. Innovative approaches to procuring services through PFI schemes, through partnerships with the private sector, and through redesign and re-engineering of the relationships between local authorities, health boards, and NHS Trusts, have all arisen in Scotland as local authorities have developed new approaches or have responded to the opportunities or challenges of new legislation and government initiatives. These will be *tested* by their contribution to Best Value in the future.

### Principles underlying Best Value procurement

4.25. The review of key elements of Best Value in this section suggests five key principles for the effective management of competition and procurement:

1. Any decision about the future organisation and management of services must fit into an overall service design and management process which ensures that:
  - there is a clear explanation and justification for the decision;
  - the decision is properly implemented;
  - the results are monitored;

- there is an assessment of the *process* and the *outcomes*;
  - there is a review of the service / activity at regular intervals;
2. Where the choice involves *competition*, it must be managed:
    - within the legal framework;
    - within the framework of Best Value in Scotland, including PMP and PPR;
    - within the policy framework of the local authority.
  3. A Best Value procurement strategy will encompass services traditionally provided in-house *and* competition for works, utilities, goods and services that have *never* been provided internally by the local authority. It will recognise that:
    - Best Value is the result of all local authority procurement decisions, not just those currently provided internally;
    - internally managed services can be improved through supportive procurement policies.
  4. The polarisation of in-house against externalisation predominant under CCT must be replaced by a debate that involves a spectrum of options including hybrid models.
  5. What matters is what works – and what ‘works’ is judged against what an authority was trying to achieve as a result of its community leadership and policy-making roles. With clear objectives for social inclusion, equalities, sustainability, regeneration, etc. an authority knows what it wants ‘to work’ and has the basis of the tools that will enable it to monitor and evaluate what does work.

## SUMMARY

4.26. This section described the nature of Best Value procurement and how it differs from competition under CCT. It also set out five main principles for Best Value procurement. These principles are developed in the following section.

## **SECTION 5      A STRATEGIC APPROACH TO PROCUREMENT AND COMPETITION**

### **THIS SECTION**

5.1. This section includes guidance to help authorities manage the procurement of services, goods and works within the framework of Best Value.

5.2. A strategic approach to procurement follows from the logic of Best Value, Community Planning and the Performance Management and Planning Framework. It is based on a relatively simple test: “*How does this procurement support the achievement of the authority’s objectives?*” It may lead to the development of a procurement strategy – i.e. a record of the authority’s objectives for procurement and the measures of outcome considered necessary to achieve and test achievement.

5.3. The section covers the process of developing a procurement strategy and its role in assisting a local authority to achieve its community, corporate and service objectives. It uses examples of different policy areas to illustrate how Best Value procurement can be used to achieve an authority’s objectives.

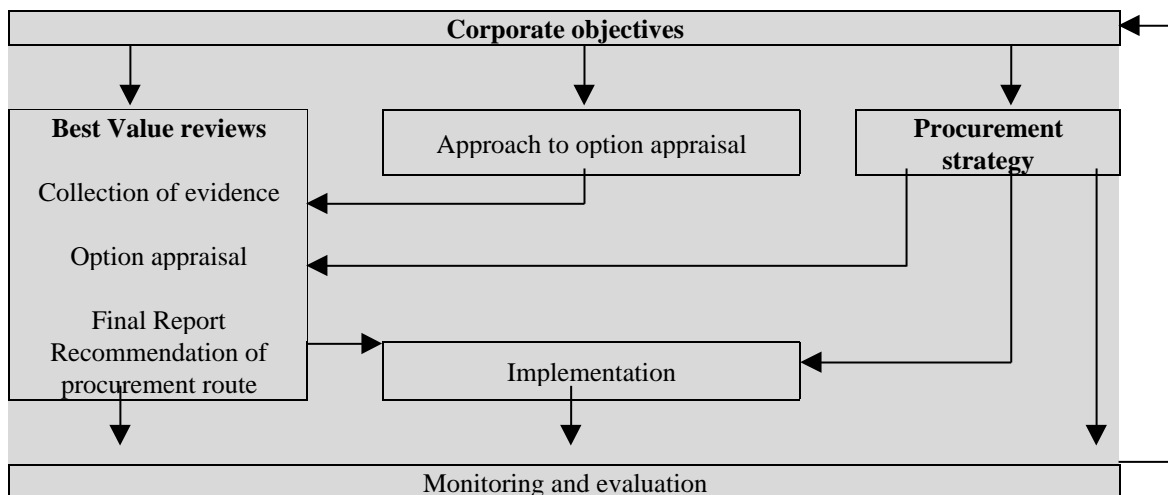
5.4. This section also covers the issue of how local authorities can use considerations of innovation and risk to help them assess which procurement options are most appropriate. It stresses the importance of *managing* risk.

5.5. Finally, the section covers the issues connected with the implementation of a procurement option – particularly the importance of monitoring the *results* of procurement decisions as well as the *processes*.

### **DEVELOPING A PROCUREMENT STRATEGY**

5.6. A procurement strategy should clearly relate to an authority’s overall objectives as well as its objectives for procurement. It should provide support and guidance to the Best Value review process, and the process of implementing reviews. It should provide the framework for all an authority’s procurement activity. A procurement strategy can also link to an authority’s approach to option appraisal (see Volume Two, Section 3).

**Figure 10 Best Value and procurement strategies**



**Aims and objectives**

5.7. A procurement strategy should be related to the authority’s overall aims and objectives, including policies on local community and economic regeneration, social inclusion, equalities and sustainability.

**Figure 11 Fife Council**

“To facilitate the delivery of high-quality public services that represent best value for the people of Fife through the development and implementation of strategic procurement policies which support and enhance the aims and values of the Council.”

5.8. In addition, as a strategy it should also include:

**The authority’s baseline position:** a statement of how the authority currently uses different procurement routes. This will include goods and supplies purchasing, CCT contracts (whether in-house or externalised), PFI schemes (complete or in negotiation), regeneration partnerships, and the capital programme. With this an authority can demonstrate just how much work, and how many achievements, are procured through different routes.

The baseline position provides an opportunity to test whether new approaches to procurement under Best Value are achieving the objectives set for them.

**Figure 12 Baseline position (source. Fife Council)**

|  |             |
|--|-------------|
| Fife Council officers regularly report to members on the overall performance of procurement against the strategic objectives of the authority. In 1999-2000 the Council's spending was (approximate figures) as shown below: |             |
| Total budget   | £420million |
| Awarded in contracts (private sector and ex-CCT)   | £199million |
| Goods and services contracts   | £65million  |
| Of the goods and services contracts:   |             |
| Awarded to organisations in Fife   | £28million  |
| Awarded to organisations in the rest of Scotland   | £29million  |
| Awarded to organisations in the rest of the UK   | £7 million  |
| The goods and services contracts were also split between public and private sectors:   |             |
| Public sector  | £19million  |
| Private sector   | £46million  |

From the baseline position it is possible to develop targets for the future. These may relate to:

- increasing the range of sources of provision (the 'mixed economy');
- financial savings or efficiency gains;
- policy targets to be achieved by the authority's procurement of services, supplies and works.

**The aims and objectives of the procurement strategy and of procurement by the authority.** This should be a statement primarily about value for money in the context of Best Value. However it provides an opportunity to reinforce commitment to using procurement to support and achieve an authority's wider objectives. There is also an opportunity to refer to specifically *procurement* targets (e.g. reductions in the costs of utilities to the authority; increased efficiencies due to new procurement methods). Some authorities also use procurement strategy documents to make specific links to policy objectives to be achieved by procurement.

**Figure 13 One English authority's report on meeting procurement objectives**

**Objective:** To minimise the environmental impact of the Council's purchasing of goods and services by finding alternatives for products that are known to have a significant harmful impact on the environment at some point in their life-cycle.

Overall progress: Slow but steady progress continues to be made. A few specific successes have been achieved.

**Objective:** To ensure budget holders and individual purchasers take full account of environmental purchasing policy and take approved steps to reduce the environmental impact of their purchasing.

Overall progress: Slow but steady progress is being made.

**Objective:** To ensure that Council contractors comply with Council environmental policies when acting on behalf of the Council.

Overall progress: Little direct action taken in this area.

**The methods that the authority will use to achieve its objectives.** The factors to consider under this heading are:

- links between procurement processes and the Best Value reviews;
- resources put into procurement (whether centralised or decentralised);
- different procurement methods to be used by the authority or being investigated by the authority (see Volume Two, Section 4).

5.9. The role of procurement in supporting, or undermining, an authority's policy objectives should not be underestimated. The development of community planning in Scotland provides an opportunity for strengthening the role of local policies in determining 'what works'. Some of the key local policy areas in which effective procurement policies can make a difference to 'what works' are:

**Equalities.** A service specification that is easier for a wide range of service providers to meet may limit the authority's ability to meet the needs of disabled people.

**Local economy.** A decision to externalise a large amount of work in one contract in order to obtain economies of scale may undermine efforts to support local businesses and communities.

**Environment and sustainability.** The specification of materials (even for an in-house service) and their quality may have a significant (negative) environmental impact.

**Sustainable communities.** The choice between providing a service directly (or by traditional contract) or working in partnership with local community groups may have a significant impact on the sustainability of local communities.

**Equity.** A decision about how people get in touch with the service provider (a telephone call centre instead of local offices) may inadvertently transfer costs to poorer people.

**Fair contracts.** This is a particular issue for smaller enterprises, particularly those in the voluntary sector. They believe (and research evidence<sup>22</sup> supports this belief) that it is easy for local authorities to misuse their power in relationships with smaller enterprises.

5.10. These policy areas are not the only ones that might influence ‘what works’. However, they may lead to a service that ‘costs’ more than a service that does not have to meet policy objectives. Procurement, therefore, has an important role in identifying some of the costs of an authority’s policies, making it easier to judge *what* value is being obtained for the money spent. Any assessment of different procurement routes and different procurement providers must take account of the complete range of objectives that procurement is trying to meet.

#### **Figure 14 An example of partnership working in Falkirk**

##### Policy and partnership working

Falkirk Council, working with Forth Valley Health Board and Forth Valley Primary Healthcare Trust, is undertaking a number of pilot projects to identify factors that will lead to a successful *Healthy Eating Initiative*. Pilots have included forming school nutrition action groups, modernising dining areas, increasing the number of cashpoints, installing swipe card systems, and training staff. In addition to the authority’s contribution of £45,000, the Health Board has committed up to £100,000 to installing fruit / salad bars and establishing breakfast clubs.

Five schools in Falkirk have recently been improved under a PFI arrangement. The PFI includes the provision of support services including catering. The services specification is output-based and the catering contractor is working with the Council to support the healthy eating initiative.

#### **Management and organisation**

5.11. A procurement strategy should also set out how an authority plans to get from baseline to achievement of objectives. This could include reference to the following:

- The organisational structures (and possible links to other organisations) that will be used for procurement. These are officer and administrative structures (centralised, decentralised or devolved) and elected member structures (roles of the executive and full council in making, or delegating, decisions)
- The rules used by the authority to ensure probity, openness and accountability. Up-to-date standing orders and financial regulations should be referred to in, or appended to, the procurement strategy. Where there are particular corporate policies to be complied with (on equalities, the environment and sustainability,

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<sup>22</sup> Gutch, R. (1992) *Contacting Lessons from the United States*. London: National Council for Voluntary Organisations.

or service quality) these should be referred to or included. This part of a strategy should refer to, or include, guidance on option appraisal in the Best Value review process

- Particular methods or approaches to be used in procurement such as the need to develop a business case, the use of the ‘gateway’ approach for major procurement<sup>23</sup>, or the use of risk management techniques
- Plans for appropriate professional training and development of staff involved in procurement. There is a shortage of procurement skills in local and national government. The strategy will build upon existing skills and experience in the authority, and set out how those skills and experience will be developed in the future
- The authority’s approach to different methods of procurement. An authority can demonstrate its commitment to a mixed economy of procurement options for achieving Best Value. Because of the legal frameworks for contracting and partnerships based around contracts, an authority may use this part of the procurement strategy to set out, or refer to, the rules and principles that will apply to contracts (standing orders, financial regulations, and guidance on tenderer selection and tender evaluation). The strategy could include a clear commitment to partnering or partnership working with contractors and/or commitments to move away from traditional ‘arms-length’ contract relationships towards more ‘relational’ contracts and longer-term relationships with suppliers.

**Figure 15** adapted from **Approaches to Best Value – Make or Buy (I&DeA)**<sup>24</sup>

A corporate framework for competition and contracts should ensure that:

External rules are complied with;

Scarce skills (writing contract documents, gathering information about suppliers) are used effectively;

Information about alternatives approaches to in-house provision or simple contracting-out is shared;

Staff and trade union representatives are involved;

Decisions and evidence are auditable.

- How the authority will ensure continuous improvement. A procurement *strategy* may simply commit the authority to continuous improvement. It can also outline the methods that may be used (regular reviews, open-book

<sup>23</sup> See the Office of Government Commerce website at

<http://www.ogc.gov.uk/ogc/publications.nsf/pages/Gateway1.html> The approach is mandatory for the Civil Departments of central government and their executive agencies and NDPBs. Local authorities and other public-service organisations may wish to consider how to apply the approach to their own procurement.

<sup>24</sup> Improvement and Development Agency for Local Government (1999) *Approaches to Best Value – Make or Buy*. London: I&DeA.

accounting, break points, incentivisation, performance targets) to achieve continuous improvement during the life of a contract or other procurement relationship.

## **Other issues**

5.12. Other issues that a strategy could include, or refer to, are:

- commitment to making contract procedures less legalistic in tone and language (the perceived bureaucracy of authority contracts is seen as a barrier by smaller enterprises);
- commitment to providing more information to citizens and service users about contracts (and other service delivery arrangements) that affect them (what service is required, what levels of performance can be expected, what levels are achieved). This should provide a link with the authority's Public Performance Reporting framework;
- decision-making and option appraisal methods used in the Best Value review process.

## **Community Initiative**

5.13. The proposed Power of Community Initiative will give local authorities in Scotland a broader statutory competence to pursue strategies to improve and promote the well-being of their communities. The Scottish Executive's consultation paper on the power of community initiative notes the importance of moving from the 'grand' policy to the details of implementation, and need for a clearly community-led approach that does not create burdensome statutory processes.

5.14. The consultation paper also notes the existence of barriers to joint working, and the importance of delivering real change on the ground. There are organisational barriers to partnership working (boundaries, budget cycles, decision processes, accountabilities, skills) and there are cultural boundaries (defensiveness, territoriality). The local authority procurement strategy can be an important signal of the authority's willingness to act as a partner both in the early discussion and design stages (in which partnership is often easier) and in the later decision making and implementation stages (when the barriers to partnership working rise again).

5.15. Signals that an authority is committed to partnership working can include:

- Use of partnership / partnering agreements in addition to traditional contract arrangements
- Inclusion of joint working arrangements (and *reconfiguration*) in the Best Value option appraisal
- Use of simplified contract arrangements where work is done by smaller enterprises in the private or non-profit sector

- Assessing in-house teams for their commitment to working with the community and partners
- Team building exercises with partners around procurement issues
- Partnership / community objectives in all appropriate contracts
- Willingness to consider and develop innovative approaches arising from community planning and community consultation exercises

5.16. As the power of community initiative develops, a local authority can use its procurement strategy to ensure that:

- there is a clear business case for innovative approaches to partnerships and other actions;
- the authority's risk is appropriate to the benefits that will be gained;
- the authority is capable of working as either a lead partner, or as a team member – whichever is appropriate.

## STRATEGIC PROCUREMENT AND CORPORATE OBJECTIVES

### Sustainable economic development

5.17. A dilemma for many local authorities is whether they can use procurement to achieve economic development objectives. European Law (following the Treaty of Amsterdam and including the Procurement Directives that have been incorporated into UK law) requires that public-sector contract award procedures are *non-discriminatory*. This means that they cannot have the *intention* or *effect* of discriminating against suppliers from other EU member states. All bidders have to be treated equally. It is not possible, therefore, for authorities to take account of local economic factors in choosing between suppliers if the approach they take is *discriminatory*. There are, however, a number of steps that authorities can take to support local small and medium-sized enterprises without compromising fairness in contract award (see Figure 16).

**Figure 16 Encouraging competitiveness**

Helping small and medium-sized businesses work with the local authority

Local authorities have developed ways of supporting local businesses (often by asking them what is needed) while staying within the letter *and spirit* of procurement law. Examples include:

Paying invoices from small and medium-sized businesses quickly, or even making regular payments on a monthly basis half in advance and half in arrears (this helps with cashflow, and still allows for incentive payments or liquidated damages)

Using more appropriate technical and financial thresholds for qualifying firms to bid for smaller contracts

Advertising *all* contract opportunities in regular newsletters supplied to *all* local businesses

Producing information about contracts, and contract documentation, in plain English

Holding seminars to introduce contractors to a contract, or range of contract opportunities, coming up in future months

Encouraging local businesses to develop networks of complementary skills to enable joint, or team, bids for multi-skill contracts

Providing training sessions on ‘how to bid for council contracts’

Working with Local Economic Forums, to develop an independent source of support for local businesses to learn about, and bid for, local authority work

Publicising the authority’s standards of openness and accountability in tender awards to ensure that businesses (and the authority’s employees) are clear about the standards that will be applied

Providing financial support to local businesses employing people with learning disabilities (the authority is ‘procuring’ independent living)

Using in-house teams to provide the bulk of a service with small contract support for specialist skills or peaks of work

Asking bidders for large contracts to submit methods statements on the actions they plan to take to support the local economy. This does not just mean using local sub-contractors: firms may also offer free training or consultancy, second managers through Scottish Business in the Community, or support the local Chamber

Ensuring that value-for-money objectives look at the wider costs and benefits as well as the headline costs of each option *during option appraisal* (otherwise larger contract packages will usually look better as they offer lower processing costs and greater economies of scale) Not artificially aggregating contracts with the effect of excluding smaller or specialised businesses

Local authorities may wish to take legal advice on option 12 about *whether* and *how* they can take these actions without breaching EC law.

These approaches do not exclude each other. They do involve financial and cultural change in authorities. They require greater co-operation between procurement, purchasing and economic development staff. If an authority follows any of these approaches there will be costs and benefits that go beyond a simple value-for-money assessment of the individual service or contract.

5.18. A procurement strategy document that signals an authority’s commitment to encouraging local business can play an important role in the development of the local authority as community leader.

## Figure 17 Encouraging local business: Fife Council

Fife Council's policy on the use of local businesses/sub-contractors is firmly grounded in UK Law and the European Procurement Directives which strictly forbid the awarding of contracts on the basis of geographical location or origin of goods.

The Council's view, however, is that local businesses/sub-contractors should be given every opportunity to win Council business in open competition and this proactive approach has been very successful in helping to keep a large percentage of Council business in Fife.

### Green procurement

5.19. Green procurement is a visible example of an authority's commitment to tackling local and global environmental issues. Both the Scottish Executive and HM Treasury / DTLR have issued guidance on environmental issues in procurement<sup>25</sup>. The Treasury's '*Green Procurement*' circular<sup>26</sup> provides a template for converting environmental and sustainability policies into action through procurement. They suggest that reduced greenhouse gas emissions, waste minimisation and water conservation can be achieved by specifying:

- energy efficient IT equipment that helps to reduce CO<sub>2</sub> emissions, and the use of non-renewable fuel resources;
- presence detectors for controlling lighting in offices;
- environmentally preferable refrigerants to reduce ozone depletion and global warming;
- recycled paper to reduce the impact on landfill;
- low-flush toilets for conserving water;
- packaging to be reduced or returned.

5.20. Green procurement can, and should, be compatible with value for money, especially if it is calculated on the basis of whole-life costs for goods, works or services<sup>27</sup>.

5.21. Green procurement principles apply whether a service is delivered directly, through contracts, or through other means. Some of the key principles of green procurement are:

- ensuring that the Best Value reviews challenge existing services on their contribution to the authority's environmental policies and on the extent of their environmental impact;

<sup>25</sup> <http://www.scotland.gov.uk/procurement>

<sup>26</sup> HM Treasury (2000) *Green Procurement* London: HM Treasury.

<sup>27</sup> A joint DETR and Treasury note on Environmental Issues in Purchasing is available at <http://www.hm-treasury.gov.uk/docs/1999/envte2.html>. It addresses how environmental issues can be taken into account consistent with public procurement policy and the regulatory framework. The DETR's Sustainable Development Unit (SDU) and the Purchasing Policy and Advice Division (PPAD) have issued guidance to help buyers 'buy green', including a *Green Guide for Buyers*. These are on the green procurement pages of the DETR's web site (<http://www.environment.detr.gov.uk/greening/greenpro/greenpro.htm>).

- using option appraisal to determine the likely environmental impact of different options – choosing the option with the least negative and most positive impact(s)
- setting Best Value targets to improve the authority's overall environmental performance (whoever is to deliver services). Targets may be set in terms of the principles of 'reduce, reuse, recycle, and rethink' and value for money calculations based on whole-life costs.

5.22. If the service is to be delivered in-house or through partnership with another authority, it will be necessary to develop appropriate budget and performance management arrangements to ensure environmental targets are met.

5.23. If the service is to be delivered through a contractual arrangement, then authorities should consider the following:

- Using the *invitation to tender* to ask the tenderers to identify possible environmental impacts and how they propose to minimise them. This approach tests their understanding of environmental issues and gives them a chance to suggest innovative approaches that can be incorporated into the contract
- Highlighting environmental issues in contract award criteria to raise awareness and indicate the authority's commitment
- Tender evaluation of environmental criteria should ensure that costs and benefits *directly* related to the *specified* service are taken into account
- Financial assessment should be done on whole-life costing bases that take account of waste, wear and tear and maintenance costs, and energy costs. Whole-life costing includes:
  1. Direct running costs - resources used over the life time of the product or service
  2. Indirect costs - loading on cooling plant arising from energy-inefficient equipment
  3. Administration costs - overheads from buying hazardous products requiring additional controls and special handling and disposal
  4. Spending to save - investing in higher levels of insulation to save heating and reduce bills
  5. Recyclability - creating markets for waste by buying recycled products
  6. Cost of disposal - paying a premium at the outset to reduce waste, i.e. choosing a product which is more durable, re-usable, recyclable, includes disposal costs or is free of hazardous materials requiring disposal in a special way

## Equalities

5.24. Best Value means better services to all citizens and service users. Best Value reviews should identify where services are effectively discriminating on the grounds of sex, race or disability. Local authorities have an important role to play in overcoming discrimination. In the case of race discrimination they now have an additional statutory role<sup>28</sup>.

*71. - (1) Every body or other person specified in Schedule 1A or of a description falling within that Schedule shall, in carrying out its functions, have due regard to the need*

*(a) to eliminate unlawful racial discrimination; and*

*(b) to promote equality of opportunity and good relations between persons of different racial groups.*

5.25. Local authority procurement can, intentionally or unintentionally, increase discrimination either in employment or in the delivery of services<sup>29, 30</sup>. The Equal Opportunities Commission<sup>31</sup> and the Northern Ireland Equal Opportunities Commission both found evidence of how women workers had suffered reductions in pay and terms of employment as a result of CCT.

5.26. Best Value reviews should identify actual or potential discrimination in existing approaches to service delivery.

- Existing service provision can be **challenged** in terms of potential discrimination against disadvantaged groups.
- Service users, non-users, and their representatives can be **consulted** about their experience of service use, their concerns about discrimination in service provision, and their views about how services can be improved.
- **Comparison** with other service providers can give evidence of alternative approaches to tackling discrimination and to giving disadvantaged groups a voice in service management and delivery.

5.27. In Best Value procurement there are two key equalities issues: equalities in service delivery; and equalities in employment.

5.28. Equalities in *service delivery* should be dealt with through the specification of the service and the authority's requirements in terms of outcomes, outputs, processes and inputs. Depending on the service, and the authority's requirements, this can include:

- **Targeting** services to the needs of specified groups

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<sup>28</sup> Race Relations Act 1976, Section 71, as amended by the Race Relations Amendment Act 2000.

<sup>29</sup> LGMB (1995) *Equalities and the Contract Culture*. London: LGMB, EOC, and CRE.

<sup>30</sup> CRE (1995) *Racial Equality and Council Contractors*. London: CRE.

<sup>31</sup> Escott, K., and Whitfield, D. (1995) *The Gender Impact of CCT in Local Government*. Manchester: Equal Opportunities Commission.

- Asking prospective service providers (including in-house teams or other authorities working in a partnership or consortia) to **demonstrate** policies and actions they have taken to tackle discrimination and promote equal access to services
- Asking prospective service providers (including in-house teams or other authorities working in a partnership or consortia) to **demonstrate** how they will implement the authority's equalities policies in their management and development of the service in future (during the life of the contract in the case of prospective contractors)
- **Performance monitoring** of the numbers of service users from different groups
- Agreeing challenging but achievable performance targets for delivering equalities in service delivery in **incentive payment** structures

5.29. Equalities in *employment* is affected by the provisions of Part 2 of the 1998 Local Government Act. This prevents local authorities from taking 'workforce matters' into account in decisions to award, or terminate, contracts. Local authorities, therefore, cannot require potential contractors to ensure that:

- staff are treated fairly and equitably;
- pay rates are comparable with local authority rates;
- young workers are recruited and given training;
- promotions, payments and other matters are dealt with fairly and in accordance with legislation.

Nor can authorities ask potential contractors about their past history in these areas. These are all 'non-commercial' matters.

5.30. There are some exceptions to the restriction on non-commercial considerations, as follows:

- Local authorities can ask six 'race relations questions'<sup>32</sup>, (although this exception may need to be redrawn, better to reflect the impact of the Race Relations (Amendment) Act 2000) (see Figure 18)

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<sup>32</sup> Scottish Development Department (1988) *Circular 7/88 Annex B*. Edinburgh: Scottish Office.

## Figure 18 The six race relations questions

Is it your policy as an employer to comply with your statutory obligations under the Race Relations Act 1976 and, accordingly, your practice not to treat one group of people less favourably than others because of their colour, race, nationality or ethnic origin in relation to decisions to recruit, train or promote employees?

In the last three years has any finding of unlawful racial discrimination been made against your organisation by any court or industrial tribunal?

In the last three years has your organisation been the subject of a formal investigation by the Commission for Racial Equality on grounds of alleged unlawful discrimination?

If the answer to question 2 is in the affirmative or, in relation to question 3 the CRE made a finding adverse to your organisation, what steps did you take as a consequence of that finding?

- Is your policy on race relations set out:
- In instructions to those concerned with recruitment training and promotion;
- in documents available to employees, recognised trade unions or other representative groups of employees;
- in recruitment advertisements or other literature?

Do you observe as far as possible the Commission for Racial Equality's Code of Practice on employment, as approved by Parliament in 1983, which gives practical guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity, including the steps that can be taken to encourage members of the ethnic minorities to apply for jobs or take up training opportunities?

- Local authorities can specify service requirements (for personal and care services) where sex, or ethnic origin, become 'genuine occupational qualifications' for effective service delivery
- Local authorities and contactors can *agree* during post-tender negotiation that appropriate standards or Codes of Practice can be followed

5.31. The Scottish Executive is currently considering whether, and how far, to repeal or amend Part 2 of the 1988 Local Government Act (non-commercial considerations). The approach taken in England and Wales is to allow authorities to take certain 'workforce matters' (which include equalities issues) into account if the purpose in doing so is to facilitate Best Value or where the workforce will transfer under TUPE<sup>33</sup>.

<sup>33</sup> DETR (2001) *Local Government Act 1999: Section 19 Best Value and Procurement – Handling of Workforce Matters in Contracting*. DETR.

## Fair contracts

5.32. A particular issue for the not-for-profit, or ‘voluntary’ sector’ over the last 20 years has been a perception that local authorities, health boards and other public services have not been fair in their approach to contracts for services<sup>34</sup>. A comparison of the experiences of non-profit organisations in the USA and UK<sup>35</sup> in the early 1990s found that:

- contracts were often only for one year at a time – even though they were invariably repeated for several years;
- monitoring was usually of finance rather than on performance. In both cases monitoring was often on a detailed line-by-line basis rather than an overall assessment;
- clients never reimburse overspending by the non-profit organisation (even if there was clear documentary evidence that it was beyond their control). But underspending (even if due to efficiency savings) was always clawed back (often by a unilateral reduction in the following year’s grant or fees);
- there was a reduction in the number (or amount) of open-ended grants available to the non-profit sector;
- there were delays in payment;
- there was an expectation by the public sector that the non-profit organisations would pay lower wages to their staff;
- the non-profit sector was effectively subsidising the public sector.

5.33. The same research found flaws with the administration of contracts. These included requirements for frequent reports that were never discussed, and an over-riding focus on the control of inputs rather than the achievement of outcomes. Non-profit organisations were forced to develop new skills and learn new procedures without any support from their client authorities – but then often found the public-sector staff they were dealing with were not adequately trained.

5.34. The Scottish Council for Voluntary Organisations<sup>36</sup> advises as a minimum that a non-profit organisation involved in negotiating or bidding for a contract or service agreement funding arrangements should try to:

- design its own specifications and put it forward for negotiation;
- obtain a fair price that reflects their core costs and the quality of service provided;
- negotiate realistic 'up-rating' of prices that reflect increased costs outside their control;

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<sup>34</sup> NCVO (1998) *Mutual Obligations – NCVO’s Guide to Contracts with Public Bodies*. London: National Council for Voluntary Organisations.

<sup>35</sup> Gutch, R. (1992) *Contracting Lessons from the US*. London: NCVO.

<sup>36</sup> <http://www.scvo.org.uk>

- agree longer-term agreements that recognise the benefits of planning and investment in staff and facilities.

**Figure 19 Advice to Scottish not-for-profit organisations<sup>37</sup>**

- For a successful contracting arrangement, voluntary organisations must ensure that the following conditions are met:
- The contract ties in both parties
- There is sound financial management - clear financial systems will give information about the use of services and ongoing costs and payments
- There is confidence that the organisation can deliver the quality of service agreed with the standards set by the organisation and the purchaser
- It is clear who will be performing assessments and making referrals
- There are systems for monitoring - the purchaser may also have systems for monitoring and inspection
- A professional adviser checks the contract thoroughly before it is signed. They should also give advice on other legal responsibilities, e.g. insurance, health and safety, liability
- Both parties are aware of these respective obligations under the contract

5.35. Some of the features of ‘fair contracts’ are described in Figure 16 on page 35. They apply to not-for-profit organisations alongside any other small or medium-sized businesses.

5.36. As local authorities develop their approaches to community planning and partnership working with the voluntary sector, it will be important to ensure that contractual arrangements are developed in a spirit of partnership and mutual benefit rather than the unfortunate tradition of low trust and antagonism.

## **INNOVATION AND RISK**

### **Innovation**

5.37. One argument for developing supply relationships with private and voluntary sector providers is their flexibility, from a public-sector perspective, and thus their ability to innovate. Innovation can turn incremental improvement into a step change, although it has to be emphasised that innovation should not be treated as an end in itself. The delivery of improvement through innovation is the objective, and risk associated with innovation has to be identified and managed.

5.38. The reasons *why* private and voluntary sector providers should be regarded as having a particular potential to innovate are not as simple as they might at first appear. Some

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<sup>37</sup> SCVO (no date) *Confident Contracting*. Edinburgh: SCVO.

research into service innovation suggests that the ability of suppliers to innovate is directly linked to the capacity-building efforts of clients. In other words, suppliers innovate because they are supported and encouraged to innovate by clients asking the right questions or posing problems – not because they are ‘naturally’ innovative.

5.39. For local authorities to get an innovative response they must take the lead; recognising their role in fostering innovation and building awareness of their commitment to innovation and the search for continuous improvement. Authorities should actively seek innovation *whoever they choose as their suppliers*.

5.40. The right conditions for innovation are to be found in clear and constructive working relationships with suppliers. This may involve the local authority developing long-term working relations with private or voluntary organisations to nurture shared objectives toward service innovation. Clearly the choice of a trustworthy and reliable partner is an important consideration.

**Figure 20 Innovation in a core-service area – Edinburgh City Council**

**Creating the right climate for innovation in a core-service area**

Edinburgh City Council has recently signed a contract with British Telecom to externalise IT services. An important consideration in the authority's choice of contractor was to work with a reputable company who would share the Council's commitment to improvement through innovation.

This particular externalisation programme is viewed as part of the Council's modernisation strategy. Investment in IT is a major factor in taking forward their modernisation programme and that of e-governance more generally. The authority is guided by the view that if the private sector is to invest in the infrastructure to deliver quality services then the Council will need to provide security through planned long-term relationships and contracts.

Part of the rationale in the choice of partner in this externalisation venture is to work with an established organisation that can provide the authority with leading-edge expertise in the private sector which can be drawn on to design innovative solutions to service provision in future Best Value service reconfiguration exercises. Edinburgh City Council was clear from the outset of negotiations that it sought a working relationship with a company that will share its commitment to service redesign and innovation over the longer term.

**Figure 21 Innovation in a non-core service area – South Lanarkshire**

**Innovation in a non-core service area**

South Lanarkshire Council recently completed a Best Value review of Waste Management Services. The review identified problems in the provision of trade waste services. The authority entered into discussions with a number of private waste management companies to identify ways in which they could provide innovative approaches in redesigning this service. The Council then proceeded to establish a partnership with a waste management company with a view to possible externalisation of this service and the costs associated with trade waste collection and disposal.

In this case the conditions for innovation were created by the Council's recognition that they lacked in-house expertise to improve a failing service and that they could work with a private partner to sustain this objective. The critical feature in this case was the nature of the approach taken in involving the private sector in an open dialogue about service innovation.

5.41. Another approach to building the capacity to innovate is that of working with local businesses, especially small and medium-sized enterprises (SMEs) and the non-profit sector (see Figure 6). There is a wide range of capacity-building approaches. **Renfrewshire Council** works with Scottish Enterprise to promote local business awareness of the preferred suppliers lists and to enable them offer to e-procurement methods to the local authority. **Fife** advertises *all* contract opportunities as widely as possible to local businesses.

5.42. Other possible approaches to stimulate innovation include the following:

- Service requirements based on objectives and outcomes rather than detailed specifications. This allows potential suppliers to develop or suggest different ways of achieving the results required
- Inviting service users and other stakeholders to 'challenge' events with the objective of developing alternative approaches to public services
- Using the processes of reconfiguring services (see Volume Two, Section 4) as the basis for future innovation in service management and delivery

**Risk**

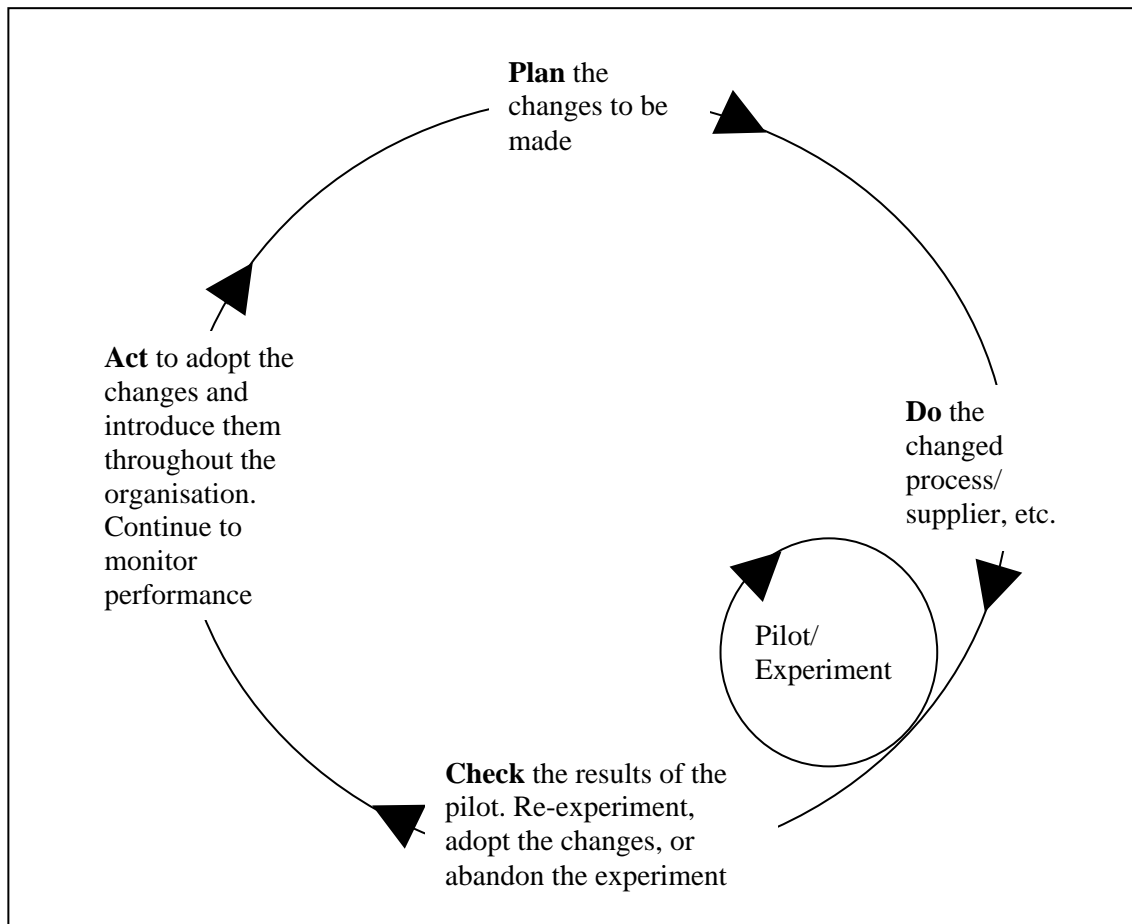
5.43. All organisations face risk and uncertainty in their operating environment to some degree. Public-sector organisations, relying on money raised through taxation, are renowned for being risk-averse in their stewardship of public funds. *Over-caution* can become a straitjacket that *prevents* the achievement of Best Value.

5.44. Local authorities need to develop their capacity to identify and manage risks. There are two approaches that authorities can take: experimentation and risk management.

## Experimentation

5.45. The Plan-Do-Check-Act (PDCA) cycle was developed to encourage businesses to ensure that risks were minimised by testing and reviewing innovative approaches<sup>38</sup>. Figure 22 illustrates this approach with an additional ‘double-loop’<sup>39</sup> for experiments to be undertaken and learned from.

**Figure 22** Plan-Do-Check-Act Cycle



5.46. This approach can be used to overcome the risk-averse public-service organisation, where the ‘all or nothing’ approach of management may insist that new approaches are tried throughout the organisation or not at all. The PDCA cycle encourages experimentation and learning. In Best Value it might mean introducing a different approach for part of a service before extending the approach to the whole service after the experiment has been reviewed.

<sup>38</sup> See Dale, B. G. (1999) *Managing Quality*. Oxford: Blackwell (Third Edition).

<sup>39</sup> See Morgan, G. (1995) *Images of Organisation*. London: Sage.

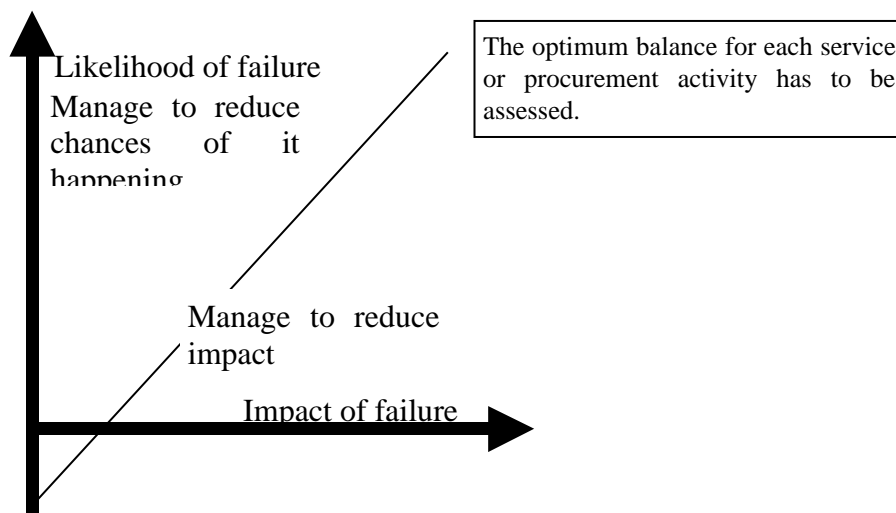
### Figure 23 Best Value – better and cheaper?

Gosport (Hampshire)<sup>40</sup> took an experimental approach to housing maintenance. The work was divided into two contracts: a traditional approach and an experimental approach, *each based on the same overall requirement*. The contractor winning the experimental approach did not submit the lowest bid but won the contract because of a price-quality assessment. Early indications suggest that the experimental contract is showing greater customer satisfaction *and* fewer jobs need re-working or re-visiting than with the traditional arrangement. If the innovative contract does work out cheaper and better, then its approach can be extended to the whole authority.

5.47. An alternative approach to trying new approaches is risk management. The critical issue is to balance the likelihood of failure and the impact of failure. A local authority must recognise the risks it faces and reflect them in the choice of supply option and the choice of supplier.

### Risk management

### Figure 24 Risk



5.48. Risk can be applied across several dimensions, all of which will be important to the authority in different ways. Volume Two, Section 4 Best Value option describes the main risks involved in negotiating a contract. For each risk the authority will need to assess:

- The likelihood of being directly exposed to the risk. This should not be an exercise in speculation. The benchmark for future risk is past experience and other testable evidence.
- The impact of failure. This is not just direct financial impact. It can include the additional costs of maintaining service delivery or finding an alternative

<sup>40</sup> Martin, S. al.et (2001) *Improving Local Public Services*. London: DETR. ISBN 1-85112-468-3

supplier. It includes the more difficult to quantify issues of upset, injury, and distress that failures in the delivery of public services may lead to.

- The costs and benefits of taking action to reduce the risk, or reduce the impact.

5.49. This should mean a three-stage approach. The first assesses the risks of managing supply through a traditional tendering exercise, a partnering approach, or the use of in-house supplier (these terms are explained in Volume Two, Section 3). This first stage is **options appraisal** in the Best Value review. The second stage, if a contract mechanism is to be used, is the **choice of contract mechanism**. The final stage is in the **choice of supplier** as part of a competitive tendering exercise. At each stage an authority can identify and *manage* the risks they face.

‘*Shorten the Odds*’, by the Accounts Commission for Scotland<sup>41</sup>, provides valuable guidelines for local authorities in identifying and managing risks, and in particular developing corporate approaches to risk management in partnership working.

## STRATEGIC PROCUREMENT

5.50. The **procurement strategy** outlines the overall approach the authority takes to procurement. It will be influenced by the authority’s policy objectives (themselves influenced by community planning) and the relative importance of different objectives. The *details* of the approach will be influenced by whether the authority takes a ‘wide’ or ‘narrow’ view of procurement and decisions about priorities.

5.51. **Strategic procurement** refers to particular procurement exercises and their identification as significant for the authority. The decision about whether the procurement of goods, service or works is *strategic* is the subject of a *financial* test and a *risk* assessment.

The **financial test** compares the size of the activity (in monetary terms) and its importance for the organisation. This is usually used to help assess appropriate approaches to *purchasing*. It is expressed in terms of a matrix (see Figure 25).

**Figure 25 Strategy / Price matrix**

|   |   |                           |                            |
|---|---|---------------------------|----------------------------|
| Strategic importance (poor performance puts the authority’s services at risk) | High  | Low-value strategic items | High-value strategic items |
|   | Low   | Low-value routine items   | High-value routine items   |
|   |   | High →                    |                            |
|   | Relative value (or price) (of each ‘item’ procured) |                           |                            |

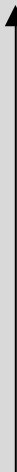

5.52. This matrix can be used as the basis for a diagnostic tool that identifies how to organise and manage purchasing of works, goods and services. This is where the second test of a risk assessment is useful.

<sup>41</sup> Accounts Commission (1999) *Shorten the Odds*. Edinburgh: Accounts Commission.

The **risk assessment** quantifies the likelihood of failure and compares that to its potential impact. A risk test can be used to assess whether an item (or service) to be procured is of strategic importance, and will help place the procurement, or purchasing, more accurately within the four boxes of the financial matrix (page 47 covers risk in more detail). Practically, a risk test may show that even with low-value routine items such as cleaning materials there is a difference between the procurement of office cleaning materials and those used in kitchens or care homes.

5.53. A combination of the two approaches illustrates the *processes* to be considered by an authority considering a procurement option (see Figure 26).

**Figure 26 Strategic procurement (Adapted from HM Treasury and Cabinet Office, 1998)**

|  |   |   |  |
|--|---|---|--|
| <b>Strategic importance</b> (poor performance puts the authority's services at risk) | <b>High</b><br> | Medium- to long-term relationship with supplier<br>Risk management<br>Identification of back-up supply<br>(e.g. Utilities)                    | Long-term relationships, strategic partnerships, incentivisation, Public-Private Partnerships, PFI projects<br>(e.g. ICT service and management)         |
|  | <b>Low</b>  | Short-term relationships<br>Cost minimisation<br>End-user management of procurement<br>E-procurement<br>(e.g. paperclips, cleaning materials) | Short- to medium-term relationships<br>Competitive tenders<br>Multiple sourcing<br>Purchasing alliances<br>Lead buyer arrangements<br>(e.g. IT hardware) |
|  |   |   | <b>High</b>  |
|  |   | <b>Relative value (or price) (of each 'item' procured)</b>  |  |

5.54. Different approaches and different relationships are appropriate for different types of purchasing. Strategic procurement (whether high or low value) requires a closer, tailor made relationship with suppliers than the non-strategic types, which should be based on arrangements to minimise transaction and purchasing costs and inefficiencies.

5.55. A further issue, and one that can assist in Best Value option appraisal, is that of *complexity*. As an authority's requirements get more complex, or the lines of communication between elected members and operational staff get longer, there will be an increase in uncertainty about how the contract is performing on a day-to-day basis.

5.56. Volatility in demand or supply breeds uncertainty. The more *uncertainty* there is, the more likely it is that a modified contractual relationship, or a non-contractual relationship, is most appropriate (see Figures 27).

**Figure 27 Uncertainty and procurement mechanism (adapted from Hughes, 1999<sup>42</sup>)**

|  | Certainty  | Mixed   | Uncertainty   |
|--|--|---|---|
| Service  | Easy to specify<br>Easy to monitor<br>Continuous or regular monitoring<br>Unambiguous tests of success or failure  | Some elements easy to specify<br>Some elements easy to monitor  | Difficult to specify<br>Inputs<br>Processes<br>Outputs<br>Difficult to monitor delivery<br>Ad-hoc or partial monitoring<br>Subjective tests of success or failure   |
| <i>All other factors being equal, the basis of the relationship should be:</i> |  |   |   |
| Relationship   | Externalisation or market testing<br>Competition to find the cheapest supplier<br>Focus on the supplier's efficiency<br>Contractor's involvement limited to the contracted service | Externalisation or market testing leading to relational contract or partnering agreement<br>Modified contract relationships<br>Competition takes account of both cost and quality<br>Open-book approaches to information<br>Authority puts policy objectives alongside service objectives | Contracts of employment (in house staff)<br>Competition is based on staff competence<br>Management through a mixture of control and co-ordination<br>Employer and employee are inter-dependent<br>Contractor used for specific pieces of work |
|  |  | <i>Or</i>   |   |
|  |  | Partnerships or relational contracts with commercial or not-for-profit organisations  | Partnerships or agreements with other public service organisations  |

## MANAGING PROCUREMENT AND COMPETITION

5.57. Best Value requires authorities to develop a clear 'vision' for procurement and competition that is turned into practice through organisational procedures and management structures. These procedures and structures themselves should also be subject to the principles of Best Value.

<sup>42</sup> Hughes, M. (1999) *How to Choose the Best Value Service Option*. London: Inter-Authorities Group.

## Different approaches for different services

5.58. In making decisions about the future management of different services and functions, authorities will need to take different approaches within the compass of their overall framework. This is entirely consistent with the ‘mixed economy’ approach and allows service reviews the autonomy to make the appropriate Best Value decisions; while maintaining a commitment to the authority’s overall objectives.

## Balancing strategic and operational roles

5.59. Identifying and maintaining the correct balance between strategic and operational roles will be crucial to the success of Best Value procurement in delivering improved services to local citizens and service users. This balance should be recognised in the guidance that authorities give to their Best Value review teams as well as in the recommendations those teams make. It will need to accommodate the tensions between organisational service and corporate imperatives, as illustrated in Figure 28 below.

### Figure 28 Getting the balance right?

Authority A has a single Contract Services Department that brings together all the activities subject to CCT under the 1980 and 1988 Acts. The director put forward the whole department for a Best Value review as soon as he could. One of the arguments for the review was that the building maintenance work was making a loss. Two external consultants were commissioned to review the options for the future running of the department and they produced a report, adopted by the Best Value team, which gave two Joint Venture partnerships as possible alternatives.

Other departments used the services of Contract Services, and it was only when they did their reviews that they realised the options put forward by Contract Services (which would tie the authority into 10-year contracts) seriously limited other services’ choice of *their* Best Value options. This led to serious disagreements between senior officers, and between senior members, about which came first: the needs of Contract Services to remain viable; or the needs of other services to have flexible options.

One of the key failings in Authority A’s *procedures* was that Best Value review teams were encouraged to talk to *customers* (i.e. the public) but not to *clients* (i.e. the budget holders). The authority has decided that future reviews of services will be on a *functional* or *issue* basis rather than on the basis of organisational structures.

5.60. Strategic objectives will need to be reflected in an authority’s procedures for managing Best Value reviews, in the training for staff involved in Best Value reviews, and in the implementation of those reviews.

5.61. A procurement strategy will need to be managed along with the authority’s other strategies. As an authority moves towards a mixed economy of provision there will need to be consideration of where and how procurement is managed within the authority. The Gershon<sup>43</sup> Report on procurement in central government was clear that a senior manager reporting

<sup>43</sup> Gershon, P. (1999) *Review of Civil Procurement in Central Government*. London: The Stationery Office.

directly to the (equivalent of) the chief executive is the optimum). This would imply an appointment at director, or assistant director level in a local authority. While this is an issue for authorities to determine themselves, particularly if most procurement decisions are decentralised, it is worth noting that one of the lessons from contracting out in the USA is that managing contracts is at least as crucial a role for the authority as is managing employees<sup>44</sup>.

## Monitoring and evaluating procurement

5.62. A mixed economy of service provision increases the importance of having adequate arrangements for monitoring and evaluating the success of various procurement approaches. For the most part this assessment can be based on the success of different services in meeting *their* targets. The performance of procured services (whether internally or externally provided) is the *outcome* of the procurement activity of the authority.

5.63. Volume Two, Section 6 outlines how the excellence model, and the balanced scorecard approach, can be used in managing procurement activity within a local authority. The approaches described, however, were originally developed for use in central government (HM Treasury and the US Department of Commerce, respectively). Volume Two, Section 5 describes how the scrutiny processes in use in Scotland, to assess the approaches taken by local authorities towards Best Value, can be used to make judgements about the impact of their procurement processes.

## SUMMARY

5.64. This section reviewed how local authorities could develop a strategy for the procurement of Best Value services, works and goods. It described how a Best Value procurement strategy fits into an authority's other strategic objectives and how it can be used to achieve objectives set through the authority's different planning and strategy development processes.

5.65. The section stresses the importance of managing procurement and, at the strategic level, having a clear view of what the authority will *achieve* through its approach to procurement. Achievements can be in terms of finance, policy objectives and service objectives.

5.66. Four issues - equalities, economic regeneration, environmental concerns and 'fair contracts' - were used to demonstrate the contribution that strategic procurement can make to achieve an authority's objectives.

5.67. The section introduced issues of innovation and risk in procurement and the importance of identifying *strategic procurement* issues and applying *appropriate methods* to ensure the authority achieves its objectives. It concluded with an introduction to some of the key management issues involved in Best Value procurement and the importance of evaluation.

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<sup>44</sup> Sclar, E. (2000) *You don't always get what you pay for*. Ithaca: Cornell University Press.

## SECTION 6 CONCLUSIONS

### MARKETS, HIERARCHIES OR NETWORKS?

6.1 The choice of service delivery option is not simply one of ‘make or buy’ or of ‘in-house provision against the market place’. Local authorities in Scotland and in the rest of the UK have developed a variety of approaches based on the needs of service users, local conditions, and a thorough review of the costs and benefits of different options. This variety of approaches fits with the commitment of Scottish Ministers to a mixed economy of provision that delivers better services to local people.

6.2 The mixed economy approach does not mean that every service will be subject to competition, or that every service should be privatised. Instead it means that the choice of service delivery method should be clearly reviewed and finally justified on the basis of the evidence available to each authority and the objectives that authority is trying to achieve.

6.3 Although there is no one answer as to *what* options local authorities should choose for managing service delivery, this study has made clear that there are *approaches* and *methods* that will enable authorities to make a reasoned and justifiable decision. These approaches and methods all rely on careful collection of evidence about existing levels of financial and service performance, clarity about an authority’s objectives for a service, and an option appraisal stage in which the evidence and objectives are brought together to produce a view of how best to go forward. As the examples in this study have illustrated it is not even necessary to choose *one* single approach to service provision. Private-sector contractors can work alongside in-house teams, and can support them. They do not simply have to replace them.

6.4 New approaches to joint working across traditional boundaries, and the reconfiguration of services, provide further dimensions to the choice of service management option. There will be occasions when authorities opt for a two-stage approach. The first stage may involve decisions about joint working with other local authorities or other parts of the public service to ensure a more customer-led or ‘one-stop shop’ approach to service delivery. A second stage may then involved decisions about who will manage and deliver services on a day-to-day basis. A two-stage approach may follow from other option choices. An authority that chooses to go into partnership with the private sector may delay implementation to give enough time for its in-house service team to improve performance so that the private sector has more interest in the deal. Even an authority opting for an externalisation option still has to choose between a traditional ‘arms-length’ contract and a more complex relational contract.

6.5 Decisions about the Best Value option for future management and service delivery must be based on the evidence available to the authority at the time the decision is taken. The challenge – compare – consult – compete elements of the Best Value reviews should ensure that authorities collect the information necessary to make decisions. The information will never be perfect, and there will be diminishing returns in searching for that ‘extra piece of information’ that looks like the last piece in a puzzle. However, authorities should ensure that they do take reasonable steps to collect data that supports a justifiable decision. They should be clear about the difference between data on past performance and future promises; they should be clear about information obtained from comparisons of service and financial performance, and information obtained from consultations with different service providers.

Authorities will also need to be clear about cost comparisons between in-house and external sources of supply and the extent and sources of efficiency and other savings claimed for the future (by either internal or external suppliers).

6.6 Information collected as part of a Best Value review must be placed in the context of a local authority's objectives at both the corporate and service level. These objectives, developed through the democratic process, and, in future, through community planning, provide the bases on which authorities can decide 'what works'. They should also provide the bases for an authority's procurement strategy.

6.7 Procurement strategies developed within Best Value and community planning will go further than the purchase of goods, services and works from the private sector. They will provide an opportunity for each authority to put its own stamp on the approach it takes to identifying possible options, appraising those options, and putting them into practice. As local authorities develop the power of community initiative, the procurement strategies can develop to support business cases for innovative approaches to partnership, planning the sharing of risk, and identifying the best role for the local authority.

## **BEST VALUE IN SCOTLAND**

6.8 This study follows the general pattern of the development of Best Value in Scotland. It has focused on the objectives of Best Value, i.e. better services for local people, and on the development of a *framework* within which Best Value can grow. The framework allows, and encourages, innovative approaches towards getting the Best Value approach appropriate to each authority. There is no 'one-size-fits-all' imposition of a single method that has to work for building facilities management in a major city and social work services in rural communities. The test of the effectiveness of procurement decisions will be in the evidence of the Performance Management and Planning Audits, Public Performance Reporting, and – most importantly – the experiences of local people.