



Supporting Better Work through Procurement

A Guide

Dr Deborah Harrison, Phillip Edwards and Gail Irvine



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How this guide was developed

This guide was developed by a team based at the Institute for Local Governance (Durham University), in collaboration with Carnegie UK Trust. We gratefully acknowledge input from a range of regional stakeholders including the North of Tyne Combined Authority, Trades Union Congress (TUC) Northern and Federation of Small Businesses (FSB). A full list of organisations who have contributed to this work can be found in our Stage 1 report at the link below.

The guide forms one of several outputs from a regional scoping and development study into the (actual and potential) role of procurement as a route to achieving good work outcomes in the North East. The project took place from January 2018 to May 2019 and included documentary analysis, interviews with key stakeholders and focused development work with the North of Tyne Combined Authority as part of their 'Inclusive Economy' strategic focus. The research focused specifically on procurement as one part of the public commissioning and procurement cycle. A more detailed overview of findings and contributing organisations is available here:

www.carnegieuktrust.org.uk/publications/making-procurement-work-for-all/



This report is printed on paper that is FSC certified.

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Introduction

Public sector organisations across the UK are increasingly asking how they can use their powers of procurement to drive 'better work'. There are opportunities to promote good work by linking the awarding of contracts to suppliers who demonstrate good work practices – such as paying the voluntary Living Wage, offering secure contracts or providing training opportunities to employees. However, public bodies also face a range of strategic, practical and legal considerations if the potential of 'good work procurement' is to be fully realised.

This guide is a practical resource designed to support the development and implementation of 'good work procurement' strategies. Based on learning from the North East and other parts of the UK, it is primarily aimed at public sector decision makers as well as strategic and operational leaders. It may also be of interest to commissioning and procurement teams, alongside others interested in delivering good work locally, regionally and nationally.

This guide was developed by the Institute for Local Governance (ILG), Durham University and Carnegie UK Trust.



Work in the UK today



Labour market

- ▶ Nationally, employment is at a record high (76%)
- ▶ Highest employment is in South West England (80%)¹
- ▶ Lowest employment is in North East England (72%)
- ▶ Youth unemployment is 11.8% (compared to 3.9% for the population as a whole)²



Poverty amongst working households is a major concern

- ▶ 1 in 5 workers are paid less than the voluntary Living Wage³
- ▶ 8 million people experiencing poverty live in a working household⁴
- ▶ Median weekly earnings are still lower than pre-financial crisis levels⁵



Working hours and income security are key issues

- ▶ One in six workers are 'underemployed' – working fewer hours than they want⁶
- ▶ 896,000 workers are on zero hours contracts⁷
- ▶ 4 in 5 low-paid workers have unpredictable earnings, making it difficult to save or plan their finances⁸



What is Good Work?

Good work is expressed in a number of different ways, including 'fair work', 'decent work', 'better jobs', 'great jobs', 'fulfilling work' and 'inclusive growth'. While several definitions exist, the central idea is that it is not just the **availability** of work that is important but also its **quality**.

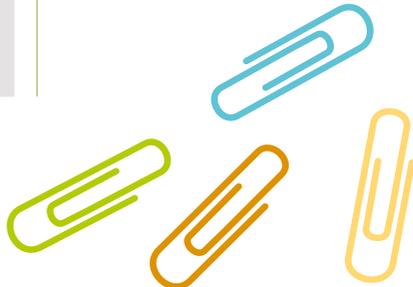
Good work focuses on issues such as:

- ▶ Fair pay
- ▶ Job security (e.g. guaranteed hours, contract types)
- ▶ Terms and conditions (e.g. sick pay, maternity allowance, paid holidays)
- ▶ Training and progression
- ▶ Safe and healthy workplaces
- ▶ Wellbeing at work (e.g. management support, staff engagement & agency)
- ▶ Worker voice and representation

WHY IS GOOD WORK IMPORTANT?

Good quality work is argued to create financial, health and wellbeing benefits for workers and their families. Improvements in work quality are linked to increased productivity and employee motivation, lower turnover and reduced sickness absence. At the community level, better jobs are shown to increase local spending power and help to reduce demand on healthcare and other public services.

Delivering on the good work ambitions set out in the UK Government's Industrial Strategy and Good Work Plan could help reduce working poverty, enhance individual wellbeing and earnings potential, and create benefits in terms of improved productivity and spending power.



HOW CAN WE PROMOTE GOOD WORK?

Quality of work can be influenced by a number of different factors. While employers create and design jobs, government at all levels can play a significant role in setting the conditions to promote better work.

There are examples across the UK of public bodies using their significant influence, spend and policy levers to promote good work. Strategic use of commissioning and procurement has played a key role, alongside approaches such as championing the real Living Wage and supporting employers through the creation of good work pledges, charters and accreditation schemes.

As such there is a growing body of knowledge on how local government and other 'anchor institutions' (such as universities, hospitals and other large employers) can influence work quality.



Recommendations for decision makers to prioritise good work

1. Assess what levers you have at your disposal as a public body to promote good quality work in your area.
2. Develop a Good Work Action Plan for your area, including clear criteria for defining success and evaluating progress.
3. Make a high profile, public commitment to enhancing good work. For example, this could include a dedicated cabinet position and annual reporting requirements.
4. Consider ways to raise awareness and generate support among employers and residents, such as supporting local good work initiatives or pledges.
5. Target improvements in low paid sectors such as social care, retail and hospitality.
6. Support the growing evidence base on the impact of good work practices, using examples from local business in your area.

How can procurement help deliver better work?

Procurement deals with the sourcing, negotiation and selection of goods and services. The public sector is a major procurer of goods and services in the UK. Public sector procurement teams are tasked with achieving the *best value for every pound of public money spent*, which involves a combination of financial, ethical and social considerations.

Procurement is one of several mechanisms which public bodies can use to influence work quality. Procurement strategies can encourage good work by awarding contracts to organisations who demonstrate fair practices – such as offering guaranteed hours, paying the Living Wage or providing enhanced training opportunities.



HOW DOES THIS DIFFER FROM THE SOCIAL VALUE ACT 2012?

The *Public Services (Social Value) Act 2012* requires consideration of ‘economic, social and environmental wellbeing’ in public service contracts. Since its introduction, the Act has been used by commissioning and procurement teams to encourage initiatives such as apprenticeships, local supply chains, environmental awareness and community development work.

While it sets a useful precedent in considering wider value as part of the procurement process, the Act’s application to date has not commonly been extended to issues of work quality for employees or conditions of employment within the supply chain.⁹

There is ongoing debate as to whether work quality is best positioned as an extension of the Act’s current application, or as a separate set of considerations. Where there is overlap, it is important to ensure that good work initiatives complement (rather than contradict or replicate) existing social value activity.

What UK regions are developing good work procurement?

- ▶ Preston
- ▶ Birmingham
- ▶ Greater Manchester
- ▶ Leeds

These and other examples, including work by the Scottish and Welsh Governments, are referred to throughout the guide.

HOW TO USE THIS GUIDE

This guide outlines key considerations and practical steps for decision makers to advance good work procurement. It focuses on several layers of influence:

- 1 **First steps:
Political leadership**
- 2 **Building good work
into day-to-day
procurement practices**
- 3 **What is legally
possible?**



First Steps: Political leadership

Good work procurement cannot happen on its own. Our research has shown that there needs to be **shared understanding, political will and strategic commitment** as key first steps, if public procurement is to become an effective lever to influence work quality. It is also important to acknowledge the role of commissioning teams in the development of good work procurement practices.

So what are the initial strategic steps towards good work procurement?

1. DETERMINE STRATEGIC PRIORITIES

Establish which **key good work priorities** for your area can be incentivised through procurement. For example, it could be promoting the voluntary *Living Wage*, discouraging *insecure contracts*, boosting *trade union membership* or encouraging staff *training opportunities*.

How to **measure** the chosen priorities must also be considered, to enable their inclusion in procurement frameworks.

2. ASSESS YOUR PROCUREMENT POWERS

Review the use of procurement within your organisation and assess what aspects of procurement can be directed towards promoting good work. Some organisations may procure large volumes of goods and services directly. Others may have scope to champion good work procurement as part of an anchor institution strategy, or within a regional or combined authority setting.

3. BUILD SUPPORT AND 'BUY-IN'

There are a **range of views** on the extent to which public bodies can, or should, seek to influence pay and working conditions in other sectors. People also have different views on whether procurement is an appropriate or feasible mechanism to promote good work outcomes.

Decision makers should be willing to **engage in this debate**, to secure buy-in from those who are central to the delivery of good work procurement. This may include teams within the organisation as well as external stakeholders, including suppliers and others who can help champion the good work movement.

Practice examples from around the UK also highlight the benefits of working with other **'anchor institutions'**. These are large employers with significant spending power, such as hospitals and universities.

3. RAISE AWARENESS OF CHALLENGING MARKETS

Engagement with supplier networks may reveal concerns about the extent or pace at which working conditions can be improved, and the impact this might have on the **viability and survival of business models** with low profit margins or facing other market vulnerabilities.

For example, zero hours contracts are widely used in the home care sector, where vulnerable clients can require care at short notice and in multiple locations. In construction temporary contracts and self-employed sub-contractors are common, as the market is of a project-by-project nature and there is a requirement for specific skills at different points in the construction process.

Raising awareness of sectoral dynamics is crucial if good work procurement is to gain traction. Decision makers can lead and engage in dialogue with industry representatives about how vulnerabilities can be addressed, and raise awareness at a national level where UK-wide solutions may be needed.

4. CONSIDER FINANCIAL CONSTRAINTS AND PROCUREMENT TEAM RESOURCES

When planning how to implement good work procurement practices, there is a need to balance the legitimate public interest of a **focus on lowest price** in procured contracts with the ability to use procurement to contribute to the social and economic goals of the area.

The **pressures of austerity** and the need for public services to deliver more for less makes this a very real challenge, and can present **conflicting priorities for decision makers**.

Some procurement teams are operating within a context of budget restraints and reduced internal resources. However, if procurement is to be used as a mechanism to deliver good work outcomes, procurement teams need the **capacity, resources and influence** to support this enhanced role.



Building good work into day-to-day procurement practices

What must be done at a practical level to make good work procurement possible?

Our research in the North East of England highlighted a range of considerations based on existing examples of effective practice. These are summarised below under the different stages of the procurement process.

STAGE 1: PRE-TENDER PLANNING AND STAKEHOLDER ENGAGEMENT

Early supplier engagement and local, market-specific research is critical to understanding the supplier market, including typical working conditions and sector dynamics.

This allows procurement teams to assess the potential for good work outcomes and create *realistic mutual expectations* through open dialogue with suppliers. Commissioning teams often have an important, complementary role to play in the pre-procurement process.

STAGE 2: WRITING TENDER DOCUMENTS AND AWARDING CONTRACTS

One key area for development is how to *quantify and measure* good work outcomes, to enable inclusion in procurement frameworks.

Good work elements must be *proportionate and reasonable* within contract scope and value. Agreement has not yet been reached on whether there is a fixed percentage of contract value that can be allocated to 'added value' (which could include good work) before affecting service delivery.

Action is required to ensure that *smaller and less established organisations* are not unfairly disadvantaged by any increased complexity in the procurement process. One way to support smaller organisations is by paying attention to *contract size and scope*. Good practice examples include 'lotting' contracts into smaller component parts, to encourage a diverse range of bidders.

STAGE 3: POST-AWARD CONTRACT MANAGEMENT

The implementation of good work procurement is likely to require enhanced post-award *contract management* functions. These are often the least developed (and least well-resourced) aspects of procurement. Yet they are critical if we are to demonstrate how procurement can be used to achieve good work outcomes.

A key challenge is how to *monitor* or ‘police’ the delivery of good work outcomes or practices, including through sub-contracting chains. Investment is required to develop these processes and feed into the national discussion on best practice.

Attention must also be paid to how to approach *unfulfilled promises*, to ensure accountability and prevent good work procurement becoming a ‘game’ in which some suppliers can over-promise in the knowledge that they will not be held to account for their good work commitments.

RECOMMENDATIONS

1. Build on existing examples of strong market engagement practice, to help establish realistic mutual expectations between tenderers and suppliers.
2. Work to minimise unintended impacts on smaller and less established suppliers.
3. Develop systems to measure and monitor good work outcomes or practices.
4. Invest in enhanced procurement team contract management functions.
5. Maximise opportunities, and seek to ensure the right infrastructure is in place, for commissioning and procurement teams to share learning and practice – locally, regionally and nationally.



What is legally possible?

The law surrounding public procurement is complex. There are mixed views and some uncertainty on the legal scope for placing good work clauses in procured contracts. However, there is more flexibility to introduce good work outcomes as part of award criteria than is often recognised.

The growing interest in good work procurement means that the range of discussion on legal limits and the role of national, regional and local government continues to develop.

Key legal considerations include:

- ▶ Requirements of EU-compliant projects
- ▶ Mandatory vs desirable criteria
- ▶ How to avoid challenges to decisions based on wider value
- ▶ Legal position if a supplier fails to deliver

Recent and ongoing work sheds light on some of these issues, as outlined below.

REQUIREMENTS FOR EU-COMPLIANT PROJECTS

Uncertainty around the legal possibilities for good work procurement often arises from the requirement for public bodies to comply with the fundamental principles of the *Treaty on the Functioning of the European Union* (TFEU).¹⁰

To be legally sound, good work elements of procured contracts must be *measurable*, *relevant* and *proportionate* to the size and scope of the specific contract.

In practice, demonstrating that contracts meet these principles is likely to prevent the use of 'off-the-shelf' or 'one-size-fits-all' approaches to good work procurement. Instead, public sector organisations should ensure a legal basis for including good work clauses in individual contracts – based on consideration of factors such as *size of spend*, *types of service rendered* and *status of suppliers* who make up the market.

TFEU principles

- ▶ Proportionality
- ▶ Mutual recognition
- ▶ Transparency
- ▶ Non-discrimination
- ▶ Equal treatment

Specifications must also state which elements of the contract are mandatory criteria and which are desirable.

The Public Contract Regulations (2015) transpose the EU Procurement Directive into UK law. As the key regulations governing public procurement in the UK, they set out that contract awards under Most Economically Advantageous Tender (MEAT) can factor in more than just financial cost, including criteria related to social value, environmental and employment factors.

There can be greater flexibility for lower value or exempt contracts (where EU principles do not have to be met). Nevertheless, criteria still need to be *relevant* and *proportionate*.

MANDATORY VS DESIRABLE CRITERIA: WHAT CAN CONTRACTORS LEGALLY ASK FOR?

Mandatory criteria used in the scoring process must relate directly to contract specifications (e.g. the ability of the supplier to carry out the contracted task). Chosen criteria must a) conform to the overarching requirement that all public procurement is based on value for money, and b) be proportionate to the services required. Clarity on how criteria relate to the *purpose* of the project is also essential.

Equality and proportionality are central to TFEU principles. Because of this, stipulating specific working conditions – such as paying the real Living Wage – as mandatory criteria is generally seen as problematic. The legal scope for doing so is subject to debate.¹¹

However there is scope for public bodies to include additional *desirable* criteria which support their organisational objectives. Implementation of the Social Value Act 2012 provides examples of how desirable criteria can be utilised to consider social and environmental factors. The Scottish Government provides examples and guidance on how fair work principles can be built into the procurement process, within EU principles.

RECOMMENDATIONS

Establish a process to review the relevant legal considerations and seek agreement on an appropriate, common approach for your organisation. This could include working examples which outline relevant and proportionate good work criteria in different types of contract.

Afterword

This Guide sets out key points of consideration for developing and implementing procurement strategies to support better work. What our research has demonstrated is that there is no 'one size fits all' approach to doing good work procurement. Public bodies who are interested in developing their approach need to consider their own **strategic priorities** for their area and to what extent good work can be championed as part of these. They need to assess the scope of their **procurement powers**. Procurement power may be considerable and direct, or a public body may have limited direct procurement spend but could influence wider practice in the region, for example, in partnership with other local anchor institutions or in a combined authority setting. Key to making good work procurement happen is **leadership**. Organisational leaders need to demonstrate a commitment to using procurement to encourage better work and a willingness to understand and overcome barriers to changing existing practice. They need to ensure that procurement teams have appropriate guidance and resources to carry out this enhanced aspect of their

role effectively. This includes ensuring there is an agreed and communicated position across the organisation on the relevant **legal considerations** of using procurement in this way. Finally, organisations need to consider how emphasising good work as part of the criteria for successful procurement bids may influence the ability of businesses to tender or carry out the contract. Smaller businesses, or sectors with tight profit margins, may need more time to adapt their business models to respond and avoid risks to employment. Actions to help them do so may require strong market engagement locally as well as advocating for changes in national policy. In this way, Good Work Procurement is part of a larger set of changes required to support better work for all.

This Guide is not the end, but the starting point in our thinking about how we can support better work through procurement. We would like to hear from organisations around the UK engaging with and advancing the ideas in this Guide, or who wish to share ideas from their own practice.

Please get in touch with Deborah Harrison on deborah.harrison@northumbria.ac.uk or Gail Irvine on gail@carnegieuk.org if you would like to discuss the ideas in this guide.

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- 9 Government consultation which concluded in March 2019 set out a series of proposed policy metrics for measuring social value procurement outcomes. These included diverse supply chains, skills and employment,

inclusion and mental health, environmental sustainability and safe supply chains. However several key principles of good work (including fair pay, job security and worker satisfaction) were not featured in the proposals.

10 At the time of writing, current understanding suggests that these legal considerations should still apply after Brexit. UK Government-EU withdrawal agreements negotiated

to date include arrangements to, 'prevent distortions of trade and unfair competitive advantages,' which would maintain current practices. These 'level playing field provisions' have however recently been moved to the Political Declaration, which would be non-legally binding.

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Carnegie UK Trust

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Institute for Local Governance

The Institute for Local Governance (ILG) formed part of Durham University Business School from 2009 to 2019. As a research and knowledge exchange partnership between North East universities, local authorities and other public sector organisations, it sought to facilitate relevant research through collaboration between academics, policy makers and practitioners. Further information about the ILG is available at: www.ilg.org.uk.

As part of its work, the ILG hosted the North East Child Poverty Commission (NECPC) during 2012-2018. The NECPC is a voluntary partnership across the region's public, voluntary and private sectors which aims to provide a strong regional voice to raise awareness of child poverty in the North East and facilitate collaborative working to tackle key issues. Further information is available at: www.nechildpoverty.org.uk.

This guidance was written by Dr Deborah Harrison, Phillip Edwards and Gail Irvine, and reviewed and edited for the Carnegie UK Trust by Douglas White.

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