



How your branch can stop outsourcing and protect members

Your step-by-step guide to
campaigning and negotiating around
procurement

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Why should you try to influence procurement?

Public authorities and organisations across the country are handing your public services over to private companies. There is plenty of evidence that this outsourcing is often bad for public services, yet local government is doing more of it than ever before. This is because of:

- Pressure to cut costs and falling budgets from central government
- Ideology - the idea that private is better, even when there's plenty of evidence this isn't the case
- The challenges of providing public services and the need to make improvements

As a UNISON branch member, you're on the frontline of this battle. You care about your public services because of your members and the important work they do to provide services. You also care about your community which benefits from these public services.

Your campaigning work is incredibly important. Without you, public services will be outsourced. Your members could lose their jobs or their terms and conditions and your community as a whole will suffer as private companies take over. If you win your campaign, it could mean:

- Public services stay in-house, run by the public authority
- Services get better as your members work to keep improving them
- Your members can keep their jobs and existing terms and conditions
- People in your community get a better service from the public authority

Even if you can't manage to keep public services in-house, it's still worth fighting whenever services are outsourced. By negotiating for fair contracts, you could improve the situation for your members and your community.

- Your members have better terms and conditions, with a knock-on effect on their families and lives
- The public authority gives everyone information about public services, and a chance to have a say
- Bad private providers are held to account

There's a lot at stake! You, your branch, your campaigning and your negotiating is badly needed. Are you feeling inspired? Or daunted? Don't worry, this guide will help you through.

Devolution Note

This guidance can be used by all service groups and UK branches that are impacted by outsourcing regulated by the EU Public Procurement Directive 2014. Whilst Northern Ireland, Wales and England are regulated by the UK Public Contracts Regulations 2015, Scotland has its own similar (and better) procurement legislation and regulations¹. Where differences matter they have been highlighted.

Other legislation may also apply in public procurement considerations in some devolved regions – for example in Northern Ireland Equalities and Human Rights provisions have to be considered and in Wales the Alternative Delivery Models in public service delivery has to now be considered.²

¹ <http://www.gov.scot/Topics/Government/Procurement/policy/ProcurementReform>

² <http://gov.wales/topics/improvingservices/publications/alternative-delivery-models-action-plan/?lang=en>

How to use this guide

How do you defend your public services from outsourcing? There are a number of strategies and resources you can use to campaign and negotiate. Throughout this document, we've highlighted strategies and resources you can use to win. This document is best used electronically.

You're the expert in your branch, your public authority, your area. You will need to use your judgement and knowledge of the situation to choose the best strategies for you. These are tough times but there are always more great campaigning tactics to try. Look out for these icons to see the different ways you can take action.

Transparency

Public authorities can choose to outsource but don't let them carry out their plans in secret. The more you know, the more you can challenge authority decisions and put forward your own - better - ideas. General rule – find out as much as you can, as early as possible.

Scrutiny

As a UNISON branch member, you have the tools to be there every step of the way, asking questions, challenging decisions.

Best practice

Your members know their services inside out. That gives you an advantage in making the case for how to improve services - in-house, without outsourcing.

Legal tools

The law is a tool you can use to hold your public authority to account and work towards better services. Be aware of when it can help you, and when it can't.

Community and media

If you work closely with your community, you'll be much stronger. Build alliances with local groups and work together to get your message out in the media.

Using the union

Being an official union stakeholder is a great asset. Use your position as a branch member to make sure you get the results you want, build up your campaigning army and always keep members informed.

Throughout this guide there are also different resources and tips to help you campaign.

Case study

There are stories from around the country from UNISON branches just like yours. Check out what you can learn from the successes, failures and experiences of other branches.

New ideas

These are innovations you can use to improve services and defend your members at the same time. It's always worth exploring those light-bulb moments.

Watch out!

Make sure you don't miss any key opportunities and lose your chance to win your campaign. Don't forget to plan ahead to maximise your influence on your public authority.

The UK public procurement context

The current government is ideologically committed to the idea that private companies should be involved in delivering public services. Public assets are being sold off and national and local government are being encouraged to outsource services to private providers. Often this is disguised as allowing authorities and services users more choice and flexibility. But in practice it means transferring services to the private sector. Between 2010 and 2015, the amount of government money spent on outsourced public services almost doubled from £64bn to £120bn. Tens of thousands of staff have been transferred to private sector management.

Open Public Services

The Open Public Services agenda comes from the UK Cabinet Office. It is being driven by the idea that public services should be 'opened up' so that they can be run by whoever is best placed to run them. The government argues that the public sector should not have a 'monopoly' on providing public services, and that cooperatives, charities, mutuals and social enterprises should be encouraged to bid for contracts, as well as the private sector.

Arguably, there is a place for some of these types of organisations in helping to deliver certain types of public services. However, this is a framing of the debate which encourages outsourcing and undermines the public sector. The risk is that third sector organisations could be used as a 'Trojan horse' to open the door to profit making companies. Once a procurement exercise is triggered – whatever the logic behind that decision – large multinational companies are often best placed to win bids. Therefore there is a very real risk of the 'open public services' agenda leading to backdoor privatisation in a whole range of public services.

How can unions respond to this agenda? Firstly, it's important to resist the push towards procurement and make the case for the unique capabilities of the public sector and in-house teams in delivering services (there is more about that in this guide). Secondly, where possible, unions can build alliances with other not for profit organisations which may be interested in service delivery. Often small not for profit organisations are not winning government contracts and some of them are also concerned about the damaging effects of privatisation.

The Public Services (Social Value) Act 2012³ means that public authorities can look at social criteria when they are procuring services. The Act enables authorities to make sure that contracts promote economic, social and environmental well-being. This applies to all contracts. The threshold Part B of the old regime still applies for implementing the Act (this is roughly £175,000). You'll need to work hard to lobby authorities to push them to make full use of the Act when designing contracts and evaluating bids.

New EU regulations have changed things – here's what it means

In 2014 a new EU Directive was published to update the original rules published in 2004. The rules cover all works (civil engineering, buildings and so on), and the buying of goods, supplies and services. The purpose of the EU regulations is to ensure that procurement is open to cross border competition wherever possible, in line with its mandate to ensure the free movement of goods and services.

³ <https://www.gov.uk/government/publications/social-value-act-information-and-resources/social-value-act-information-and-resources>

The EU Directive sets the framework for individual nation states, which develop their own interpretation of these rules. This resulted in UK Public Contracts Regulations 2015⁴ (UK PCR). The government was pleased with the outcome of the negotiations that led to the EU Directive, saying they represented a more ‘modern, flexible and commercial approach’. Indeed, it was so pleased that it rushed through the creation of the UK PCR in less than 12 months after the EU Directive was published! (This is much faster than was necessary and with very little consultation).

Unfortunately, the UK government’s interpretation of the rules set out by the EU is relatively relaxed with a minimalist de-regulatory approach. So rather than use the opportunities in the EU rules to adopt more progressive legislation (for example, by making it mandatory to include social and environmental criteria in assessing procurement options), they declined to do so. This doesn’t mean it is *all* bad news. There are some improved ‘social provisions’ for using better, alternative **contract award criteria**, and some improved options to reserve contracts for mutuals (although these have significant loopholes the private sector can and will exploit).

The main thrust of the UK PCR is that it allows greater ‘flexibility’ for authorities – should they wish to use it. This can often be bad news, because it means that strong mandatory criteria aren’t in force.

Your role is to ensure that they are aware of the fact that they can now use better ‘quality’ criteria as part of the scoring systems in the contract awarding process itself to help make decisions about who should provide your public services. You can build public support for this too.

Key points of the new rules

Increased flexibility in contract award criteria: Authorities are free to decide how they assess tenders and procurement options. While cost only decisions are (unfortunately) allowed (except in Scotland), authorities also have the option to include social, environmental, quality and technical criteria in decision making processes. This is in some sense an improvement although it doesn’t go far enough because it leaves this up to contracting authorities, rather than making it mandatory.

Increased transparency: There are new rules that encourage transparency. While the Freedom of Information Act takes precedence, there should be more room to argue against ‘commercial confidentiality’. The rules encourage sharing publicly contract price and incentivisation mechanisms, performance metrics, management plans, governance arrangements, resource plans and service improvement plans. It also encourages less redaction of documents.

More in-house options: There are also exemptions where contracts are effectively in-house, for instance where authorities create shared services. This includes ‘Teckal bodies’ (which are ‘vertically’ integrated bodies under shared control of multiple authorities) and ‘Hamburg’ arrangements, (where services are integrated ‘horizontally’ and authorities co-operatively pursue shared objectives).

New procedures: There are now five possible ways for authorities to pursue procurement. This includes the old four (open, restricted, competitive dialogue and competition with negotiation), and a new ‘innovations partnership’ approach.

⁴ <https://www.gov.uk/guidance/public-sector-procurement-policy>

Minimum time limits have reduced by about a third: This means you need to be aware of contract notices or prior information notices, and makes having a procurement agreement in place in advance even more important.

Simpler process for assessing bidders' credentials: The new rules include more use of self declarations of suitability. This means bidders declare themselves fit for purpose and can't really be challenged or checked until a contract is awarded.

More freedom to negotiate: There is expected to be more use of the negotiation procedures to give suppliers time and space to influence the design of bids and set outcomes. This makes your job harder, but in some ways just reflects what was already happening.

The part A/B distinction removed: Under old regulations some services (Part B services) were subject to different rules. This distinction has been abolished, with the effect of opening up more services to the full procurement rules. There are still some services and goods that aren't subject to the full rules. These are now subject to what is called the 'light touch regime'. This in effect replaces the old part B services.

The new EU rules encourage social enterprises and mutuals

Contracts can be reserved for social enterprises and mutuals for three years to allow them to develop and gain experience delivering public service contracts. (The 'reservation of contract' provision for mutuals does not exist in Scotland.)

The thrust behind this is still to open services, but it gives you an option to set up a mutual if in house bids aren't possible or are ignored by the authority. Unfortunately it doesn't go far enough and because of the way it is written there are ways around it for private sector companies to exploit it.

For instance, the rules for reserving contracts for mutuals stipulate that the 'structures of the organisation (at least when performing the contract) are based on employee ownership or participatory principles' OR require 'active participation of employees, users or stakeholders'. This criteria is *incredibly* vague and leaves open the options for private sector groups to meet these criteria only for the duration of the contract, and falls short by insisting that these organisations only require 'active participation', which is a vague concept.

This means mutualisation can be a route towards privatisation, although it can also provide opportunities for you to keep public services and assets public. For instance, asset locks can be used to ensure that mutualisation doesn't lead to creeping privatisation of publicly owned land and buildings.

UNISON has already written a guide to help branches better understand mutuals and public services.⁵

For further information on best practice see the Joint TUC and Co-operative Guidance on Public Service Mutuals and Cooperatives.⁶

⁵ <https://www.unison.org.uk/content/uploads/2013/06/On-line-Catalogue199463.pdf>

⁶ https://www.uk.coop/sites/default/files/uploads/attachments/tuc_co-operatives_uk_-_guidance.pdf

New threshold rules

The new rules also include abolishing pre qualification questionnaires (PQQ) for contracts below the EU thresholds to make things easier for private contractors to apply for tenders.

The new EU rules apply only to contracts with a value (not including VAT) estimated to be at or equal to:

Works contracts: EUR 5,225,000 (£4,104,394)

Public supply and service contracts by central government: EUR 135,000 (106,047)

Public supply and service contracts by local government: EUR 209,000 (£164,176)

Public service contracts for light touch regime: EUR 750,000 (£589,148).

Where do the EU rules apply?

Your first step to finding out which rules apply will be to establish what the service is, and what type of procedure is being used.

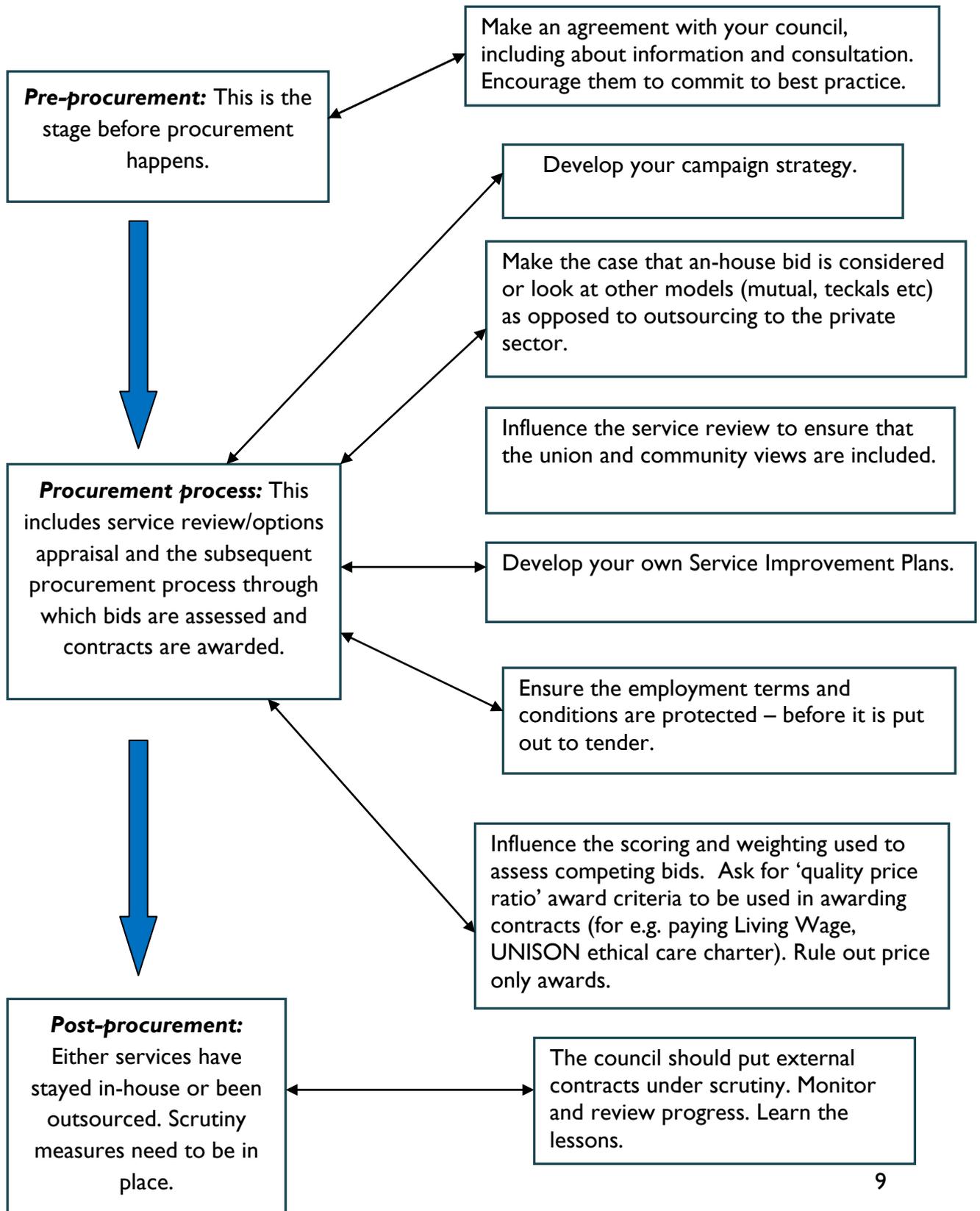
If you are not sure which threshold applies, your public authority should be able to tell you. If the EU rules *don't* apply, your public authority will still have duties that it needs to pay attention to when procuring public services.

You can always negotiate and campaign to push for the result you want.

Overview of the three key stages of procurement

Understanding the key stages of procurement will help you develop your strategy to keep public services in-house. There are three key stages of the procurement process that you need to understand:

Through this guide we will be referring to the three stages of procurement. It's useful to understand what these are.



1. Stage One - Pre-Procurement

Some local authorities want to outsource services. Others want to keep services in-house where possible. You need to know what your local authority is thinking and try to influence their general approach at an early stage.

Scrutiny

Local authorities have a number of different strategies and policies which can influence procurement – these might include a community plan/strategy, a corporate plan, an asset management plan, a customer services plan or even an IT strategy. It will help you if you know what the authority's overall strategic approach is.

If you want to stop outsourcing and promote public services, it's best to get involved as early as possible to try to influence the local authority's overall strategic approach.

Best practice

You can encourage your authority to support

- In-house services
- The value of public sector workers
- Trade unions being involved in authority decisions
- Access to information

As soon as you can, approach public authorities to set up an agreement giving broad principles of support for efficient and effective in-house services. It's not just the local authority you can approach. There is also the National Probation Service, Police and Crime Commissioners, school and colleges, Clinical Commissioning Groups or NHS trusts.

Using the union

If you need advice on putting a procurement and information agreement in place, talk to UNISON. Use the Branch guide to negotiating a procurement agreement⁷.

2. Stage two – Procurement process

Once a decision to go to the market, outsource or partner has been taken, there is a legal and technical process. This period usually has defined stages and timescales ranging from an initial service review, advertising the service for tender through to contract award and closure. You can make the case against outsourcing and privatisation any time, but it's easier to challenge the process before the legal procurement stage is underway.

Transparency

The authority may decide to review public services to see how they are working (possibly involving external consultants in the process). The review might involve all kinds of assumptions and assertions about the benefits of outsourcing. This might be called an 'efficiency review' or 'options appraisal'. Now is the time when you need to challenge the review process, questioning the process, the goals and the assumptions behind the public

⁷ <https://www.unison.org.uk/get-help/knowledge/contracts/procurement/>

authority's strategy. Find out from the public authority what the timescales are for any review or procurement process. Be prepared.

Scrutiny

If the authority is assuming that outsourcing would be better, use evidence to question those assumptions and ask questions. Any movement away from direct service provision should only take place if it is justified by a detailed examination of service and cost data. What is the public interest in a preference for outsourcing?

Best practice

Put forward alternative options for delivering great public services. Campaign for an in-house bid, making the case for why it would mean better services.

Community and media

This is a good time to engage the community. Contact union branch members, councillors, communities, service users and the local media to get them involved in the campaign.

You need to run a public campaign AND negotiate behind closed doors at the same time. For example, you might be lobbying loudly against a proposal to outsource a service – but at the same time trying to influence the tendering process by negotiating a Service Improvement Plan or an in-house bid.

In many cases industrial action by members may have failed to stop outsourcing but strengthened the union's negotiating position.

Using the union

Negotiate for wider employment rights of the staff affected by the plans. Make sure employment issues and options or any health and safety concerns are tackled before contracts are advertised (See Section 8 pg 31)

3. Stage three - Post-procurement

If the authority decides to go ahead and outsource to a private or third sector contractor, there is still a vital role for you to play. Staff may be transferred to another service provider and the service provided may be undermined. Your local authority may not be doing a great job at setting up and monitoring the outsourced services – that's where you come in.

Scrutiny

Challenge the public authority on the arrangements they have in place for monitoring contracts. Monitor how well the contract is performing. The public authority should be putting external contracts under scrutiny – check whether that is happening, and what they are doing.

Using the union

Negotiate and bargain with your new employer to get the best deal for your members. For example find out whether the Cabinet Office voluntary 'Principles of Good Employment Practice', which replaced the 'two tier workforce code', is being applied by the employer.⁸

⁸ <https://www.unison.org.uk/get-help/knowledge/contracts/two-tier-workforce/>

Report back to UNISON at the regional and national level about the impact of outsourcing in your area. This will help everyone to learn from successes and failures of branch strategy and tactics.

Everyone in the union can learn from your experience so don't forget to share what works and what doesn't.

Look out for the key stages where you can intervene to challenge the procurement process.

Commissioning and Procurement: 13 steps in 3 key stages

Key Stage One Pre-procurement

Your goals

- 1) Make an agreement with your public authority about how you will work together, including about how information will be shared
- 2) Encourage your public authority to commit to best practice (See case studies for inspiration)
- 3) Decide on your campaign strategy



Watch out!

- You will need to act quickly – the new EU rules have speeded up the procurement process
- Don't forget – your authority *doesn't have to outsource at all*.

1) Make an agreement with your public authority

Your first aim is to negotiate a procurement agreement with your employer or local authority so that your branch is involved right from the start. Wherever possible your branch should try to influence public authority policy before any formal procurement or tendering process begins in order to protect members and services.

The aim here is to ensure that the branch is fully involved from the start of the process, well in advance of any decisions being made by the employer or public authority. Use the Branch guide to negotiating procurement agreement.⁹

Your public authority should involve you

Under the duty of best value and various guidance issued by the government, including on workforce involvement, the trade unions have an entitlement and are encouraged to be involved as a 'stakeholder' in reviewing services and in any decisions about future service delivery.

Many UNISON branches will also have in place an existing negotiating and consultative procedure that can be used to good effect. A public authority which refuses to engage with UNISON may be in breach of a wider public duty to consult key stakeholders and could be challenged.

Where this approach is not achievable the branch should still seek to reach agreements that will ensure that it is fully informed and consulted at all stages of a service review and procurement exercise before any key decisions are made. This may involve separate

⁹ <https://www.unison.org.uk/get-help/knowledge/contracts/procurement/>

agreements on for example the union's involvement in designing and carrying out an options appraisal.

What should be included in the agreement?

Your job is to encourage the public authority to commit to good procurement. This means negotiating an agreement which includes

- A commitment to **consulting and involving** staff and trade unions at the earliest possible stage and whenever key decisions are made
- If there is a procurement committee, a commitment to including **UNISON representation** on that committee
- An agreed **process for trade union and workforce involvement** in service reviews; efficiency reviews, options appraisals; and all stages of the procurement process
- A policy of making **information** available, including provisions for sharing confidential information
- Addressing sustainable development, community well being and equalities and including **criteria** to assess social, economic, equity and environmental impact at both options appraisal and bid evaluation stages
- A commitment to **options appraisal** before beginning any formal procurement process
- A commitment to supporting **in-house service improvement** and considering that option before any procurement process
- A commitment to including a properly resourced **in-house bid** in any procurement exercise
- A commitment to **workforce development** which maximises opportunities for training and development and recognizes the positive role of trade unions and union learning reps in this
- An agreed policy for **minimising any job losses**
- A commitment to fully **protecting the pay, conditions, and pensions** of the workforce.
- A commitment to a **common approach** across different directorates and departments of the public authority

Transparency

Negotiate an information and confidentiality agreement - as part of the procurement agreement

If you want your branch to be fully informed and able to influence key decisions and plans, you will need access to as much information as possible. Negotiate an information agreement and where appropriate a confidentiality agreement. Your goal is to agree a deal where you are kept informed, and avoid as much as possible being restricted by 'commercial confidentiality'.

Get a commitment to sharing all the information

The agreement will give you access to information on tender bids. It allows your branch to submit comments on tender submissions to the public authority and to engage effectively with the bidders themselves. If staff transfers are being proposed, you can represent members' interests.

Public authorities and bidders may resist giving you all the information on the grounds of "commercial confidentiality". Negotiate to make sure you have access to *all* the information – wider financial, commercial and technical aspects of proposals, not just the employment proposals around TUPE and pensions. You should press for access on the basis that there is a need to understand the full proposal in order to effectively represent your members.

Watch out for 'commercial confidentiality' restrictions

As part of the procurement process your branch will probably be asked to sign a confidentiality agreement which may restrict how information can be used. There are advantages and disadvantages of signing. It can be necessary, but bear in mind that having to keep secrets about the proposals will limit your ability to campaign with the rest of your branch and the wider public. If you are signing a confidentiality agreement, seek advice from the regional office; any agreement must be signed on behalf of UNISON by a designated regional official.

What might be included in the information/confidentiality agreement?

- The key information to be made available to the trade unions at different stages of a service review, options appraisal and procurement process outside of a commercial confidentiality agreement
- Clarification of how public and confidential information is defined and classified and the relevance and application of the Freedom of Information regulations
- That the employer/public authority will seek agreement with bidders that will ensure appropriate and timely access to information and its publication
- How confidential information will be made available to the branch and the how it will be used
- The format of information
- Assistance in the interpretation of information and proposals - this may include financial support to the union to have complex information analysed
- Responsibilities of the branch to maintain the security of any sensitive or confidential information made available
- Responsibilities and responses if there is a breach of confidentiality



Case study

Newcastle City Council's Commissioning and Procurement Plan 2012 - 2016¹⁰ makes a commitment to:

- Provide appropriate information to staff and trade unions at all stages of the procurement process
- Establish regular consultation processes with staff and trade unions at appropriate frequencies
- Provide an opportunity for trade unions to comment on all aspects of the procurement process at key milestones of the procurement process
- Facilitate meetings between trade unions and potential providers at key stages of the procurement process
- Enable the trade unions to select their own representatives for meetings with contractors and site visits
- Allow full discussions between trade unions and the City Council's preferred bidder prior to contract award
- Use a minimum of temporary and agency staff during the procurement process, consistent with service and operational objectives

¹⁰ https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/procuring_for_a_fair_and_sustainable_city.pdf

2) Get your authority to commit to best practice

There is plenty of best practice around the country; you could encourage your authority to follow these examples. If your public authority commits to best practice around outsourcing, it will make your job much easier. They will be more likely to be transparent, promote social value, protect workers and keep services in-house. If you think your authority could be open to this, encourage them to consider the case studies below.

Case study: Southwark

Southwark Council has 220 different contracts with a total value of £2.6 billion. A huge range of services, from the building of new schools to employment support services to homecare for vulnerable residents, are procured by the council. Decisions about outsourcing have a big impact on the lives of people in the borough. Southwark has had a number of outsourcing and procurement controversies in recent decades, some of which have damaged services and wasted taxpayers' money.

The council wants to stop this from happening again in the future. Commissioning services in Southwark needs to be more transparent, subject to greater democratic control and more engaged with what service users want. The council also wants to take more advantage of its spending power to promote equality and fairness. It has made a number of recommendations in its Commissioning and Procurement at Southwark Council Report of the Overview & Scrutiny Committee¹¹

- The in-house service should be the “preferred provider”
- No assumption of outsourcing – the case has to be made for any mode of delivering services
- Lower contract thresholds to improve oversight of spending
- Using the Public Services (Social Value) Act 2012 to boost jobs and apprenticeships
- Using the Public Services (Social Value) Act 2012 to achieve other social and environmental outcomes
- More scrutiny and monitoring of contracts
- Openness and transparency for contracts – all contracts will be published in full as standard
- Action on the gender pay gap and pay differentials for outside providers

The council has also committed to a number of measures to protect the workforce whenever renewing contracts or outsourcing services to the private or voluntary sector. These include:

- Access to the Local Government Pension Scheme (LGPS)
- Trade Union recognition agreements
- London Living Wage
- Payment of sick pay
- Appropriate training
- Defined hour contracts without unreasonable “availability clauses” (i.e. no zero hours contracts)
- Free access to personal protective equipment
- Guarantees that TUPE terms and conditions will last for the term of the contract

¹¹ <http://moderngov.southwark.gov.uk/documents/s51134/Draft%20Scrutiny%20Report.pdf>

Case study: Scotland

In Scotland the procurement framework is different. The Procurement Reform Act, passed in 2014, aims to put sustainable and socially responsible purchasing at the heart of the process. There is more detailed guidance on sustainable procurement and achieving the payment of a Living Wage through procurement¹². It means public authorities must think about how they can use procurement to:

- Improve economic, social and environmental wellbeing of their area. Where the estimated value of a contract is at least £4 million, Scottish public authorities are required to consider imposing 'community benefit requirements' on suppliers to make sure the contract delivers social value
- Reduce inequality in their area
- Encourage contractors to pay the Living Wage, where relevant to the delivery of a contract

The new framework means there is a lower threshold for the effective review and challenge of procurement decisions. Public authorities still have a duty to treat all bidders equally and to be transparent and proportionate.

Case study: Get the evidence

We Own It is an organisation which campaigns against privatisation and outsourcing. They collect evidence to help campaign to keep public services in public hands.

There's a huge gap between the evidence about privatisation and the ideology often driving it. The gap needs to be exposed. We Own it can share academic work, reports and case studies about privatisation and public ownership. Everyone needs to know about this evidence so they make sure it's communicate as clearly and creatively as possible.

Find out more from We Own It¹³ if you would like them to work with local groups to get your council to commit to public services.

3) Decide on your campaign strategy

Your authority may not be willing to think about best practice. If you think there's any risk of outsourcing, you will need to have a clear campaign strategy to help you to be effective. Being prepared means that if there's a threat of outsourcing, you are ready to intervene instead of responding in an ad hoc way. Your strategy will help you stop procurement processes, promote in-house alternatives and protect your members.

There could be situations where your branch is not consulted and is faced with a threat to move to the formal procurement stage immediately, or where a decision in principle has been taken to enter into a contract or partnership with the private sector. So the sooner you develop your strategy, the better.

Your branch is responsible for developing its own strategy in consultation with the regional office. You can use UNISON's national policies and strategies while applying them to your specific local situation.

¹² <http://www.gov.scot/Topics/Government/Procurement/policy>

¹³ <https://weownit.org.uk/about-us>

Transparency

Find out what you can

Information is power when it comes to procurement. If your public authority is planning a procurement exercise, you need to understand as much as possible about what they have up their sleeves. This includes understanding their reasons as well as finding out about the key milestones where you can get involved.

- Find out everything you can about the procurement exercise – the scope, decision making processes and timescales
- Identify and obtain copies of all reports, both internal (from the public authority) and external (e.g. by consultants)
- Identify which of your members are likely to be directly and indirectly affected

Involve the key stakeholders

You'll need to meet as early as possible with everyone who is affected and develop a clear strategy together. You should contact:

- Your regional organiser
- Other UNISON branches – all relevant stewards and branch officers
- Other relevant unions
- Community groups and public service users who could be affected

If the plans affect a number of public authorities, e.g. a shared services project you'll need to develop a strategy with other branches and decide which region will lead.

Using the union

A major procurement exercise will usually continue for many months and in some cases years. An effective branch strategy will make significant demands on branch and regional time and resources and will have to be managed effectively. Can you designate a senior branch officer or steward with overall responsibility for the campaign?

Develop a critical path

If your public authority is looking to outsource services, you need to step into their shoes to try to understand why. This will help you to work out what needs to happen to put a brake on their plans, and how you can achieve this. Do you have a good idea of what is motivating your public authority? What would change their minds?

A good tool for campaigning is the idea of a 'critical path'. Picture the outcome you want to see and work backwards from that. Is there one person or one committee that needs to make a certain decision for you to win your campaign? What would need to happen before they would make that decision? And what would need to happen before that? And so on...

For example, if the reason for a procurement exercise is poorly performing services, can you work with your members to develop a service improvement plan to turn things around? Can you engage the public authority and show them that services can get better without outsourcing? Who do you need to influence most and how can you build a relationship with them?

Think about the reasons why your authority is looking at a service review or procurement exercise – and how you might be able to respond to them with a well worked-out plan. The reason may be one or a combination of the following, and there are a number of strategies you can use to respond:

Best practice

Reason: Efficiency savings/budget cuts

Your response: Can you demonstrate that the in-house option is likely to be better value for money? You could use on the ground experience or academic evidence.

Community and media

Reason: Ideological/political dogma

Your response: You may find that the best response is building powerful support against the proposals by working with the local community and the media – showing how unpopular outsourcing would be.

Best practice

Reason: Poor performing services/poor external assessment (e.g. Care Programme Approach (CPA); Department of Health (DH); Care Quality Commission (CQC); Ofsted)

Your response: Can you work with your members to develop a service improvement plan? Can you suggest new and better alternatives for improving services (rather than outsourcing)?

Legal tools

Reason: National policy directive (e.g. encouragement to contract out)

Your response: Does your employer understand that they don't need to contract out? Can you show them the legal information they need to be reassured on this front? Or can you make the case that your local situation means procurement isn't appropriate?

Reason: Access to capital investment/regeneration/local jobs

Your response: Can you suggest other ways of getting local investment? Outsourcing often means involving multinationals at the expense of the local economy. Can you work with local businesses to make your case?

Reason: Chief executive/senior manager(s) support outsourcing

Your response: Can you build a relationship with them and persuade them of the value provided by your in-house members? Can you side-step them by getting another key decision maker on your side?

It's always a good idea to keep in mind these questions:

Who do you need to persuade?

Can you build relationships with key decision makers?

Do you have friendly face in the contracting authority who can help you think about their point of view?

Who are your allies? Remember to think outside the box and go as wide with this as you can. You'll be stronger with allies.

What can you use as a bargaining chip if you need to? Influence on local voters? The threat of bad press? The threat of strikes? Combine negotiation and relationship building with a real threat of public campaigning.

Try out different tactics and keep experimenting.

Celebrate every victory – and don't give up!

How will you communicate your campaign?

Your communications plan should flow directly from your strategy. For example, if you are quietly negotiating with your employer and achieving results that way, you may not need to talk to the public much – though you will need to keep your branch members informed. But if your employer is ignoring you, you will definitely need to work with community groups and get the local media interested.

Community and media

Draw up a communications plan about how you will involve members and the wider community in the campaign. Identify the different audiences you need to communicate with. These might include: stewards, members, council managers, local politicians, user organisations and community groups

Tools you can use to communicate:

- Branch newsletter
- Website
- Social media
- National UNISON website and social media
- Members' meetings
- Council meetings
- Local organisations - spread the word at their meetings or through newsletters
- Local media – newspapers and radio
- National media if there's a national story

Using the union

Membership

A well organised union presence with high membership density and good steward cover will help your branch to win the campaign. How can union members support you?

- Carry out a mapping exercise of UNISON membership and density in the areas directly and indirectly affected including steward numbers, location and occupational coverage
- Plan a mini campaign to organise and recruit to boost the union presence in the affected areas
- Can your members help your branch to link up with other unions, community groups and the media?
- Can you ask members to use industrial action to support your campaign?

Using the union

How will you resource the campaign?

Do you have the information, skills, training and support you need to campaign about procurement? You might want to consider the following:

- Guidance and advice - UNISON materials available¹⁴ from head office or national service groups, training modules and packages
- Company information – company profiles; information on potential bidders and management consultants is available from the **Private Companies Unit**¹⁵ or the **Bargaining Support Unit**¹⁶ at head office
- External expertise – UNISON endorsed and recommended external advisers who can provide an analysis of the potential impact of any proposals; longer term support; or act as an employer funded ‘critical friend’ working directly to the union locally (contact your regional officer for further information)
- Experience/knowledge of similar issues arising elsewhere (e.g. neighbouring branches)
- Finance including possible sources outside the branch e.g. regional pool; General Political Fund (GPF)
- Paid release for branch officers and regional support
- Audit of branch officers and stewards who have undertaken training and an assessment of training needs
- Identify priorities for training (including basic and advanced), timescales and how the training will be delivered.
- A short intensive workshop facilitated by the region or an external organisation might help you explore procurement proposals and develop your strategy

Outsourcing is a big threat so your branch will need to be prepared for it. But you may have other priorities too (e.g. pay and grading reviews; member representation). Look at how they can be resourced and managed during the procurement exercise – and at how these other priorities might fit with your campaign.

Case study: Barnet

Barnet Unison has a challenge on its hands. Barnet Council is driven by an ideological commitment to outsourcing as many public services as possible.

In 2009 Barnet Council introduced a policy which was dubbed 'EasyCouncil'. The idea was to offer only basic public services at a fixed price with 'fast track' services available if you paid extra. This approach was abandoned and replaced by the consultant driven 'One Barnet Programme', which led to the council privatising and outsourcing a whole range of services within three years, from social care and public health to housing and planning. Hundreds of council workers were transferred to other employers. This often meant

¹⁴ <https://www.unison.org.uk/get-help/knowledge/contracts/procurement/> and <https://www.unison.org.uk/get-involved/learning-development/activists/negotiating-and-bargaining/>

¹⁵ Staff and organisers can contact the Private Companies Unit and receive a newsletter network for information and resources. Contact private.contractors@unison.co.uk and

¹⁶ bsg@unison.co.uk

redundancies as the new employer moved jobs out of the borough and Greater London to places as far afield as Belfast, Carlisle, Coventry, Southampton and Darlington. Barnet is now calling itself the 'Commissioning Council'.

Further services are at risk of outsourcing, including early years, library services, adult social care, street services, education and school meals.

The council has a very ideological approach, which means it's difficult to argue with them and make the case that services should stay in-house. The UNISON branch campaign has responded by working with residents to create as much public pressure as possible. It has done this through:

- Working alongside community groups such as Barnet Alliance for Public Services, Save Barnet Libraries and local campaigners 'Mrs Angry' and 'Mr Reasonable'
- Campaigning with families and children, for example with the 'Kids 4 Libraries' march
- Lots of demonstrations to show the community anger on the street
- Repeated strike action
- Active social media
- National press coverage in the Guardian to embarrass the council

Key Stage two (a): Service reviews, options appraisal and announcement of new procurement proposal

Your goals

- 4) Understand the service review and options appraisal process – knowledge is power!
- 5) Develop a service improvement plan (SIP)
- 6) Be involved in the options appraisal - ensure an in-house bid is considered at the options appraisal stage and that the scoring and weighting mechanisms so that in-house bids are given a fair hearing and authorities make use of the mechanisms they can to look beyond short term costs
- 7) Develop an in-house bid
- 8) Make sure employment issues are tackled before contracts are advertised



Watch out!

- A service improvement plan (SIP), which is the plan you will have to design to show how you will improve services over the next 2-3 years, can lead to changes to job titles, terms and conditions and potentially job losses. It's worth bearing this in mind, but not engaging could be much worse than engaging in this process.
- Don't justify outsourcing. UNISON should not put itself in a position of providing a justification for outsourcing based on participation in a process and should remain independent and critical at all times.
- Some public authorities may select a 'poorly performing' service for procurement without a full service review and/or options appraisal. They may also consider transfer of the service to an arms-length organisation, company or trust or they may consider ways of 'deconstructing' the service into separate parts and transferring them or procuring them separately.

4) Understand the service review process – knowledge is power!

We all know that prevention is better - and easier - than a cure. It's the same with procurement. It's much easier, and often more effective, to intervene early in the process, before decisions are made. Below we outline two related but interlinked parts of the process where intervention can be extremely effective - the service review and options appraisal stages.

Within all of this there are multiple ways to get involved in the process and - doing this at this stage could be much more effective in your fight to keep services in house, improve services and save jobs and conditions for your members. Not getting involved at this stage can also mean that the process is more likely to lead to outsourcing decisions, as in-house bids won't be considered, so it's important to act now.

What's a service review?

Good practice and 'best value' would dictate that the decision to procure is based on a full review of service/activity and an options appraisal. This is designed to establish

- (a) the need for the service;
- (b) the best method of providing the service and;
- (c) who should provide the service.

Service reviews are a management tool, but should do a number of things:

- challenge the basis on which a service is provided
- collect baseline information on costs and performance
- analyse all business processes to ensure the most efficient and effective means of service delivery
- collect market intelligence and benchmarking information about how other similar services in the public, private or voluntary sectors are provided
- take into account the views of staff, trade unions and service users.

The service review and options appraisal is often a weak link that can be exploited by you. Either a service review isn't done at all, or it is inadequate. UNISON branches should always argue that a fundamental service review should be carried out before any procurement is pursued or changes made to in-house services.

The scope and nature of service reviews will vary widely depending on the context. But regardless of the sector, a service review is a powerful tool in examining current performance and identifying how to secure improvement in service delivery.

By engaging in this process you can highlight these failures, run parallel service reviews, develop your own service improvement plans (SIP) and ensure that the reviews take into account fully the views of the community and your members. Failure to be involved can speed up the move towards outsourcing and mean that in-house options aren't fully considered, particularly if the authority is biased towards certain solutions.

See **Appendix 1** for how to carry out a service review yourself. This is likely to be a good idea!

Note: where there is a Framework Agreement in place then services do not need to go to tender. This is because the Framework Agreement means that there is a list of preferred providers.

What can you do?

At all times the key is focusing on improving services - the best way to engage commissioners. Public authorities don't *have* to go to market or outsource – but they do have to look for continuous improvement and find best value. That said, the new regulations also provide more 'flexibility' for authorities to decide what's best for them – and this can include just simple cost (except in Scotland). Be sure to make the case that they need to look at social value and whole life costs from day one.

Transparency

Make sure that you are aware at an early enough stage of any proposals that may lead to outsourcing, and ensure that you have access to the relevant documentation supporting any decisions.

Using the union

At all times keep your branch members up to speed with what is going on. This will help ensure your branch response strategy is as strong as possible. And as a union you have access to resources and training that can help you – consultants are often bad news, but you can ask authorities to hire consultants to check on the consultants work to review the service review/options appraisal process ensure that they aren't being biased towards private sector solutions or are reviewing services effectively.

Ensure that you are aware of service review techniques and consider training UNISON stewards to take part in reviews (e.g. Business Process Reengineering)

Community and media

Get in touch with community organisations when you hear a service review is taking place. Make sure they know to feed in to the authority what they like about the service and that they are consulted as part of the process.

Legal tools

There are various tools you can use to help ensure that you are involved in the service review/options appraisal process. For example, s.138 of the Local Government and Public Involvement in Health Act (2007 – England and Wales only) and s.15 of the Local Government in Scotland Act (2003) include provisions that can be used to ensure that unions and/or representatives of those who work for the authority are involved in the planning process. UNISON can use the statutory duty to insist that it is fully involved as a representative of the workforce.

Diagram – Outline of process from service review to business case

Scoping of a Service Review

Establishing a review team
Developing terms of reference for a service review



Carrying out a baseline assessment

Collecting of available evidence on current service performance (eg cost, quality and customer / service user satisfaction)



Evaluating the evidence

Analysing service performance
Analysing business performance



Developing the options for future service delivery eg

In house delivery through a service improvement plan
Competitive procurement exercise with an in-house bid
Competitive procurement exercise without an in house bid



Options appraisal

Determining realistic options
Appraising options using appropriate method
Ensuring evidence supports the appraisal



Developing a business case

Setting out justification of preferred option
Choosing appropriate in house service improvement or procurement route

The use of management consultants

Management consultants are often used by public authorities to provide a rationale for outsourcing. But the conclusions of consultants are often based on flimsy evidence or a pre-determined approach.

It is therefore vitally important that UNISON branches challenge the assumptions underpinning management consultants' assessments. Their reviews often fail to engage with the staff delivering a service or service users; can use market intelligence and performance data which is unreferenced; and use options appraisal methods that are heavily weighted in favour of one particular outcome.

Management consultants are used in a number of different environments and for different kinds of procurement and commissioning, including financing (PFI/PPP/LIFT), service delivery partnerships, and CCG commissioning and building contracts. Generally these services are provided by major financial and accountancy firms like PWC and KPMG.

Scrutiny

While management consultants all too often play a negative and pre-determined role, if they are properly used and managed well they can sometimes play a positive role in bringing your expertise to the table.

- The branch should arrange to meet with any management consultants appointed and make an assessment of the role they are expected to play.
- Seek an 'open access' approach by the authority so that UNISON has full disclosure of documents/reports produced by management consultants and is able to critique the assumptions and rationale used to support the consultants case
- Ensure you have an opportunity to analyse and comment on any reports produced before they are considered by councillors/board members/the project board or formally published.

Using the union

You can use the union to help turn the tables on management consultants. The UNISON branch and/or the public authority (particularly an overview and scrutiny committee) may wish to appoint their own external consultants or advisors. Where this happens it is important to be absolutely clear on the role and the tasks that the consultant is required to undertake, such as:

- **Critical friend** – offer an objective third party appraisal of plans actions and recommendations made (e.g. by other management consultants) at any stage from pre-procurement through to contract award
- **Service appraisal/improvement** – offers an objective appraisal of the in-house service and makes recommendations for improvement to pre-empt a move towards active procurement
- **Project support or advisor** – gives technical and practical advice on what in-house services need to do to prepare effectively for inclusion in a tendering process.

In these and other roles consultants can be used to offer support and bring skills to the authority team for an entire procurement-related process or just for a specific task within it and if used well can add a legitimacy to the unions' preferred approach.

At the end of a service review process there are a number of possible outcomes:

1. ***The service is working well – no action required.*** The service review can find that the service meets the necessary performance standards and requirements of the service users and the public authority. If this happens an in-house service improvement plan is put in place to drive continuous improvement in the service until the next review. This approach further avoids a costly and resource hungry procurement exercise.
2. ***The service needs improving.*** The service review can show that there is a weakness in service performance and further action is needed. This action will include, retaining current in-house service, but with a 3 year Service Improvement Plan (SIP), or going through the procurement exercise with or without an in-house option. These options will (usually) need to be considered through the options appraisal (see below), but before that it is best practice to look at the possibility of improving services through an SIP, although occasionally, where circumstances prevent in-house service improvement, this might not be possible. This can be the case for instance where a service review identifies factors that make in-house improvement difficult, for example identifying the need for external investment to make a service viable.

5) Develop a Service Improvement Plan (SIP)

Service Improvement Plans (SIPs) have a vital role in providing evidence for, and substantiating in-house provision. They are a great chance for you and your members to demonstrate your understanding of the needs of service users and the ways services could be improved locally. The SIP allows you to set out the activities and action required to achieve these improvements over the next 3 years.

As such, SIPs should combine a vision for the service with strategy and a programme. The SIP must convey to heads of commissioning bodies, service users, and staff and inspection bodies that an in-house option has clarity and is sustainable. A good SIP should include clear objectives and tasks with measures of output and outcomes and defined responsibilities.

The SIP is important because it can be used later too, at the options appraisal stage. It is also a tool to hold management accountable for progress, to build staff support, facilitate wider community engagement in the future of public services.

If your SIP is implemented it should be reviewed at regular intervals to ensure that it is being properly implemented properly and effectively, and where appropriate revised and updated to reflect any changed circumstances. UNISON branches should ensure that they are involved in monitoring and reviewing SIPs and this should be a part of the plan itself.

See **Appendices 2 and 3** to understand the scope of an SIP and what should be included.

Scrutiny

Ensure that UNISON is involved in monitoring and reviewing the outputs and outcomes of the SIP.

Using the union

Where the SIP will involve changes to staff working practices and/or terms and conditions ensure that this is subject to proper consultation and negotiation in accordance with agreed procedures

Where a successful SIP is put in place make sure that the lessons learned from the process are incorporated into the branch strategy and information and intelligence is fed back to the regional office of UNISON so that the success can be publicised and learning opportunities for UNISON maximised.

Community and media

Tell the local media you are doing a SIP and that you are committed to improving services. The community can also be included in the SIP, and their views taken into account through online polls.

6) Be involved in the options appraisal

After the service review (assuming one is done and/or that it doesn't result in an in house option), Public authorities are required to assess the options available. This is the stage of the process where the options available are scored, and a decision made about the best way to provide the service in question is taken. Remember that an options appraisal is a 'method' not a 'science'. It is a way of weighting and scoring the procurement options identified by reference to the available evidence. The weighting and scoring can be very subjective and will determine the relative outcome of an options appraisal.

Note: In some cases the scale of the procurement exercise may not lend itself to the carrying out of a formal options appraisal and business case (e.g. if it is a small contract) although it is always good practice to undertake an appraisal of the options available.

If you are at the options appraisal stage, it's important that the process can still lead to the continuation of in-house provision under a SIP. You should be arguing that at the very least the SIP should be one of the options considered.

You need to ensure that an in-house bid isn't made less likely to succeed because of biases in the scoring and weighting of the various options. You can challenge assumptions and biases, and refer to the Public Services (Social Value) Act and the provisions in the UK PCR that allow authorities to use social, environmental, technical and quality criteria to assess bids later on. These should be used at options appraisal too. Like the service review, the options appraisal will often see management consultants used too – so think about ways you can turn the tables if you think they are being biased.

(Note: an options appraisal can form part of a service review, i.e. where the options for the future delivery of the service are evaluated at the end of a service review. But in many cases where a service review has not been carried out, an options appraisal will be undertaken separately (sometimes with the assistance of external consultants) or as part of developing a business case for a procurement option.)

What to do if authorities resist you being involved in the options appraisal?

There are few if any effective legal remedies if trade union involvement is not permitted. However, UNISON can seek to challenge the process. For instance under s.138 of the Local Government and Public Involvement in Health Act 2007 (England and Wales only), local authorities (but not police authorities) have a duty to involve "representatives of local persons in the exercise of their functions" and this includes "those who work for the

authority". Where appropriate, try to get the issue referred to a body such as a local authority overview and scrutiny committee. UNISON can also challenge the process if it appears to be in breach of the statutory equality duty imposed on public authorities and/or if it contravenes any statutory guidance on workforce involvement. UNISON can also lobby councillors and executive and non-executive members of health bodies and promote their case through the media. If all else fails, the use of the Alternative Disputes Resolution (ADR) procedure, which is part of the Code of Practice on Workforce Matters or appropriate industrial action can be considered in consultation with the membership and the regional office.

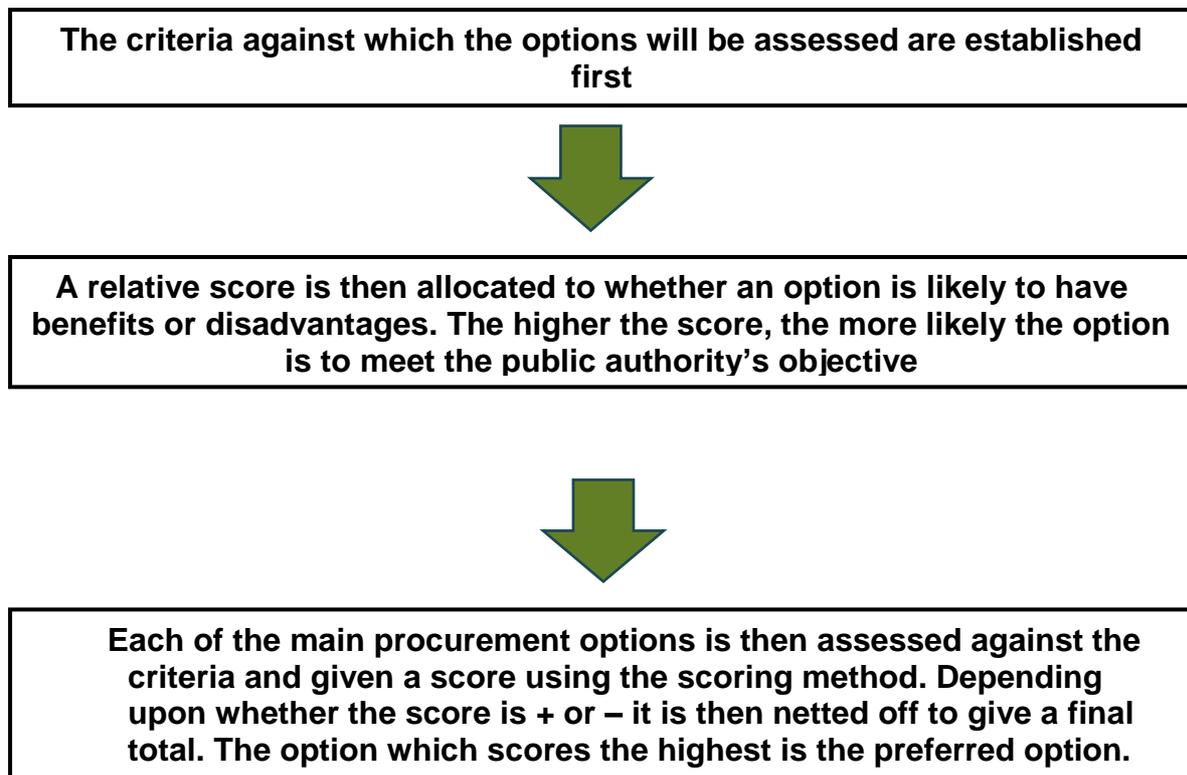
How are the options assessed?

There are four principles that should be taken into account when assessing the options. These are:

- that each service is different and no option should be ruled in or out before being appraised
- no option is automatically better than any other. The main question should be which option will achieve highest quality and wider community benefits on a cost effective basis?
- even when an option is chosen, there will still be further choices. These will include factors such as the type of competition and the selection of a contractor.
- any decisions must be based on evidence from the service review on costs, quality, scope for continuous improvement and the fit with the public authority's wider objectives.

There are broadly six main approaches to options appraisal – see more detail on these in Appendix 4 if you need to.

The options appraisal process



Watch out!

In many instances where an options appraisal has been carried out by external consultants the benefits of in-house improvement are undervalued in favour of other perceived benefits that a preferred external provider can bring e.g. investment in IT infrastructure, management capacity, access to wider markets, regeneration and employment. Public authorities often assess other options against an “in-house” option that is treated as a standstill or “do nothing” option (i.e. status quo). This approach condemns the in-house option to fail before the process even begins. That’s why it’s vital that an in-house bid is part of the options appraisal.

Transparency

Request a copy of the draft_criteria and scoring.

Best practice

If an in-house bid isn’t on the table, you can argue that it should be. Then object to any criterion that is considered prejudiced or inappropriate or irrational. You can use the Public Services (Social Value) Act to make the case for including wider notions of value in the scoring mechanisms.

Scrutiny

Propose additional or alternative criteria, object to any weighting that is considered prejudiced or inappropriate

Using the union

Lobby members, executive/non-executive directors of health boards and chief officers if UNISON concerns are not being acted upon.

7) Develop an in-house bid

In-house bids don’t mean doing nothing. Remember that many of the benefits associated with outsourcing options can equally be secured by an in-house service and that where there is limited access to skills, investment and resources these can often be addressed by the in-house service working in tandem with another service provider. For instance the supply and installation of “state of the art” IT infrastructure can be achieved with the in-house team working in partnership with a private supplier and implementing business process changes internally or sharing services with other authorities.

In house bids can vary a lot. Different approaches will be necessary in different places. But they can include:

- reconfiguring the in-house team to meet the requirements of the service review and options appraisal
- in-house team working in partnership with other providers to access skills and /or build capacity
- in-house team working with other providers to access wider markets, investment etc
- shared services model – in-house team working in partnership with another public body or bodies to provide services

New ideas

There are lots of alternative ways to develop in-house bids. Shared services are a good way to avoid outsourcing. Some of the opportunities for joint working in the public services are as follows:

- working across organisational boundaries to provide integrated services (E.g. pooling resources with other authorities, transferring or delegating functions, or developing a single provider of integrated services)
- developing a wider range of approaches to fit particular circumstances
- joint committees and boards
- joint contracts with third parties
- joint support services
- delegate functions and second or loan staff more effectively
- making better use of public-sector assets (eg exploiting their potential for one stop-shop working)

Sometimes public authorities might choose to develop a *new* in-house solution in response to a service review, or failure by contractors. The evidence that would support such an option includes:

- existing service providers have consistently, or seriously, failed to meet the authority's requirements
- the public authority agrees to take over responsibility for service provision from another public sector organisation as a result of *its* decision to choose an alternative service delivery option
- a review has identified the need for a new service, or a gap in existing provision, for which there is a clear need

Transparency

Make sure that you are aware of when a business case is being brought forward for approval. Use agreed protocols to access information on any proposal included in the business case.

Scrutiny

Where a business case/justification has not been provided challenge the public authority to provide one.

Ask the authority to engage an independent body or 'critical friend' to review the business case and make recommendations. Where the 'public authority' refuses to do so, consider engaging an independent third party or consultant to carry out such a review and publicise the findings.

Best practice

Ensure that any business case is subjected to effective scrutiny. In local authorities this should not just involve the executive or cabinet, but should be fully considered by overview and scrutiny committees.

Using the union

Ensure that staff and UNISON members are fully aware of the proposals in the business case and bring pressure to bear on the public authority to take into account the views of staff. Contact Labour Link or General Political Fund where appropriate.

Work effectively with the management of the in-house bid team to put together a tender. Ensure that appropriate skills are available to support the in-house bid including where appropriate engaging consultancy support for the in-house team.

Work jointly with other public sector unions to oppose any outsourcing proposals and to lobby commissioning bodies.

Community and media

Where the proposals impact upon service users and the wider community, publicise the implications including any findings of an independent review commissioned by UNISON and mobilise support amongst service users and community groups.

8) Make sure Employment issues (TUPE, Equalities, Pensions) are tackled before contracts are advertised

Implementing changes – either outsourcing or keeping in-house services with a SIP – will mean changes for staff. Obviously you'll need to be in discussions about how the authority will implement changes, and in the implementation of the changes themselves.

Your members are likely to support a union campaign that focuses strongly on protecting their pay, conditions and pensions. If you win a good employment package it will help them and it will boost the credibility of the branch - making it easier for you to recruit and retain members in the future. It will also make it more difficult for an external provider to make savings at the expense of the workforce, so it could make it more likely that services stay in-house.

That said, there is an obvious tension between fighting to stop the outsourcing of services, and fighting to keep good conditions if services are outsourced, which has been the focus of the above guidance.

Unfortunately, you need to try to do both. Dropping a focus on conditions and the transition can be worse for members, as authorities are likely to provide the basic minimum TUPE protection and the minimum pension arrangements for transferred staff and new starters. But fighting just for good conditions doesn't challenge the logic of outsourcing and makes your life harder in the long run because fragmented services make organising harder.

Your aim should be to achieve the best possible terms and conditions for employees, with a good pension scheme for new starters. As always, you need to get involved as early as possible to make it easier for you to secure the best outcome for your members.

And remember, even with in-house improvements, changes in systems, staffing arrangements and relationships with service users will all take time to embed and services must still be delivered. Changes to job descriptions and requirements will have to be negotiated as will any redeployment or redundancy.

Watch out!

There have been instances where union branches have delayed discussing the employment issues, instead putting all their energy into campaigning against outsourcing - only to discover later that they have missed the opportunity to influence the employment model. Make sure you keep track of employment issues right from the start.

Understanding TUPE

To get the best conditions you need to aim for securing the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). TUPE safeguards employees' rights when the business in which they are employed changes hands. The TUPE Regulations provide a range of legal safeguards including:

- terms and conditions of employment
- previous employment rights
- protection against dismissal for any reason connected with the transfer
- accrued pension rights
- collective agreements
- union recognition
- Information and consultation rights.

The UNISON 'TUPE branch guidance'¹⁷ is the 'one stop shop' for the information and advice a branch will need when dealing with transfers, from the start to the finish. UNISON also has a dedicated web page on TUPE¹⁸ with additional resources.

New starters taken on after a transfer are not covered by TUPE and are often employed on worse pay and conditions. This creates a two-tier workforce.

The Code of Practice on Workforce Matters in Public Sector Contracts used to offer new starters broadly comparable terms and conditions to those received by TUPE transferred staff. Under the Code of Practice on Workforce Matters in Local Authority Service Contracts 2003, new recruits used to be guaranteed:

- Pay and conditions which were overall no less favourable than transferred staff;
- The right to membership of the local government pensions scheme, membership of a good quality employer pension scheme or membership of a stakeholder pensions scheme under which the employer would match employee contributions up to at least 6%

However, the 2003 code was revoked on 23 March 2011, although it continues to have effect with regard to contracts entered into before that date.

The code has been replaced by a voluntary statement of "Principles of Good Employment Practice for Government, Contracting Authorities and Suppliers".

This merely provides that "Where a supplier employs new entrants that sit alongside former public sectors workers, new entrants should have fair and reasonable pay, terms and

¹⁷ <https://www.unison.org.uk/content/uploads/2014/04/On-line-Catalogue223172.pdf>

¹⁸ <https://www.unison.org.uk/get-help/knowledge/contracts/tupe/>

conditions. Suppliers should consult with their recognised trade unions on the terms and conditions to be offered to new entrants.” Pensions are not specifically mentioned.

They also highlight that contracting organisations should make sure that supplier policies and processes are compliant with the Equality Act 2010.

However, branches should seek to include the following fair employment policies through negotiation with the employer:

- variation to conditions of service should only be introduced following a collective agreement with a trade union;
- new recruits will be on the same/very similar terms and conditions.

Scrutiny

Look closely at the potential impact on members' terms, conditions and employment at the start of any service review or procurement exercise.

Best practice

Talk about employment implications at each stage of the procurement process. Influence the OJEU advert at the beginning of the procurement exercise.

Using the union

Make sure the branch meets at an early stage to make a plan and that the employment issues are a central feature of the branch strategy. Try to meet with bidders to assess the impact on conditions.

Use UNISON resources - the union has a wealth of knowledge and experience of negotiating on employment issues. See the UNISON branch guidance on TUPE¹⁹ for more information about employment issues. This has key advice about organising, as well as specific advice for different sectors.

Pensions:

Private contractors are generally expected to offer a “comparable” pension scheme to transferred staff. Both the Local Government Pension Scheme in England and Wales, which came into force in 2014 and the NHS Pension Scheme 2015, include measures to allow staff transferred to the private sector to keep their membership of these schemes.

In October 2013, the government published new ‘Fair Deal’ guidance on pensions for staff transferring from the public to private sector. In health, staff whose employment is compulsorily transferred under TUPE from the NHS to independent providers of public services will generally have a right to continued access to the NHS Pension Scheme, rather than a broadly comparable scheme, as was previously the case.²⁰ Keep in touch with updates on pensions on the UNISON website.²¹

New starters must be offered an opportunity to join a pension scheme, and these will range from a good quality final salary scheme, to a defined contribution scheme with a matching employer contribution of up to 6%.

¹⁹ <https://www.unison.org.uk/content/uploads/2014/04/On-line-Catalogue223172.pdf>

²⁰ <https://www.unison.org.uk/news/article/2013/10/government-publishes-nhs-pensions-guidance/>

²¹ <https://www.unison.org.uk/get-help/knowledge/pensions/>

Part time employees:

Under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, a part-time worker has the right to no less favourable treatment than full-time workers.

Equality Impact Assessment (EIA)

EIAs are no longer a legal requirement under the Equality Act 2010. However public service providers should use their judgment to pay due regard to equality (See section.149 of the Equality Act).

However, authorities still have a duty to ensure that decisions don't discriminate against groups of people. These groups can be demarcated using various equality characteristics, including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion/belief, sex, and sexual orientation. Organisations are expected to use this understanding to demonstrate 'due regard' to the Public Sector Equality Duty to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between people who share a protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not.

Public service providers should ensure that a proportionate, timely approach is taken to equality assessment at the outset of the policy making process and that an audit trail is kept to ensure that "due regard" has been had to these issues. You can argue that the Equality Framework for Local Government would be a good process to follow to assess impact.

Best practice

While they aren't a legal requirement, you could still argue that an EIA should be done and that this represents best practice. Read UNISONs Equality Duty Factsheet²²

Health and Safety

UNISON believes health and safety in the workplace is an issue for everyone. Every year, thousands of people suffer accidents and ill-health at work – most of which could be avoided. Speak to your UNISON safety rep if there are any concerns during procurement. UNISONs health and safety resources can also help you²³.

Stage two (b): Tendering procurement process

Your goals

- 9) Understand the new regulations, exemptions and the different procedures that can be used to run a procurement process and exemptions that you and authorities can use to stop putting a contract to a full procurement process
- 10) Be aware of the process and the points you can intervene
- 11) Ensure due process is followed and that it isn't biased towards the private sector
- 12) Influence the contract award criteria and the evaluation of bids

²² <https://www.unison.org.uk/content/uploads/2013/06/Briefings-and-CircularsPublic-Sector-Equality-Duty-Factsheet3.pdf>

²³ <https://www.unison.org.uk/get-help/knowledge/health-and-safety/>



Watch out!

- You'll have to influence things like the type of procedure used and the employment issues raised ahead of the contract being posted on the OJEU.
- Once posted, you won't have much time to respond. Minimum time limits for responses have reduced to 30-35 days, although they can be even shorter than that.
- Local authorities, contractors and/or their advisers usually require that branch officials and staff members can only gain access to bid documents by signing a confidentiality agreement. As long as this does not inhibit the branch producing their own analysis of the bids for circulation to elected members and staff there is little to be lost by the union agreeing to sign an agreement

9) Understand: the new UK regulations²⁴, exemptions, the different procedures that can be used to run a procurement process

Key elements of UK Public Contracts Regulations 2015²⁵

General provisions

Fair and equal treatment: Authorities must treat different suppliers equally. This means that they can't be biased against in-house services or mutual, although it might often feel like this is the case. As in the options appraisal and service review, you can use consultants if you feel like this is the case, and pay close attention to procedures to make sure that information is shared with you at all stages.

Can't avoid procurement: Contracts can't be designed to void procurement exercises, and the design of the procurement can't artificially narrow competition.

Confidentiality: Authorities must treat information with confidentiality. This will be something you hear a lot when requesting information.

Transparency: An authority must be transparent and share certain information and documents. This takes precedence over confidentiality.

Electronic documents: All procurement documents must be available electronically from the date any contract notice is sent to the OJEU. Contracting authorities need to offer full and unrestricted access to all the procurement documents from the date that a contract notice (or invitation to confirm interest following a PIN) is published in the OJEU. "Procurement documents" is a defined term in the PCR 2015 and will include, in addition to the call for competition itself, and non-exhaustively, technical specifications, descriptive documents, pre-qualification questionnaires, invitations to tender, and the terms and conditions of the contract.

Prior Information Notices (PIN)

Public bodies can make their intention of planned procurements known by publishing a Prior Information Notice (PIN). The PIN can be published up to twelve months in advance of the actual procurement exercise taking place and will contain some basic information regarding the goods, works or service to be purchased.

²⁴ <http://www.legislation.gov.uk/ukxi/2015/102/contents/made>

²⁵ See the government web page on all procurement guidance <https://www.gov.uk/guidance/public-sector-procurement-policy>

In the vast majority of cases, publishing a PIN is not a mandatory requirement for the public body but can alert the market that there is an opportunity coming up within the next 12 months and make it possible for the buyer to reduce the timescales needed to complete the procurement exercise. In most cases public bodies will follow up the publication of a PIN with a **contract notice (advert)** when they are ready to carry out the procurement exercise.

Where a PIN may be used differently:

Public bodies which are not part of central government are allowed to use a PIN as a call for competition replacing the need for an additional contract notice. If the PIN is to act as a call for competition, this will be clearly stated in the PIN. It is important that you understand the type of PIN that is being used by the buyer. When it is being used as a call for competition this is your opportunity to express interest in the future procurement exercise.

Sub-central authorities, including local councils and certain NHS Trusts, can now use a PIN to:

- Notify suppliers and the market of a forthcoming opportunity
- Give specific intent to reduce the tender timescales in the Open, Restricted and Competitive Procedure with Negotiation
- 'Call for Competition' which negates the need for a further Contract Notice and means that only those suppliers that respond as required will be invited to participate at the selection stage in the Restricted and Competitive Procedure with Negotiation

It's important to note that:

- When a PIN is used as a Call for Competition there will be no further Contract Notice published, so the PIN will begin the selection questionnaire cycle. When the authority is ready to proceed with competition it will only consider those suppliers that have responded to the PIN. Only those that reconfirm their interest, when asked to do so, will receive the new standard Selection Questionnaire (SQ)²⁶.
- Timescales also differ at the tender stage when PINs have been used with the intent to reduce timescales. In the Open Procedure, which allows 35 days for response, a PIN can cut the timescale to 15 days. In both the Restricted and Competitive Procedure with Negotiation, the 30 day minimum timescale can be slashed as low as 10 days.

Use of Contracts Finder: There is an obligation to publish non-OJEU notices to all four UK government Contracts Finder portals as well as all OJEU notices advertised on Contracts Finder. The regulations include a statutory obligation (other than for a contracting authority that is a maintained school or Academy) on contracting authorities to also publish on Contracts Finder any contracts (below threshold) as low in value as £10,000 or £25,000 for 'sub-central' contracting authority procurements.

Self-certification of suitability: Introduction of the European Standard Procurement Document (ESPD) and E-Certis: The new Selection Questionnaire (SQ) means that companies have to self certify that they meet minimum mandatory and discretionary criteria and are exempt from criteria that could be grounds for exclusion. All contracting authorities will now need to accept the ESPD, which is a standard EU form of self-certification available for use by a supplier, to demonstrate it is not within the exclusion criteria and that it meets financial standing and technical capability criteria.

²⁶

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/558531/PPN_8_16_StandardSQ_Template_v3.pdf

The contracting authority may request supporting documentation or evidence at any stage, however, if the evidence needed is directly obtainable (e.g. through central databases) then this route must be taken. If you think that companies don't meet the minimum then you may have to wait until the deal is almost signed to challenge this, but you could raise concerns earlier.

Eventually there will be an obligation to accept ESPDs provided exclusively in electronic form. This will come into force 18 April 2017. The use of the European online certificates repository, e-Certis, has also been mandated. This will come into force 18 October 2018.

Conflict of interest: Conflict of interest just means having a direct or indirect financial, economic or personal interest which compromises their impartiality. This applies to staff at authorities and staff of bodies acting on behalf of authorities, e.g. where procurement is subcontracted. Authorities must try to prevent and remedy conflicts of interest to allow fair and equal treatment of suppliers.

New Specific provisions

New threshold rules: Above the threshold limits the procurement rules apply.

The new EU rules apply only to contracts with a value (not including VAT) estimated to be at or equal to:

Works contracts: EUR 5,225,000 (£4,104,394)

Public supply and service contracts by central government: EUR 135,000 (106,047)

Public supply and service contracts by local government: EUR 209,000 (£164,176)

Public service contracts for light touch regime: EUR 750,000 (£589,148).

This means full procedure will need to be followed. Contract notices or PINs will need to be published, pre-qualification questionnaires will need to be done, award criteria and weighting will need to be rational and transparent, and suppliers will need to be treated fairly and equally and information made transparent and available.

Below the threshold limits authorities are free to pursue their own procedures.

Under-threshold contracts: For the first time the Regulations require that contracts as low in value as £10,000 (or £25,000 for 'sub-central' contracting authority procurements), if advertised at all, must be advertised on the government's "Contracts Finder" portal; and unless one of the exemptions at Regulation 112 (2) applies, details about contract award must also be sent to Contracts Finder.

Note that maintained schools and Academies are exempt from these requirements, as are contracts for health services covered by the NHS Regulations.

Part A/B services distinction has been abolished: Under the new rules fewer contracts can be restricted from full procurement procedures. Replacing the old Part B services is a new 'light touch regime' which is meant to make it simple to avoid costly procurement exercises in certain sectors that it isn't appropriate to be put out to tender. Mostly this means social, cultural and education services. See new 'light touch regime' below.

New contract award criteria: There are better provisions to allow authorities to award contracts using criteria other than price. The new rules permit decisions to be made with reference to "quality, technical merit, aesthetic and functional characteristics, accessibility,

social, environmental and innovative characteristics.” Social’ criteria are included for the first time.

This means that using ‘price only’ criteria to award contracts can be ruled out. Public authorities can now take a ‘price - quality ratio’ approach where price is only one criterion amongst others in deciding who to award the contract too. This means you do have the opportunity to challenge the way that the authority decides the contract award criteria.

A price only approach leaves the door firmly open to the continuation of damaging price-only competition fuelling the race to the bottom. This can now be challenged. Public procurement competition can be used by public authorities to encourage companies to adopt much better social responsible procurement criteria: implementing the Living Wage; decreasing the gender pay gap, adopting good equalities and fair employment practices; improving financial transparency; preventing blacklisting, non-payment of employment tribunals, health and safety breaches and breaches of environmental and tax obligations.

Revised provision on abnormally low tenders: There is a duty on the authority to investigate low tenders. Low tenders resulting from breaching international environmental/social/labour laws must be discarded. But no action required when the prices in tenders appear abnormally low.

New timescales: All of the time limits for all the procedures for procurement have been shortened. This means there is now less minimum time from publishing a contract to receiving bids or tenders. So watch out!

For open procedure the new time limits for receipt of tenders is 35 days from publishing the contract notice (30 days if submitted electronically, and 15 days if a Prior Information Notice was published and nothing substantially changed).

For other procedures the minimum time is 30 days, which can be shortened to 25 days if submitted electronically, and 10 days if a Prior Information Notice was published and nothing substantially changed. Restricted procedure can also be shortened to 15 days if the authority can demonstrate urgency is required.

Exemptions – Teckals (vertical and horizontal), Mutual’s and the new ‘Light Touch Regime’

Under the new rules there are provisions for certain contracts to be exempt if they meet certain criteria. These exemptions ensure that in-house contracts don’t have to be put out to market, but also exempt award of contracts to organisations over which the authority exercises control ‘similar’ to that which it has over its own departments. These exemptions apply to organisations that are controlled by authorities jointly too, so integrated in-house providers run by multiple councils are exempt from procurement.

Teckals

A Teckal is the name given to co-produced services which are vertically integrated (if the organisation is horizontally integrated it is referred to as a Hamburg-type organisation) This means that an organisation that is jointly owned and/or run by multiple authorities can be exempt. To qualify however, 80% of activities carried out by that organisation (in total) must be related to the performance of that contract.

Mutuals

Public contracts can be reserved for mutual and social enterprises only - if a public authority declares its right to exercise the discretionary use of the right to reserve contracts for mutual’s in these services under Regulation 77. The thrust of the reasoning for this is to

enable small and medium sized social enterprises and business to gain experience in delivering public service contracts before they are subjected to full competition. However, you can use this provision to keep services in house.

To qualify organisations must meet all of the following criteria:

- The objective of the organisation has a public service mission linked to the delivery of those services listed in Schedule 3 (see below)
- Profits are reinvested or distributed on participatory considerations (i.e. to staff/owners of the organisation)
- the structures of the organisation (at least when performing the contract) are based on employee ownership or participatory principles OR require 'active participation of employees, users or stakeholders'
- The organisation has not received a contract for the services concerned within the last three years

This criteria is *incredibly* vague and leaves open the options for private sector groups to meet these criteria only for the duration of the contract, and falls short by insisting that these organisations only require 'active participation', which is a vague concept.

 **Case study: Example of Circle.** This is an organisation made up of two elements, the Circle Partnership (49.9% of the company) which is owned by practitioner and consultant partners, with shares allocated on basis of performance, and Circle International plc (50.1% of the company), which is owned by City financial institutions which receive shares for their investment. This goes against the alleged drivers for the new rules about mutuals.

UNISON has lots of information on mutuals²⁷ and joint best practice guidance by the TUC and Co-operatives on running public services²⁸. By mutuals, we mean new forms of service delivery: co- operatives, mutuals and social enterprises. Public Sector Mutual's (PSM) that are also know as spinouts of the public sector.

Using the union

To find out more and keep up to date, click on [UNISONs Mutuals Knowledge Base](#) (UNISON members' password: 620621622)

The new Light Touch Regime (LTR)

The new Light Touch Regime (LTR)²⁹ is a set of rules for specific service contracts that are of lower interest to cross border competition, or to contracts reserved for mutual/social enterprises. This includes certain social, health and education services. The list of services included can be seen in schedule 3 of the UK PCR³⁰.

²⁷ <https://www.unison.org.uk/content/uploads/2013/06/On-line-Catalogue199463.pdf>

²⁸ https://www.uk.coop/sites/default/files/uploads/attachments/tuc_co-operatives_uk_-_guidance.pdf

²⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/560272/Guidance_on_Light_Touch_Regime_-_Oct_16.pdf

³⁰ <http://www.legislation.gov.uk/uksi/2015/102/schedule/3/made>

They are purposefully designed to allow flexibility in procurement for specific sectors and contracts – so only need to follow minimum standards procedures and procurement rules. LTR applies to those services over the threshold of EUR 750,000 (roughly over (£589,148) and in the LTR schedule list. Over this, authorities must:

- Advertise a contract on the OJEU advertising. A contract notice *or* prior information notice needs to be published, except where negotiated procedure without a call for competition can be used, e.g. where only one provider is capable of providing the service or where a framework agreement is in place
- Publish a contract award notice (CAN) – this can be done on a quarterly basis, with groups of CANs published together to make it less time consuming. If this is done quarterly it must be done within 30 days of the end of a quarter
- Ensure transparency and equal treatment

However, for LTR contracts, there are:

- No minimum time limits, but must be 'reasonable and proportionate'
- No requirement to use standard EU procurement procedures – e.g. open, restricted procedure and so on) – although authorities can use them if they wish.

LTR allows for the use of wider award criteria (Article 76, s.7). For instance, there is scope to include

- The need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the service. (Article 76, s.7)
- The specific needs of users
- Involvement and empowerment of users
- Innovation

Best practice

If you are faced with the LTR procurement process, use these to your advantage!

LTR in Health procurement and the NHS Procurement Regulations: It is important to understand how the new Light Touch Regime fits in with the NHS Procurement Regulations. When commissioners have decided to advertise a contract they must publish a contract notice on OJEU. While the Government has published practical guidance setting out the requirements of the Light Touch Regime, a number of key questions have still not been answered. For example, the NHS Regulations provide a basis for a "no tender" decision based on an assessment of various duties (known as the "most capable provider" approach). This is not permitted in the Light Touch Regime – all contracts above the threshold **must** be advertised.

The five different types of procurement regimes

There are different procurement regimes or procedures. (i.e. ways of doing procurement). Authorities must state which procedure they are using in the initial advertisement in the OJEU. Different procedures will be used for different types of contracts. Generally, the more complex or larger the contract, the more negotiation and dialogue there will be with suppliers before we get to the point of contract award. Often bidders drop out, meaning that less bids are on the table than are legally required using that procedure. There are ways for authorities to get around this legally, but you should pay attention to this and if the number of bids is ever less than the minimum you can argue that it isn't best practice to carry on with the process and that this is evidence that the market isn't suitable for the contract.

1. Open procedure: Any interested parties can respond to the advertisement of a contract by submitting a tender.

2. Restricted procedure: Interested parties express interest in submitting a tender and then a selection is made about who to invite to actually submit a tender. Minimum number of candidates invited to tender: 5

3. Competitive dialogue procedure: A selection is made from those who respond to the advertisement, and then an authority enters into dialogue with potential bidders to develop a suitable solution/specification, on which bidders will be invited to tender. There are problems as this means that those invited to dialogue can design the tender to their strengths and can seek to increase the value of the potential contract through the dialogue. The new regulations mean that there is more scope to use this procedure under the new rules. Minimum number of candidates invited to tender: 3

4. Competitive procedure with negotiation: Generally this is used for more complex contracts, such as PFI/SSP contracts. Under this procedure, a selection is made from initial respondents to advertisements, who are invited to submit an initial tender. But authorities can open negotiations to improve these bids or seek better offers following the initial submission. Occasionally an authority can award a contract without advertisement and simply approach suppliers and negotiate the terms of the contract. This is known as a **negotiated procedure without prior notification**. This applies where framework agreements are in place and contracts are 'called off' during the period the framework agreement is in place. Minimum number of candidates invited to tender: 3

Scrutiny

Competitive procedures shouldn't be used for off the shelf services and products. If you think this procedure is being used when it could be an open procedure, argue that it breaches the rules governing procurement regimes. You can reference the government's own rules that state these should only be used when off the shelf solutions needs adaptation, contracts include innovation/design of new services, the contract is complete, where technical specifications cannot be established. The latter might be used as justification for using this procedure, but you can argue that the SIP identifies the criteria.

5. Innovation partnership procedure: This is a new procedure under which authorities make a selection from those who respond to the advertisement, and then the authority uses a negotiated approach to invite suppliers to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing product on the market. Innovation partnerships should only awarded using best price quality ratio (BPQR), not just cost – so make sure this is the case. Minimum number of candidates invited to tender: 3

Scrutiny

Innovation partnerships will have set intermediate points and include the option to terminate at each phase of the partnership. You can find out when these are and conduct reviews to establish if it is meeting the performance criteria.

10) Be aware of the process and the points you can intervene

In simple terms the procurement process goes through the following steps each of which will be more or less complex dependent upon the scale of the contract and the nature of the service to be provided.

- advertising the contract
- engaging and selecting suppliers
- preparing the specification and contract documents
- invitation to tender/negotiate
- evaluating bids
- selecting the preferred bidder
- awarding the contract

Once a decision has been made to use the procurement process ideally a procurement action plan should be developed by the contracting public authority

Such a plan should set out: the chosen approach with all tasks and deliverables, timescales that are realistic, the skills and resource requirements to support the procurement process, set out if specialist advisors (procurement, legal, human resources etc) will be required, and when, how the specification will be developed, in particular how stakeholders or their representatives are to be involved in the development and the evaluation stages required, the overall evaluation criteria and the evaluation process - it should ensure that the evaluation strategy is acceptable to stakeholders and compliant with EU procurement rules.

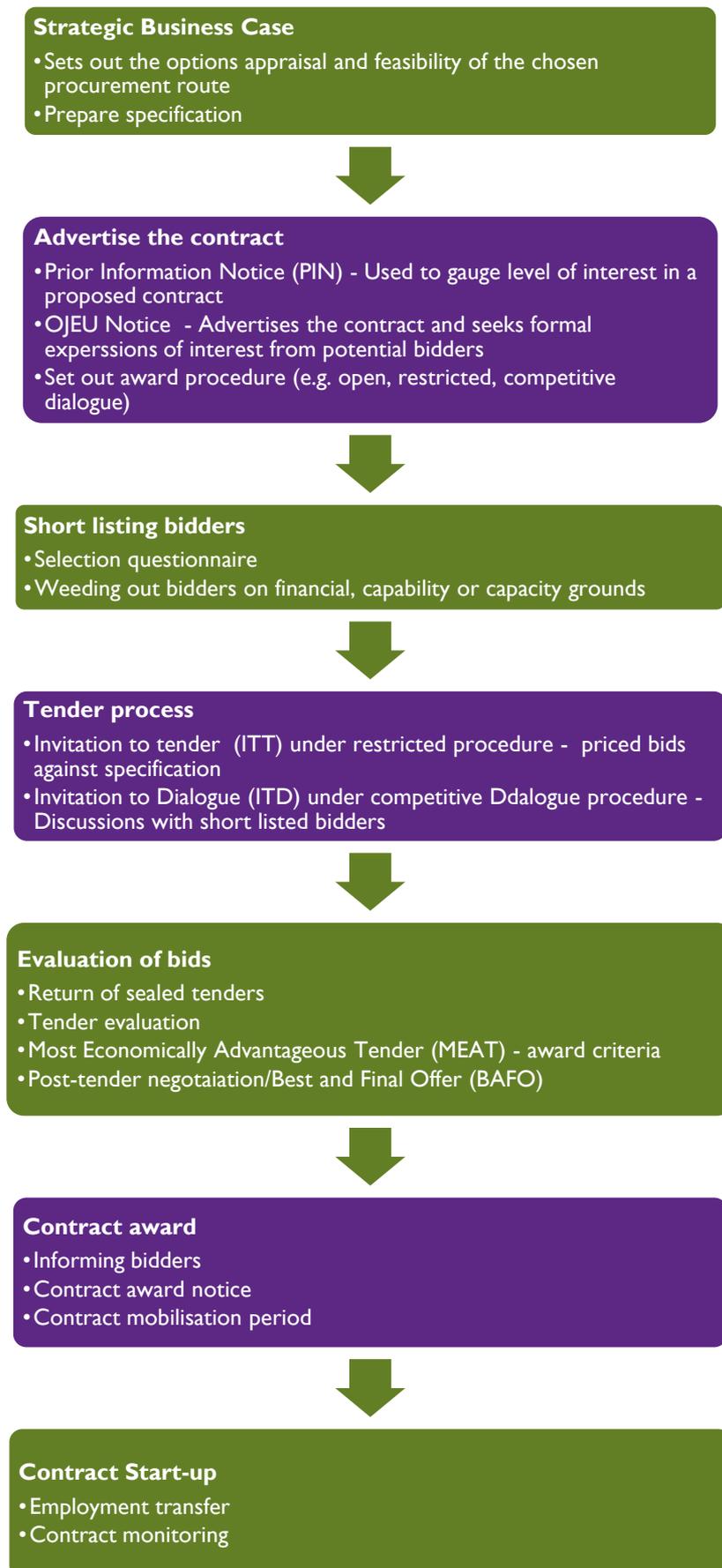
Transparency

Make sure you get a copy of any procurement action plan as this can help you plan your campaign. All stages of the process must be documented – so you should be able to access reports, consultations, business cases and any other documents relating to decisions and the process taken.

Using the union

If there are advisors being hired then you can try to meet with them to help determine the procurement process. You can also focus on the weighting given in the evaluation stage.

Diagram – Outline of process from business case to contract start



11) Ensure due process is followed and that it isn't biased towards the private sector

Advertising the contract: Once a decision to procure is taken then there are various steps an authority needs to take. This includes advertising the contract in the OJEU, either as a contract notice (CN) or a Prior Information Notice (PIN), which is an early notification of upcoming contracts.

You should be included when these are published, but if not then keep an eye out for both CNs and PINs. PINs in particular are a useful early warning system for potential outsourcing of services, particularly if you don't have a great relationship with the authority. These are published as close to possible at the start of the financial year and at least 52 days before a contract notice is posted. Feedback from suppliers in response to PINs is also used to update and improve the specification at a later date, although the basic information in the PIN has to be correct.

Scrutiny

Watch out for responses to PINs – any contact following PINs shouldn't be used as a covert form of negotiation as this violates principles of treating suppliers fairly. You should get access to information that results from PINs being issued too. Conversely, if there is a minimal response to the PIN the authority may feel pressure to repackage it to make it more attractive to suppliers. UNISON branches should argue that if there is no significant interest then the public authority should be bold enough to retain the in-house service because no external market exists.

Be alert to any signs of favouritism to specific suppliers. Raise concerns through procurement planning groups and other decision makers as necessary.

Stay on top of the process. Lots of things can't change once a contract notice has been put on the OJEU, including minimum requirements and the type of procedure used. If you think the authority is changing things then raise this with the procuring body.

Using the union

Lobby decision makers and seek to postpone the PIN until UNISON has been fully consulted on the proposals

Establish the in-house team's ability to proceed with a bid, and if appropriate start early discussions on preferred options to partner with another public authority with the branch committee

Transparency

Ensure that the in-house team are being kept advised of any supplier contact and feedback via the PIN process. You are entitled to see information that is given in response to PINs.

Selection of candidates invited to tender

To be selected potential bidders have to fill in a Selection Questionnaire (SQ). This applies to the restricted, negotiated and competitive dialogue procedures, but also should be used in the open procedure to check that suppliers meet certain minimum requirements.

The SQ covers mandatory and discretionary grounds for exclusion from being selected.

The grounds for exclusion apply to all members of a consortium, but it isn't mandatory that they apply to subcontractors (although authorities could stipulate this if they wished).

What's new? The updated rules mean that there is more scope for suppliers to self-certify that they aren't subject to any grounds for exclusion, and authorities have to proceed on the basis of that self-certification. They also allow authorities to use discretion to assess whether suppliers have done enough 'self-cleaning' to prevent reoccurrence of misdeeds that would cause grounds for exclusion. In essence these rules make it easier for authorities to circumvent the grounds for exclusion, either mandatory or discretionary.

You should influence the SQ weighting so that it doesn't discriminate against in-house options. You also need to keep on top of procedures to ensure that the right procedures are followed.

Transparency

Ensure UNISON access to the information on potential bidders and to the tender documentation. When a tenderer is excluded at any stage of the tender process it may write to the public authority requesting a debrief. The public authority is obliged to respond to the supplier within 15 days of the written request, providing reasons why it was unsuccessful and, if the supplier has submitted a compliant tender, also the characteristics and relative advantages of the successful tenderer and the name of the successful tenderer.

Scrutiny

Be aware of the SQ process and support its use as this will give you access to useful information on potential bidders.

Use the process (and information) to raise queries and concerns re potential suppliers or the ability of the market place to deliver. Be aware of any opportunity for inappropriate 'favouritism' to external suppliers - if you see any, report it.

If there are less than three bidders (open procedure) or five bidders (restricted procedures) take the opportunity to lobby for the abandonment of the process and support for the in-house option.

Best practice

Try to influence weighting of the SQ on the scoring and try to include discretionary criteria. If there is limited response to a PIN and if you think an authority is pressured to make the process more inviting then argue against this. This is proof that a market solution might not be appropriate. Several smaller contracts are often worse for staff and services.

Consider whether there is a case for the exclusion of certain suppliers from the bidding process would be appropriate.

Community and media

If your concerns aren't listened to – be creative. Use the media, social media and your contacts in the community to raise concerns and put pressure on councillors.

Using the union

Ensure that the UNISON branch puts forward its own comments on the invitations to tender or invitation to enter dialogue. If needed engage external expert help to assist with this through the regional office.

12) Influence the contract award criteria and the evaluation of bids

Evaluating bids

The evaluation of price and quality criteria is a key element of the process and like options appraisal methodology is based on a weighting and scoring model. The factors that are included in the evaluation criteria list will play an important part in determining who the short listed or successful bidders are. Weighting and scoring can potentially discriminate against in-house bids.

This is another stage at which UNISON branches should ensure that trade union objectives in procurement are secured. While the law precludes discrimination in favour of one supplier or another, UNISON needs to ensure that the in-house bid is given every opportunity to succeed. This could be by way of influencing the tender documentation so that there is a 'level playing field' for the in-house bid or ensuring that evaluation criteria are not weighted against the in-house option.

Best practice

Be involved in the design of weighting and scoring systems to assess bids. Make use of the fact that social, environmental and other criteria can now be considered relevant. If the authority wants to decide only on cost or price then lobby to make it clear why you think other factors should be taken into account. Examples of social criteria that can now be included in tender evaluation are questions on:

- Living Wage and employment practices
- Equalities and recruitment practices
- Staff training and career progression
- Apprentices
- Ethical trade charter
- Environmental practices
- Energy efficiency
- Climate change adaptations
- Added social value

Devolution – does this apply in Scotland?

The Procurement Reform (Scotland) Act 2014 and other procurement regulations³¹ take a different approach, which makes it mandatory to look at sustainable procurement. This means there is a duty on authorities to look at how they can improve the social, economic and environmental well-being of their community before it buys services. The Act also includes the ability and willingness to pay the Living Wage as criteria. This means that Scotland's procurement regime is much more progressive and much more open to arguments for services to be kept in house. The advice in this document still applies, but it should be easier to make the case for sustainable procurement and as a result make in-house bids more likely to succeed.

³¹ <http://www.gov.scot/Topics/Government/Procurement/policy>

Using the union

Use case studies to demonstrate where authorities have taken services back in house because of failures that poor selection and evaluation criteria used at the tender process played a part. Authorities could guard against this by using better evaluation criteria. UNISONs ethical care charter is a useful example of how in social care using a set of standards can provide benefits for everyone³².

Scrutiny

It is important to test whether or not the benefits claimed for the procurement process and outcomes are in fact realised. In certain circumstances this will be important information that can be used to illustrate where a private sector supplier has failed to do that which it claimed, particularly if an in house supplier was denied the opportunity to make improvements. This information can be used when working on future service reviews and when arguing against the use of the procurement process.

Using the union

Meet with bidders. When doing this it is important to understand the scope of the meeting as part of the procurement process and always ensure that more than one representative attends meetings

- prepare for the meeting by dividing up the questions and deciding whether and to what extent you will present the branch position
- have a list of questions and demands including where relevant the TUPE transfer and protection proposals³³
- request written confirmation of any agreements and responses to questions, which have not been answered at the meeting.

Key Stage three: Post procurement - Your goals

13) Monitor contracts and learn the lessons

Watch out!

Just because the decision had been made about procurement doesn't mean everything's over. Keep a close eye on what happens next.

Why should you help to monitor contracts?

Once contracts are let, it's really important that you stay involved. When contracts are managed and monitored in secret, problems stay hidden. Don't allow your public authority to 'let and forget'.

You need to keep track of what's happening with effective monitoring to help you:

- **Protect your members on workforce issues.** Your members need your help if they have been transferred to a new service provider. Make sure contractors don't make changes to employment terms and conditions that haven't been agreed.

³² <https://www.unison.org.uk/content/uploads/2013/11/On-line-Catalogue220142.pdf>

³³ <https://www.unison.org.uk/content/uploads/2014/04/On-line-Catalogue223172.pdf>

- **Understand whether public services are being delivered properly.** Hold your public authority to account. Monitoring can make sure communities continue to have the public services they need.
- **Collect evidence about performance problems** so that you can campaign successfully to bring services in-house again.
- **Share your experience of outsourcing.** Keeping a close eye on what happens in your area can help to inform and influence the wider debate about public services.
- **Learn the campaigning lessons.** UNISON can learn from what happens in your area. Branch, regional and national strategies can be made more effective for next time.

Best practice

If your services are staying in-house, that's great. Your goal is to show their success!

If you have worked with the public authority to agree on a **service improvement plan (SIP)**, that's a real victory and a big opportunity for you. If you are successful in delivering the plan, it will mean better public services and a better situation for your members – and it will reduce the risk of any future outsourcing. To make sure you are successful, you will need to agree arrangements for monitoring the new plan. You need to be on the review and implementation team. This might be done under the supervision of a council department or an employer wide joint consultative committee (JCC).

If you have put forward an **in-house bid** and won a competitive tendering exercise, you will normally be subject to the same monitoring regime and requirements as an outsourced service would have been. You will need to arrange for the union to be involved in monitoring the in-house service, to make sure it is successful. Where there are new arrangements for delivering services - for example, where support services are outsourced but other front-line services remain in-house - the information below about monitoring contracts will be relevant.

If your services are being handed to a private contractor, your goal is to watch closely for risks and opportunities.

Watch out!

Can you rely on your authority to monitor the contract?

Your public authority may not have resources and expertise to manage the contract properly, so you can't rely on them. This makes your role even more important. The Audit Commission says that post contract monitoring and review of performance is often one of the weakest elements of the procurement process. In many cases public authorities have very limited ability to manage the contract properly.

That's where you come in! If you think a service or contract is performing badly you can always look at commissioning a review from an external consultant to help demonstrate the impact the contract has had on services and staff.

Do you have an agreement with your public authority? You need a commitment from the authority for UNISON to be involved in monitoring the new contract.

Transparency

Your union needs access to information to be able to monitor the workforce and performance issues. If you have already worked with the authority to decide on an information/confidentiality agreement (see 'pre-procurement') arrangements may already be in place. You may want to ask your authority/service provider for access to reports on contract performance at service/business level and other performance metrics. You might also want to negotiate time off and training to enable your branch to monitor effectively.

After the contract has been signed, you may be able to negotiate for access to more information, so you can monitor effectively and campaign publicly if things are going wrong. Your public authority may refuse your request on the grounds of commercial confidentiality. However, timing is key. Once contracts have been signed off, the commercial situation is different, and a request for documents (e.g. the final business case) may be seen as more 'reasonable' by the information commissioner (who regulates and enforces the Freedom of Information regulations). If you need it, there is plenty of information out there about using Freedom of Information legislation to get the information you need.

You need to think carefully about how you can best access information from management about the service. You can use reporting procedures to find out comprehensive information on all aspects of the service. At the same time, you will need to decide on the key areas you want to monitor closely – so you don't drown in a sea of paperwork!

Scrutiny

Questions to ask about the contract

Whatever arrangement you have with your public authority about information, you have the right to ask questions – and you should. Here are some key points to find out about:

- How does the contract define the **services and outputs** that are expected of the provider? A key part of assessing the service provided is the agreed baseline, or level from which service levels will be measured. Be clear about this. Managing service delivery means ensuring that what has been agreed is delivered and looking at the quality of service through quality metrics too.
- The contract will include a variety of service **performance standards** – are these being met? It might include a performance management framework – what are the Key Performance Indicators if these are used? Other ways of assessing performance include benchmarking or comparing performance and pricing data across different organisations or services.
- Who is responsible for **administering and monitoring** the contract? This includes contract maintenance, changes, charges and cost monitoring, ordering and payment procedures, management reporting. Clear procedures should exist and be understood – i.e. who does what, when and how.
- If the provider is **failing** to meet their targets, what happens?
- Is there scope for **public service users and the wider community** to be involved in monitoring? Is the public consulted about the service they get and any changes to the contract? Is there a system for receiving, recording and investigating complaints?
- If there are promises of **new jobs and new investment** to regenerate areas and communities, does the contract deliver these?
- How does the contract ensure **race and equality** compliance for users and/or staff?
- How does the contract deal with **risk management** - have risks been retained or transferred?
- Is the contract **flexible enough** to accommodate change while providing proper financial safeguards for the public authority and proper consultation and protections for staff, trade unions and service users? Contractors may expect to charge more for changes in the service, such as extra services to meet a new need.
- What is the **cost of cancelling** the contract?

Scrutiny

Monitoring workforce issues

If your staff are being switched to a new contract, it will be vital for you to monitor and negotiate around workforce related issues, including TUPE transferred rights.

All service contracts should include workforce monitoring matters – and this should be done before the invitation to tender (ITN) is issued. You also need to make sure your public authority is committed to monitoring workforce codes and agreements in practice. This means:

- Identifying the **responsibilities and resources** for workforce monitoring in the preparation of the ITN
- **Costing** workforce monitoring over the contract period and including this in the financial analysis in the appraisal of options and bids
- Including workforce monitoring as a **standard item** on joint consultative committee and negotiating committee (JCC / JNC) agendas
- Ensuring workforce monitoring is included in the remit of **scrutiny panels** and other relevant committees

Using the union

Your **branch strategy** needs to include monitoring of the contract or in-house service. This should involve looking at workforce and performance issues. You may need to provide training to branch representatives who have responsibility for monitoring contracts.

Communicate often with members, especially those directly affected, and ask them to report back about problems with the service to the designated branch officer or steward. Carry out simple staff and member surveys. This will make sure the union remains visible and will help to build up intelligence and information on the performance of the contract.

If outsourcing happens, it is even more important for you to **build your branch membership** and organise together. Involving your members throughout the procurement process will boost their confidence in you, laying the foundations for strong organisation, and will making it easier to recruit and retain members despite the contracting out.

Case study: West Sussex

UNISON West Sussex recently released a report on the impact of outsourcing back office functions at West Sussex County Council to Capita. The report, produced by independent researcher Andrew Holt, found that the outsourcing deal had led to lower quality services, lower staff morale, and less transparency and accountability. What this research does is demonstrate that the public's perception is backed up by research on the impact outsourcing has on the quality of services and staff.

The contract in question was worth £154 million over 10 years, and signed in June 2012. The functions outsourced through the contract - known as the Services Outsourcing Contract, included everything from recruitment, human resources management and payroll to customer service centres and online service delivery.

The report was designed to examine 1) whether the contract was meeting performance objectives, both in terms of cost savings and in terms of service and performance, 2) the impact on staff and morale, and 3) whether or not there is social value, or value for the community taking into account a wider notion of value than simply the cost.

Key findings:

Accountability and transparency lacking

In line with other research on outsourcing, there is a lack of publicly available information to permit independent scrutiny of contract performance.

The report also finds there is insufficient separation between the council as commissioner and Capita as supplier. For example, given so many Capita staff are involved so closely with the council, it's hard for them to assess the contract and manage it properly.

Worse services

50% of respondents felt that services had got worse – and just 2% said they had improved. 65% of staff felt they weren't offering a better service under Capita, and 55% felt more under pressure. The contract is preventing innovation and leading to a standardised treatment of service users.

Profit coming before people

One way social value has been undermined through the contract is the increasing use of offshoring service provision. At the time of writing, Capita was about to outsource many of its operations to India. Capita says it has a contractual obligation to deliver cost savings, and that this means it needs to move jobs abroad if necessary. But as the report states "social value will undoubtedly reduce if jobs are relocated elsewhere without some kind of quid pro quo taking place."

Negative impact on staff

70% of respondents disagreed or strongly disagreed with the statement "There is good morale in my workplace".

76% of staff transferred from WSCC felt morale was lower since transferring to Capita.
Poor process and governance

The report details that the deal was rushed through, and that there is evidence that the council doesn't have sufficient capacity to manage a contract of this size.

The report by West Sussex can help all UNISON branches both understand and spread the word about the dangers of outsourcing.

Appendices

Appendix 1

How to carry out a service review

What are you trying to do?

The objectives of the review should be clearly established at the beginning. Objectives could include gathering information with a view to establishing a baseline view of how well the 'public authority' is performing, seeking to ensure that services are operating at optimum efficiency, or specifically trying to identify areas of activity to reduce in an attempt to balance the budget.

At what level are you trying to do it?

This relates to outcomes, outputs and inputs (e.g an example of an outcome could be "reduction in the mortality rates in hospitals", an output could be "the number of patients treated" and an input could be "the number of nurses per ward"). A service review will need to collect evidence that appropriate arrangements are in place at the appropriate level to ensure that best practice is being followed. The focus should be on outcomes, but it is also important for instance, to demonstrate that services provide value for money and meet other corporate objectives.

What outcomes do you expect?

At its most general level this will usually be the achievement of the 'public authority's' policy objectives at minimum cost to the public. In practical detail this simple statement masks a host of potentially competing imperatives. The tension between service costs, service quality and public expectation can only be resolved through the effective balance of economy, efficiency and effectiveness. But cost shouldn't be the only thing that matters. The more specific the outcomes at the outset of an exercise the more likely it is that the exercise will be successful eg "to ensure that a modern customer services centre is operational by xyz (date)".

(2) **Collecting baseline service information**

The next stage is to collect baseline data on the current service which includes:

- What does the service do?
- Why does it do it?
- How much does it cost?
- How many people does it employ including those that are brought in on a temporary basis through an employment agency or as consultants?
- How does the service gauge whether it has done what it says it is going to do?

(3) **Evaluating the evidence**

The next stage involves an analysis of what the evidence tells us about how the service is performing.

Collection and use of performance data

Can the service demonstrate that it contributes to the delivery of the public authority's overall corporate policy objectives/outcomes?

Does the service set SMART (Specific, Measurable, Achievable, Realistic and Time bound) targets based on accurate baseline data covering both costs (inputs) and required service deliverables (outputs)

Are these regularly reviewed and updated?

Does the service publish Performance Indicators?

Are these national PIs?

Are they local PIs and if so how are they derived?

Does the service benchmark itself against other providers?

Do these benchmarks cover costs as well as service outcomes?

If the service does not benchmark itself against others can it offer a reasonable explanation as to why not?

Analysis of business processes

Is the service able to describe its main business processes in a way that is clearly understandable – this might be in diagrammatic form where relevant?

Does the service benchmark its processes against other providers?

What does the service do with the information it collects? Does it:

- use it for internal service planning;
- report it to councillors / leading members of commissioning bodies and senior managers to aid strategic planning;
- publish it to ensure public accountability.

Continual improvement

Does the service follow a robust cyclical service improvement model such as the one shown below?

Can the service demonstrate continuous improvement over the last three years in terms of economy, efficiency and effectiveness to reflect the balance between the three elements required at a strategic level? Evidence will include:

- increased outputs
- improved outcomes
- meeting short term targets and moving towards long term targets
- demonstrable service impact
- efficiency savings.

Views of service users and staff

What are the views of service users expressed through customer care systems and community organisations?

What are the views of staff and trade unions and their commitment to service improvement?

What are the implications of options for jobs, terms and conditions?

Corporate policies and priorities

How does the service contribute towards improving sustainable development?

What is the contribution of the service to equalities, diversity and community wellbeing?

Appendix 2

The scope of a service improvement plan (SIP)

Scope	Identify services and functions in scope of the improvement plan
Priorities for improvement	Identify each of the improvement priorities in relation to operational systems, management practice and organisational structures.
Objectives	Ensure the aims and purpose of each improvement are clearly stated based on an understanding of the cause/effect of performance weaknesses and/or opportunities for improvements.
Results expected	Identify the planned impact, outputs and outcomes of the improvements.
Period covered	It is essential that SIPs cover a 2 or 3-year improvement programme.
Management of change	Application of Business Process Re-engineering and how service standards will be maintained in a period of reorganisation.
Action to be taken	Specify what action is required to implement each proposal.
Resources and investment required	Financial costs of improvements, changes in use of assets including equipment & buildings.
Training, staff recruitment/redeployment	Identify human resource changes needed to support implementation.
Corporate action	Change required at corporate level to ensure successful implementation of improvements and achievement of wider benefits.
Staff/trade union involvement and consultation procedures	Agreement on involvement of staff and trade unions in service improvement plan process and reporting progress/issues at employer/union meetings.
Responsibility and management accountability	Elected/board member responsibilities together with officers, or manager's responsible including names/posts and contact details.
Timetable	Dates when proposals will be commenced and completed.
Monitoring and reporting progress	Regular reporting of progress to users, elected/board members, corporate management team and staff.
Scrutiny review	Review on annual or six-monthly basis.

Source: European Services Strategy Unit, 2008. **Commissioning and Procurement Toolkit**

Appendix 3

Extract from a SIP action plan

Objective Two: To pro-actively manage customer relationships to ensure customer engagement in the nature and quality of cleaning services provision.				
Task	Approach	Output	Outcome	Owner
Establish a streamlined service level agreement (SLA) process that incorporates Performance Indicators that have been agreed with the customer as a measurement of quality, satisfaction and value for money.	Using the knowledge and experience of the operational team and the feedback from customers' to-date, develop a front page user friendly summary for consultation with customers. Draft PIs for discussion that could be appropriate to existing customers (especially head teachers) and amend as a result of consultation.	User friendly SLA with more individual customer summary and technical appendices as appropriate. Customer related Performance Indicators that are jointly agreed for managing and improving the building cleaning service	Customers that are informed and engaged in the provision of an ancillary service that may have an impact on their own area of provision. Shared information that enables the customer to form an objective view of the cleaning service. An opportunity to discuss extending the SLA time period and commitment required to make the improvements sustainable for both parties.	AN other
Establish a communication plan that ensures a two way exchange of service information that is useful to the customer, develops the cleaning service and ensures a quality profile for building cleaning services within the authority.	Operational team to review customer communication methods to-date and feedback received from customers on communication. Brainstorm new activities that can be implemented with minimum resource requirements but make a significant impact upon the perception of customers.	Communication plan with clear task allocation and targets to measure successful implementation and outcomes.	Improved profile of building cleaning services within the authority and greater customer knowledge of the nature and benefits of a quality cleaning service on their own operation.	AN other

Appendix 4

The six main approaches to options appraisal

Technique	Principles
1. Weeding out	Weeding out is normally done as part of an initial scoping exercise and is based on asking a series of questions against which each option is assessed such as “Is it legally possible?” “Can it deliver the necessary improvement?” “Is it supported by politicians and the local community?” From this it is possible to eliminate options which fail key tests at an early stage of a process.
2. Strategic Questions	Another approach is to build option assessment around key, or strategic, questions. The options are compared against pre-determined criteria that enable the review team to select and rank ideas or solutions. This can be done in stages to ensure that different issues are taken into account. The first stage looks at the positive and negative impacts of each option, the risks involved and the long-term implications. The intention is that the review team would reach a consensus about the relative merits or otherwise of the main options. The second stage would look in more detail at the remaining options to assess whether for instance the option meets service delivery requirements, would have appropriate governance arrangements in place, the relationship with the service provider and the management of risk. Each option is then scored against key criteria set by the review group which are normally weighted to indicate their relative importance.
3. Key factors	This is a variant of the strategic questions approach but is based on the public authority setting out corporately the ‘key factors’ that will be used to assess options for all service reviews. These factors are again scored and weighted to determine a preferred option.
4. Flow charts	Also called “decision trees”. This as it implies involves producing a flow chart for each option with the implications set out from the initial policy choice through to implementation.
5. Key decision clusters	This is a more complex variation of the key factors approach. It is based on observations about how strategic decision makers <i>actually</i> operate. In most strategic decisions there are three clusters of sub-factors that influence the final choice. They are normally “value for money”, “policies and objectives” and “acceptability” with a number of sub-factors linked to each cluster. Stage 1 involves determining the appropriate sub-factors. Stage 2 involves weighting the clusters and the sub-factors according to their relative importance. Stage 3 involves scoring each of the sub-factors on a scale for example from + 5 to – 5. The scores and weightings are then calculated to produce a total score for each option. The option with the highest score is the best option and the option with the lowest score is the worst option. To use this approach those involved need to be properly trained to use the technique and to work as part of a team.
6. Cost-benefit analysis	This is arguably the most sophisticated approach to options appraisal and is described in the Treasury ‘Green Book’. It is used to analyse the cost of undertaking a task or project and the benefits that are likely to arise from it. It is most commonly associated with a method of assessing investment projects in the public sector such as PFI/PPP

Source: Best value: Volume 2 – making choices, a practical guide to best value, procurement and competitiveness by Michael Hughes, Inlogov (Institute of Local Government Studies) for the Scottish Executive (Government)

Appendix 5

Glossary – your jargon buster

ADR – alternative disputes resolution procedure	LIFT – NHS local improvement finance trust
APSE – Association for Public Service Excellence	MEAT – most economically advantageous tender <i>Formerly the way to calculate best value for money, using a mix of price and quality. MEAT can now be determined more flexibly by authorities.</i>
BAFO - best and final offer Theoretically the final offer in negotiated procedures, although often leads to further negotiation.	OJEU – Official Journal of the European Union <i>The place where contracts need to be advertised.</i>
BSF – Building Schools for the Future	CCS – Crown Commercial Service <i>Formerly the Government Procurement Service. The CCS is part of the cabinet office that supports and advises the government and public sector in the buying of goods and services.</i>
CVS – community and voluntary sector	OBC – outline business case
DCLG – Department of Communities and Local Government	PI – performance indicator
EU – European Union	PITN – preliminary invitation to negotiate <i>Used in the procurement procedures that require negotiation after selection of candidates.</i>
ESSU – European Services Strategy Unit <i>Non-profit, independent group with good strategies and advice on alternatives to privatisation</i>	PIN – prior information notice
FBC – final business case	PQQ – pre-qualification questionnaire
FESC – framework for procuring external support for commissioning (NHS – England)	PFI – private finance initiative
GPF – General Political Fund	PPP – Public Private Partnership
ITT – invitation to tender	PIs – performance indicators
ITN – invitation to negotiate	SMART – performance targets that are specific, measurable, achievable, realistic and time bound
IFS – Institute of Fiscal Studies	SSP/SSP – strategic service delivery partnership
JCC – joint consultative committee	SIP – service improvement plan
	SBC – strategic business case
JVC - joint venture company	SMEs – small and medium enterprises
KPI – key performance indicator	
JVC - joint venture company	UK PCR UK Public Contracts Regulation 2015
KPI – key performance indicator	TUC – Trades Union Congress
LGPS – Local Government Pension Fund	TUPE – Transfer of Undertakings (Protection of Employment) Regulations 2006