

COMMERCIAL STRATEGY PROCUREMENT AND CONTRACT TERMS

Navigating best practice

July 2019 -  Interactive PDF

INTRODUCTION

This guidance note has been prepared to assist ACE members and their clients who are involved in the procurement process. This note is aimed at distilling down the existing best practice from both public and private sectors and providing simple advice in relation to the more challenging areas of commercial strategy, the procurement process and contracting. The purpose of this is to enable both clients and consultants to better understand each other's drivers and constraints in order to discuss and agree on a balanced way forward.

The information in this guide relates to contracts under English law only.

1. COMMERCIAL STRATEGY

Ahead of any procurement process, the phase of commercial strategy development is crucial to setting up the commercial environment to support success. This phase of the process involves determining the outcomes to be delivered by any potential procurement. The key decisions during this phase include 'what will be procured?', 'who will use the framework/contract?', 'how long will it last?', 'what is the value?', and 'what is the packaging strategy?'. All of these critical decisions need careful consideration and market sounding in order to develop a clear brief for the procurement exercise to deliver against. [The Project 13 commercial handbook](#)¹ has six commercial principles which set out some existing best practice ideals, however it is not always appropriate to aim to include these in each commercial engagement, and bespoke advice and strategic conversations with the market will help to prepare both parties to enter a successful procurement exercise.

Commercial principles to support collaborative arrangements:

1. Alignment – where commercial performance measures are aligned to delivery of outcomes to the client, customer or end user as appropriate.
2. Reward – where rewards are based on value added in exceeding the clients outcomes, not lowest.
3. Risk – where risks that the asset owner or investor are accountable for are not transferred to the supply chain, instead supplies are incentivised to mitigate them.
4. Engagement – where the enterprise comes together at a much earlier stage in the asset enhancement/ creation lifecycle.
5. Scale – the greatest benefits are found when clients + suppliers collaborate applied across asset systems/portfolios.
6. Time – where the relationships between organisations last over a longer time period.

How ACE will support:

Provide the opportunity for clients to come to a single source for consultancy market sounding. Through convening its members, ACE is able to offer input to commercial strategy development on the following:-

- a consultancy industry view on risks to delivery of the project which should be considered in the development of the commercial strategy;
- convening consultancy businesses to provide feedback on a draft commercial strategy;
- a view on the current market conditions and how this might impact on business appetite to bid e.g. Professional Indemnity at present;
- an understanding of the structure of the market and how to access the right areas of capability the client is looking for.

For more information please email at: consult@acenet.co.uk



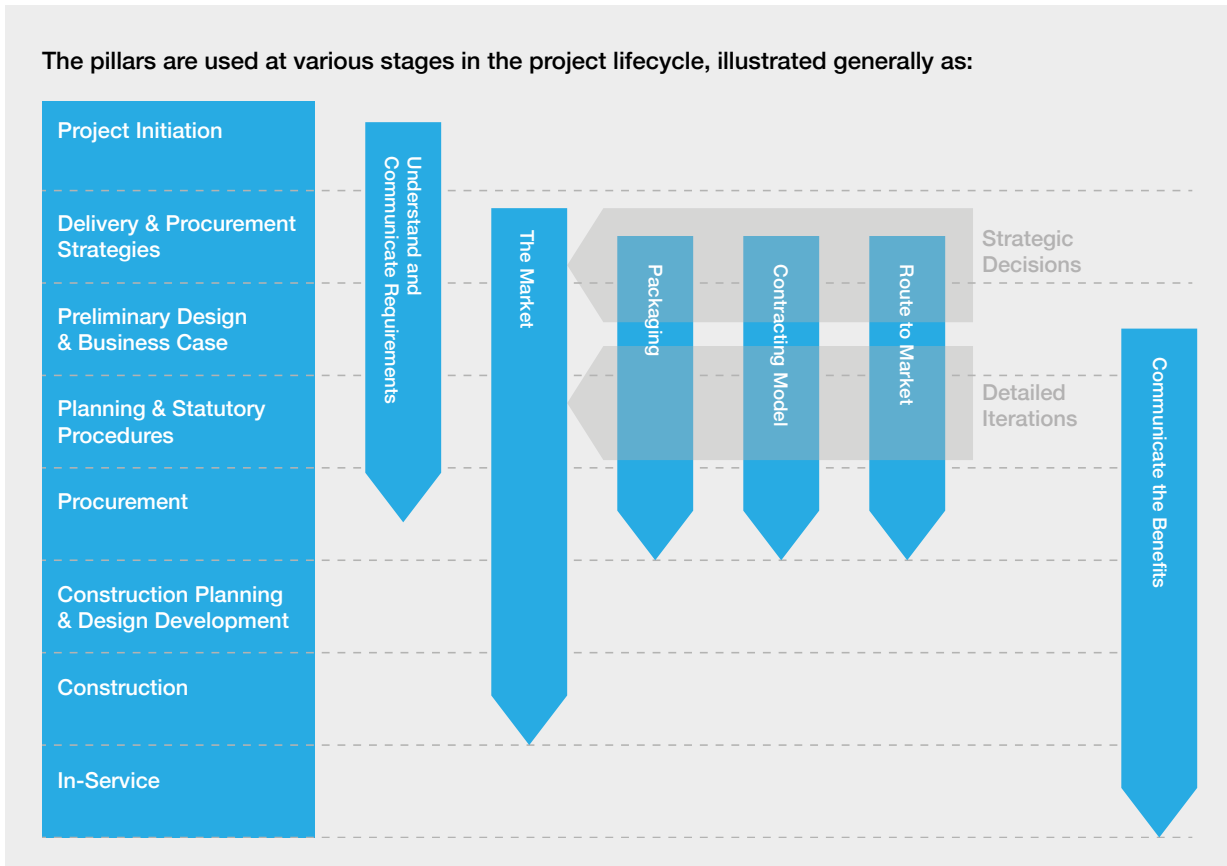
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2. PROCUREMENT PROCESS

The procurement process itself is well described in both the [Infrastructure and Projects Authority's Project Initiation Routemap²](#) and the [ICE Procurement Panel's June 2018 guidance note³](#). Both of these documents set out the steps required to undertake a successful procurement exercise.



Source: [ICE Procurement Panel's June 2018 guidance note⁴](#)

In addition to the process itself there are a number of specific areas which impact on businesses set out in the table overleaf where ACE can offer special guidance.

How ACE will support:

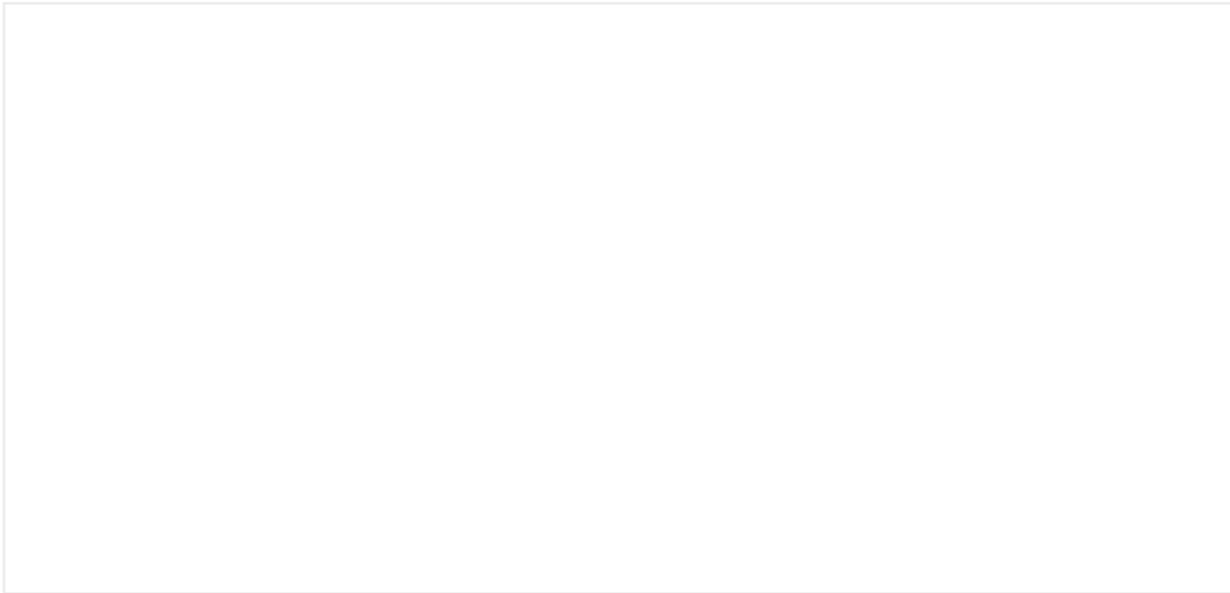


ACE will launch an anonymous reporting email to allow businesses to refer **challenging procurement and contracting practices**. Initially, this will provide advice to the businesses on **relevant legislation and best practice guidance** which they can cite in the conversations they have with their clients.

It can also be used to escalate matters if this doesn't resolve the challenges, and **ACE will engage on behalf of the consultancy industry** to bring about a solution. For more information please email at consult@acenet.co.uk

Areas map

To navigate to a specific area of interest, **please click** on the appropriate box below.



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Area	Description & implications for businesses	Legislation/guidance for clients

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3. CONTRACT TERMS

In order to avoid undermining the commercial intent or the careful selection of partners through the procurement process, it is important that the contract terms used are carefully decided upon. This section highlights those terms which have the greatest impact on professional service businesses and how they might be mitigated.

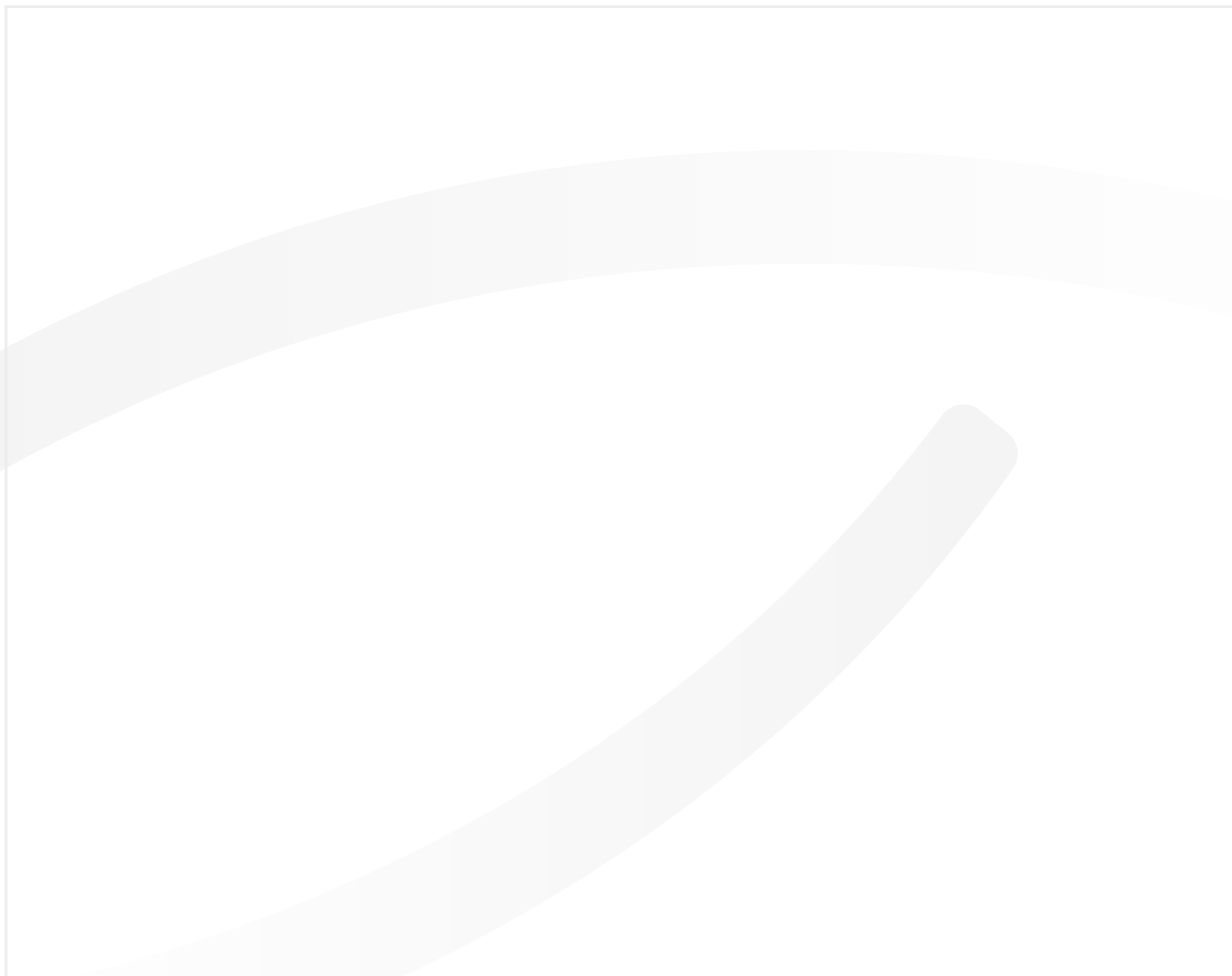
How ACE will support:



- ACE agreements, [ACE has standard forms of contract](#) which can be used by clients and consultants
- ACE members have access to a free legal helpline for any specific contract queries they have.

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ACE Helpline

Contact our helpline now for contract, legal, HR, taxation and business advice.

0845 450 1980

Agreements & Contracts

ACE agreements and contracts are industry standard documents offering up-to-date and flexible agreements for both the end-client and consultants. They provide clarity, transparency and peace of mind for those working on a project. As well as ACE agreements, we sell contracts from FIDIC and the ICC. In the rare moments when a third party is required, ACE can nominate an adjudicator.

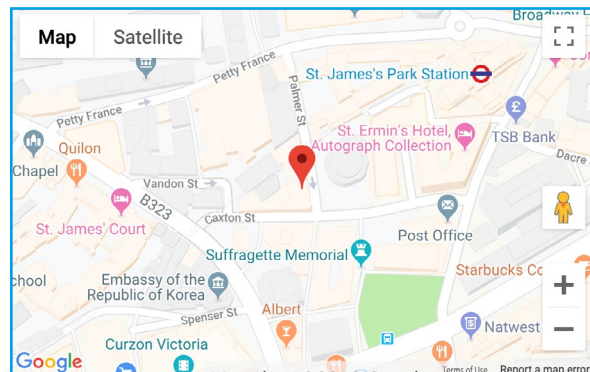


Contact Us

We're based in Westminster, London.
Closest tubes are St James' Park, Westminster
and Victoria.

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Acknowledgments

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Endnote

- 1 <http://www.p13.org.uk/wp-content/uploads/2018/06/P13-Commercial-Handbook-Web.pdf>
- 2 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/529340/Procurement_Module.pdf
- 3 <https://ice.org.uk/getattachment/knowledge-and-resources/best-practice/procurement/ICE-Procurement-Guidance-Notes.pdf.aspx>
- 4 <https://ice.org.uk/getattachment/knowledge-and-resources/best-practice/procurement/ICE-Procurement-Guidance-Notes.pdf.aspx>
- 5 <http://www.legislation.gov.uk/uksi/2015/102/regulation/72/made>
- 6 <http://www.legislation.gov.uk/uksi/2016/274/regulation/88/made>
- 7 <https://www.gov.uk/government/publications/procurement-policy-note-0916-procuring-for-growth-balanced-scorecard>
- 8 <http://www.legislation.gov.uk/uksi/2015/102/contents/made>
- 9 <http://www.legislation.gov.uk/uksi/2016/274/contents/made>
- 10 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577259/PPN1016-OnerousPracticesinProcurementContracting_1_.pdf
- 11 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577259/PPN1016-OnerousPracticesinProcurementContracting_1_.pdf
- 12 <https://www.supremecourt.uk/cases/uksc-2015-0115.html>
- 13 <https://www.fenwickelliott.com/research-insight/newsletters/legal-briefing/2014/08>
- 14 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698482/PPN_0118_Contract_Condition_for_Subcontracting_Supply_chain_spend_on_CF_final_docx.pdf
- 15 <http://www.legislation.gov.uk/uksi/2015/102/regulation/113>
- 16 <https://www.fenwickelliott.com/research-insight/newsletters/dispatch/archive/swansea-stadium-management-city-county>
- 17 <https://www.legislation.gov.uk/ukpga/1998/20/section/6>

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