



Commercial and Procurement Oversight Board

Terms of Reference

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1. Role and Purpose

The Commercial and Procurement Oversight Board (CPOB) will provide direction and oversight across KCC's procurement activity, ensuring that activity is undertaken effectively, efficiently, and in a compliant, fair, and transparent manner in line with public procurement regulations and the mandatory rules and procedures in Spending the Council's Money. This will result in Goods, Services, and Works being secured that represent value for money for the Council and Kent residents.

2. Membership

Membership of the CPOB will be comprised of senior Officers from the Commercial and Procurement Division (CPD) and key functions across the Council, including Finance and Governance and Law. The CPOB will be chaired by the Head of Commercial and Procurement and will include a core membership plus optional members depending on the items under consideration.

Core Members

- Chair – Head of Commercial and Procurement
- Corporate Director for Finance (or nominated representative)
- General Counsel (or nominated representative)
- Strategic Commercial and Procurement Leads
- Commercial and Procurement Standards Manager
- Commercial and Procurement Policy and Governance Lead

For each meeting, depending on the item, additional invitees would be:

- Commercial Managers
- Director of Adults & Integrated Commissioning
- Heads of Commissioning (for Adults, Children's, or Integrated Commissioning)
- Service Directors
- Heads of Service

3. Functions and Responsibilities

- The CPOB will provide strategic oversight of the Council's procurement activity in order to ensure alignment with the Council's overall direction, priorities, and objectives.
- The CPOB will review KCC's Procurement Pipeline. This will inform future planning and resource allocation and a 12-month forward plan of projects for review by the CPOB will be developed.
- For procurement projects that are reviewed by the CPOB, the group will seek to ensure that activity is effectively and efficiently undertaken or planned to maximise value for money.
- The group will seek to ensure that there has been and will be transparency and accountability in the procurement process, with objective decision-making and fair, open, and compliant processes
- The group will provide advice and guidance on major risks and issues facing projects reviewed

- When reviewing procurement projects, the group will have consideration of whether public procurement regulations and Spending the Council's Money have been followed.
- The CPOB will champion continuous improvement in procurement practice across KCC.

4. Standard Eligibility Criteria for CPOB Attendance

- The CPOB will act as a gateway for reviewing procurement projects, specifically the Commercial Strategy and Procurement Plan, prior to Officers going out to tender.
- Specifically, the CPOB will act as a gateway for those procurement projects that it is determined will result in a 'Gold'-tiered contract, or a 'Silver' tiered contract over £1m in value, following an assessment of project value, risk, and complexity.
- For the avoidance of doubt, where KCC is procuring collaboratively with another organisation (e.g., another LA or an NHS partner) but is not the organisation leading the procurement, there is still the expectation that Officers will attend the CPOB if the projects meet the above criteria. CPOB may agree that the proposal as to the project approach to be adopted can be provided virtually, so Officers should confirm with the CPOB administrators in advance.
- All projects subject to the Provider Selection Regime (PSR) legislation governing the procurement of healthcare services in England, will be subject to CPOB attendance by the relevant Officer, **regardless of value**. This recognises the risk associated with new Direct Award procedures permitted under the Act and will be reviewed in April 2025, and ensures that there will be sufficient scrutiny of Direct Award decisions in relation to PSR to minimise the risk of challenge.
- For other projects that fall under the remit of a consolidated programme of funding or activity, Officers will need to attend for **each project** that fulfils the above criteria; it will not be sufficient for projects to be "grouped" together and they must be considered separately.
- Projects funded through grant awards are subject to the same criteria as those with other funding arrangements; but Officers must adhere to the correct governance processes regarding grant receipt and administration separately. As part of the CPOB submission, Officers will be required to demonstrate that any procurement activity is cost neutral in relation to the grant.

5. Timing for Review and Exceptions to Standard Eligibility Criteria

- Approval to proceed should be received from the CPOB prior to going out to tender in line with the mandatory rules and procedures in Spending the Council's Money.
- A 12-month forward plan will be developed and agreed by the group. However, it is the responsibility of Officers whose projects meet the above criteria to ensure they are scheduled to attend the CPOB at a time sufficiently prior to their intended procurement start date.
- The CPOB may determine that other projects not meeting the above criteria must also attend in which case the onus is on the CPOB to make Officers aware of their request.
- In cases of urgency, the Head of Commercial and Procurement can approve the Commercial Strategy and Procurement Plan, without it coming to the CPOB, in consultation with the Section 151 Officer and Monitoring Officer, with a report subsequently provided to the CPOB.
- Where there are 'material changes' following the tender process, Officers should visit the CPOB with a summary of the changes and proposed Award Report before making the contract award in line with Spending the Council's Money and the Council's Scheme of Delegation.
- 'Material changes' can be determined by the senior Officers from the CPD alongside Legal and Finance.

6. Governance and Reporting

- The CPOB will be part of the Council's established Informal Governance Arrangements.
- Officers should attend the CPOB prior to seeking any formal governance to proceed to tendering.

- Half yearly reports will be delivered to the Corporate Management Team, Corporate Board, and Governance and Audit Committee, covering the lessons learned and recognised best practice, outcomes from meetings, advice provided and recommendations made, and lessons learned.

7. Meetings Frequency and Format

- The CPOB will meet every month for 1½ hours. The frequency and duration of meetings, and the number of procurement projects reviewed at each may vary dependent on business need.
- Strategic Commercial and Procurement Leads will be invited to attend and to present, alongside the relevant Head of Commissioning or Head of Service in the Directorate that they support.
- The presentation should summarise their Commercial Strategy and Procurement Plan, providing clear recommendations to the CPOB with a view to gaining approval to proceed to tender.
- Officers may also raise questions, issues, or concerns that they seek further CPOB direction on.
- The CPOB will consider the presentation with a view to fulfilling its functions and responsibilities and checklists outlined in Sections 3 and 8, deciding whether the project can proceed to tender.
- For any visit required to the CPOB prior to contract award, the presentation should focus on a summary of the 'material changes', the implications for KCC, and the proposed Award Report.
- Recommendations by the CPOB will be communicated to attendees after the meeting, along with a summary of key discussion points and any additional advice from the group.

8. Administration

- The Commercial and Procurement Standards and Improvement Team will administer and coordinate the meeting of the CPOB, being on hand to advise attendees beforehand, and ensuring that advice and recommendations from the group are communicated thereafter.

9. Potential Areas of Examination for the CPOB

As a part of reviewing the Commercial Strategy and Procurement Plan prior to Officers proceeding to seek formal governance to proceed to tendering, the CPOB may examine the following:

- The intended outcomes and benefits of the project.
- The project's potential to succeed and whether this has been considered in the wider context of the Council's overall strategic objectives and priorities.
- Whether there has been an assessment of the supply market, KCC's position in relation to it, fair market rates, and the consideration of findings from any market engagement undertaken.
- Whether consideration has been given to whether the project could be joined up with other projects, either internally (i.e., consolidation) or externally (i.e., collaboration).
- The specification of requirements is an accurate reflection of the business needs and is neither over- nor under-specified, which could result in additional costs now or in the future.
- Whether consideration has been given to the type of contract to be used, any deviation from the Council's standard terms and conditions, contract length, and extension options.
- Whether consideration has been given to the allocation of risk between the Council and any selected suppliers and the appropriate payment and incentive mechanisms.
- Where there has been an assessment of the most appropriate procurement route, which has been proposed alongside a clear and realistic timetable for running the competition.
- The required budget is in place and alternative funding options have been considered.
- It has been considered whether and how 'best value' could be achieved with the appropriate consideration of any potential negotiation/savings opportunities considering KCC's leverage.
- Social value considerations have been made.

- Procurement regulations, policy and procedures, and best practice is followed and recognised.
- Necessary transparency publications have been considered.
- There are suitable arrangements in place for identifying, recording, managing and mitigating risks both in the procurement stage and the contract mobilisation and management stage.
- There is confidence that key stakeholders have been appropriately engaged with the project, including Officer and Member decision makers, Legal, Finance, Insurance, LGPS, and ICT.
- CPD has the support it requires from Directorate stakeholders and vice-versa.
- An EQIA and DPIA has been undertaken.

As a part of reviewing any 'material changes', the CPOB may examine the following:

- The original projected outcomes and benefits can still be achieved.
- Implications of the changes do not place undue financial, legal, commercial or reputational risk on KCC and, where necessary, there are plans to monitor any risks arising from the changes
- 'Best value' can still be achieved
- Lessons for future projects will be identified and recorded.
- There is confidence that the changes and their implications will be appropriately communicated to key stakeholders, including senior Officer and Member decision makers.

10. Process Flow Chart

