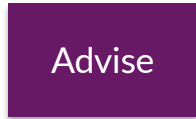




**GOVERNMENT  
OUTCOMES  
LAB**



# Procurement for Social Impact Bonds

06<sup>th</sup> March 2018



@ukgolab  
#SIBsProcurement

# About us

Joint partnership  
between UK  
Government &  
Oxford University

Established in 2016

Based at the  
Blavatnik School of  
Government, in  
Oxford

Centre of academic research and practice with a mission to improve the provision of public services to tackle complex social issues, with a focus on outcome based models

# Support available from GO Lab

Knowledge Hub  
[golab.bsg.ox.ac.uk](http://golab.bsg.ox.ac.uk)

Communities of  
practice  
(peer learning)

How to  
guides



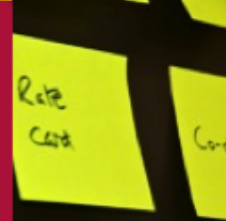
Commissioners'  
journey tool



Webinars

HOW TO  
GUIDE  
CONTRACTING  
AND GOVERNANCE

Advice  
surgeries



Events &  
workshops



SIB  
projects  
database



Executive  
education



Fellows of  
Practice

# Today's speakers



**Julian Blake, Partner, Bates  
Wells Braithwaite LLP**



**Jo Blundell, Director, Future  
Public**

## Your main questions were...

- How does procurement fit within the broader process of developing a SIB?
- What are the key considerations to take into account when deciding on a procurement option/ strategy?
- What are the pros and cons of the different options of procuring for a SIB?
- What is best practice in terms of a procurement model/ strategy when using a SIB to commission services?
- What are the main mistakes made regarding procurement processes?

# Session overview

- The journey to contracting for a SIB & challenges around procurement for SIBs and other outcome contracts
- Engaging with investors
- Key considerations for provider-led SIBs
- Procurement options, incl. the newer procurement procedures, and pros and cons of the respective approaches
- Factors to consider in choosing the right approach

# Important caveat

**Anything we say today is to the best of our knowledge. It does not constitute advice from the University or from Government and you will still have to make your own decisions and take legal or other professional advice if necessary.**

# The journey to contracting for a SIB

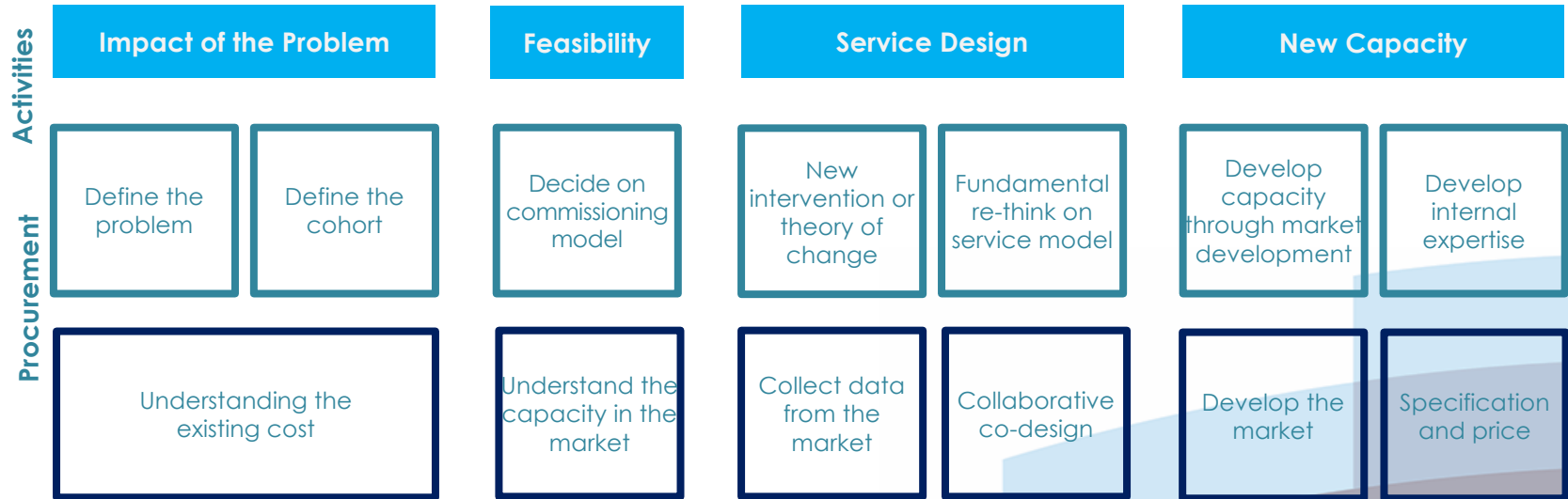
## Your main questions were...

- How does procurement fit within the broader process of developing a SIB?
- Why is procurement more challenging in a SIB context?



# The process of developing a SIB

## Development Stage



# The process of developing a SIB

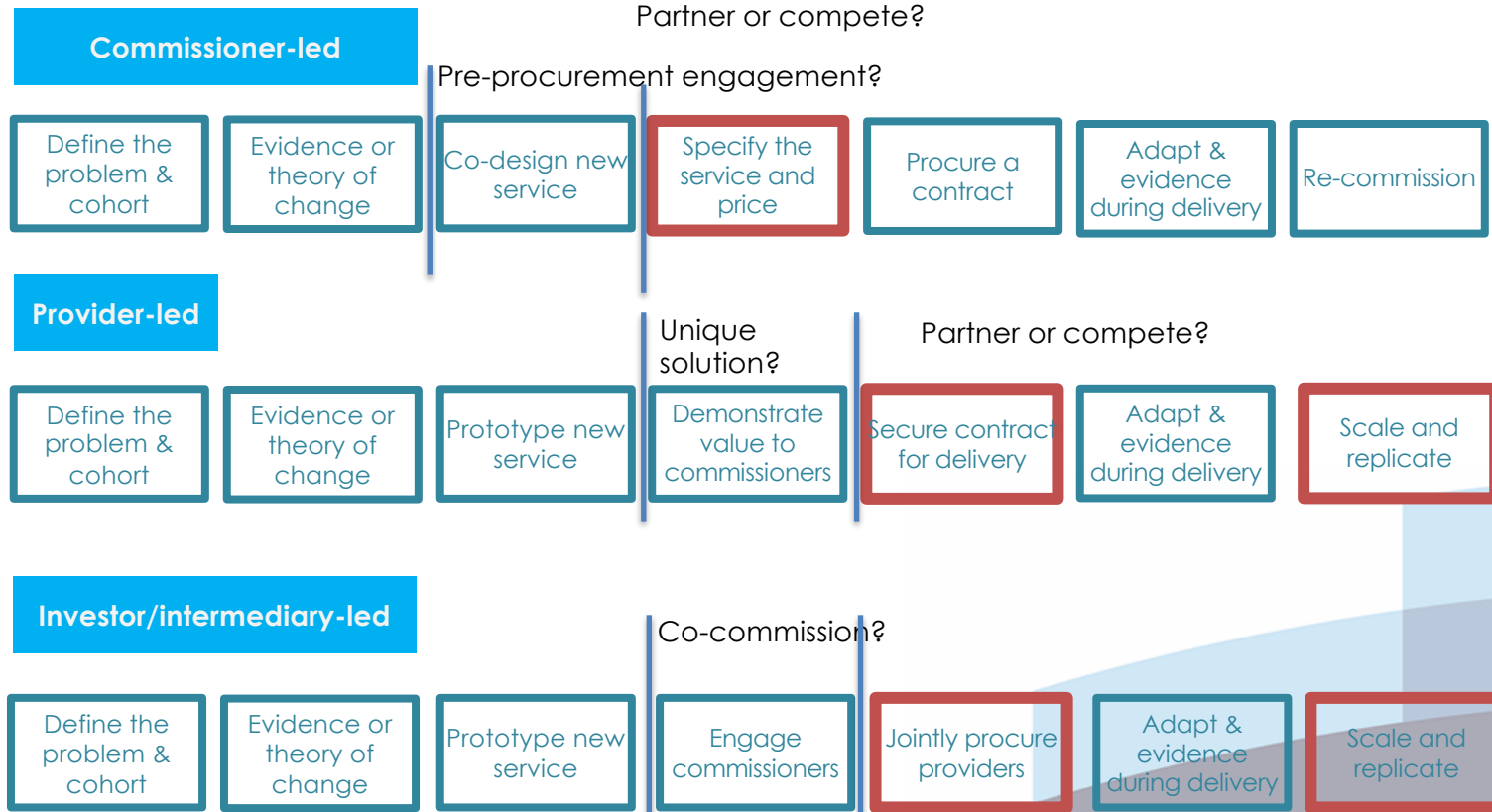
## Delivery Stage



# Factors influencing contracting for SIBs

- Limited competition in the market for delivering the intervention/ service
- Consultation & collaboration prior to competition
- Provider intellectual property
- Relationship with social investors
- Leadership of the development by a provider
- Challenges of developing a detailed specification

# Main Routes to a SIB



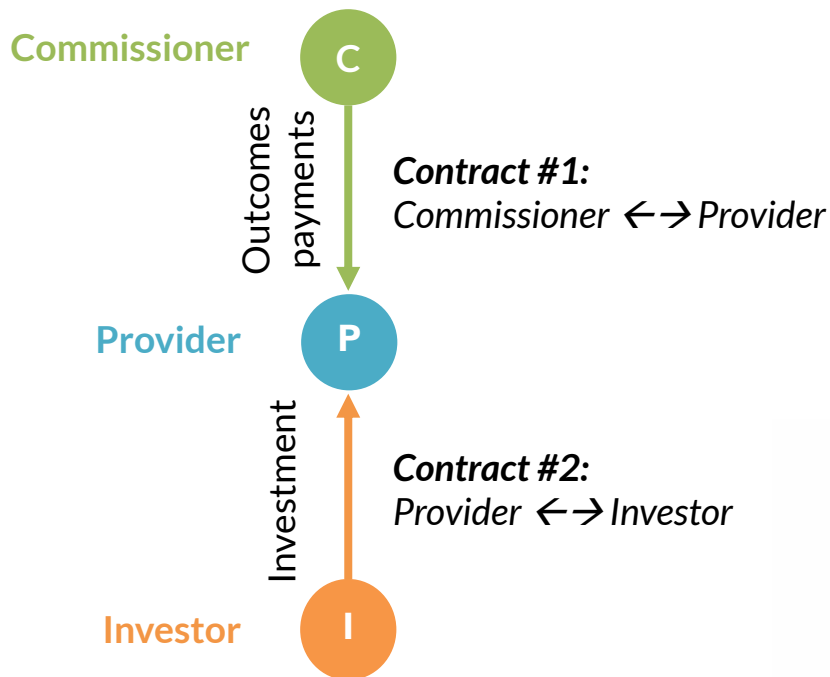
# Engaging with investors

## Your main questions were...

- The role of investors in a SIB
- The different roles investors play in the contract.
- When and how to engage them?

# Contract Mechanism 1

## *Provider in the middle*



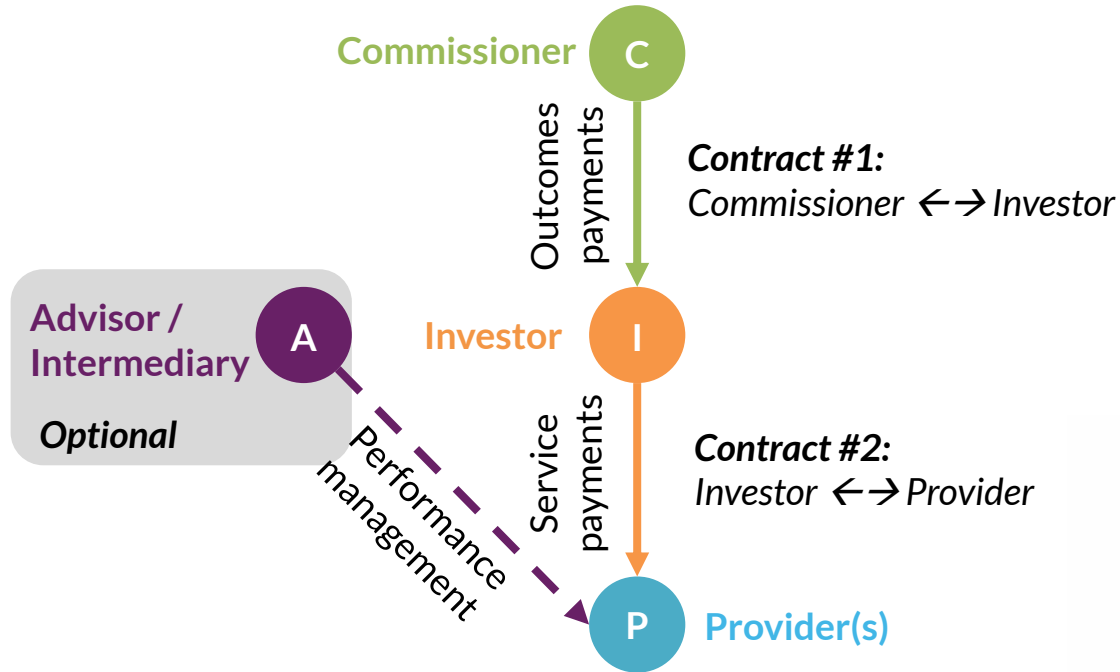
The Provider holds the contract with the Commissioner and takes responsibility for finding an Investor to share the risk with

The Investor gives the Provider the money needed to deliver the work upfront; if outcomes are not achieved then the Provider doesn't have to repay (all) this money and the Investor loses their capital and receives no return

Generally best for projects with **one** Commissioner and Provider

# Contract Mechanism 2

## *Investor in the middle*



The Investor holds the contract with the Commissioner. If outcomes are not achieved, the Investor stands to lose their investment and no return is paid

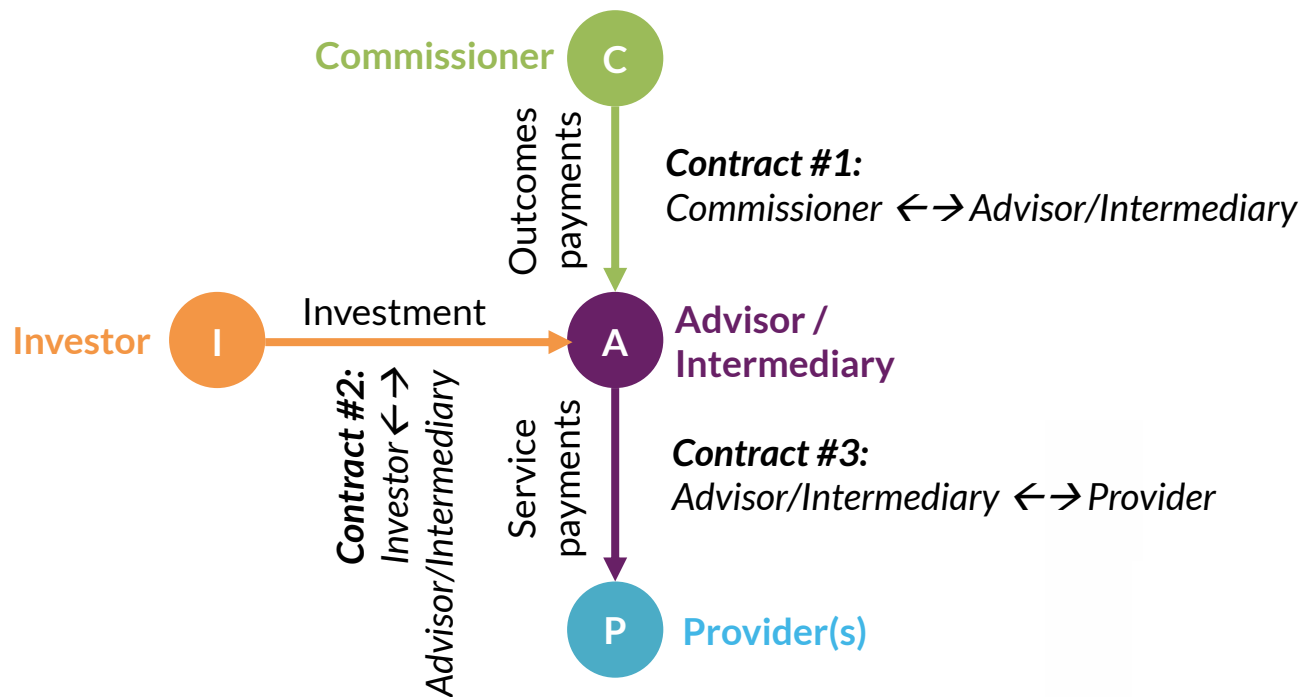
The provider operates on service fee basis, shielded from risk by the Investor

Sometimes an advisor / intermediary provides performance management of the provider to help assure the investor outcomes will be achieved

Generally best for projects with **multiple** Commissioners and/or Providers

# Contract Mechanism 3

## Advisor / intermediary in the middle



The Commissioner holds the contract with an Advisor/intermediary, who raises investment from the Investor(s). If outcomes are not achieved, the Investor stands to lose their investment and no return is paid

The provider operates on service fee basis, shielded from risk by the Investor

Generally best for projects with **multiple** Commissioners, Providers and/or Investors



# Procurement for provider-led SIBs

## Your main questions were...

- What are the main procurement issues facing a provider-led SIB? How might these challenges be overcome?
- How can a delivery agency use a SIB approach to win work to deliver an outcome-based intervention in multiple areas and for multiple commissioners?
- How can a commissioning authority best deliver value for money given the limited competition?
- How can a local commissioner best create a level playing field of providers (SME vs larger providers with experience of SIBs)?

## Ways to Wellness

Ways to Wellness is a SIB in Newcastle delivering social prescribing for a defined population of people with long term conditions. It is managed through a independent special purpose company (SPC) who act as a the social prime contractor and who commission and manage 4 providers to deliver the services.

The SPC was set up using the Voluntary Ex-Ante procedure.

- It started with a pilot so the capability to deliver emerged from a grant funded process
- The relationship between the CCG and Ways to Wellness team was a partnership around a shared ambition, rather than a commissioner/provider relationship
- Social investors were engaged through discussion at the development phase funded by the CBO grant and Bridges were appointed.
- The funders provided access to the legal resources to formulate the complex structure of agreements pro bono.
- The 4 providers were procured through open competition
- A key lesson was not engaging procurement and legal teams early and they had to unpick some of the agreements downstream as a result

# Procurement options

## Your main questions were...

- **What are the different procurement options available for those developing SIBs?**
- **What are the lesser known procedures?**
- **How does an Innovation Partnership work? What are the benefits as compared to other models?**
- **What are the key factors to consider in choosing the right approach?**
- **Examples**

# The rule book

- EU Treaty Regulations
- Public Contracts Regulations 2015 – new procedures & greater flexibility

# Public procurement procedures

- The Open Procedure
- The Restricted Procedure
- The Competitive Dialogue Procedure
- The Competitive Negotiated Procedure (with a call for competition)

# 1. A restricted competitive process (PIN or VEAT)

- The commissioner works with the provider(s) during a pre-competition development stage to create a business case

- The commissioner compares the value to alternative services, or no service at all.

- The price is negotiated with the provider around the terms of the business case.

Example: Travel Training

✓ Make sure that the deal doesn't unravel if social investors get involved later in the process. (get investors engaged during the initial negotiation)

## Travel Training

HCT developed a new service proposition around providing travel training to children using community transport services to enable them to travel more independently over time. No other community transport provider had a similar proposition.

HCT secured development funding from CBO Fund and engaged three authorities in developing a SIB.

- HCT had a unique proposition at the development stage – no other provider could demonstrate a track record
- Commissioners needed to judge whether other organisations could develop a similar service in response to an opportunity to bid.
- HCT had received the external development funds that enabled the service to be developed as a SIB and resourced the development of the business case with commissioners.
- HCT sought a restricted process and a VEAT process was used successfully with one authority.
- There was a challenge on the VEAT process by another provider with the 3<sup>rd</sup> authority and they conducted an open competition as a result.

## 2. An open competitive process that will define the price to be paid

- The commissioner tests the size and quality of the market (and its likely response) during the early stages of feasibility and development.

- The commissioner produces a tender specification as a product of the development process, describing the outcomes desired but not the price to be paid for them, which the market will determine.

- The commissioner designs a competitive process that is most likely to achieve the best social, environmental, price and quality outcome (i.e. what is defined as the Most Economically Advantageous Tender or MEAT).

Example:  
Reconnections SIB

- ✓ Social investors should be included either as respondents or as part of provider bids
- ✓ There may be some need for capacity building in social sector organisations to participate in a competition based on paying for outcomes.



## Reconnections

The Worcestershire Reconnections service is designed to address loneliness. It is the first and only SIB to tackle this area and resulted in producing a business case that demonstrates the cost benefit of intervention.

- The service was co-commissioned between Worcestershire County Council and several local CCG commissioners
- The idea came out of work by Social Finance and Age UK who created the initial business case that secured grant funding
- There was extensive collaboration prior to the formal stages of the contract relationship
- The commissioners chose to run an open procurement exercise that took 10 months to give themselves leverage over the negotiation of terms
- However, the only respondent were the team that had developed the concept – Age UK, Social Finance, supported by Nesta and Big Society Capital, so there was no competitive pressure in practice.
- Outcome payments are not linked to the cost benefits expected by the commissioners which are longer term than the SIB itself. (e.g. incidence of dementia and diabetes). Payments are linked to user reported improvement in loneliness over time.

# 3. An open competitive process against a pre-defined schedule of payment rates

- The commissioner tests the size and quality of the market (and it's likely response) during the early stages of feasibility and development.

- The commissioner produces a schedule of payment rates for outcomes, or 'rate card', as a product of the development process.

- The commissioner designs a competitive process that is most likely to achieve the best social, environmental, price and quality outcome (i.e. what is defined as the Most Economically Advantageous Tender or MEAT).

✓ If the payment rates do not reflect the cost of delivery and provide the right incentives, they may encourage “gaming”.

✓ This approach is most useful when commissioners are confident that they can define the value of payments for improved outcomes

Example: DWP Innovation Fund

## Innovation Fund

The [Innovation Fund](#) was a pilot initiative aimed at supporting disadvantaged young people, and those at risk of disadvantage, aged 14 years and over.

It paid for outcomes that were directly related to increasing future employment prospects.

The Innovation Fund was commissioned over two rounds via an open competition.

- DWP developed a range of proxy outcomes for gaining and sustaining future employment.
- Outcomes include re-engaging with education, such as addressing truancy and behavioural issues; gaining educational qualifications; and entering apprenticeships and employment.
- DWP specified a maximum amount they were willing to pay per outcome, which represented a proportion of the benefit savings associated with moving a disadvantaged young person into work. There was also a cap of £8200 per participant in round one and £11,700 in round two.
- A list of payable outcomes was published in the specifications for each round. Bidders were invited to pick and mix from this list and work toward outcomes appropriate for their particular group of young people. Bidders also proposed the payments they expected for each proxy outcome, up to the maximum amount set by DWP.

## A fourth option to consider...

- In some cases, investors have partnered with the public authority, and have then jointly procured a provider as partners.
- Whilst provision of finance is not subject to procurement, commissioners should consider how they secure good terms from the investor partner.

## Mental Health Employment Partnership

### Social Finance

Mental Health and Employment Partnership (MHEP) is a vehicle through which local commissioners of mental health supported employment services can procure a specialist intervention known as Individual Placement and Support (IPS).

There are 3 contracts with Haringey, Tower Hamlets and Staffordshire.

MHEP secured the development grant funding from the CBO programme.

- MHEP “co-commissions” with local authorities using a pre-defined specification, payment and outcomes structure and performance management process
- They look to be appointed as investor partners prior to a competition for a provider under a Memorandum of Agreement
- Note - the provision of finance is excluded from the Public Contracts Regulations.
- This means that there is no competitive test on the charges levied for finance, but there is a shared interest in securing a service that delivers value and impact.
- Haringey moved an existing IPS service already procured under the MHEP service. The other 2 authorities have run open procurement exercises for providers.

# Developing your procurement plan

## Your main questions were...

- What is best practice in terms of a procurement model/ strategy when using a SIB to commission services?
- What are the main mistakes made regarding procurement processes?

# Developing your procurement plan

- Define the procurement process in a plan that justifies the choice of approach
- Articulate the basis on which organisations will be engaged prior to the formal procurement and in particular the basis on which they share intelligence (soft market test)
- Any capacity building that might be required to enable providers to participate

# Transparency & intellectual property

- How can councils avoid challenge on ‘fairness and transparency’ grounds given that the very undertaking of a feasibility study gives the provider advance knowledge of the commissioning organisation and customer needs?
- Can, and if so how, councils select the provider to undertake a feasibility study without going to the market?
- What are the pitfalls to watch out for in talking to potential providers in the feasibility stages of a SIB?



# Transparency & intellectual property

One of the defining characteristics of outcome contracting is that it presumes a level of collaboration and shared value between the parties to the contract, however, commissioners should consider how that value is owned and shared to the public benefit.

Knowledge and evidence should be regarded as an asset created through the contract and transparency required as a condition of the contract:

- Commitment to transparency as part of evaluation process
- Open use of data and evidence as part of re-commissioning decisions

## Key considerations (I)

- Do you have a baseline against which to judge that better value has been achieved or will the price be defined through a competition?
- Are you developing a new service in collaboration with partners, or putting an existing service into a SIB?
- Will the service be delivered by multiple providers and do I need/want a management prime or performance intermediary?
- Would there be a good market response for an open competition?
- How will existing providers respond to a SIB procurement?

## Key considerations (II)

**A SIB is a commissioned three-party project partnership, within which procurement obligations for service contracts may arise.**

**A project plan is the first requirement, with procurement issues anticipated.**

**The project plan needs to include:**

- a. user and supplier consultation;
- b. a Project Collaboration Agreement;
- c. active management of project information to ensure equality of treatment to suppliers at any competitive stage;
- d. appropriate treatment of supplier intellectual property;
- e. applied specification drafting/offering for design and delivery;
- f. preferably design and delivery as a single contract (which only Innovation Partnership secures).

# Some helpful resources





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## Next steps



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# Stay in touch



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