



**HOUSING ASSOCIATION INTERNAL AUDIT FORUM**

**INTERNAL AUDIT PROGRAMME GUIDE**

**EU PROCUREMENT**

website: [www.haiaf.org](http://www.haiaf.org)



This guide has been funded by the Innovation and Good Practice Programme of the Housing Corporation

[www.housingcorp.gov.uk](http://www.housingcorp.gov.uk)

Tel: 0845 230 7000



## INTERNAL AUDIT PROGRAMME GUIDE PROCUREMENT AND EUROPEAN UNION (EU) PROCUREMENT RULES

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### Preamble

### Procurement

This Internal Audit Programme Guide covers the area of Procurement and the EU Procurement Rules.

Typically an association will spend 50 to 75 per cent of its budget on a variety of external goods, works or services, which are purchased by a number of individuals or departments. A small improvement in how the money is spent could yield a significant financial benefit, equivalent to a significant increase in efficiency and could help to offset the effects of budget cuts.

Everyone involved in procurement, needs to understand current best practice and the linkage between the association's strategic objectives and the procurement that will help achieve those objectives.

A corporate procurement strategy will help explain which of these products, works and services are important to an association and why. The strategy will help senior managers to understand how procurement will help the association to deliver its own corporate objectives and to understand their obligations and those of the people who work for them.

A common cause of failure or weakness in procurement is where those involved cannot see the whole picture and are not aware of the corporate objectives and strategy to achieve those objectives. The adoption of a suitable strategy and policy enables everyone within the association to be aware and accountable for securing Value For Money (VFM) from all procurement activity.

The procurement strategy and policy are based around a number of key principles:

- the overriding objective is to ensure that the right goods and services are obtained at the most advantageous cost;
- the association will utilise the most cost efficient and effective methods for procuring materials and services throughout the organisation;
- the association will seek to negotiate with successful tenderers to ensure that maximum savings are achieved;
- the association will seek to develop long-term partnerships with contractors and suppliers, as long as value for money and good performance can be demonstrated.
- The association will seek to achieve best Value For Money (VFM). When making procurement decisions. Securing best VFM means taking into account "the optimum combination of whole life cost and quality necessary to meet the associations requirements.



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### EU Procurement

For many years it has been argued that associations were not covered by the rules, however, under the threat of proceedings by the European Commission, the UK Government has conceded and the Housing Corporation has advised that associations must follow the procedures set out under the rules.

Since 10 September 2004, the Housing Corporation has required all housing associations to follow the EU procurement rules for all procurements to which those rules apply. Officers responsible for all forms of procurement within housing associations should become familiar with the EU procurement rules.

The guide is intended to assist in ensuring that the EU procurement rules and their application to housing associations has been followed, but it is not a substitute for legal advice. The guide should hopefully result in a clearer and more efficient instruction of the housing associations legal and procurement advisers.

Before taking any steps towards procuring any works or buying any goods or services, a housing association should;

- decide whether it will be entering into a contract, to which the EU rules apply;
- decide whether the contract is for works, services or supplies and, if so, whether it is a public works, services or supplies contract, a concession, a contract outside the EU procurement regime (e.g. a land transaction), or a contract subject to special procedures.
- once the housing association has decided what kind of contract it is procuring, the contract should be valued, along with any other contract with which it has to be aggregated, to decide whether it is over the threshold for EU procurement;
- even if the EU procurement rules do not apply to the contract, or apply only partially to the contract, compliance with the EU Treaty provisions should be considered; and
- if the EU procurement rules do apply, a decision to which of the EU procurement routes and procedures to follow should be made (e.g. open, restricted or negotiated or the special procedure for public housing scheme works contracts or design contests).

Inevitably, there will be occasions when a housing association does not fully comply with EU procurement rules. These could be minor failings (such as failing to include EU technical specifications) or could be major failings (such as using the negotiated procedure when circumstances do not justify it). When this occurs, the housing association will need to undertake a risk assessment of whether to continue with or abort the procurement.

The EU Procurement rules are all derived from the EU Treaty. Most of the rules covering items such as notices in the Official Journal of the European Union (OJEU), are found in Directives, concerning works, services and supplies contracts and further Directives dealing with remedies for breaches of the EU procurement rules and the use of standard forms for notices.



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The EU Procurement rules have been brought into force in UK law by three sets of regulations;

- The Public Works Contracts Regulations 1991
- The Public Services Contracts Regulations 1993; and
- the Public Supply Contracts Regulations 1995

The tables below show the thresholds applying to public sector bodies and utilities for contracts that are subject to EC Procurement rules. The thresholds are net of VAT.

### **Public Contracts Regulations 2006 – From 31 January 2006**

	<b>Supplies</b>	<b>Services</b>	<b>Works</b>
Entities listed in Schedule 1 <sup>1</sup>	£93,738 (137,000Euros)	£93,738 <sup>2</sup> (137,000 Euros)	£3,611,319 <sup>3</sup> (5,278,000 Euros)
Other Public Sector contracting authorities	£144,371 (211,000 Euros)	£144,371 (211,000 Euros)	£3,611,319 <sup>3</sup> (5,278,000 Euros)
Indicative Notices	£513,166 (750,000 Euros)	£513,166 (750,000 Euros)	£3,611,319 <sup>3</sup> (5,278,000 Euros)
Small Lots	£54,738 (80,000 Euros)	£54,738 (80,000 Euros)	£684,221 (1,000,000 Euros)

<sup>1</sup> Schedule 1 of the Public Contracts Regulations 2006 lists central government bodies subject to the WTO GPA. These thresholds will also apply to any successor bodies.

<sup>2</sup> With the exception of the following services, which have a threshold of £144,371 (211,000 Euros)

- Part B (residual) services
- Research & Development Services (Category 8)
- The following Telecommunications Services in Category 5
  - CPC 7524 – Television & Radio Broadcast Services
  - CPC 7525 – Interconnection Services
  - CPC 7526 – Integrated telecommunications Services
- Subsidised services contracts under regulation 34.

<sup>3</sup> Including subsidised services contracts under regulation 34.

### **Utilities Contracts Regulations 2006 – From 31 January 2006**

	<b>Supplies</b>	<b>Services</b>	<b>Works</b>
All sectors	£288,741 (422,000 Euros)	£288,741 (422,000 Euros)	£3,611,319 (5,278,000 Euros)
Indicative Notices	£513,166 (750,000 Euros)	£513,166 (750,000 Euros)	£3,611,319 (5,278,000 Euros)
Small lots	£54,738 (80,000 Euros)	£54,738 (80,000 Euros)	£684,221 (1,000,000 Euros)



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### Summary of Changes to the EU Directives

The revised Regulations include a number of procedures and requirements not included in the previous rules. The main changes are:

- Refinements of existing provisions:
  - Simplified thresholds expressed in Euros (Sterling figure fixed for two years in the UK).
  - Encouragement to use performance specifications and more emphasis on 'equivalence'.
  - Requirement to publish the relative importance of contract award criteria.
  - Environmental and social issues addressed.
  - Electronic means of communication.
  
- Significant additions:
  - The 'competitive dialogue' procedure.
  - Framework Agreements.
  - Central Purchasing bodies.
  - Electronic auctions.
  - Dynamic purchasing systems.
  - Exit criteria for utilities operating in open and competitive markets.
  - Some changes in coverage of Utilities Directive.

The significant additions are in relation to;

- Consolidation to single Directives: one for the public sector and one for utilities. This should ensure a more consistent treatment of common issues and provide a more comprehensive index in each directive.
- the public sector Regulations expressly provide for framework agreements and electronic auctions for the first time;
- specific provisions are included for Central Purchasing Bodies (whereby contracting authorities can purchase from or through such bodies, which must be contracting authorities who have been set up to provide those goods, works or services;
- a new competitive dialogue procedure in the public sector regulations is available for complex procurements, where the authority does not consider that the open or restricted procedures will allow the award of a contract. This procedure will allow authorities to enter into a dialogue with bidders before seeking final tenders from them.
- introduction of rules for Dynamic Purchasing Systems, a wholly electronic system for commonly used purchases. The system is open to new bidders through its lifetime. Call offs are made by means of a simplified notice to all those on the system;
- Contracts may be reserved to supported factories and businesses (those where more than 50% of the workers are disabled persons);



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- the Regulations provide clarification on the use of social and environmental issues;
- the Regulations now require mandatory exclusion of candidates who have been convicted of the following offences – participation in a criminal organisation, corruption, bribery and fraud, as defined in the Regulations;
- there is a requirement for a 10 calendar day standstill period at the award stage to permit unsuccessful tenderers to seek further information about an award decision and enable them to take action in the courts should they feel that they have sufficient grounds.

The purpose of the EU procurement rules is to open up the public procurement market and to ensure the free movement of goods and services within the EU. In most cases, they require competition. The EU rules reflect and reinforce the value for money (vfm) focus of the government's procurement policy. This requires that all public procurement must be based on vfm (defined as the optimum combination of whole-life cost and quality to meet the user's requirement) which should be achieved through competition, unless there are compelling reasons to the contrary.



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**Areas / Risks covered by this Guide.**

It is not the intention of this guide to cover the detailed content of legislation in this area in detail. The purpose of this guide is to focus on controls and processes which serve to minimise the risks to the Association of falling foul of such legislation.

Failure to put in place appropriate systems to maximise procurement and meet EU regulations exposes the Association to a number of risks.

This Internal Audit Programme Guide covers the following areas: -

Audit Area	Key Risks / Implications	Chapter Section
Procurement	<ul style="list-style-type: none"> <li>· Inconsistent practice leading to duplication of resource, poor value for money and ultimately non-achievement of agreed objectives.</li> <li>· Non compliance with the Corporation's Regulatory Code.</li> <li>· Inconsistent practice leading to a breach in EU Directives and current EU legislation.</li> <li>· Failure to achieve efficiency targets.</li> </ul>	1.1
Risk Management	<ul style="list-style-type: none"> <li>· Adverse PR / financial losses attributed to failure to identify and monitor the risks associated with Procurement.</li> <li>· Failure to comply with EU Procurement legislation resulting in the possibility of prosecution or reputational risk.</li> </ul>	2.1
Implementation of the Procurement and EU Procurement Strategy and Policy	<ul style="list-style-type: none"> <li>• Failure to meet legislation, regulation and Association policy, resulting in reputational / financial loss.</li> <li>· Policies and procedures are circumvented, resulting in the procurement objectives not being achieved.</li> <li>· Failure to meet legislation, regulation and Association policy, resulting in reputational / financial loss.</li> <li>· Inability to demonstrate economy, efficiency and effectiveness (VFM) in the procurement of works, services or supplies.</li> </ul>	3.1
Communication of the Procurement and EU Procurement Strategy and Policy	<ul style="list-style-type: none"> <li>· Board Members and Staff do not know what they are responsible for, or how they should carry out their duties, leading to non-compliance with legislation, Housing Corporation guidance or organisational policy and procedures.</li> </ul>	4.1
Management Information, Reporting and Continuous Improvement	<ul style="list-style-type: none"> <li>· Poor decision making, due to poor quality or timeliness of information provided to management.</li> <li>· Inability to demonstrate continuous improvement in service delivery.</li> </ul>	5.1



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### Other Sources of Information

There are numerous publications available on this topic and the list below is only a summary of those considered most useful to assist in an internal audit review of this area. Those marked with (£) are those where a fee is payable.

- National Housing Federation: Guide to the EU Procurement rules (March 2005)
- The Housing Corporation/Trimmers publication “Assessing Procurement – ensuring probity and value for money in property development, regeneration and maintenance procurement”.
- The Corporation’s Regulatory Good Practice Note 3, “Maintaining Standards of Probity”.
- The ODPM Social Housing Efficiency Technical Note (available from <http://www.odpm.go.uk>.)
- For IT procurement, the CIPFA publication “Systems Based Auditing Control Matrices for Information Technology”.

The Internal Auditor should also obtain details of any Consortium or Supply Chain Arrangements in place, to ensure VFM is being achieved through these procurement routes. If these procurement routes are being used, the Internal Auditor should ensure that the Association has implemented a mechanism for testing the market on a timely basis, to continue to ensure economy, efficiency and effectiveness is being maintained.

### Useful Websites

- Ø <http://simap.eu.int> – European information worksite for public procurement – with copies of the standard forms on line and the EU Directives
- Ø <http://www.ogc.gov.uk> – UK information on public procurement and project/programme management – with hyperlinks to the UK Regulations on the HMSO website;
- Ø <http://ted.publications.eu.int/official> - Tenders electronic daily, used by Contractors to identify tenders to bid for – with links to the Official Journal of the European Union (OJEU), EU Procurement legislation and SIMAP website.
- Ø <http://europa.eu.int?comm> – European Union website (which has overview guidance notes to each of the Works Services and Supplies Directives, setting out the approach of the European Commission to the EU Procurement rules); and
- Ø [www.hmso.gov.uk/acts.htm](http://www.hmso.gov.uk/acts.htm) - search on ‘Statutory Instruments’ for copies of the original Regulations, but this should be used with care, as HMSO does not update the Regulations on its website to incorporate changes made by subsequent Regulations.
- Ø <http://www.housingcorp.gov.uk>
- Ø <http://www.audit-commission.gov.uk/kloe/housingkloe.asp>



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### Terminology

EU Procurement Directives	The EU Procurement Directives set out the legal framework for public procurement. They apply when public authorities and utilities seek to acquire, goods, services, civil engineering or building works. They also include a set of procedures, which must be followed before awarding a contract when it's values exceed set thresholds.
Value For Money (VFM)	<p>Securing best VFM means taking into account “the optimum combination of whole life cost and quality necessary to meet the associations requirements.</p> <p><b><i>Economy</i></b> is the price paid for what goes into providing a service, for example, the cost per hour of care workers; the rent per square metre of accommodation.</p> <p><b><i>Efficiency</i></b> is a measure of productivity – how much you get out in relation to what is put in. For example, the efficiency of services such as rent collection may be measured by the cost of the service compared to the rent roll. Similarly, tenant participation costs may be expressed as an annual sum per tenant. Efficiency is primarily associated with the <i>process</i> and delivery of procurement.</p> <p><b><i>Effectiveness</i></b> is a measure of the impact achieved and can be quantitative or qualitative. For example, how many people were prevented by home care services from needing residential care (quantitative); satisfaction levels among different sections of the community with tenant participation arrangements (qualitative), and so on. Outcomes should be equitable across communities, so effectiveness measures should include aspects of equity. Effectiveness is primarily associated with the <i>outcomes</i> for customers.</p> <p><b><i>VFM</i></b> is high when there is an optimum balance between all three – relatively low costs, high productivity and successful outcomes. The Improvement and Development Agency (IDeA) in its procurement guidance defines best value for money as the ‘optimum combination of whole-life costs and benefits to meet the customer’s requirement’.</p>



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**1. PROCUREMENT & EU PROCUREMENT STRATEGY / POLICY AND PROCEDURE**

Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
1.1 Inconsistent practice leading to duplication of resource, poor value for money and ultimately non-achievement of agreed objectives.	1.1.1 A Procurement Strategy/ Policy has been produced.	(a) Ensure a Procurement Strategy/policy has been documented.  (b) Review the content of the Strategy/policy to ensure it covers: - <ul style="list-style-type: none"> <li>· The Strategic aims and objectives of the Procurement strategy;</li> <li>· How the Association will use procurement to support its aims and objectives;</li> <li>· A commitment to achieving Value For Money (economy, efficiency and effectiveness) and the process to secure continuous improvements in VFM.</li> <li>· How it will make a decision about what to procure and when;</li> <li>· Procurement, preferences (partnering, public/public, public/private etc)</li> <li>· Goods, works and services to be covered;</li> <li>· Procurement policies/ standards;</li> <li>· Procurement tools (joint procurement, e-procurement etc)</li> <li>· Roles and responsibilities of the procurement advisory Committee/group, procurement officers and finance department.</li> <li>· Training to be provided;</li> <li>· Approach to sustainability issues – Increased public awareness of environmental obligations. e.g. environmental legislation, how the legislation can affect procurement decisions;</li> </ul>	



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<b>Key Risk / Implication</b>	<b>Expected Key Control or Process</b>	<b>Suggested Tests</b>	<b>File Ref</b>
1.1 Inconsistent practice leading to duplication of resource, poor value for money and ultimately non-achievement of agreed objectives.	1.1.1 Cont.	<ul style="list-style-type: none"> <li>· Approach to e-procurement;</li> <li>· Other strategic priorities/social objectives e.g. Decent Homes Standard, Anti Social Behaviour.</li> <li>· Housing Corporation Regulatory Code;</li> <li>· Objectives and targets to be achieved through sound procurement practice;</li> <li>· Monitoring and reporting mechanisms.</li> </ul>	



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<b>Risk / Implication</b>	<b>Expected Key Control or Process</b>	<b>Suggested Tests</b>	<b>File Ref</b>
<p>1.1 Inconsistent practice leading to duplication of resource, poor value for money and ultimately non-achievement of agreed objectives.</p>	<p>1.1.2 Procurement Procedures have been produced.</p>	<p>a) Ensure Procurement procedures have been documented.</p> <p>b) Review the content of the procedures to ensure they include:-</p> <ul style="list-style-type: none"> <li>· The identification of need and the development of an outline specification for inclusion in the business case;</li> <li>· Obtaining financial approval/authority to proceed;</li> <li>· Identifying prospective suppliers/contractors / consultants;</li> <li>· Finalising the specification and preparing the rest of the invitation to tender documentation;</li> <li>· Issuing invitations to tender documents and handling enquiries;</li> <li>· Evaluating tenders;</li> <li>· Awarding and managing the contract; and</li> <li>· Debriefing unsuccessful suppliers.</li> <li>· Performance targets and monitoring.</li> </ul>	



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Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
1.1 Inconsistent practice leading to duplication of resource, poor value for money and ultimately non-achievement of agreed objectives.	1.1.3 In the development of the Procurement Strategy / Policy & Procedures, the Association has consulted with its internal / external customers, partners and wider stakeholders.	<p>(a) The Association has undertaken a needs analysis in order to identify its stakeholders in this area.</p> <p>(b) Obtain evidence of consultation with representatives of the Board in formulating the strategy / policy and procedures. For example, correspondence, minutes.</p> <p>(c) Obtain evidence of consultation undertaken with internal staff / tenant groups / compacts in formulating policy / strategy. For example, correspondence with representatives, organisations, notes from meetings, etc.</p> <p>(d) Obtain evidence of consultation undertaken with customers in formulating policy / strategy. For example, correspondence with representatives, organisations, notes from meetings, etc.</p> <p>Obtain evidence of consultation undertaken with other stakeholder groups in formulating the policy / strategy (i.e. local community / business community; For example, correspondence, notes from meetings, etc.</p> <p>(f) Obtain evidence of the use of sector research / studies in the development of the Strategy / Policy. For example, copies of the reports themselves, note references within the Strategy, etc</p>	



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Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
1.1 Inconsistent practice leading to duplication of resource, poor value for money and ultimately non-achievement of agreed objectives.	1.1.4 Standing Orders / Financial Regulations include the financial processes to follow when making purchases for goods / services.	(a) Ensure the Standing Orders / Financial Regulations include; <ul style="list-style-type: none"> <li>• The designated officer responsible for all payments on behalf of the Association;</li> <li>• The ordering process for goods and services; <i>including order completion, raising of order requisitions, appropriate authorisation etc</i></li> <li>• Values where estimates and quotes are required;</li> <li>• Authorisation limits and officers with delegated responsibility;</li> <li>• The receipt of goods and services; <i>including the checking of goods on receipt, checking the goods received note against the order; identifying any defects and recording them on the delivery note etc;</i></li> <li>• Expenditure Authorisation and Payment of Invoices</li> </ul>	



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Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
1.1 Inconsistent practice leading to duplication of resource, poor value for money and ultimately non-achievement of agreed objectives.	1.1.5 Standing Orders / Financial Regulations include the requirements for Capital Expenditure and Contract Arrangements.	<p>(a) Ensure the Standing Orders / Financial Regulations include;</p> <ul style="list-style-type: none"> <li>• A definition of items categorised as Capital Expenditure e.g. Land and Buildings, acquisition, installation or replacement of moveable or immovable plant and machinery; purchase of computer or other equipment in excess of £1,000 in value.</li> <li>• The project appraisal and monitoring process <i>including the need for a business case, risk assessment, options study, specification, reporting and monitoring procedures, project management process and post completion review arrangements.</i></li> <li>• Contracting and Tendering Arrangements <i>including compliance with EU Procurement legislation, tendering process, expenditure value when tenders are required, selection and appointment process, reporting framework.</i></li> </ul>	



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Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
1.1 Inconsistent practice leading to duplication of resource, poor value for money and ultimately non-achievement of agreed objectives.	1.1.6 In developing the Procurement Procedures the Association has considered its Strategy, Standing Orders and Financial Regulations for consistency.	(a) Obtain the Strategy, Procedures, Standing Orders and Financial Regulations and review to ensure that there is synergy between the four documents and they are appropriately cross referenced.	
	1.1.7 The Board has confirmed its commitment to economy, efficiency and effectiveness when purchasing goods or services, through approval of the Procurement Strategy / Policy, Procurement Procedures, Standing Orders, Financial Regulations and any summaries of these produced.	(a) Review Board minutes and supporting papers to ensure approval of the Procurement Strategy / Policy, Procurement Procedures, Standing Orders, Financial Regulations and any summaries of these produced.  NB Performance reporting to the Board is covered under section 5 of this guide.	
	1.1.8 The Senior and Middle Management Teams have acknowledged their roles and responsibilities in the implementation and monitoring of the Procurement Strategy/Policy and Procedures	(a) Review minutes of Senior and Middle Management Team meetings and supporting papers to ensure approval of the Policy and Procedures.	
	1.1.9 The Association has considered recruiting a dedicated purchasing officer to ensure economy, efficiency and effectiveness is achieved.	(a) Consider if the Association has a dedicated purchasing officer to centrally control purchases and if not whether the need for such a post has ever been considered.  (b) If a dedicated officer is in place, obtain a copy of the Job Description / Specification for this role and ensure it is consistent with the Policy document.	



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Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
1.1 Inconsistent practice leading to duplication of resource, poor value for money and ultimately non-achievement of agreed objectives.	1.1.10 The commitment to achieving economy, efficiency and effectiveness is set out through objectives and targets within the Association's Corporate Plan.	(a) Obtain a copy of the current corporate plan and ensure coverage of Procurement.  (a) Ensure any Procurement objectives and targets agreed as part of the Corporate Plan are consistent with the Strategy/ Policy / Procedures.	
1.2 Non Compliance with the Housing Corporations Regulatory Code	1.2.1 The Procurement methods adopted are in compliance with the Housing Corporations Regulatory Code.	(a) Ensure that the Association makes reference within its procurement strategy to the Regulatory Code and review the strategy to confirm it meets the principles of the code.	
	1.2.2 Conflicts of interest are declared and managed in an accountable way.  (Compliance with Schedule 1 of the Housing Act 1996)	(a) Ensure that the Association has a procedure/process in place for identifying potential conflicts of interest and review any declarations made to ensure that they have been managed in an accountable manner in line with the procedure/process recorded.	



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Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
1.3 Inconsistent practice leading to a breach in EU Directives and current EU legislation.	<p>1.3.1 The Procurement Strategy / Policy and Procedures includes a section on EU Procurement Directives.</p> <p><i>NB It is recommended that before a Housing Association undertakes the EU Procurement route, legal advice should be sought to ensure the Association is not subject to a breach in the EU Directives.</i></p>	<p>(a) Obtain the Procurement Strategy / Policy, and review to ensure that the EU Directives and procedures have been incorporated or identify whether a separate Strategy / policy has been formed.</p> <p>(b) Review the Strategy to confirm that it includes;</p> <ul style="list-style-type: none"> <li>- the types of contract to be covered e.g. written contracts, where the Housing Association is buying, works, goods or services;</li> <li>- Renewals and extensions;</li> <li>- Responsibilities for EU Procurement for Group Structures;</li> <li>- Central Purchasing bodies (if appropriate), which are set up specifically to procure goods and sometimes services on behalf of a number of Housing Associations;</li> <li>- Bidding directives for PFI and other local contracts;</li> <li>- The directives for different types of contracts e.g. provision of works, services or supplies;</li> <li>- Threshold values for each type of contract to which OJEU notices apply and the differing directives depending on the nature of the contract;</li> </ul>	



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<b>Key Risk / Implication</b>	<b>Expected Key Control or Process</b>	<b>Suggested Tests</b>	<b>File Ref</b>
1.3 Inconsistent practice leading to a breach in EU Directives and current EU legislation.	1.3.1 Contd.	<ul style="list-style-type: none"><li>- The directives for placing on OJEU notice including the type of notice, completion of the notice, pre qualification periods, invitation to tender or negotiate process, contract award and records and reporting.</li><li>- The procedure to be adopted when making the OJEU contract notice e.g. Open, Restricted, Negotiated, Special Procedure. The procedure to be used gives clear guidance to the contractor on the nature of the contract notice.</li></ul>	



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**2. RISK MANAGEMENT**

The Auditor should refer to the IAPG chapter on Risk Management for expected key control or process and suggested tests in regard the introduction and embedding of a robust risk management framework. In terms of expected key control or processes to manage the risks associated with Procurement, these are referred to throughout the sections in this chapter.

Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
2.1 Adverse PR / financial losses attributed to failure to identify and monitor the risks associated with Procurement.	2.1.1 Further to assessment of the risk management framework under the IAPG chapter on risk management, the Association has identified and evaluated the risks associated with Procurement.	(a) Obtain the Association's current versions of its Strategic and Operational Risk Registers and assess the extent to which Procurement is reflected. <i>(NB Risks themselves may not be specifically identified in Procurement terms but more generalised risks such as compliance with legislation, value for money, capital expenditure, etc).</i>	
	2.1.2 Meetings of the Board and any Sub Committee's have a VFM / Procurement dimension.	(a) Obtain a copy of the Association VFM policy, which details the methods to be adopted to demonstrate VFM  (b) Obtain and review copies of Board and Sub Committee minutes and supporting papers and assess the extent to which Procurement / VFM is considered as part of the routine business of the Association. For example, do minutes reflect VFM issues discussed, do agendas have a standing item on this area, are regular reports produced on progress against the objectives in the VFM policy.	



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2.1 Adverse PR / financial losses attributed to failure to identify and monitor the risks associated with Procurement.	2.1.3 Meetings of the Senior Management Team (SMT) have a Procurement / VFM dimension.	(a) Obtain and review copies of SMT minutes and supporting papers and assess the extent to which Procurement / VFM is considered as part of the routine business of the Association.	
	2.1.4 Team and Departmental meetings consider Procurement / VFM.	(a) Determine if the Association has a formal process in place to advise Staff of the need to hold regular team / departmental meetings and if there is any guidance as to the items to be considered as part of these including discussion on achieving VFM (economy, efficiency and effectiveness).  (b) Subject to (a) above, select a sample of teams / departments and review evidence in support of the regular undertaking of such meetings and the extent to which consideration of Procurement/VFM involvement features.	
2.2 Failure to comply with EU Procurement legislation resulting in the possibility of prosecution or reputational risk	2.1.5 The Association has been made aware of and has adopted the EU Procurement Directives setting out the legal framework for public procurement.	(a) Obtain and review a copy of the Board and SMT minutes and supporting papers confirming approval of the EU Procurement Directives and the legal framework for public procurement.  (b) Review the supporting papers to confirm that they detail the procedures which must be followed before awarding a contract when its value exceeds set thresholds.	



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**3. IMPLEMENTATION OF THE PROCUREMENT AND EU PROCUREMENT POLICY AND PROCEDURE**

Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
3.1 Failure to meet legislation, regulation and Association policy, resulting in reputational / financial loss.	3.1.1 The establishment of a project board / sponsor to monitor and report on the adherence to legislation / policy / procedures.	<p>(a) Using the Strategy / Policy, Procedures and Financial Regulations obtained as part of 1.1.1 – 1.1.5, select a sample of capital purchases for goods or services and review the appropriate documentation to ensure;</p> <ul style="list-style-type: none"> <li>- A business case has been completed detailing the reason for the purchase, benefits for making the purchase and details of why the purchase is required.</li> <li>- An options appraisal has been undertaken and is included within the business case.</li> <li>- An outline specification has been recorded and included in the business case;</li> <li>- The business case has been approved at an appropriate level, including obtaining financial approval/authority to proceed;</li> <li>- A Project Management Board / Team or sponsor has been appointed with the relevant experience to oversee the achievement of the project;</li> </ul>	



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Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
3.1 Failure to meet legislation, regulation and Policies and procedures, resulting in reputational / financial loss	3.1.1 Cont	<ul style="list-style-type: none"> <li>- Terms of Reference of the Project Team or a job description for the project officer have been recorded detailing the roles and responsibilities;</li> <li>- The monitoring and reporting framework has been established to ensure decisions are made on a timely basis and at an appropriate level;</li> <li>- The project board has identified the process for documenting its justification and authorisation limits for any single tender action.</li> <li>- Review minutes and supporting papers from meetings to ensure the Project Team meets regularly and fulfils its terms of reference.</li> <li>- Determine if an action plan in support of the Policy has been developed and approved by the Board.</li> <li>- Ensure progress against the action plan has been reported back to the Project Team. <i>NB Determine if there has been any significant slippages which need to be brought to the attention of the Board.</i></li> </ul>	



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3.1 Failure to meet legislation, regulation and Policies and procedures, resulting in reputational / financial loss	3.1.1 Cont	<ul style="list-style-type: none"> <li>- The EU Procurement legislation has been met, (if appropriate) with a suitable advert placed in the European Journal;</li> <li>- The project team has established the competitive tender procedure / quotation procedure, which is in accordance with the Financial Regulations. Any deviations should be noted and approved at the appropriate level;</li> <li>- The specification has been finalised along with the rest of the tender documentation, which is approved by the project board / team before being issued to prospective companies;</li> <li>- The process for managing the invitations to tender documents and handling enquiries is established, to ensure an unfair advantage cannot be obtained;</li> <li>- A due diligence process for suppliers of key services is undertaken, including checks on legal status and technical capacity, seeking references from other clients.</li> <li>- The project team / board or other appropriate group is in place to evaluate the tenders. The evaluation process is in accordance with the Financial Regulations. (All unsuccessful tenderers are notified)</li> </ul>	
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Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
3.1 Failure to meet legislation, regulation and Policies and procedures, resulting in reputational / financial loss	3.1.1 Cont	<ul style="list-style-type: none"> <li>- A contract is in place with the successful consultant / contractor / supplier, which includes the specification, contractual obligations, roles and responsibilities, performance targets, completion stages etc. The contract has been signed by all parties before commencement of the work.</li> <li>- Monitoring and Reporting of performance / issues to appropriate Committee's has been identified, to ensure completion to the agreed specification.</li> </ul>	



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Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
<p>3.2 Policies and procedures are circumvented, resulting in the procurement objectives not being achieved.</p>	<p>3.2.1 The Association has considered the appointment of a Procurement Officer to ensure adherence to Strategy / Policy / Procedures/ Standing Orders / Financial Regulations</p>	<p>(a) Using the Strategy / Policy, Procedures and Financial Regulations obtained as part of 1.1.1 – 1.1.5, select a sample of purchases for goods or services and ensure that evidence is held to confirm;</p> <p><u>Orders for Goods and Services</u></p> <ul style="list-style-type: none"> <li>- Official orders have been raised in advance of the purchase (except utilities);</li> <li>- Verbal orders have only been placed in emergency situations and a confirmation order has been raised within 2 working days of placing the order;</li> <li>- Orders / Requisitions are raised and authorised in line with Financial Regulations and the authorised signatories list;</li> <li>- The cost of the purchase is covered by the budget;</li> <li>- The appropriate selection, contract and tender requirements have been complied with;</li> <li>- The selection of purchase is based on “the optimum combination of whole life cost and quality necessary to meet the associations requirements.</li> <li>- Orders and Requisitions are fully completed with the nature, volume, unit price, discounts claimed and total cost of the goods, works or services required and terms and conditions of purchase.</li> </ul>	



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3.2 Policies and procedures are circumvented, resulting in the procurement objectives not being achieved.	3.2.1 Cont	<p><u>On Receipt of the Goods / Services;</u></p> <ul style="list-style-type: none"> <li>- The goods should be checked at the point of receipt to the satisfaction of the person receiving the goods;</li> <li>- The details contained on the delivery/ goods received note should be checked against the original order and requisition;</li> <li>- Obvious defects and quantity variations should be noted on the delivery note, advised to the carriers and copied to Finance.</li> </ul> <p><u>Expenditure Authorisation and Payment of Invoices;</u></p> <ul style="list-style-type: none"> <li>- Invoices received by the Finance Department have been registered and the details matched to the delivery/goods received note.</li> <li>- Payments have only been made against invoices certified for payment by an authorised signatory.</li> <li>- The goods, services or work covered by the invoice or account have been received, carried out, examined and approved.</li> <li>- The price is in accordance with the relevant quotation, tender or contract.</li> <li>- The expenditure is posted to the correct ledger account e.g. capital / revenue.</li> </ul>	



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<p>3.2 Policies and procedures are circumvented, resulting in the procurement objectives not being achieved.</p>	<p>3.2.1 Cont</p>	<ul style="list-style-type: none"> <li>- The prices, trade discounts, other allowances, credits and tax calculations are correct.</li> <li>- a properly detailed account and is in the correct form.</li> <li>- The invoice has not been previously paid.</li> <li>- The quantities stated to have been received are correct; and</li> <li>- The invoice is in the correct form for VAT purposes.</li> <li>- Appropriate controls exist for the payment of invoices e.g. two authorised signatories on cheque payments or logical access controls to BACS transmissions</li> </ul> <p>Ensure segregation of duties between the raising and approval of orders, ordering and receipt of goods/certification of e.g. maintenance work, ordering and invoicing and payment of invoices is appropriate.</p> <p>Ensure that a periodic review takes place of tender lists, long term suppliers, approved suppliers or suppliers under call-off contracts, to confirm that VFM is being achieved.</p>	



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3.3 Failure to meet legislation, regulation and Association policy, resulting in reputational / financial loss.	3.3.1 The Association has assigned responsibility for EU Procurement to an officer with appropriate knowledge and experience of the new directives.	<p>(a) Using the Strategy / Policy and Procedures obtained as part of 1.2.1, undertake a walkthrough of a contract that has been subject to an OJEU contract notice and ensure the following has been considered;</p> <ul style="list-style-type: none"> <li>- standard forms have been completed for the OJEU contract notice; <i>NB Standard forms for contract notices are mandatory and can be located at <a href="http://simap.eu.int/">http://simap.eu.int/</a>.</i></li> <li>- OJEU Advertising Timescales are adhered to; <i>NB the timescales can be located at <a href="http://simap.eu.int/">http://simap.eu.int/</a>.</i></li> <li>- The type of procedure has been established e.g. open, restricted, competitive dialogue, negotiated. <i>NB Public authorities have a free choice between open and restricted procedures. The competitive dialogue procedure is available where the contract cannot be awarded under open or restricted procedures.</i></li> <li>- If notice periods are to be reduced in line with the directives the following should have taken place;               <ul style="list-style-type: none"> <li>- <i>a prior information notice (PIN) was published sufficiently far in advance of the procurement or when accelerated procedures are used.</i></li> </ul> </li> </ul>	



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3.3 Failure to meet legislation, regulation and Association policy, resulting in reputational / financial loss	3.3.1 Cont	<ul style="list-style-type: none"> <li>- <i>if the OJEU notice was submitted electronically, was it submitted in accordance with the requirements set out on the SIMAP website.</i></li> <li>- <i>where authorities offer full and unrestricted access to tender documents (in accordance with specific requirements set out in the Regulations)</i></li> <li>- Has the stages of the procurement process been followed in accordance with the regulations; e.g. Specification stage, selection stage and award stage.</li> <li>- On the selection of Tenderers, has the Association complied with the minimum number of bidders (5) for the restricted procedure and (3) for the negotiated and competitive dialogue procedure.</li> <li>- Has the minimum number been stated in the contract notice and is the number quoted sufficient to ensure genuine competition.</li> <li>- If a post tender negotiation stage has been used, has the Association adhered to the European Commission statement on post tender negotiations? <i>NB The European Commission Statement specifically rules out any negotiation on price.</i></li> </ul>	



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Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
3.3 Failure to meet legislation, regulation and Association policy, resulting in reputational / financial loss.	3.3.1 Cont	<ul style="list-style-type: none"> <li>- On award of a tender, ensure that the contract has been awarded on the basis of lowest price or most economical advantageous tender (MEAT)</li> <li>- Contract notices / contract documents give relative weighting to each criterion used to judge the most economically advantageous tender.</li> <li>- Where this is not feasible, award criteria has been stated in descending order of importance.</li> <li>- MEAT award criteria should assess the inclusion of environmental characteristics (e.g. energy savings, disposal costs etc) provided these are linked to the subject matter of the contract.</li> </ul>	



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<p>3.4 Inability to demonstrate economy, efficiency and effectiveness (VFM) in the procurement of works, services or supplies.</p>	<p>3.4.1 The Association has established a budget for Capital and Revenue Procurement based on reasonable assumptions / supporting information.</p> <p><i>NB Whilst costs associated with this activity may be included within several cost centres such as Estates, Finance, Salaries, Marketing, etc without undertaking some form of overall analysis it will not allow the true costs to be measured, or for the measures employed to be assessed to improve and demonstrate VFM.</i></p>	<p>(a) Obtain details of the Associations budget agreed for the financial year and ensure it provides resource for proposed Capital and Revenue expenditure.</p> <p>(b) Subject to 3.1.1 (a) above, review the basis of the setting aside of resources for Capital and Revenue expenditure to ensure consideration has been given to: -</p> <ul style="list-style-type: none"> <li>· Start up costs for Project Boards / Teams;</li> <li>· Recurring funding for existing initiatives / Groups;</li> <li>· Bids for / use of additional resources such as Housing Corporation Grants;</li> <li>· Provision to / use of Specialist Advisors in setting up of, and continued operation of initiatives / groups;</li> <li>· Administration costs;</li> <li>· Other costs associated with Procurement e.g. advertising, tendering, appointment of consultants/contractors, obtaining quotations etc</li> <li>· Staff time associated with Procurement.</li> </ul> <p>(c) Review the extent to which Tenants themselves have been involved in establishing and agreeing the budget for capital and revenue procurement initiatives.</p>	



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**4. COMMUNICATION OF THE PROCUREMENT STRATEGY / POLICY**

Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
4.1 Board Members and Staff do not know what they are responsible for, or how they should carry out their duties, leading to non-compliance with legislation, Housing Corporation guidance or organisational policy and procedures.	4.1.1 The Association has publicised its Procurement Strategy / Policy and Procedures to its staff, Tenants and other stakeholders.  <i>NB Without publishing its policy there is a risk tenants are unaware of the means of participation and how they can become involved.</i>	(a) Ensure the Association has publicised its Procurement Policy and or summary through review of its intranet, website and other literature (e.g. tenants handbook, leaflets; etc).  (b) Ensure the Association has taken account of equality and diversity in publicising the policy by offering information in other forms such as hard copy, translations, Braille, large print, etc.	
	4.1.2 The Procurement Strategy / Policy and Procedures is available for inspection / accessible in the Association's premises, including main, regional, district and neighbourhood offices.	(a) Visit a sample of the Association's premises to ensure that the Procurement Strategy / Policy and Procedures are available.	



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Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
<p>4.1 Board Members and Staff do not know what they are responsible for, or how they should carry out their duties, leading to non-compliance with legislation, Housing Corporation guidance or organisational policy and procedures.</p>	<p>4.1.3 The Association has provided its Board Members, Staff, Representatives involved in procurement with training on Capital and Revenue Procurement processes.</p>	<ul style="list-style-type: none"> <li>(a) Obtain a copy of the training programme for the Board and ensure coverage of Procurement and EU procurement directives.</li> <li>(b) Obtain evidence of the formal delivery of training courses on Procurement For example, copies of handouts / materials used and Board minutes.</li> <li>(c) Review the Board’s current list of members against attendance records from Procurement / EU Procurement training courses to ensure receipt of training by individual board members who may be involved on the Project Management Board / Team.</li> <li>(d) Obtain a copy of the training programme for Staff and ensure coverage of Procurement and EU Procurement directives.</li> <li>(e) Review the current Staff list against attendance records from Procurement / EU Procurement training courses to ensure receipt of training by individual staff members.</li> <li>(f) Establish if a formal training programme for residents / resident groups has been established (If involved in Procurement decisions)</li> </ul>	



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Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
4.1 Board Members and Staff do not know what they are responsible for, or how they should carry out their duties, leading to non-compliance with legislation, Housing Corporation guidance or organisational policy and procedures. Contd	4.1.4 The Procurement Strategy / Policy, EU Procurement Directives and associated policies and procedures are reviewed on an annual basis to ensure they remain up to date with legislation, etc.	<p>(a) Using the results of testing in 1.1.1, 1.1.2, 1.1.3 and 1.1.4 ensure policies / procedures have been subject to review on an annual basis. <i>NB This can be determined through version control / review dates on the documents themselves and / or minutes of the Board / Sub Committee's and Senior Management Team.</i></p> <p>(b) Using the result of (a) ensure the polices / procedures publicised in 4.1.1 and 4.1.2 remain the most current.</p>	



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<p>4.1 Board Members and Staff do not know what they are responsible for, or how they should carry out their duties, leading to non-compliance with legislation, Housing Corporation guidance or organisational policy and procedures. Contd</p>	<p>4.1.5 The Association remains up-to-date with current initiatives / best practice.</p>	<p>(a) Ensure that the Association has a clear process for ensuring it remains up to date with current developments in this area, including changes to EU Procurement levels. For example, participation in national / regional forums, attendance on training courses, use of the internet to identify changes to EU Procurement thresholds.</p> <p>(b) Ensure that the Association has considered appointing a Procurement Officer to review its procurement arrangements. If so, obtain a copy and ensure an action plan has been agreed, and progress is formally monitored.</p> <p>(c) Familiarise yourself with recent guidance / publications (e.g. websites, trade journals) and review the Procurement Strategy /Policy and procedures to ensure they remain up to date. In addition, consideration could be given to interviewing a sample of staff involved in procurement to confirm awareness of recent / proposed changes.</p>	



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**5. MANAGEMENT INFORMATION, REPORTING AND CONTINUOUS IMPROVEMENT**

Key Risk / Implication	Expected Key Control or Process	Suggested Tests	File Ref
5.1 Poor decision making, due to poor quality or timeliness of information provided to management.	<p>5.1.1 The Board and / or Sub Committee receives regular performance reports on Procurement activity.</p> <p><i>Example Performance Indicators may include:-</i></p> <p><i>Economy, Efficiency and Effectiveness achieved;</i></p> <p><i>Progress against specification;</i></p> <p><i>Progress on significant ongoing capital expenditure;</i></p> <p><i>Projects completed to time, quality and cost;</i></p> <p><i>Budget reports: actual against budget;</i></p> <p><i>Levels of satisfaction with services procured, including tenants perception of the ability to shape and influence the design of such services.</i></p>	<p>(a) Review a sample of board minutes and supporting papers to ensure receipt of regular information on Procurement / VFM.</p> <p>(b) Review performance reports presented and consider the extent to which they provide information concerning the objectives and targets within the Procurement Strategy / Policy.</p> <ul style="list-style-type: none"> <li>• Evaluation and effectiveness of specific procurement initiatives</li> <li>• Identification of key priorities and issues</li> <li>• Monitoring of performance of consultants / contractors</li> <li>• Financial implications / costs</li> <li>• Local indicators agreed as part of partnership arrangements</li> <li>• Information from managing agents.</li> <li>• Individual cases and emerging trends</li> </ul> <p><i>NB some of the above may be reported though other reports such as Management Accounts; Estates and Finance Committee, update of progress against the Corporate Plan.</i></p>	



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<b>Key Risk / Implication</b>	<b>Expected Key Control or Process</b>	<b>Suggested Tests</b>	<b>File Ref</b>
5.1 Poor decision making, due to poor quality or timeliness of information provided to management.	5.1.2 Senior Management receives regular performance reports on the area of Procurement.	(a) Review a sample of Senior Management meeting minutes and supporting papers to ensure receipt of regular information on Procurement.  (b) Review performance reports presented and consider the extent to which they provide information concerning the objectives and targets within the Procurement Strategy / Policy.	



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<b>Key Risk / Implication</b>	<b>Expected Key Control or Process</b>	<b>Suggested Tests</b>	<b>File Ref</b>
5.1 Poor decision making, due to poor quality or timeliness of information provided to management.	5.1.3 Performance information is generated in an accurate and reliable manner.	(a) Obtain examples of performance reports generated for the Board and Senior Management Team and ascertain through interview the basis on which information is generated and review adequacy of controls in place to ensure accurate and reliable including independent review, data validation routines.  (b) Take an example of the most recent report for Board and Senior Management Team and trace back to the MI system and source data where possible and comment on adequacy and completeness of audit trail.	



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5.1 Poor decision making, due to poor quality or timeliness of information provided to management.	5.1.4 The Association publicises its performance in regard to VFM.	<p>(a) Obtain a copy of the most recent Annual report and review outcome of any objectives / targets established for VFM</p> <p><i>NB If performance is indifferent or declining what measures the Association is to put in place and a mechanism for tracking to ensure implemented.</i></p> <p>(b) Obtain and review examples of recent newsletters to tenants and stakeholders and review the extent to which economy, efficiency and effectiveness in relation to VFM is reported.</p>	
	5.1.5 The Association reviews its VFM performance on an ongoing basis including comparatives to previous periods, similar organisations and other benchmarking information	<p>(a) Using the review in 5.1.1 - ensure the Association considers trends / comparatives with previous periods, similar organisations and other benchmarking information on a regular basis.</p> <p>(b) From review in (a) consider if the Association is able to demonstrate continuous improvement in this area. <i>For example, better quality services from a new supplier, economy in a change in supplier / process, changes in process that improve effectiveness, improving levels of satisfaction; etc.</i></p>	



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5.2 Inability to demonstrate continuous improvement in service delivery.	5.2.1 The Association is able to demonstrate continuous improvement in its systems and processes in place for Procurement.	<p>(a) Using performance information obtained in 5.1.1 undertake a trend analysis of information reported (where practical) to determine if figures demonstrate improved performance or areas of indifference / concern.</p> <p>(b) If the Association has recognised performance issues, is there an action plan in place to resolve these and is this critically reviewed and managed.</p> <p>(c) Determine the extent to which the Association has sought to evaluate the costs / benefits of each of the mechanisms employed in Procurement and how it has sought to develop these to ensure the efficient use of resources.</p>	