

**Keeping it Legal, Keeping it Local**

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## Setting the Scene

- Recession – increased emphasis on spending money locally
- Glover Report – transparency, simplicity, strategy “Accelerating the SME economic engine”
- Roots Review – Collaborate or Die!
- HM Treasury (OEP) – collaborative procurement
- EU Procurement Directive and Treaty of Rome
- Illegal to have a “buy local” policy
- So its about managing the tensions between EU and local procurement

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## The Dilemma

- LA's wear (at least) 2 hats:-
  - Economic development
  - Meeting legal and policy obligations in spending public money
- Tensions can arise between these when LA's procure
- Public contracts may be “the only game in town”
- How can smaller providers be supported by Council business to:-
  - allow them to contribute to the local economy (limiting unemployment)
  - and to grow larger (increasing overall wealth)
- HMG has the same problem (Glover Report) – accidental exclusion of SME's

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# The EU Dimension

## The EU procurement legislation adds an extra dimension

Public authorities such as councils and central government have a legal obligation of non-discrimination in the award of public contracts

Any supplier in EU must be allowed to take part in (mainly larger value) contracts

These contracts can't be so structured as to favour local suppliers

Local small suppliers must compete on an equal footing with all other suppliers (whether large/small/local/national/other EU)

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# What if We Get it Wrong?

**The EU dimension adds risk to a council's procurement operations as special action for local suppliers risks legal action**

This could result in civil damages/action against the UK by the European Commission/the injunction of the contract

Action can be taken against the Council by any supplier (including an EU supplier but much more commonly another UK supplier)

Such actions are increasingly common and Councils are disproportionately the subject of such cases

Each case increases the risk of future challenge

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## What Can't I Do?

Local-only advertisement of the contract

The provision of early or additional information on the contract that provides the local supplier with an “edge”

The “lotting” of contracts with the aim of reserving parts of a contract to a smaller (=local) supplier

Requirement to use local labour

Requirement to have a local office

Specifications likely to favour local suppliers

Requirement for experience of working with the council in the past

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## However....

- Do you use compliance with EU Regulations as your excuse?
- Or, your opportunity?
- If it's your excuse then you risk excluding local providers
- But if you use it as your opportunity to critically review each contract and be creative you can comply, innovate and stimulate the local market

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# How Do I Do This?

## So what *can* we do

“supply side” actions to improve local providers awareness of our contracts  
(additional local advert/internet/meet the buyer conferences)

Work with others to train local providers to approach us Professionally

Make our procurement as simple as possible consistent with risk  
(e.g. simpler PQQ's)

Actively debrief poor providers as to why they failed

Use lotting sensitively to allow local providers to demonstrate they  
are better vfm than larger (non-local) providers

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# What Have We Done in Staffordshire

- “Lotting” – Fruit and Vegetables, Fresh Milk, Home to School Transport
- “Selling to the Council” website
- New tenderers guidance pack
- Contracts database
- Pre-tender workshops
- E-tendering
- Call out and response times
- Simplified contract documentation
- Tender toolkit
- CLES National Award 2009 – “Forging Resilient Local Economies”

and finally.....

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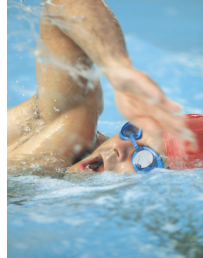


# What Do These Have in Common?

Walking



Swimming



Car



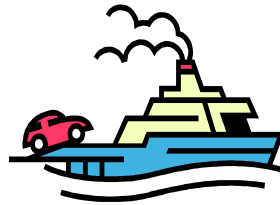
Bike



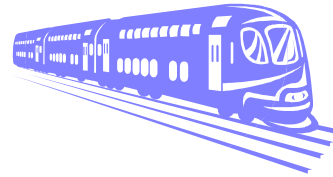
Aeroplane



Ferry



Train



Bus



- *They all get us from start to finish*
- *They all carry risk, but we still do them?*

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# Managing the Risks

- Risk is unavoidable, its how you manage it that counts
- It isn't just about compliance, its also about the "right" result for your organisation and the local economy
- If we don't innovate there may not be a local economy post recession
- Show leadership
- Don't hide behind "the rules"
- Engage, listen, encourage and inform
- Multiplier effect of £1 spent locally
- You can comply and innovate
- Schumpeter – "Creative Destruction"
- Johnson – "Frugality Drives Innovation"
- and finally.....
- EU compliance is not the "end game" it is a process which should support effective, fit for purpose procurement. If you make it the "end game" you may find.....
- "The patient is dead but look at the quality of the stitches?"

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**Questions?**

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