

# Contract Management and Procurement

# Procurement and contracting are...

**Procurement** is the process of acquiring goods, works or services from (usually) external providers/suppliers and managing these through to the end of contract.

**Contracting** is the process of negotiating and agreeing the terms of a contract for services, and on-going management of the contract including payment and monitoring.

What is contract management?

# Contract management is:

- Ensuring the right people are in place to carry out the contract management activities
- Setting up administration systems
- Managing performance to ensure that the service is provided in line with the contract, including improving supplier performance and capability
- Ensuring payments are made to the supplier in line with the contract and that appropriate incentive mechanisms are in place
- Understanding and managing contractual and supplier risk
- Handling of changes to the contract

# Why should commissioners know about contract management?



# Getting good results from your contracts

- Good results depend on:
  - Good contract administration
  - Good provider relationship management
  - Strong contracts and specification
  - Contract management is an integral part of the procurement cycle
- Refer to Top 10 Attributes and Top 10 Pitfalls
- Identify examples that you have experienced and discuss

## A contract is...

A legal agreement between a purchaser and provider which establishes the mutual expectations of both parties.

A grant is in essence a 'gift' although it may be accompanied by certain conditions.



# A specification is...



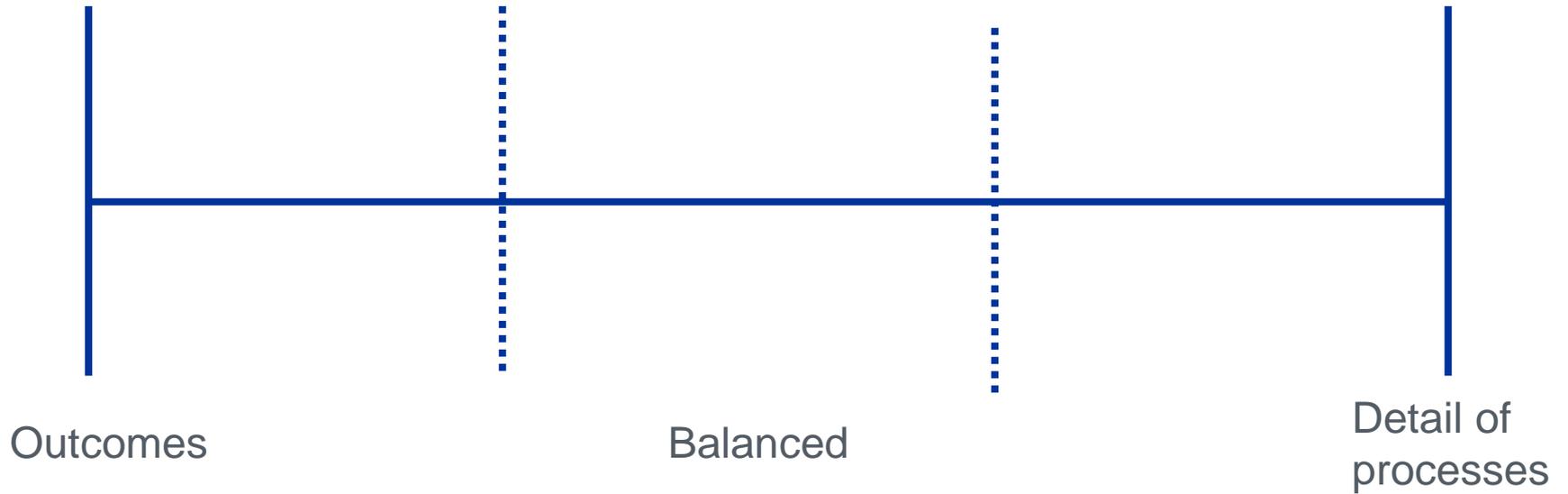
A document describing a buyer's needs, which enables providers to propose an appropriate, costed solution to meet those needs.

A Service Level Agreement (or SLA) defines what services a service provider will provide and the required level or standard for those services.

# Key functions of a specification

- To describe the nature and scope of the service to be bought.
- To define the people for whom that service should be provided.
- To set the outcomes that are required.
- To set the value base within which the service should be provided.
- To describe the monitoring arrangements to determine whether or not all the requirements are being met.

# Spectrum of specifications



# Exercise

Think about service specifications you use:

- What does “good” look like?
- What improvements could be made?

# Developing a specification

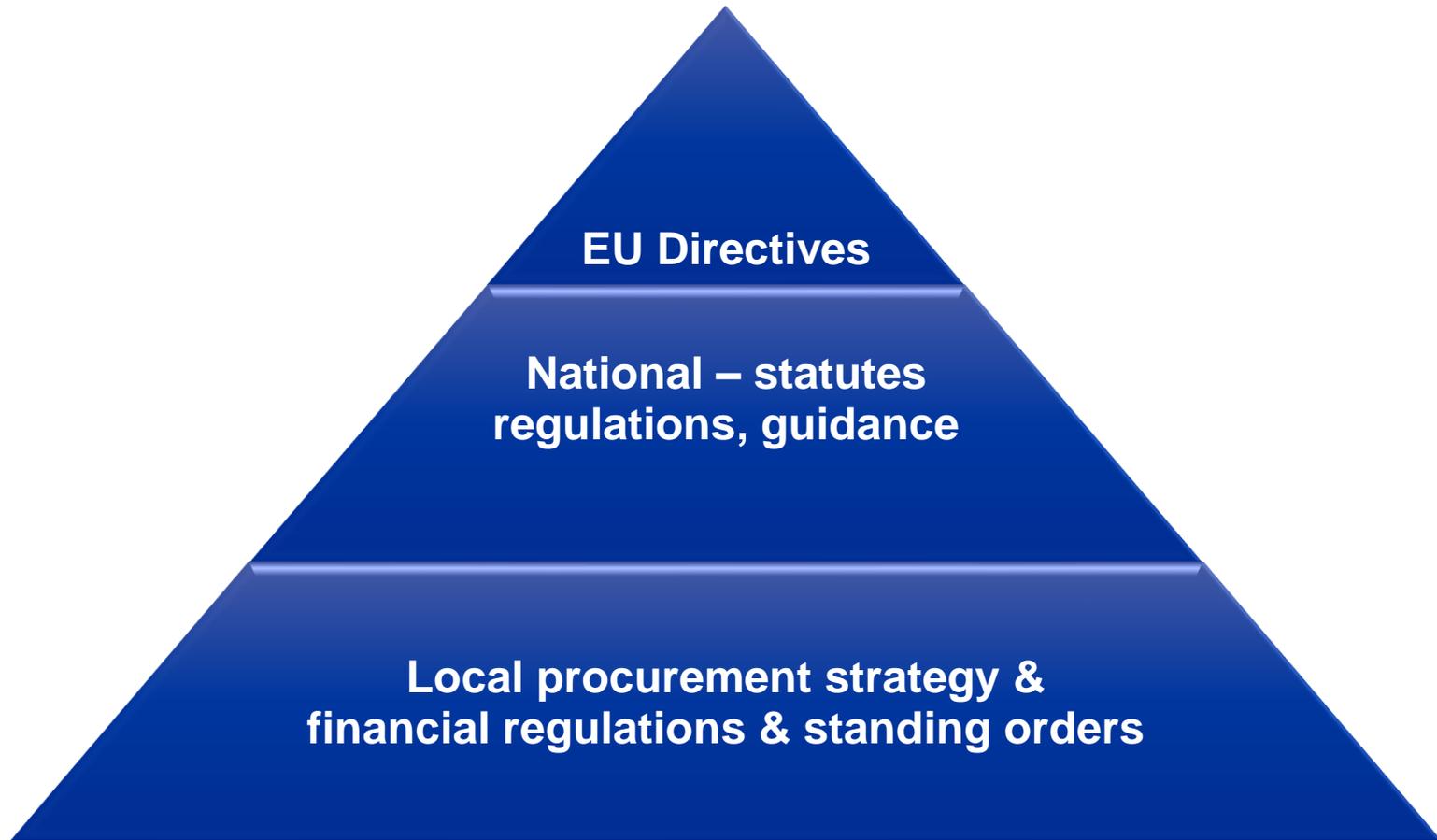
- Who should be involved in the team and who should take the lead in writing the specification?
- How are values to be agreed and defined?
- What outcomes be defined and written down?
- How else is quality to be specified?
- How are the outputs to be specified?
- How much detail will be written about the processes?
- Where does the service fit in the care and support pathway?
- How will we ensure that changes can be made over time to reflect national and local policy priorities?
- How are inputs to be specified e.g. numbers and qualifications of staff?
- How will it be measured and monitored?

# Good practice specifications and contracts

- Take a shared approach to risk and equity of benefits.
- Outline the channels of communication.
- Set clear targets and say how the success of the service will be measured.
- Specify the monitoring arrangements, which are proportionate.
- Build in flexibility and ability to change.
- Have sensible, do-able timescales.
- Use plain language.

# Procurement

# The legal procurement framework



# Brexit and the transition period...and beyond...

- EU Public Procurement Directives and UK Public Procurement Regulations continued to apply during the transition period from 31 January 2020 until 31 December 2020.
- A package of Public Procurement Directives
  - [The Public Contracts Directive 2014](#)
  - [The Concessions Contracts Directive 2014](#)
  - [The Utilities Directive 2014](#)
- These EU Directives governed procedures for the award of a contract to a supplier when its value exceeds set financial thresholds, unless it qualifies for a specific exclusion.
- Expired 31st December 2020

# Procurement Post Brexit

"an historic opportunity to overhaul [the UK's] outdated public procurement regime."

"Transforming Public Procurement" (2020) - Green paper indicates contracting authorities and prospective suppliers should expect major reforms to be proposed in the months ahead.

# Transforming public procurement December 2020 – Green Paper

- Legal principles of public procurement: value for money, the public good, transparency, integrity, efficiency, fairness.
- New flexible procedure
- Open procedure for simpler, ‘off the shelf’ competitions
- A limited tendering procedure that buyers can use in certain circumstances, such as in crisis or extreme urgency
- Removing the Light Touch Regime as a distinct method of awarding contracts
- Opening up public procurement to a more diverse supply base, making it easier for new entrants
- Bidding to be simpler, with procedures that are quicker and cheaper to participate in and information on contracts easier to find
- Single digital platform for suppliers
- New Dynamic Purchasing System (DPS+) that may be used for all types of procurement

# Post Brexit Regulatory Framework

- The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020
- Ensures procurement arrangements align with the transitional provisions on public procurement in the Withdrawal Agreement.
- will not affect any ongoing procurement procedure commenced before the end of the transition period.
- procurements for framework agreements which were commenced before the end of the transition period will continue to be bound by EU procurement law as transposed into UK law.

# Post Brexit Regulatory Framework – Key Features

- New e-notification service “Find A Tender” (replaces OJEU)
- Replaces the "ESPD", for European single procurement document, with "SPD";
- Transfers supervisory powers from the European Commission to Cabinet Office;
- Omits provisions on joint cross border procurement with EU member states;
- Procurement thresholds remain the same
- Below-threshold procurements no longer need to comply with "general EU Treaty principles"

# Other Post Brexit Frameworks

## WTO Agreement on Government Procurement (GPA)

- fair and transparent public procurements
- treat suppliers from fellow GPA countries in the same manner as domestic suppliers for all covered procurements. (Health Services are excluded)

EU-UK Trade and Co-operation Agreement (TCA) - increased access to each other's procurement markets and to enhance the transparency of public procurement procedures.

More information:

<https://www.pinsentmasons.com/out-law/guides/a-short-guide-public-procurement-post-brexit-uk>

# Light Touch Regime

- Originally for contracts that tend to be of lower interest to cross-border competition will continue much as before:
- Threshold: £663,540 as of 1 January 2020
- Schedule 3 of the Public Contracts Regulations 2015 - Services that are allowed to be procured under the light touch regime include (among others): health/social services;
- Under the LTR –
  - No set procurement procedure to follow,
  - Contracting authority can use its own processes
  - Must adhere to the principles of equal treatment, non-discrimination and transparency.

# Selection stage: tendering

**Local authorities must publish details of every invitation to tender for contracts to provide goods and/or services with a value that exceeds £5,000, and also publish details of every contract that exceeds £5,000**

**Local Government  
Transparency Code 2015  
(31-32)**

- The promotion of the tender opportunity, ensuring that all tenderers, and enquiries, are responded to equally and fairly.
- The rejection or selection of candidates based on:
  - legal;
  - financial; or
  - technical grounds.
- A comprehensive record is kept of the procurement activities undertaken and decisions made.

# Five procurement procedures

Contracting authority can follow one of the 5 procurement processes for the LTR:

1. **Open tendering:** all those interested may respond to the advertisement in the OJEU by submitting a tender for the contract.
2. **Restricted tendering:** a selection is made of those who respond to the advertisement and only they are invited to submit a tender for the contract.

# 'Choice' of procurement procedures

Allow a degree of negotiation with suppliers

- 3. Competitive dialogue:** a selection is made of those who respond to the advertisement and the contracting authority enters into dialogue with potential bidders, to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender.
- 4. Competitive procedure with negotiation:** a selection is made of those who respond to the advertisement and only they are invited to submit an initial tender for the contract. The contracting authority may then open negotiations with the tenderers to seek improved offers.
- 5. Innovation Partnership:** selection is made of those who respond to the advertisement and the contracting authority uses a negotiated approach to invite suppliers to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing 'product' on the market. The contracting authority is allowed to award partnerships to more than one supplier.

# Public Services (Social Value) Act 2012

“The contracting authority must consider how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and; how, in conducting the process of procurement, it might act with a view to securing that improvement”.

The Act applies to contracts over the EU procurement threshold (set at old Part B level) – but the Revised Best Value Statutory Guidance 2015 “recommends that authorities consider social value for other contracts ... where it is relevant to the subject matter of the contract and deemed to be beneficial to do so”.

# Social and environmental aspects

The new Regulations contain improved rules on social and environmental aspects, making it clear that:

- Social aspects can now also be taken into account in certain circumstances (in addition to environmental aspects which have previously been allowed);
- Contracting authorities can require certification/labels or other equivalent evidence of social/environmental characteristics;

The full life-cycle costing can be taken into account when awarding contracts.

## Award stage

- Evaluate tenders on an equal footing, based on criteria and relative weighting that was stated in advance.
- The award of contracts is based on the most economically advantageous tender (MEAT), looking at the best price-quality ratio
- Can use full life cycle costing
- Prioritise key local concerns and be innovative about information requested from providers and/or the evidence used.
- Feedback is given to unsuccessful tenderers.
- Take advice if post tender negotiation needed.

# Abnormally low tenders

“Contracting authorities shall require tenderers to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.”

Public Contract Regulations 2015 (69:1)

- The tender may only be rejected where the evidence supplied does not satisfactorily account for the low level of price or costs proposed.
- The tender shall be rejected if it is established that the tender is abnormally low because it does not comply with applicable obligations (eg minimum wage).

# Role of health and social care commissioners in procurement

- Needs analysis
- Service design (logic model?)
- Specification – clear? Outcomes?
- Market preparation (market facilitation)
- Stakeholder engagement
- Designing the criteria
- Managing the process

# Plenary discussion

- Consider the key processes outlined so far relating to tendering, procurement and contracting
- Share your recent and current experience, and reflect on your own organisational arrangements



## More information

- [Government Outcomes Lab](#)
- Crown Commercial Service: [Guidance on the light touch regime](#)
- Crown Commercial Service: [Reform of the EU procurement rules](#) – public sector
- Cabinet Office: [Public procurement policy notes](#)
- [Social Value Hub](#)
- LGA: [Encouraging innovation in local government procurement](#)
- [Procurement Guide for Commissioners of NHS-funded Services](#)
- [The National Procurement Strategy for Local Government in England](#)

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