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Contract Management and Procurement

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Procurement and contracting are...

Procurement is the entire process of sourcing goods, works or services from (usually) external providers/suppliers, risk management, and overall supplier management (including performance tracking) and managing these through to the end of contract.

Contracting is an essential part of procurement – it is the process of negotiating and agreeing the terms of a contract for services, and on-going management of the contract including payment, performance monitoring, and relationship maintenance.

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

What is your relationship like with your Procurement / contract management colleagues?

1. Poor but I have no time/capacity to improve things so I'm just going to smile and nod!

2. Ermm...there is work to be done!

3. It's okay!
But I'm eager to improve it!

4. I know they are there but I'm not sure how knowing more helps me in my role



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

Contracts or Grants?

- A contract is 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.

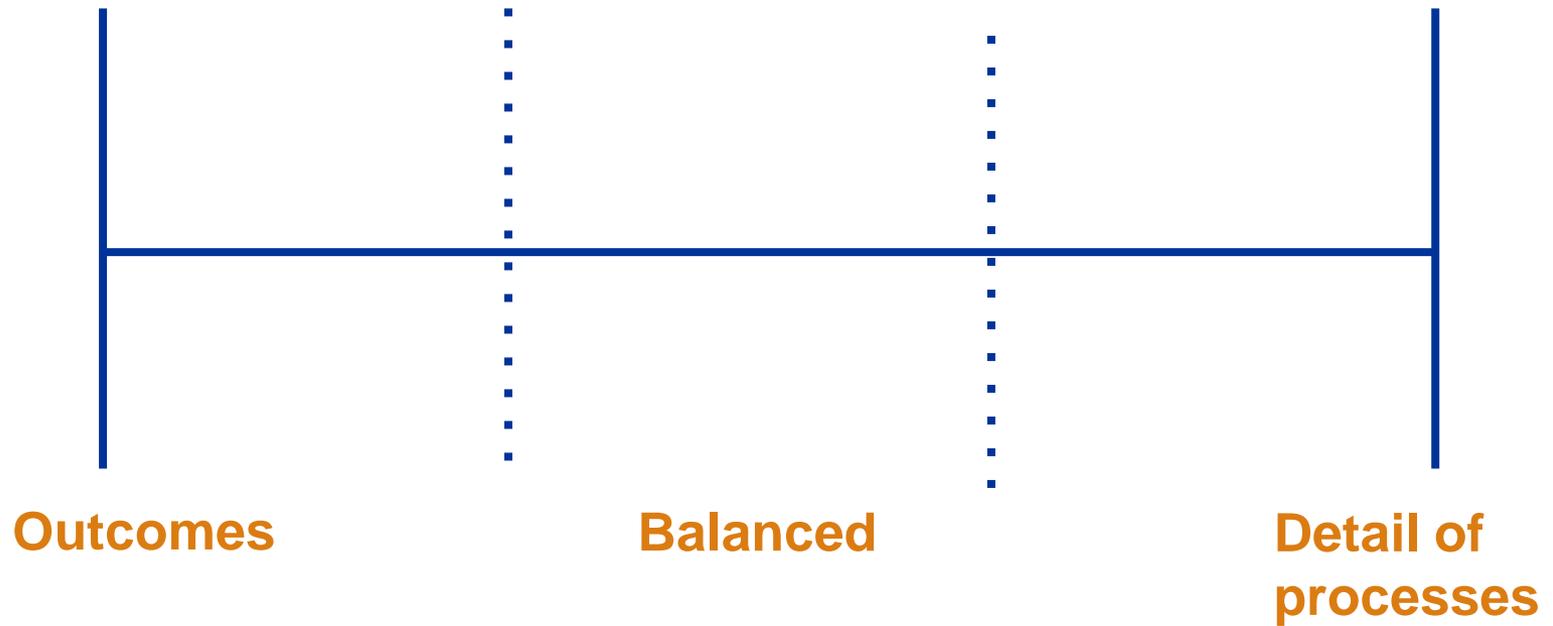
A Service Level Agreement (or SLA) defines what services a service provider will provide and the required level or standard for those services.



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 specification



Spectrum of specifications



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?

Developing a specification (2)

- 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.

Develop a model specification

In your groups, discuss what the elements of a good specification might be and the key themes that you would include in a specification for your target population service.



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Procurement

The legal procurement framework (UK)



The Procurement Act
OR
PSR

Local procurement strategy, financial regs and
standing orders

Transforming Public Procurement

The Procurement Act (2023) – 28th October 2024

- Legal principles of public procurement: delivering value for money, maximising the public good, transparency, acting with integrity, & treating suppliers with fairness
- Duty to ‘have regard’ to – must follow these principles unless there is a good reason not to
- 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

Transforming Public Procurement

- Opening up public procurement to a more diverse supply base, making it easier for new entrants and small businesses and social enterprises
- 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 – Find a Tender
- Requirement for early market engagement & publish notices – e.g., pipeline notices, preliminary market engagement notices, transparency notices, contract award etc.
- £5m contract value and KPIs

Light Touch Regime – key changes

Still required to follow the legal principles of the act (when above the financial threshold value)

- List of services captured under the new Light Touch regime – generally categories of social care, welfare and education (as the case with the previous PCR)
- Direct Award justifications – user choice contracts
- Award Criteria includes:
 - Views of an individual or their carer, and varied needs of different service recipient(s)
 - May also include where the proximity of the supplier and service recipients) is important



Procurement Act 2023 Knowledge Drop
for contracting authorities

Light touch

Accompanying factheet for **light touch contracts** designed to be reviewed alongside the 4 parts of the Procurement Act 2023 Knowledge Drop for contracting authorities.

This factsheet is intended to highlight some of the **exemptions or differences** to the main rules of the act for light touch contracts. You should assume that the obligations detailed in the Knowledge Drop series apply unless stated within this factsheet.



<https://assets.publishing.service.gov.uk/media/6569fcae1104cf000dfa73bd/20231127-factsheet-light-touch.pdf>

Light Touch Regime key changes

Differences

- Light touch contracts have different thresholds.
- Light touch contracts may also include the needs of the end user in the award criteria often referred to as 'user choice'.
- Minimum timescales for light touch contracts are not mandated.
- There is no maximum term specified for a framework that is a light touch contract.
- Light touch contracts also have the benefit of undertaking a direct award on the basis of user choice.
- The contract details notice must be published within 120 days, rather than 30 days.
- There are increased flexibilities for modifications made to light touch contracts during their term, which may be substantial or above threshold or outside the scope of permitted modifications.

Exemptions

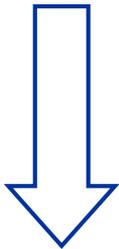
- Light touch contracts are defined by CPV codes and are exempted from certain parts of the act.
- The requirement to publish the transparency notice does not apply to direct awards for user choice contracts.
- The requirement to observe a standstill period does not apply to light touch contracts though you may choose to have a voluntary one.
- Setting, assessing and publishing KPIs does not apply for light touch contracts.
- The requirement to publish contract performance notices for poor performance or breaches of contract does not apply to light touch contracts.
- The requirement to publish a contract change notice (or a copy of the amended contract) does not apply to light touch contracts.

In practice much remains in place for now

£m



£663,540



£0

- The regulations have 2 levels – a full regime and a light touch regime for other services (Schedule 3).
- **Health, adult social care and children’s services are Schedule 3 services.**
- Pre-Qualification stages only permitted for contracts valued at more than the threshold.

Threshold of £663,540 (inclusive of VAT) Or £552,950 (net of VAT)

- It is good practice to follow principles:
 - Equality of treatment
 - Non discrimination
 - Transparency
 - Proportionality

Provider Selection Regime (01/01/24)

The Provider Selection Regime aims to replace the existing procurement rules for healthcare services. The aim of the Provider Selection Regime is to make it easier to integrate services and enhance collaboration, and to remove the rigidity associated with the current procurement rules, and the related bureaucracy and cost.

For:

- NHS and Public Health Services
- ICBS
- LAs who arrange healthcare services as part of Public Health or Section 75 arrangements

Overview of the decision-making circumstances

Direct award processes

The most suitable provider process

The competitive process

A

B

C

The existing provider is the only capable provider.

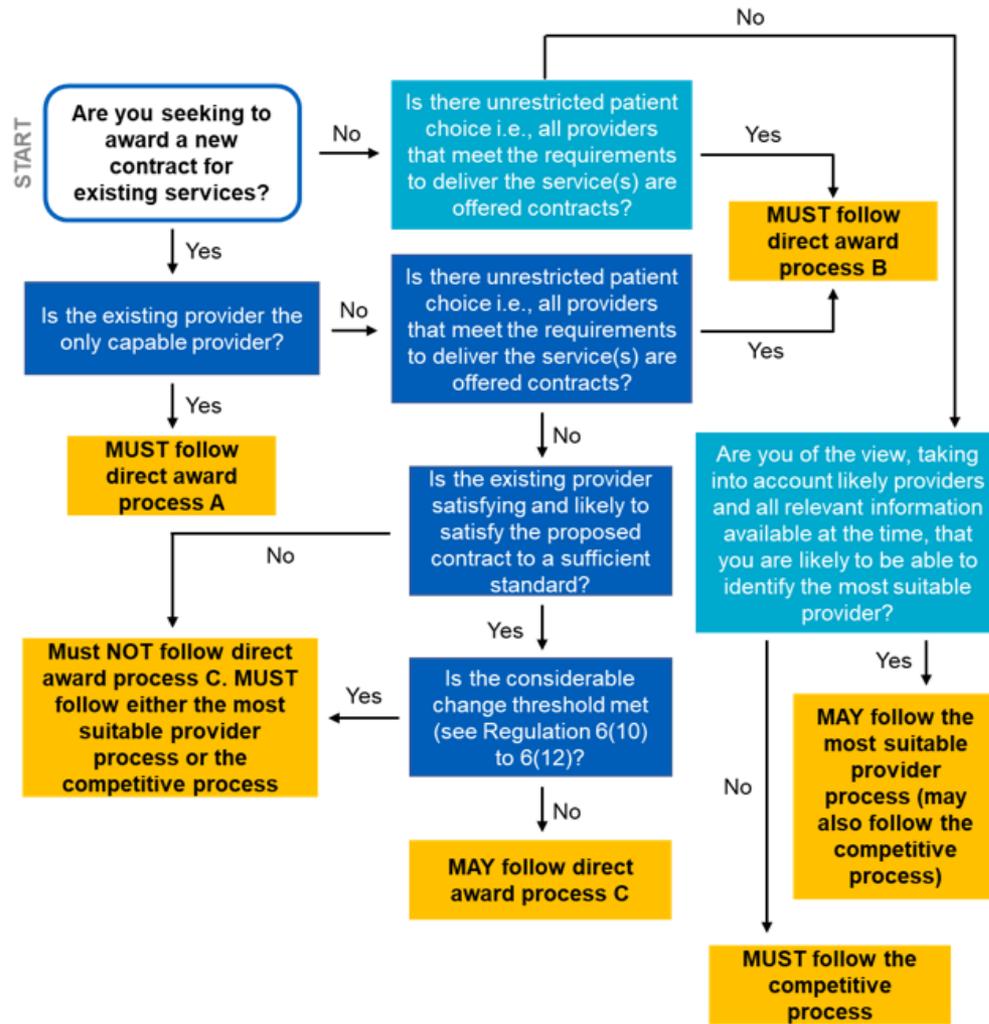
People have a choice of providers, and the number of providers is not restricted by the relevant authority.

The existing provider is satisfying the existing contract and will likely satisfy the proposed new contract, and the contract is not changing considerably.

Allows the relevant authority to make a judgement on which provider is most suitable based on consideration of the key criteria. Award without competitive tender.

Where the relevant authority cannot use any of the other processes or wishes to run a competitive exercise.

Getting to the right decision



Procurement approaches

How services are procured can have a big impact:

- Block contracts
- DPS
- Framework Agreement
- Spot purchasing
- Fixed prices
- Direct Award



Each impacts differently upon providers

Selection stage: tendering

- The open 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 competitive procurement procedures

Contracting authority can follow one of the 5 procurement processes.

1. **Open tendering:** all those interested may respond to the advertisement in the FTS 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.

Competitive procurement procedures

- 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.



Allow a degree of negotiation with suppliers

Changes expected in the Procurement Act 2024

- Only two competitive tendering procedures:
 - An open procedure
 - A competitive flexible procedure
- Minister direct award
- 'More dynamic' DPS's

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. *The new procurement act changing this to MAT.
- 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 / Notices.
- Take advice if post tender negotiation needed.
- Standstill Period.

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.

Abnormally low tenders

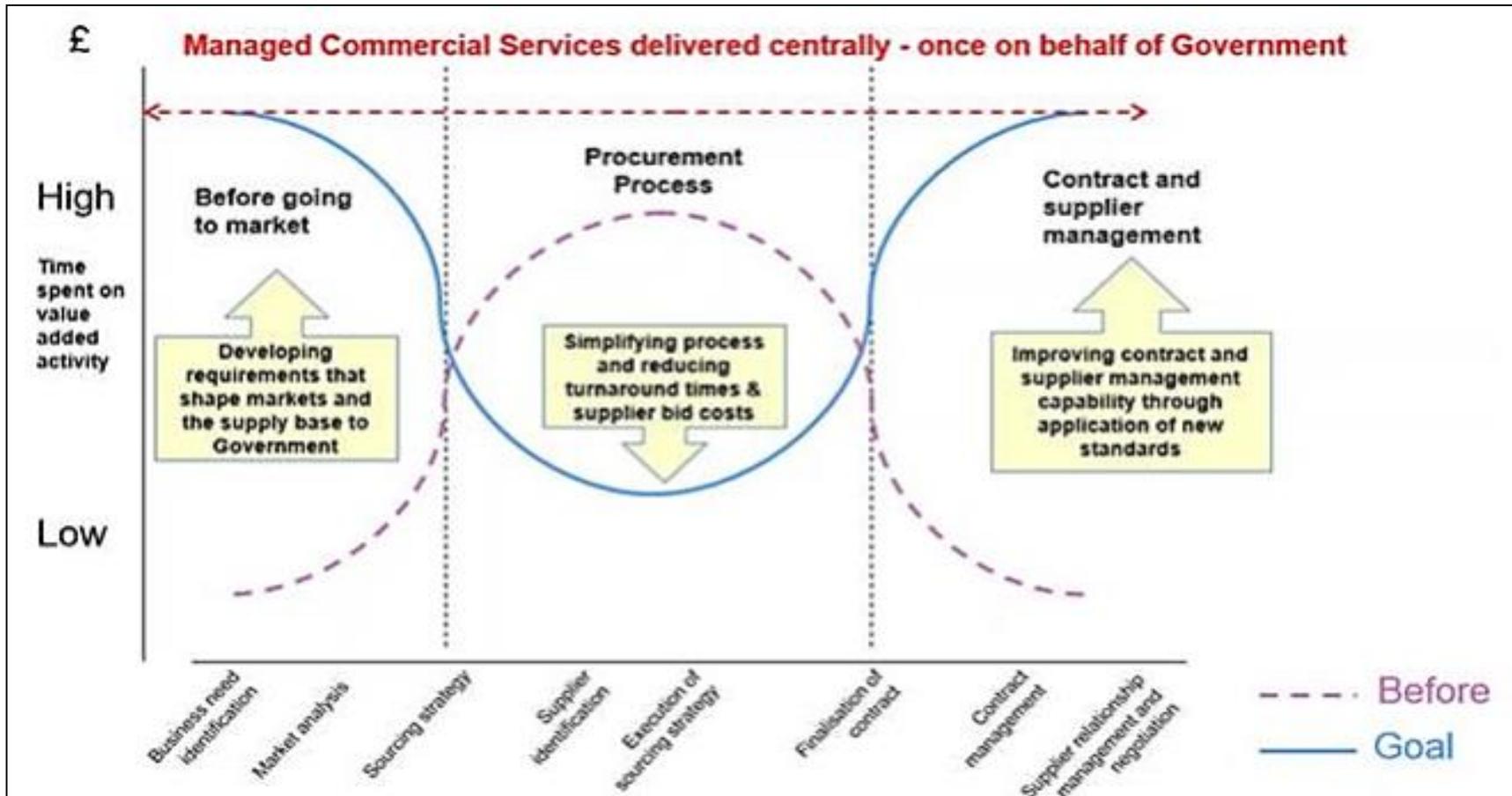
“Contracting authorities shall require tenderers to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.”

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).

Getting the balance right



Source: Cornwall Council

Group 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
 - How you agree and evaluate selection criteria for potential providers.



Reflections from Module 3



- What have been the main things you have heard today?
- What has struck you most about the discussions?
- What might this mean for you, your teams and organisation?
- How might you take some of this forward?

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