Contract Management and Procurement

Procurement and contracting are…

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

<u>Contracting</u> 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.

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's your relationship like with your Procurement /Contracts / Commissioning 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

Why should commissioners know about contract management?

All for one and one for all? Who contributes?

Getting good results from your contacts

- 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.

Contracts or Grants?

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

Outcomes Balanced Detail of processes

Spectrum of specifications

Develop a model specification

- In your groups, share your experience of service specifications.

- Discuss what the elements of a good specification might be.

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.

Procurement

Analyse
Commissioning
Plan
Legislation & guidance
Gap analysis
Population needs assessment
Commissioning strategy/prospectus
Review service provision
Procurement
Business case and options appraisal
Resource analysis
Assess individual needs
Develop specification and contract/SLA
Analyse providers
Purchasing plan
Service design
Resource allocation
Support plan
Outcomes for people
Contract monitoring
Secure services/ treatment/ support
Evaluation of services
Market /supplier development
Review individual outcomes
Contract management
Review of plans
Capacity building
Review of market performance
Assessment against outcomes
Manage provider relationships
Review
Do

Procurement and contracting are separate in that…

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The legal procurement framework

Brexit arrangements…

The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 signed into law on 19 November 2020. Ensured that the UK procurement regulations align with the transitional provisions on public procurement as set out in the ratified withdrawal agreement

So, the main changes arising from Brexit have been…

Below-threshold procurements no longer need to comply with "general EU Treaty principles" irrespective of whether these contracts would be of cross-border interest to suppliers in an EU member state. The only exception relates to Northern Ireland.

that procuring bodies are required to publish notices on the new UK e-notification service called Find a Tender (FTS) instead of in the OJEU

Some other key points

The procurement thresholds remain the same as they were before the end of the transition period given that these thresholds are set out under the WTO's Agreement on Government Procurement.

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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

Transforming Public Procurement

- 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
- 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

The Procurement Bill – 2022

The Bill proposes to streamline public procurement by:

“Creating a simpler and more flexible, commercial system that better meets our country’s needs while remaining compliant with our international obligations.

Opening up public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts.

Embedding transparency throughout the commercial lifecycle so that the spending of taxpayers’ money can be properly scrutinised.”

Awaiting Royal Assent in Parliament

‘Transforming Public Procurement’

- Government Green Paper on ‘Transforming public procurement’ - December 2020
- Consultation during 2021
- Government response to consultation December 2021
- Bill announced in Queen’s Speech – April 2022
- Awaiting Royal Assent / pass at Parliament to make this Law
- Provider Selection Regime

There will be changes in procurement law, but not likely before 2023!

Procurement Approaches

How services are procured can have a big impact impact:

- Block contracts
- DPS
- Framework Agreement
- Spot purchasing
- Fixed prices
- Floor and Ceiling contracts
- *Direct Award*

Each impacts differently upon providers

Selections stage: tendering

Local authorities have to advertise contracts over £25K (net of VAT) on Contracts Finder, if they advertise.

For new opportunities, if don't use advertising (where legal) don't have to advertise on Contracts Finder.

- 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.

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.

‘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.

What are purchasing and procurement arrangements for individual care purchasing?

- Currently spot purchasing is the predominant model in the existing children's services marketplace.
- Sometimes this is achieved through an arrangement that meets public contract regulations e.g. a framework or Dynamic Purchasing System and has pre-agreed price structures and contract terms.
- However, in more recent years purchasing often takes place outside of these arrangements in the open market and price and terms and conditions are negotiated individually.
- Alternative partnership arrangements might include: volume discounts, preferred provider lists, block contracts ('hard' and 'soft'), use of social impact bonds.

Further considerations that can affect procurement

- Is there anything about your approach to procurement that unfairly impacts upon any specific group of people?
- How might you involve service users/potential service users in the procurement process?
- How can you benefit the local economy through your procurement processes?
- How can you promote sustainability and/or social value through your procurement activity?

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.
- Alcatel / Standstill Period

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).

Procurement – what next?

“After a decade and more of austerity, the basic efficiencies available through tendered competition have already been secured. That particular well is empty.

If essential public services are to be maintained or improved, we’re going to have to look at doing things another way.”

‘The Art of the Possible in Public Procurement’ - Frank Villeneuve-Smith & Julian Blake

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.

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