



Commissioning and Procurement ToolKit

Local Government and Health

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European Services Strategy Unit

(Continuing the work of the Centre for Public Services)

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The **European Services Strategy Unit** is committed to social justice, through the provision of good quality public services by democratically accountable public bodies, implementing best practice management, employment, equal opportunity and sustainable development policies. The Unit continues the work of the Centre for Public Services, which began in 1973.

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| List of abbreviations | | | |
|-----------------------|---|------|--|
| ABC | Activity based costing | NHS | National Health Service |
| AES | Annual Efficiency Statement | NPV | Net Present Value |
| BAFO | Best and Final Offer | OBC | Outline Business Case |
| BME | Black and Minority-owned Enterprise | OGC | Office of Government Commerce |
| BSF | Building Schools for the Future | OJEU | Official Journal of the European Union |
| BVPI | Best Value Performance Indicator | PFI | Private Finance Initiative |
| BVPP | Best Value Performance Programme | PfS | Partnership for Schools |
| BVR | Best Value Review | PCT | Primary Care Trust |
| CEHR | Commission for Equality and Human Rights | PIN | Prior Information Notice |
| DCLG | Department for Communities and Local Government | PITN | Preliminary Invitation to Negotiate |
| DfES | Department for Education and Skills | PPP | Public Private Partnership |
| DSO | Direct Service Organisation | PQQ | Pre-Qualification Questionnaire |
| EOI | Expressions of Interest | PSA | Public Service Agreement |
| ETN | Efficiency Technical Note | PSC | Public Sector Comparator |
| FBC | Full Business Case | RCE | Regional Centre of Excellence |
| FM | Facilities Management | SBC | Strategic Business Case |
| HMT | Her Majesty's Treasury | SCM | Supply Chain Management |
| ICT | Information and Communications Technology | SME | Small and Medium-sized Enterprise |
| IDeA | Improvement and Development Agency | SPA | Strategic Partnering Agreement |
| ISTC | Independent Sector Treatment Centre | SPB | Strategic Partnership Board |
| ITN | Invitation To Negotiate | SPV | Special Purpose Vehicle |
| LEA | Local Education Authority | SSP | Strategic Service-delivery Partnership |
| LEP | Local Education Partnership | TUPE | Transfer of Undertakings (Protection of Employment) Regulations 1981 |
| LIFT | Local Improvement Finance Trust | VCO | Voluntary and Community organisation |
| | | VfM | Value for Money |
| | | 4ps | Public Private Partnerships Programme |

A Glossary of Terms at the end of the Toolkit explains the meanings of the various terms used in commissioning and procurement.

Introduction

Procurement is centre stage in the government's modernisation strategy. Public bodies are expected to adopt commissioning, competition and contestability strategies in the provision of all services. There is also an expectation that new investment and development will be delivered through 'partnership'. The government has extended the role of public-private partnerships such as Building Schools for the Future (BSF), Strategic Service-delivery Partnerships (SSPs) and NHS Local Improvement Finance Trusts (LIFT).

The efficiency agenda, initiated by the Gershon Review in 2004, has expanded into the shared services agenda. Three percent annual efficiency targets are accompanied by pressure to draw up shared services projects with other public bodies, particularly for corporate and transactional services.

Options appraisal, the procurement process and contract management thus have a key role in decisions about who provides services, how they are delivered, their quality and the terms and conditions of the staff.

Key issues for branches

Branches need to take account of the following:

- Commissioning and contestability are being mainstreamed in all public services. This is driving more services into competitive tendering with some authorities taking steps to increase competitive markets. Efficiency targets and the shared services agenda also drive this approach.
- Procurement no longer starts with the issue of a Contract Notice in the Office Journal of the European Union and trade press – it now starts much earlier with the assessment of service performance and options appraisal.
- Involvement and action at the assessment of service performance and options appraisal stages is vitally important. Decisions will be made at these stages whether the service will remain in-house with a service improvement plan or whether a procurement process will be commenced.
- Branch strategy should try to eliminate the need to commence a formal contracting process, and if this is not possible, ensure that an effective in-house bid is submitted.
- Branches cannot assume that the authority will automatically allow an in-house bid. A circuitous argument could be used – if a service is not performing well then management and/or Elected Members may 'assume' that another provider will be able to improve performance. They may think 'why spend money preparing an in-house bid when the authority is looking for efficiency savings'!
- A rules-based approach is unlikely to be successful primarily because the rules only apply to the final stages or the formal procurement process. Service and efficiency reviews and options appraisal, where key decisions will be made, do not have the same detailed legal framework.
- Procurement is not simply a technical or legal process. Political decisions are made at various stages such as the criteria used to evaluate options, the extent to which the authority 'stimulates' or creates markets and whether it supports an in-house bid. The questions asked in a Preliminary Invitation to Negotiate (PITN) inevitably have a political content. In addition branches need to ensure that procurement officers and managers do not treat procurement solely as a technical and legal process. Branches should ensure that elected members are made aware of progress and developments.

Larger projects should be reviewed by Scrutiny at key stages of the commissioning and procurement process.

Influencing the early stages of commissioning and procurement

UNISON branches should have significant involvement at key stages of the commissioning and procurement process. These include:

- the definition of future needs;
- assessment of current service performance;
- the views of service user and staff;
- need for in-house service improvement plan;
- decision to retain current provider or initiate procurement process
- selection of options including in-house option
- options assessment criteria including impact assessment;
- options appraisal
- identify need, scope, cost, risk of procurement

Assessments and decisions will be made about the current performance of the service and whether an in-house or outsourced service can be improved or not.

There are both direct and indirect triggers, which could start the procurement process. Poor performance, pressure for efficiency savings and shared services projects, poor Comprehensive Performance Assessments or internal support for a Strategic Service-delivery partnership (SSP) could trigger a procurement process – see Table 1. Capital projects, commissioners moving directly to outsourcing, the transfer of services to arms length companies and trusts and political dogma could be direct triggers of the procurement process.

Table 1: Issues which may start the procurement process

| Issues which may start the procurement process | |
|---|--|
| Poor service performance | Need to ensure in-house option with Service Improvement Plan is considered first before other options considered. |
| Efficiency savings or budget cuts | |
| Shared services projects | |
| CPA performance pressure | Options appraisal and authority could conclude that best option is to retain in-house provision or to start procurement process. |
| Partnerships such as Strategic Service-delivery Partnerships | Capital projects could be fully or partially publicly funded. |
| Capital projects PFI/BSF/LIFT | |
| Commissioners move directly to outsourcing option | |
| Transfer of services to arms length companies & Trusts | |
| Arms length companies and Trusts terminate Service Level Agreements with Council | |
| Political dogma – Elected Members, Board Members and/or managers | Start procurement process. |

Part 1

The political economy of procurement and commissioning

Introduction

Procurement is a legal and technical process but the context in which it is undertaken and the decisions made in the commissioning and procurement process are highly political. This section examines:

- Marketisation of public services
- Commissioning and contestability
- Public Private Partnerships
- National Procurement Strategy for Local Government
- Efficiency and shared services agendas
- Social enterprises and voluntary and community bidding
- Opposing the contract culture
- EU and WTO liberalisation proposals

Marketisation of public services

The marketisation of public services is driven by neoliberalism, a conservative economic philosophy. It has a number of components such as a belief in the superiority of markets, that competition drives down costs, that the private sector is more efficient and innovative than the public sector and that individual choice will improve the quality of services. It is also claimed that choice will reduce inequality because market forces are a more equalising mechanism than political voice, which the middle classes have traditionally used to benefit most from public services.

Public services are being marketised in five ways - the specification of services; the reorganisation of work so that it can be contracted; the introduction of market mechanisms in the financing, organisation and management of public bodies; treating service users as individual consumers and restructuring democratic accountability by transferring responsibility to new companies, boards and trusts; and, finally, embedding business interests in public policy-making.

The government's method of increasing choice in public services inevitably means that it will be exercised through competition between schools, hospitals and other public facilities and the introduction of market forces. Procurement will have a central role in the exercise of choice as public facilities seek to compete by cutting costs and improving quality.

Commissioning and contestability

Commissioning is described as the means by which the authority “*seeks to secure the best outcomes for their local communities by making use of all available resources - without regard for whether services are provided in-house, externally or through various forms of partnership*” (DCLG, 2008). The Department of Health has a similar description of ‘world class commissioning’: “*The commissioning process involves assessing and prioritising population needs, focusing on strategic outcomes, procuring services, and managing providers to deliver the required outcomes*” (Department of Health, 2007)

The duty to conduct Best Value Reviews and produce annual Best Value Performance Plans in local government has been removed. However, local authorities are now urged to “regularly and rigorously assess and review the competitiveness of those services against similar services provided by other statutory bodies, local authorities or other service providers” (Para 6.11, Draft Guidance, DCLG, 2007).

The draft guidance for the implementation of the Local Government and Public Involvement Act 2007 describes commissioning as:

- *“User and community engagement and needs analysis;*
- *Strategically planning for services which deliver sustainable outcomes;*
- *Implementing plans, shaping markets, securing services and outcomes;*
- *Monitoring the delivery of outcomes, evaluating and challenging services”* (ibid).

Authorities are encouraged to:

- Regularly review the competitiveness of services, and if they are under-performing, to draw up service improvement plans or seek new providers if they cannot be improved in reasonable time or match the quality of competing providers (see Part 3). PCTs and upper tier local authorities have a statutory duty under the Local Government and Public Involvement in Health Act 2007 to identify the current and future health and well being needs of a local population in a Joint Strategic Needs Assessment (JSNA (see Part 3).
- Create a clear separation between commissioning and service provision – a client/contractor or purchaser/provider split. This is claimed to allow *“authorities to champion the interests of citizens and to promote service improvement”* (ibid).
- Develop opportunities for joint commissioning across local statutory bodies;
- Develop a mixed economy of provision through a range of delivery mechanisms -
 - *“joint working with other statutory bodies;*
 - *partnerships with the local business and third sector;*
 - *intervening to make local markets more effective;*
 - *co-production with service users and communities of interest and place;*
 - *contracting with providers in the public, private and third sectors; and*
 - *securing services through service level agreements with an in-house provider.”*

The government believes that *“best value is more likely to be achieved where there is a positive approach to achieving a mixed economy, rather than where any one supplier dominates the provision of services in an area”* (ibid).

- *Focus on understanding what communities need, and so to challenge existing service provision;*
- *Avoid silos, and be creative in seeking opportunities to achieve cross-cutting objectives through mainstream services* (ibid).
- *Involve service users and local communities “throughout the commissioning cycle” to “deepen to the extent that local communities become co-producers of the services and outcomes they want to see. This could include participatory, community-led or individual or family budgets, or active participation in service delivery, or the management and ownership of assets.*
- *Authorities should also involve front-line staff in the commissioning of services, making use of their commitment and expertise”* (ibid).

The Department of Health has identified eleven competencies for PCTs and practice-based commissioners to achieve 'world class commissioning':

1. *"Are recognised as the local leader of the NHS.*
2. *Work collaboratively with community partners to commission services that optimise health gains and reductions in health inequalities.*
3. *Proactively seek and build continuous and meaningful engagement with the public and patients, to shape services and improve health.*
4. *Lead continuous and meaningful engagement with clinicians to inform strategy, and drive quality, service design and resource utilisation.*
5. *Manage knowledge and undertake robust and regular needs assessments that establish a full understanding of current and future local health needs and requirements.*
6. *Prioritise investment according to local needs, service requirements and the values of the NHS.*
7. *Effectively stimulate the market to meet demand and secure required clinical, and health and well-being outcomes.*
8. *Promote and specify continuous improvements in quality and outcomes through clinical and provider innovation and configuration.*
9. *Secure procurement skills that ensure robust and viable contracts.*
10. *Effectively manage systems and work in partnership with providers to ensure contract compliance and continuous improvements in quality and outcomes.*
11. *Make sound financial investments to ensure sustainable development and value for money (World Class Commissioning, Department of Health, 2007).*

Framework for procuring External Support for Commissioners (FESC) - outsourcing commissioning

Primary Care Trusts which lack commissioning capabilities can recruit or train internally, work with other NHS organisations or local authorities to obtain the skills, outsource the work to management consultants or alternatively use FESC which is a national framework agreement. The Agreement covers assessment and planning, contracting and procurement, performance management and review and patient and public engagement. Fourteen suppliers – the usual healthcare companies and management consultants - were appointed to supply commissioning services in October 2007. If a PCT wants to outsource "a comprehensive end-to-end service" it will have to seek permission of the Strategic Health Authority (FESC Policy Statement, Department of Health, February, 2007).

Two Primary Care Trusts (PCTs) in Oxford and Hillingdon have proposed outsourcing commissioning. One contractor would be responsible for procuring another contractor to deliver the service. The commissioning contractor would in effect monitor and contract management the service delivery contractor.

Commissioning for children and adult social care

See the Joint Planning and Commissioning Framework for Children, Young People and Maternity Services www.everychildmatters.gov.uk/strategy/planningandcommissioning/about/ and the Commissioning eBook for Adult social care services produced by the Better Commissioning Network www.icn.csip.org.uk/betterCommissioning/index.cfm?pid=184

Contestability and making markets

The government is concerned that, parallel with procurement, local authorities and public bodies should help to 'make markets', in other words, take initiatives to improve the capacity and competitiveness of the supply side (private and voluntary sector contractors) and minimise fragmented commissioning. A series of "developing the local government services market" reports for different services were commissioned by DCLG from management consultants PricewaterhouseCoopers.

<http://www.communities.gov.uk/localgovernment/localregional/servicedelivery/procurement/developinglocal/>

Public Private Partnerships

The Private Finance Initiative has been used for infrastructure projects in local government, health and other public services. In addition, the **NHS Local Improvement Finance Trust (LIFT)** programme is used to renew primary health care facilities. A joint venture company is established with the private sector having a 60% share stake with Partnerships for Health (now Community Health Partnerships, a Department for Health quango) and the local Primary Care Trust (with local authority and other local stakeholders) each having a 20% stake. The LIFT company rents premises to doctors, pharmacies and other health organisations and retains ownership of the assets after the 20-year agreement expires. It has an exclusivity agreement to undertake the provision of additional facilities during the contract period.

Building Schools for the Future (BSF) is the government's new £40 billion programme to renew the secondary school infrastructure in England over the next fifteen years. A Local Education Partnership (LEP), 80% controlled by the private sector, with the local authority and Partnership for Schools (a Department for Children and Families quango) each have a 10% stake, is at the core of each Building Schools for the Future project. The LEP will design, build, finance and operate new and refurbished schools using a mix of public and private investment.

A **Strategic Service-delivery Partnerships (SSPs)** is a long-term (usually ten-year with option for further five years) multi-service, multi-million pound contract between a local authority, or other public body, and a private contractor. Anything from 50 to 1,000 staff will be transferred to a private contractor or seconded to a joint venture company (JVC). The range of services usually include IT and related services such as human resources, payroll, revenues and benefits, financial and legal services and often include property management and other professional services (highway management, technical services). The Audit Commission examined a sample of SSPs in *For better, for worse: Value for money in strategic service-delivery partnerships* (www.audit-commission.gov.uk) but a critique of the study identified serious shortcomings (www.european-services-strategy.org.uk/news/2008/ppp-research-critique/).

National Procurement Strategy

The National Procurement Strategy for Local Government was launched by the government and the Local Government Association (LGA) in 2003 to improve procurement policy, procedures and to ensure every authority has a corporate procurement strategy and framework. Local authorities were required to ensure these were in place by 2006.

Efficiency and shared services agendas

The Comprehensive Spending Review 2007 set out Labour's spending plans to 2010/11. The tax burden will increase by 1.0% of national income (£14 billion) whilst public spending will be cut by 0.5% of national income (£7 billion). The Institute for Fiscal Studies concludes that this would, if delivered, "take the tax burden to a 24-year high and public spending to an eight-year low" (IFS, 2008).

Healthcare spending is forecast to increase by 3.7% a year on average in real terms between 2008/09 and 2010/11 compared to an average real growth of 6.6% per annum between 2002/03 and 2007/08.

The 'tight' local government settlement plans for an average real increase of 1.5% per annum compared to a 4.2% average growth rate in spending reviews between 1998/99 and 2007/08.

The spending plans are based on:

- 3% annual efficiency savings;
- 2% pay policy;
- additional savings by commissioning and outsourcing

The efficiency agenda is a key part of the modernisation agenda, the government's public spending strategy and will be a driver for procurement (see Part 6).

Social enterprises and voluntary sector bidding

The government is encouraging Voluntary and Community Organisations (VCOs), Black and Minority-owned Enterprises (BME) and women-owned businesses to bid for public service contracts. Council and NHS Trusts/PCTs are encouraged to ensure that these organisations are included in market analysis and informed about contracts.

The Department of Health's Social Enterprise Fund has £78m over four years from 2007/08 to assist existing and emerging social enterprises to bid for health and social care contracts. Branches may need to monitor local developments – see also the Departments Resource Pack for Social Enterprise Providers and Commissioners (www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/Browsable/DH_074302).

Opposing the contract culture

The transformation of public services can be achieved by using different strategies, which avoid the negative impact of marketisation and privatisation. Commissioning and contestability should be opposed because:

- Reduced focus on in-house improvement plans, in-house options and the submission of in-house bids leads to **increased outsourcing and PPP projects** – thus creating a vicious circle.
- **Erodes public service principles and values** as business practice and commercial values increasingly dominate service delivery.
- Public service language is being replaced by a **language of the marketplace** – contestability, brokers, soft market test, the offer – which are intended to change attitudes, priorities and imbed marketisation in the public sector.
- The growth of arms length companies, trusts and Joint Venture Companies will lead to further **corporatisation and fragmentation of democratic accountability and transparency**.
- Public sector **resources are diverted into 'making markets'** by shaping contracts to suit business, consulting business interests and designing business- friendly regulatory frameworks. The notion of creating a 'mixed economy' and 'level playing field' are simplistic and ignore the economic realities of private sector cherry picking, cross subsidising contracts and using loss leader strategies, exploiting labour, the use of gaming tactics to take advantage of market forces and regulatory regimes, and achieving economies of scale not available to the public sector.

- A **client-contractor split** is imposed on service delivery followed by the **transfer of in-house service delivery units to arms length trading organisations** or companies and their eventual **privatisation** through trade sales or 'partnerships'.
- Public sector employees will be **more regularly transferred between employers** with consequences for the continuity of terms and conditions, pensions, training and career development.
- **Job security** is dependent on TUPE, TUPE Plus and secondment but they have weaknesses and require local authorities to monitor the employment practices of contractors. There is little evidence that this is being done now so there can be little trust that it will happen in a contract friendly culture.
- **A contract culture** and procurement processes will increasingly dominate JCC and industrial relations machinery.
- **Reduces the scope of public management** because an increasing proportion of staff are engaged in commissioning, procurement and contract management. The planning, management and operational skills required to deliver public services are increasingly taken over by private contractors.
- Wider use of management consultants, legal and technical advisers as contracts get larger and more complex. This is not only costly but **reduces the capability of in-house services and ultimately leads to more privatisation**.
- There have already been attempts to **outsource commissioning** itself, which is the logical next step if the commissioning and contestability policy is accepted. This will involve private consultants and contractors assessing needs and services, writing specifications, selecting outputs and outcomes, carrying out options appraisals, managing the procurement process, evaluating bids from other private contractors and monitoring their performance.
- More and more **shared services projects will bypass in-house provision** and are likely to consider only outsourcing options.
- A greater share of public spending will be absorbed by **transaction costs** – the cost of management consultants, lawyers, managing the procurement process, managing and monitoring contracts. Procurement is expensive – SSP procurement costs alone are about £3m – which can divert resources from frontline services.
- **Increases reliance on contract monitoring**, which has rarely been rigorous and comprehensive, as it is often the target of budget pressures and 'efficiency' savings.
- **Financial savings exaggerated**. Competitive tendering savings were claimed to be 25% but government funded research proved conclusively that savings ranged from a maximum 8% to a -16% cost (Whitfield, 2001).
- It will **fundamentally change the culture of UNISON** with an increasing proportion of members employed in the private sector. Policy and activities will have to concentrate on providing contract and procurement support and advice for branches and members. Radical branch restructuring is likely to be required as new branches are formed in outsourced contracts, existing branches suffer a decline in membership and many private contractors seize the opportunity to promote staff forums to undermine trade union organisation and representation.
- The International Monetary Fund concluded "*Much of the case for public private partnerships rests on the relative efficiency of the private sector. Whilst there is an extensive literature on this subject, the theory is ambiguous and the empirical evidence is mixed*" (IMF, 2004).

EU and WTO liberalisation proposals

The European Union's Lisbon strategy includes a new Directive to liberalise the services market. Services account for 70% of European GDP and virtually all the new jobs created in the EU between 1997-2002, yet only 5% of activity in services is cross border. The EU estimates that 600,000 jobs could be created with an internal market in services (COM(2005)24).

The World Trade Organisation is continuing to promote the General Agreement for Trade in Services (GATS), which is, essentially, adopting the same principles to create a global market in services. However, negotiations have been stalled since the breakdown of the Cancun Ministerial Conference in 2003.

Part 2

Developing a branch strategy

Introduction

This section stresses the importance of branches developing a strategy of how to deal with commissioning and procurement. Whenever possible, branches should be taking action to influence the agenda before the formal procurement or tendering process begins. It should ensure that members in the affected services are fully represented and are kept up to date about developments and branch action. The Branch should work with other UNISON branches in the area/region who are likely to facing the same issues and problems. Sharing information and lessons learnt is very beneficial. This section informs branches about:

- Key aspects of options appraisal and commissioning
- Procurement frameworks and protocols
- Strategy and organisational issues
- Efficiency reviews
- Marketisation and the wider agenda
- In-house bids and alternatives
- Options appraisal

Key aspects of options appraisal and commissioning

- **Ensure a three-part process:**
 - service review with service improvement plan
 - options appraisal to include in-house provision
 - procurement with a in-house bid
- **Service and efficiency reviews and options appraisal:** These are crucial stages which determine whether the formal procurement or tendering process is commenced.
- Try to persuade the authority not to **soft market test** services or to do so under strict conditions.
- Monitor the authority's '**market making**' activities and engagement with private and voluntary sector contractors.
- **Scope of the contract:** Minimising the range of services and functions included in the tender.
- **Exclusion of services:** whether support services are excluded before procurement or mandatory in-house bid.
- **Employment models:** whether staff are to be seconded or transferred and the conditions under which these options will operate.
- **In-house bids:** whether an in-house bid is 'allowed' and the extent to which it is resourced and supported. Mandatory bids also enable the submission of in-house bids where the authority has not excluded support services at the project planning stage.
- **Content of ITN:** contract conditions, use of council assets, and requirement to provide specific community benefits.

- **Evaluation at selection bid stages:** criteria, methodology and method statements, assessing the real value of community benefits.
- **Role of advisers and consultants:** how they are selected and their role in procurement is often crucial.
- **Democratic accountability, scrutiny and monitoring:** accountability and transparency in partnership contracts, regular scrutiny of procurement and management and performance of the contract.

Branches should be involved at the earliest possible stage in the procurement process, ideally at the service review, options appraisal or the start of preparation of an Outline Business Case. Using information about a company's track record, performance, financial status and directors interests may force the withdrawal or non-selection of a company but it will usually not stop the procurement process.

Protocols

Protocols set out how public bodies will undertake key stages of the transformation and procurement process. Each protocol should contain a description of its scope, how it will be applied at different stages of the transformation or procurement process, responsibilities, rights to information and how staff and trade unions will be involved. Protocols are an important way of establishing corporate best practice and thus ensuring directorates and departments follow a common approach.

Transformation will usually include service reviews, efficiency reviews options appraisals and procurement so a transformation protocol would include:

- A corporately agreed process for trade unions and workforce involvement in service reviews; efficiency reviews, options appraisals; procurement.
- Procurement could result in an alternative provider of services, therefore, it is proposed to adopt an approach which ensures options for an in-house service improvement plan precedes and informs the procurement process. Thus the procurement process should include a clear commitment to in-house bids.
- An agreed policy for managing job loss to avoid compulsory redundancies and maximize redeployment opportunities.
- A commitment to workforce development which maximises opportunities for training and development and recognizes the positive role of trade unions and Union Learning Reps in workforce development.

Where this approach is not feasible an alternative approach will be to seek agreement for individual protocols on:

- Options appraisal methodology
- In-house bids and public sector consortia
- Staff and trade union involvement
- User and community involvement
- Social and community needs assessment
- Equalities mainstreaming
- Sustainable procurement
- Community impact and benefits
- Soft market testing
- Making markets/contestability

Information protocol

For example, an Information Protocol could include the following:

- Identify the key information to be made available to trade unions at different stages of service review, options appraisal and procurement processes outside of a commercial confidentiality agreement.
- Clarification of classification of public and confidential information and the application of Freedom of Information regulations.
- Authority to seek agreement with bidders on access to information.
- Basis of the application of commercial confidentiality and information agreements.
- Format and access to information.
- Assistance in the interpretation of information and proposals.
- Responsibilities of trade unions and community organisations to maintain the security of information made available to them.
- Responsibilities and responses if there is a breach of confidentiality.

(see Somerset and Taunton Branches reports on the procurement of an SSP www.somersetcountyunison.org)

Branches should:

- Ensure that the council's procurement policy includes protocols for staff, and trade union consultation, community consultation, options appraisal and other key aspects of the procurement process. They should assess the scope of protocols and if necessary negotiate revisions or new ones.
- Make sure that the procurement policy allows for options appraisal before the formal procurement process is commenced.
- Ensure that the policy addresses sustainable development, community well being and equalities and provide criteria to assess social, economic, equity and environmental impact at both options appraisal and bid evaluation stages.
- Ensure that the procurement policy fully implements the Code of Practice on Workforce Matters and the authority includes the cost of monitoring the workforce in options appraisal and bid evaluation.

Strategy and organisational issues

Political decision-making process

It is essential to avoid the procurement process becoming merely a technical process with elected members marginalised until a decision is required on whether to award a contract. By then it is usually too late because the procurement process is entrenched with officers working towards a contract decision. Redesigning services, meeting e-government requirements and change management are usually complex processes. Elected members may have limited knowledge and understanding of the key issues or have a limited perspective on selected issues. The extent to which UNISON can ensure that the process remains a key part of the political decision making process will have a big influence on the success of the branch in achieving its objectives.

Draw on lesson learnt elsewhere: It is essential that branches draw on the lessons from branches in local authorities, which decided to retain services in-house, for example, Newcastle City Council's ICT and related services and the retention of the Prescription Pricing Division in the NHS Business Services Authority.

Involve stewards and members by regular reporting back to staff affected: Members should be involved in key decisions affecting their jobs and the action planned by the branch and kept regularly informed through newsletters and emails.

Pressure on bidders: Experience shows that it is important to make staff and trade union demands clear to all potential bidders. Branches should also gather information about bidders track record service performance, employment, social and environmental policies, particularly on staff secondment or transfer under the Best Value Code of Practice on Workforce Matters.

Community needs: Ensure that the positive effects of an in-house option on community well-being including the local economy, public health, the physical environment, social infrastructure and sustainability are clearly presented and are part of the evaluation criteria.

Tactical use of industrial action: Branches will need to consider if, when and how, it might need to use industrial action to support its demands. All forms of industrial action need careful consideration during the procurement process, taking into account the potential effect on service users, the authority, bidders and maintaining branch involvement in the procurement process. The authority could respond by excluding or limiting trade union involvement and access to documentation. The threat of industrial action and proceeding to a ballot can be used to build internal and external support. Building support of the membership is vitally important.

Efficiency and effectiveness reviews

How should branches respond?

- Make the case for an efficiency and effectiveness review before an options appraisal or procurement is considered.
- Make the case for an options appraisal before procurement is commenced.
- Challenge the expectations of efficiency savings – highlight the cost of procurement, the assumptions underlying the efficiency savings figures, provide alternative figures and views, make sure this debate is held with elected members. How were the savings calculated? Are the conditions in your authority the same as those as the examples being used?
- Promote in-house improvements; make the case for improvement strategies and how the service can be made more effective and efficient.
- Keep elected members and UNISON members informed.

Duty to consult staff and trade unions

There are many commitments to consult staff and trade unions in the service review, options appraisal and procurement processes. The authority's **Procurement Strategy** should contain a Protocol setting out how staff and trade unions will be involved in the different stages of the procurement process. This should include:

- A set of principals such as acting in the public interest, public service ethos, sharing information, non-disclosure of confidential information.
- Consideration of exclusion of support services from contracts or mandatory bids.
- Consultation, access and commenting on drafts of contract documentation.
- Non-disclosure agreement.
- Meetings with shortlisted tenderers.
- Access to bid documentation and meetings with bidders affecting the employment of staff and working practices.

- Evaluation criteria, trade union nominated observer to evaluation panel, and opportunity to submit written submissions to the panel.

A similar Protocol should be drawn up for user and community involvement in the procurement process. The Local Government and Public Involvement in Health Act 2007 imposes a duty to involve 'representatives of local persons' in policy making from April 2009 (see Statutory Guidance: Draft for Consultation 2007). The Act refers to "*representatives of local persons*" which includes "*whose who work or study in the area (including those who work for the authority)....*" The guidance states that authorities "*should also involve front-line staff in the commissioning of services, making use of their commitment and expertise*".

Staff and trade union representatives must be involved in the planning and delivery of services. A number of studies have recommended staff involvement:

Department for Communities and Local Government (2007) *The Role of Frontline Staff in Service Innovation and Improvement: Local authorities and their Engagement in the Beacon Scheme*, November, London. www.communities.gov.uk

DCLG, Cabinet Office, LGA and IDeA (2007) *Engaging the Workforce in Service Transformation, Front Office Shared Services*, May, London. www.idea.gov.uk

Improvement and Development Agency (2001) *Working Together for Best Value, with the Employers Organisation, LGIU, APSE, UNISON, TGWU, and GMB*, London.

Improvement and Development Agency (2007) *Shared Services and the Workforce*, London www.idea.gov.uk

Local government National Process Improvement Project (2007) *Building Capacity to Improve Local Services*, London www.bip.rcoe.gov.uk/rce/core/page.do?pagelid=1

The **Best Value Code of Practice on Workforce Matters in Local/Police Authority Service Contracts in England** contains a duty to consult trade unions (Section 6). It states that "when contracting out services and transferring staff to a new employer, councils/police authorities must consult trade unions."

Under the **TUPE regulations** the authority must inform and consult trade union representatives about the transfer at the earliest opportunity (regulation 10).

The **Disclosure of Information and Consultation with Staff and other interested parties** sets out rather narrow employment-focused guidance for local authority PFI projects (4ps, undated).

Newcastle City Council's Corporate Procurement Strategy makes a commitment to:

- Provide appropriate information to staff and trade unions at all stages of the procurement process;
- Establish regular consultation processes with staff and trade unions at appropriate frequencies;
- Provide an opportunity for trade unions to comment on all aspects of the procurement process at key milestones of the procurement process;
- Facilitate meetings between trade unions and potential providers at key stages of the procurement process.
- The trade unions will select their own representatives for meetings with contractors and site visits.
- Allow full discussions between trade unions and the City Council's preferred bidder prior to contract award.
- Use a minimum of temporary and agency staff during the procurement process, consistent with service and operational objectives.

Public consultation

Legal guidance on local consultation requirements for PCTs conducting local primary medical care procurements is available, plus a consultation template. However, the latter is entirely focused on presentations and consultation and does not address patient/community organization and/or staff/trade union involvement in the procurement process

www.dh.gov.uk/en/Procurementandproposals/Procurement/ProcurementatPCTs/DH_081031

Local Involvement Networks (LINKs) replaced Patients' Forums and the Commission for Patient and Public Involvement in Health from April 2008. Each local authority area with responsibility for social care will have a LINK, funded by the Department of Health. Councils will pay a host organisation to operate and support the LINK. A wide range of patient/carer, community, business, tenants and youth organisations can be members of a LINK plus individuals.

Part 3

Reviewing services

Introduction

The scope and nature of service reviews will vary widely depending on the political context as discussed in the Introduction. Ideally, a review should take account of:

- Future service needs
- Service performance
- Views of service users and staff
- Corporate policies and priorities

This part of the Toolkit examines these issues in more detail.

Local authorities are urged to review all services (in-house and externally provided):

- *“Regularly and rigorously assess and review the competitiveness of those services against similar services provided by other statutory bodies, local authorities or other service providers;*
- *Where these services are found to be under-performing in comparison with others they should reevaluate the need and priorities for that service; and*
- *Where service improvement is unlikely to be forthcoming within a reasonable period of time or unlikely to match what could be provided by alternative providers, local authorities should seek new supply arrangements through, wherever practicable, fair and open competition”* (DCLG, 2008).

PCTs and upper tier local authorities have a statutory duty under the Local Government and Public Involvement in Health Act 2007 to identify the current and future health and well being needs of a local population in a Joint Strategic Needs Assessment (JSNA). It will cover all the factors impacting on health and well being including employment, education, housing and the environment. It must link to other strategies and plans such as the Children and Young People’s Plan, Supporting People strategies and PCT Local Delivery Plans.

The JSNA will be used as a tool for commissioning outcomes. Department of Health JSNA guidance refers to the difficulties of measuring benefits through contractual requirements to provide outputs. It proposes *“commissioners, presenting actual or potential providers with outcomes requirements, may ask providers to write the specification that will lead to the successful results needed”* (Department of Health, 2007).

Future service needs and performance

Questions can be used to help to identify changes in the scope, level and type of changes, which will impact on the future provision of the service. For example:

- What is the purpose of the service?
- What changes in the size and composition of the population are forecast?
- What are the current and future needs of local service users?
- Are there different or conflicting needs between different population groups?
- Have existing inequalities been identified and mapped?

- How could the service contribute make a bigger contribution to the Authority's strategic aims?
- Is there an evidence base to support the service needs assessment?

Service performance

- Recent service delivery performance in meeting local and national performance standards and targets (such as Performance Indicators, Comprehensive Performance Assessment, Local Public Service Agreements and other targets).
- Degree to which a Service Improvement Plan has been implemented?
- Ability to develop and implement a new Service Improvement Plan?
- Is there capacity and cultural ability to provide an in-house solution?
- How do other authorities and providers meet these needs?
- What is the track record of other forms of service provision?
- Financial performance in meeting budgetary targets.
- Is the service subject to known or foreseeable cost pressures?

Views of service users and staff

- What are the views of service users expressed through customer care systems and community organisations?
- What are the views of staff and trade unions and their commitment to service improvement?
- The implications of options for jobs, terms and conditions.

Corporate policies and priorities

- How does the option improve sustainable development?
- What is the contribution of the service to equalities, diversity and community well-being?

Conclusion of service review

Four possible courses of action should be considered at this stage:

- 1) Where analysis determines that the current service provision meets performance standards and service needs with provisions for improvement no further action will be taken until the next review of the service.

Where analysis reveals a weakness in service performance further action will normally be considered:

- 2) Retention of current service provider supported by a three-year Service Improvement Plan.
- 3) Procurement exercise with an in-house bid.
- 4) Procurement exercise without an in-house bid.

This is summarised in Table 2.

Table 2: Decision on Service Review

| Good performing service | If a service has: |
|--|--|
| 1. Achieving a good level of performance and shows scope for further improvement: 2. Users express satisfaction; 3. Staff support for service improvement. | 1. Failed to implement key parts of a Service Improvement Plan: 2. Poor levels of service performance; 3. Users indicate unacceptable levels of dissatisfaction. |
| ACTION | ACTION |
| Retain the current service provider and prepare new Service Improvement Plan. | Options appraisal including in-house. Procurement process started with or without an in-house bid. |

European Services Strategy Unit, 2008.

However, some local authorities may select a poorly performing service for procurement without a full service review and/or options appraisal. They may also consider transfer of the service to an arms length organisation, company or trust or they may consider ways of ‘deconstructing’ the service into separate parts and transferring them or procuring them separately.

When an assessment of service performance identifies:

- significant performance or delivery weaknesses but clear evidence of a culture for change and improvement or;
- the future service needs are different from the current service but there is clear evidence of a culture for change and improvement.

An Option Appraisal will be undertaken followed by a procurement exercise. If analysis of the Option Appraisal indicates that an in-house option is viable then the procurement exercise should include a supported in-house bid.

If the service does not substantively meet performance standards or service needs and:

- the service provider does not have the expertise, culture or capacity to meet the future needs or;
- it does not have the expertise, culture or capacity capable of developing a SIP or,
- it fails to implement a SIP or,
- it fails, through its own action, to achieve improvement targets and timescales under a SIP;

then the authority is likely to proceed with procurement without an in-house bid.

Service Improvement Plans

Service Improvement Plans (SIPs) have a vital role in providing evidence and justification for in-house provision. They should combine a vision for the service with strategy and a programme, which sets the course for the service over a three-year period. The SIP must convey to Elected Members, service users, staff and inspection bodies that an in-house option has clarity and is sustainable. A SIP is in effect a commitment to improve the quality of the service and sets out the activities and action required to achieve improvement.

It is also a tool to hold management accountable for progress, to build staff support, facilitate wider community engagement and enable Scrutiny to review and assess the improvement programme. The scope of a Service Improvement Plan is summarised in Table 3.

Table 3: The scope and content of Service Improvement Plans

| The scope and content of Service Improvement Plans | |
|--|--|
| Scope | Identify services and functions in scope of the improvement plan. |
| Priorities for improvement | Identify each of the improvement priorities in relation to operational systems, management practice and organisational structures. |
| Objectives | Ensure the aims and purpose of each improvement is clearly stated based on an understanding of the cause/effect of performance weaknesses and/or opportunities for improvements. |
| Results expected | Identify the planned impact, outputs and outcomes of the improvements. |
| Period covered: | It is essential that SIPs cover a 2 or 3-year improvement programme. |
| Management of change | Application of Business Process Reengineering and how service standards will be maintained in a period of reorganisation. |
| Action to be taken | Specify what action is required to implement each proposal. |
| Resources and investment required | Financial costs of improvements, changes in use of assets including equipment & buildings. |
| Training, staff recruitment/redeployment | Identify human resource changes needed to support implementation. |
| Corporate action | Change required at Corporate level to ensure successful implementation of improvements and achievement of wider benefits. |
| Staff/trade union involvement and consultation procedures | Agreement on involvement of staff and trade unions in service improvement plan process and reporting progress/issues at JCC meetings. |
| Responsibility and management accountability | Elected Member responsibilities together with officers, managers responsible including names/posts and contact details. |
| Timetable | Dates when proposals will be commenced and completed. |
| Monitoring and reporting progress | Regular reporting of progress to users, elected members, Corporate Management Team and staff. |
| Scrutiny review | Review on annual or six monthly basis. |

European Services Strategy Unit, 2008.

Part 4

Efficiency reviews

Introduction

This section explains the new focus on efficiency and how it effects the procurement process. It covers:

- Definition of efficiency
- Government efficiency targets
- Annual Efficiency Statements
- Efficiency reviews
- Role of Regional Centres of Excellence

Definition of Efficiency

The government has defined efficiency in terms of raising productivity and enhancing value for money. Efficiency gains are achieved by one or more of the following:

- Reducing inputs (money, people, assets, etc) for the same outputs;
- Reducing prices (procurement, labour costs, etc) for the same outputs;
- Getting greater outputs or improved quality (extra service, productivity, etc) for the same inputs; or
- Getting proportionally more outputs or improved quality in return for an increase in resources.

The Gershon Review covered the public sector and identified scope for significant efficiencies in the following areas ('workstreams'):

- procurement
- back office (i.e. corporate support services - this includes finance, human resources, payroll, ICT, legal, procurement, property, security and communications functions.
- transactional services (like revenues and benefits)
- productive time (actions that increase productivity)
- policy, funding and regulation (streamlining for both the public and private sectors including Local Area Agreements)

Cost of services

Understanding the cost of services is an essential part of efficiency reviews and comparisons within and between authorities. See *Delivering Efficiency: Understanding the Cost of Local Government Services (2008)* which includes a cost allocation framework. www.communities.gov.uk/documents/localgovernment/pdf/730431

Efficiency targets

Annual 3% efficiency savings will be achieved by one or a combination of the following:

1. reducing inputs (money, people, assets, etc) for the same outputs
2. reducing prices (procurement, labour costs, etc) for the same outputs

3. getting greater outputs or improved quality (extra service, productivity, etc) for the same inputs, or
4. getting proportionately more outputs or improved quality in return for an increase in resources.

1 and 2 produce cashable efficiency gains, while the gains from 3 and 4 are non-cashable. Savings from 'cuts' (withdrawal of service, lowering of quality standards) do not count.

Annual Efficiency Statements

There are two parts to the Annual Efficiency Statement (AES). An action plan (strategy, key actions and expected efficiency gains) for the year (called a 'forward look') and a report on efficiency gains achieved in the year ('backward look').

The forward look must be submitted in April each year with the backward look in June. In between (November), single tier and county councils (except those in the excellent category) must submit a mid-year update. Excellent councils and districts are encouraged to do the same.

The template for the AES forward-look requires authorities to include information by service block ('sector') on strategy, key actions and expected annual efficiency gains together with an indication of which gains are expected to be cashable. Councils can take any action they choose to deliver the required efficiency gains.

Where the processes in delivering services are complex such as adult social care, education and children's services, housing and supporting people, the authority is expected to take a 'whole system' approach to achieve efficiencies.

The efficiency agenda is likely to have a significant impact on employment including rewriting job descriptions and responsibilities, changing functions and workplaces, changes to working practices, amending skill requirements, new training requirements and regrading and changes to terms and conditions.

Efficiency review process

Efficiency reviews are likely to take various forms and degrees of comprehensiveness since there is no required model. They are likely to include an examination of:

- Area asset management planning - making better use of facilities, rationalisation of service delivery locations, possible consideration of alternative asset management vehicles and ownership models
- Improving efficiency through focused investment in ICT – more effective management of ICT assets, desktop efficiency programme, through integration of systems, by increasing the productive time of frontline staff by reduce travelling and routine administrative tasks.
- Improving business processes; Business Process Re-engineering to review service delivery and working practices
- Rationalising office accommodation; 'hot desking' to enable staff to be more community based, home working, mobile working and better use of office space. Could include asset disposals such selling land and buildings to reduce maintenance and security costs.
- Reducing energy consumption/usage; bill monitoring, mapping consumption and investing to improve energy efficiency of buildings.

Reducing sickness absence and improving attendance; improve skills to manage sickness effectively.

- Reducing supplies and services; cost reduction plans for postage, telephony, agency staff, travel and procurement processes. Also collaborative projects with other authorities and public bodies.
- Service asset management planning – take account of possible changes in staffing levels, organisational arrangements, work processes and support facilities requirements.

Some managers may want to bypass effectiveness and efficiency reviews and to opt for procurement and outsourcing in the belief that larger savings can be achieved by outsourcing. Identifying the full transaction and public sector costs of outsourcing will be vitally important to counter the inflated savings credited to outsourcing and to help make the case for a full efficiency review before the procurement option is considered.

The procurement process must also implement sustainable development, improve management of the supply chain, achieve community benefits, involve users and frontline staff and embrace partnerships (hence larger and more complex contracts) whilst reducing transaction costs. This is a difficult task and affords opportunities for UNISON branches to shape the procurement agenda.

Role of Regional Centres of Excellence

The Government established Regional Centres of Excellence in Procurement but their remit was quickly expanded to include efficiency following the Gershon Review (HM Treasury, 2004). RCEs provide support to local authorities to achieve efficiencies in the procurement of goods, services, construction and facilities management; corporate and transactional services.

The remit of the centres includes:

- co-ordinating and analysing data on authority performance across the four workstreams to enable decision makers in local authorities to understand the options for improved performance.
- providing support, including identifying and bringing to bear available resources, to authority-led projects designed to achieve efficiencies. This could include the national support programmes – Change Agents - for the efficiency agenda being delivered by the Local Government Taskforce (construction), the LGA Performance Partnership (IDeA, EO, 4ps) and DCLG, OGC and other government departments. They also work with the DfES's Centre for Procurement Performance, the Highways Agency and the Department of Health's change programme for adult social care on procurement opportunities.
- developing opportunities for shared working across local authorities and the wider public sector, involving, where appropriate, the private and voluntary and community sectors. They will also co-ordinate support for local authorities to ensure that efforts of individual organizations support the needs of the region.

Part 5

Shared services

Introduction

Pressure is increasing on all public services to develop shared services projects. They have initially focused on corporate and transactional services but the scope is almost certain to widen to include frontline services. This section examines:

- Types of shared services projects
- Shared services principles
- Options appraisal and evaluation criteria
- Business Case
- Employment models
- Offshoring
- Governance and accountability
- Role of management consultants

Types of shared services

There are broadly six types of shared services projects:

1. Collaboration and shared procedures between two or more public bodies
2. Corporate consolidation within a public sector organisation at regional or national level
3. Lead authority on behalf of a group of public bodies
4. Jointly managed services between a group/consortium of public bodies at subregional or regional level.
5. Strategic partnership or joint venture with the private sector.
6. Outsourcing and offshoring.

The first four are in-house options which could be one or multi-centred operations with joint governance arrangements.

UNISON Branches in prospective shared services projects should meet regularly to share information, assess proposals and ensure that employment issues are fully addressed from an early stage.

Shared services principles

In order to ensure that the quality of service, democratic accountability and governance, the quality of employment and a rigorous planning process are achieved, shared services projects should adopt the following principles:

Table 4: Shared services principles

| Principles for shared services | |
|--|---|
| Scope and quality of service | |
| 1 | Focus on collaboration and sharing best practice in frontline as well as back-office services. |
| 2 | Take a long-term perspective and avoid short-term focus on efficiency and savings. |
| 3 | Improve the quality of service to internal and external users. |
| 4 | Full use of economies of scale to maximise benefits for reinvestment in frontline services. |
| 5 | Standardisation to maximise sharing potential and avoid duplication but accommodate local flexibility and added value services. |
| 6 | Promote and enhance public service principles and values. |
| Democratic accountability, governance and participation | |
| 7 | Democratic accountability and governance with all joint boards, committees and JVCs fully accountable to partner authorities. |
| 8 | Trade union involvement in the early stages of project development and in project implementation. |
| 9 | Impact assessment of service and employment consequences and economic, financial and equalities issues. |
| Shared services process | |
| 10 | Rigorous evaluation of options using comprehensive appraisal criteria |
| 11 | Retention of skills and intellectual knowledge in the public sector. |
| 12 | Maximise public ownership of assets (buildings, equipment). |
| 13 | Transparency of process and disclosure of information and evidence base |
| 14 | Full business case and business plan to underpin project. |
| 15 | Assess impact of commissioning and outsourcing on scope and sustainability of shared services. |
| 16 | Rigorous and comprehensive procurement process if this is required. |
| Employment | |
| 17 | In-house/secondment option a priority. Transfers on a TUPE Plus basis including pensions for transferred and new staff. |
| 18 | Develop a multi-skilled and motivated workforce and a work environment to support workforce development and continuous improvement. |

European Services Strategy Unit, 2008.

Options appraisal and evaluation criteria

Ensure that in-house options are fully considered and that appraisal criteria take account of the particular issues of shared services projects (see *Shared Services in Britain* www.european-services-strategy.org.uk/outsourcing-library/shared-services/)

Business Case

Shared services projects will usually develop an Outline Business Case at an early stage in order to get approval in each constituent authority to develop the project to a more advanced stage. Ensure that shared services projects:

- Consider the long-term implications;
- Address new risks associated with shared services projects;
- Savings projections are realistic and evidence based;

- Fully assess compatibility of technology and working practices;
- Take account of organisational and cultural differences in authorities;
- Fully address staffing issues and industrial democracy issues.

Employment models

The same employment options are applicable for shared services projects as for other service delivery options – see Part 10 and Table 12 for the risks associated with employment models.

Offshoring

This is a threat if authorities outsource services, either in traditional contracts or via PPP/SSPs. Many managed services companies, such as Capita, Capgemini and Steria plan to increase offshoring work to subsidiaries or partners in Asia. Some private contractors have shared services centres in Eastern Europe. Try to ensure that relocation of service delivery is not permitted in the draft contract issued with the ITN and is not considered a reserve matter if a joint ventures company is established.

Governance and accountability

Staff/trade union and service users should be represented on project working groups.

New organisational and governance structures are being drawn up for shared services projects, particularly for collaborative, consolidation, lead authority and jointly managed projects involving a group of neighbouring authorities where the work is retained in-house. It is essential that authorities draw on the experience of existing jointly managed and collaborative projects.

Joint Venture Companies, Public Private Partnership and Strategic Service Delivery Partnership Boards should be representative and accountable with comprehensive disclosure, reporting, scrutiny and review requirements.

Role of management consultants

Authorities often engage management consultants at an early stage of shared services projects as a 'neutral' solution to prevent one particular authority from having a central role. However, this approach is more likely to promote outsourcing and undermines the existing capability and capacity of the pooled resources of the authorities.

Joint waste services

The Local Government and Public Involvement in Health Act 2007 set out powers to allow for the establishment of joint waste authorities in England. Two or more local authorities may submit proposals, to the Secretary of State, to transfer waste collection, disposal and/or street cleansing functions to be discharged by a joint waste authority. See *Consultation on Proposals for Joint Waste Authorities in England*, DEFRA, March 2008.

www.defra.gov.uk/corporate/consult/jwa/index.htm

Part 6

Options appraisal

Introduction

This section explains the six stages of the Options Appraisal process:

- Identifying the problem
- Researching the market
- Identifying potential options
- Selecting appraisal criteria
- Appraisal of options
- Gateway Reviews

Identifying the problem

Options appraisal is the identification and assessment of different methods of delivering or supplying services and/or obtaining new and improved facilities and infrastructure. A service should be considered for an option appraisal only under certain conditions as described in Part 6 if there is consistent poor performance, lack of ability to implement service improvements or if a Service Improvement Plan failures to achieve its targets.

It is important to identify the causes of poor performance and the possible remedies – they may affect the relevance of other options too:

- Lack of resources and investment.
- Low corporate priority for the service.
- Continuing high demand for the service dominates the delivery process restricting the ability to improve services.
- Lack of integration with other services.

Researching the market

The purpose of market research is to develop an understanding of:

- the current range and type of provision and providers of the service;
- anticipated future changes as a result of legislation, user demands and/or best practice;
- the organisation of the sector and the key providers;
- the key developments and trends in the sector;
- the pattern of mergers and take-overs;
- whether the market or sector can contribute added value to the defined service.
- Capability and level of interest of private/voluntary sector in provision of whole service or particular parts of the service.

Market research methods

The authority may investigate the market and identify potential bidders with a combination of one or more of the following:

- Desk research.
- Trade advertisements inviting potential bidders to express an interest in delivering part or all of a service or groups of services.
- An OJEC Prior Information Notice.
- Consultation with other local authorities and government departments.
- Letters to providers.
- Questionnaires to potential bidders.
- Briefing day or workshop for potential bidders where council officers describe the services being tendered and private/voluntary providers indicate their preferences.
- Meetings with representatives of professional and/or trade associations.

The process market research must be tightly controlled through protocols, which set out the approach, recording and audit trail.

Soft market testing

Authorities frequently initiate a soft market test once they have drawn up an Outline Business Case. A soft market test is intended to assess the capacity of the market to deliver the planned scope of services and to establish the level of interest by private contractors. It is often carried out by management consultants and will involve discussing the project with private contractors who would normally be expected to submit bids. A soft market test should be carried out with care. It is not a formal procurement process so the process is not governed by any rules.

There are two basic approaches. In the first, an authority commissions a consultant to ask a number of questions relating to what the authority wants to know or better understand about the market and/or the commercial interests of key providers. No more, no less. The authority could undertake the work itself.

A second approach is broader and providers could be asked for their views on:

- The scope of services and service provision.
- How savings may be achieved.
- Whether the contractor could introduce innovation.
- Contract packaging.
- Terms of a contract and payment mechanism.
- Preferred performance indicators.

The authority may also interview contractors. This approach entails the authority providing much more information about the service to the private sector. It is therefore essential that Branches try to ensure that if a soft market test is carried out that the authority sets out a clear framework, including preferred employment option.

Action if there is a limited response from providers

If there is limited response to the OJEU Notice the authority will be under pressure to revise the project either by adding services or functions which might be more 'attractive' to the private sector or by 'deconstructing' the project into smaller parts in the hope that the private sector will bid for individual sections.

Branches should ensure that the authority takes account of:

- Adding functions or dividing up the work does not have a negative impact on service integration, users and staff.

- The likely increased transaction costs of several smaller contracts.
- The effect on corporate policies.
- The revised proposals are subject to further consultation with service users, staff and trade unions.

Branches should argue that if there is no significant interest then the authority should be bold enough to retain the in-house service because no external market exists.

Investigating new suppliers

The possibility of encouraging new supplier groups will be considered. This could include working with other authorities, as partners in joint procurements or as direct suppliers. Potential partners may also include organisations that do not see themselves as operating in a market at all, such as voluntary or community groups. The cost, including officer time, should be taken into account in determining the extent to which this option is progressed.

Encouraging new supplier groups should be co-ordinated with economic development initiatives supporting the formation and growth of Small and Medium Enterprises (SMEs).

Identifying potential options

Clarity in identifying the potential options is essential. A status quo in-house option should not be considered as an option because this is rarely feasible or desirable. It should only be considered if there is also an 'improvement' in-house option to avoid inflating the advantages of other options and disadvantaging the merits of an in-house option. The options include:

- In-house provision.
- Establishing a new authority owned company to deliver goods and services.
- Partnership – a public sector partnership or a public-private partnership (this could include other local authorities, central government and statutory organisations, a registered social landlord, a voluntary or community organisation, a community development trust or social enterprise, a private contractor or developer or a technical or management consultancy).
- A mixed economy or market (including in-house provision and other options below).
- Full outsourcing or externalisation/privatisation of the service to the private sector, voluntary organisation or social enterprise.
- Hybrid combining two or more of the above.
- Postponing the decision and undertaking a market test.

In theory the 'cessation of the service' should be considered as an option but this is usually politically, economically and socially implausible. This is only realistic if the authority does not have a statutory duty to provide the service, if there is little or no demand for the service, if the costs of provision outweigh the overall benefits of provision, and/or there are other comparable externally provided services available at reasonable cost to service users and where this will not undermine the council's broader social policy and community well-being objectives.

Selecting appraisal criteria

The selection of options appraisal criteria is not constrained by EU or UK procurement legislation. It is strongly recommended that appraisal is based on twelve criteria (see Options Appraisal Matrix and Criteria for further details (www.european-services-strategy.org.uk/publications)).

1. **Design and scope:** How each option meets strategic objectives, vision and aspirations, ability to meet current and future needs, user views, effect of

creating/extending market mechanisms, scope for synergies and design/technical assessment.

2. **Accountability, governance and participation:** The implications of each option for enhancing democratic accountability, transparency and scrutiny and user/community and staff/trade union involvement in planning, policy and provision.
3. **Financial assessment:** Assess whole life and transaction costs, investment requirements and funding, affordability, use and allocation of savings, Best Value and risk assessment.
4. **Quality of service:** The potential impact on performance, service integration, continuous improvement and innovation, flexibility and responsiveness, accessibility and connectivity.
5. **Local/regional economy and community well being:** Assess impact on jobs, skills, labour market and local economy, contribution to regeneration and economic development strategies, community well being and cohesion.
6. **Quality of employment:** Application of employment models to each option, ability to retain terms and conditions, pensions and labour standards, impact on working practices, workplace training, access/provision of childcare and health and safety in workplace and community.
7. **Sustainable development:** Impact on local/regional production and supply chains, access to parks and recreational activities, services and facilities, environmental impacts and efficient use of resources.
8. **Ability to address social justice and inequalities:** The appraisal should identify how each option will reduce/eliminate health and other inequalities and discrimination for different equality groups. It should include a distributional analysis of the costs and benefits of each option and assess the contribution to building community capacity, power and participation.
9. **Capability, management and intellectual knowledge:** Effect of each option on retention of key skills and intellectual knowledge, ability to manage change and regulatory frameworks and transferability of skills to rest of the authority.
10. **Organisational arrangements:** Effect on flexibility, scope for collaboration and consortia, impact of transfer to arms length bodies and trusts and capability of third sector organisations.
11. **Added value:** Proposals over and above core requirements and additional community benefits.
12. **Corporate impact on the authority:** Assess the impact on the viability of in-house provision, service integration and the financial and employment knock-on effects on central and other services.

Appraisal of options

There is no compulsion or statutory requirement to adopt a particular option.

The rigour of the appraisal process is very important. Recommendations should take account not only government policies on modernisation and national policies for particular services or sectors but the authority's modernisation agenda and policies for service needs, value for money, democratic accountability, equity, user/community and staff/trade union participation and community well-being.

Options Appraisals must:

- make a clear statement setting out the rationale for each options appraisal including the reasons why an appraisal is being carried out.

- be legitimately triggered by this Strategy and that elected members, officers, users/community organisations and staff/trade unions are aware of this.
- assess the relevance of the market intelligence with the specific service being appraised, social needs and local circumstances.
- contain appropriate consultation with user/community and staff/trade union representatives.

Appraisal process

The appraisal process should include the following:

- Identify the objectives.
- Future service needs, changes in demand and new legislative requirements.
- The case for change - new plans and approaches, tackling inequalities and capital investment.
- Service, social, economic, equality and environmental impact
- Market research evidence
- Financial appraisal
- Comparison of options
- Sensitivity analysis
- Risk analysis
- Recommendations

Impact assessment of options

Impact assessment is a method of identifying the costs, benefits and effects of policies and projects. It is designed to be used **before** implementation so that action can be taken to eliminate or minimise adverse effects. It can also be used in scrutiny and evaluation. Impact assessment has frequently been used to assess particular aspects, for example the economic or health impact of a project. An integrated impact assessment examines the economic, social, environmental, equality, health and sustainable development in one process.

Impact assessment should be used at the following stages:

- Reviewing service performance
- Options appraisal
- Selection of bidders
- Evaluation of bids
 - The impact on the local economy and labour market
 - The quality of community benefits
 - The impact on supply chain proposals for the local/regional economy
 - The environmental and sustainable development implications of bids.

The types of impacts to be assessed will depend on the service(s) and capital works being procured. However, all procurement processes should assess the impact on the following:

- **Corporate impacts** – this should assess the effect of the project on the authority as a whole and individual departments/directorates where relevant.
- **Local economy** – the effect of investment, supply chains and training on the local economy and labour market.

- **Employment** – The impact of different employment models and bidders workforce proposals. It should include assessing the consequences of the failure to implement assurances and commitments made by bidders during the procurement process.
- **Equalities** – The effect of changes in access to services, planning social needs, employment opportunities, and impact on equality groups.
- **Social** – The effect of demographic change and social structure, the effect of changes in community organisational structures.
- **Offshoring** – the impact of transferring work overseas on employment and service integration should be assessed. It should also assess whether this is the thin end of the wedge which could lead to further offshoring once the contract is operational.
- **Job generation** – Some partnership projects include proposals to generate additional employment via Regional Business Centres. They are based on the contractor winning contracts from other local authorities and public bodies and should be subjected to rigorous assessment.

Consultation with service users/community organisations and staff/trade unions during appraisal process

Service users, community organisations, and staff and trade unions should be fully involved in all stages of options appraisal. It is essential that the options are genuine and the assessment transparent.

Gateway Reviews

The Gateway Review process examines a project at critical stages in its lifecycle to provide assurance that it can progress successfully to the next stage. The Gateway Review model is controlled by the Office of Government Commerce (OGC) with organisations such as 4ps licenced to carry out reviews in local government. The National Procurement Strategy recommends that it be adopted for all new projects. Reviews are undertaken by an accredited review team leader supported by experienced commissioning and procurement officers from other local authorities or public bodies.

There are six Gateway Reviews available during the lifecycle of a project; four before contract award, and two looking at service implementation, and confirmation of the operational benefits. A project is reviewed using the 4ps Gateway Review workbook appropriate to the point reached in its lifecycle. The Gateway Process has been designed to support projects that procure services, construction/property, ICT business change projects and procurements utilising framework contracts. www.ogc.gov.uk or www.4ps.gov.uk

The level of independent scrutiny is extremely limited. Gateway Reviews are constrained in scope and purpose to assessing the degree of rigor and comprehensiveness of the chosen approach. In other words, it assesses the quality of the work undertaken in implementing a particular policy option, it is not designed to challenge the policy decision or select an alternative option.

Scrutiny Panel

The authority's response to Gateway Review conclusions and recommendations should be considered by the authority's Scrutiny Panel or Committee as part of a regular assessment of the project and procurement.

Part 7

The case for in-house provision

Introduction

This section sets out the case for in-house provision and the action Branches may need to take to ensure that in-house bids are supported and comprehensive. It covers;

- Making the case for in-house provision
- In-house bids, not Best Value Comparators
- UNISON strategy to support in-house bids
- Alternative options

Making the case for in-house provision

The case for in-house provision is comprehensive. It has many distinct advantages to the authority – economic, social, reduction in inequalities, employment, sustainable development and others which are summarised in Table 5 below.

Table 5: The case for in-house provision

| The case for in-house provision | |
|---|---|
| <p>Improved services Better quality of service Maximising scope for improvement Coordination and integration of services and functions Continuity and security Improving coordination and leadership in service delivery Coordinating and integrating purchaser and provider functions Working to needs, not contracts and profits Retaining and enhancing a public service ethos and values</p> <p>Corporate Retaining intellectual capital in the public sector Enhancing public sector capacity and skills Ownership of public assets Private sector ability to deliver public services is often overstated.</p> | <p>Democratic accountability Direct democratic control & accountability of service delivery Safeguarding the public interest</p> <p>Financial advantages Lower overall cost when wider economic, social and environmental impact taken into account. Economies of scale Cost transparency Improved sustainable development Implementation of corporate policies, objectives and priorities</p> <p>Employment Sustaining good quality employment Maintaining and developing local/regional supply chains and support for small and medium-sized businesses and social enterprises.</p> |

European Services Strategy Unit, 2008.

Ideally the authority should make reference to an in-house bid in the OJEC Notice but this is not essential. It does not preclude the submission of an in-house bid later in the procurement process although this is not ideal and could reduce the time available to prepare a bid. It could also lead to complaints from other bidders.

The authority should:

- Start preparing an in-house bid as soon as the authority agrees to proceed with a procurement process. Indeed, the existence of a strategy and business plan could pre-empt the need to start procurement.
- Organise workshops with staff and trade union involvement to identify key issues, discuss the service improvement plans and the scope of the change management programme.
- Summarise the authority's track record of innovation and the successful implementation of change. Again it is important not to make any assumptions about the extent of knowledge or understanding by the evaluation team (which may include external advisers), other officers and elected members. It should be an honest appraisal identifying successes and weaknesses and where lessons have been learnt and how they will be applied in the in-house bid.
- Demonstrate the viability of the financial proposals – this requires seeking out the actual cost of different components of the bid i.e. the bid must be supported by hard evidence rather than mere estimates.
- The in-house bid should assess the need for and cost of external technical and change management advice.
- Address the key concerns of Elected Members and senior managers and other directorates:
 - Ability to implement/change management.
 - Innovation.
 - Financial and investment viability with savings achievable.
 - Evidence of staff and trade union support.
- Those responsible for preparing the in-house bid must be capable and committed.
- The in-house bid team need to understand the evaluation methodology and criteria and to fully grasp the requirements of the ITN.
- The in-house bid should consider the use of external expertise for change management in addition to external expertise for procuring hardware, software and training. SSP contractors rely heavily on external advice and the in-house team will need to draw on external expertise and support as and when required in a tightly controlled framework.
- The team will need to develop proposals on how the technology and change management process and lessons learnt can be transferred to the rest of the authority. The in-house service has a key organisational and financial advantage, which should be drawn on.
- Ensure the in-house team have full organisational support and credibility. Partial proposals will be limited in scope and compare poorly with external bids.
- The authority must have the confidence in the ability of its staff to develop the appropriate plans and proposals.

In-house bids

Sometimes Service Reviews are claimed to be 'comparators' which are used in the evaluation of bids to assess contractor's proposals with the 'performance' of the authority. They give the impression to Elected Members and staff that an in-house bid is being prepared when it is not. Value for money 'comparators' or service reviews are not a substitute for an in-house bid because:

- A Service Review can help to identify service improvements but it falls far short of constituting an in-house bid to compete against the private sector. It cannot be evaluated with private sector bids because a like for like comparison is not possible.
- The 'comparators' usually include the current in-house performance levels and the potential improvements in performance, which could be achieved, with a Service Improvement Plan. In other words, current performance of in-house services is compared with the long-term potential performance of the private sector. This is not comparing like with like.
- Consultation is often limited to selected groups of staff, internal users and the council's citizen's panel but rarely includes the participation of service users, community organisations and trade unions.

UNISON strategy to support in-house provision

This section is divided into three parts. The first identifies the key demands required to try to obtain a commitment for an in-house bid. The second examines branch involvement in the preparation of an in-house bid and the third explains ways of organising and involving members in the process, which have been used by branches.

UNISON branches should:

- Demand that elected members require senior management to prepare an in-house bid. Management must prepare and own the bid. Selective and limited use of consultants to increase capacity and may help to build confidence in the ability of the authority to deliver the project. However, over reliance on consultants could jeopardise the bid and elected member's confidence in the ability of managers to successfully implement a change management programme.
- Develop a strategy, which focuses on the content of jobs, quality of service, the process of service delivery and accountability arrangements.
- Focus on the investment and policy decisions to be taken by the council.
- Campaign for in-house provision and set out in detail the principles and values, which should underpin it.

Branches have succeeded in:

- Persuading an authority to submit an in-house bid and co-operating in its preparation (for example Newcastle City Unison's campaign on Information Technology and Related Services). Constant pressure and campaigning over two years resulted in the submission of a successful in-house bid against BT.
- Preparing a broad alternative plan setting out the principles and approach which could be adopted (for example, the Milton Keynes and Northamptonshire UNISON branches published a report which made the case for an in-house bid, described how the authority could finance investment and had the capacity and ability to restructure services. Eventually Northamptonshire County Council withdrew from the procurement process).

Branch involvement in the preparation of an in-house option or bid

Branches will need to decide what role they should take in the preparation of an in-house bid. Managers preparing the bid usually want to discuss the broad agenda for change, particularly changes to working practices and staffing levels. There are clearly dangers of a Branch getting sucked into the detail of a bid and being persuaded to make concessions, which need to be fully negotiated at a later stage.

Branches could, however, co-operate with management in the preparation of an in-house bid by:

- Promoting public service principles and values as the basis for an in-house bid.
- Identifying the content and scope of Service Improvement Plans (SIPs).
- Examining working practices and procedures and make proposals, which improve service quality and effectiveness.
- Discussing future staffing levels, redeployment and retraining proposals.
- Working with service users and community organisations to identify needs and priorities and to build support for an in-house bid where there is agreement on core principles and values.
- Discussing the approach to change management and the interface with other services.

What action to take if a council refuses to allow an in-house option or bid

If an authority refuses to make a commitment to an in-house option or bid or there is a distinct lack of progress having made such a commitment, the following action could be taken:

- Lobby elected members or Board members explaining the advantages of in-house provision.
- Turn the advantages of submitting an in-house bid into statements about the negative consequences of not having an in-house option or bid in a briefing for elected members and a press release.
- Make the case that the authority has the capacity and ability to carry out the investment and service improvements itself and that UNISON will cooperate with negotiated change management.
- Use evidence from authorities which have retained services in-house to demonstrate the benefits of this approach.
- Present the case for an in-house option or bid to the External Auditor making the point that the authority has the capacity and ability to directly undertake the project and that it is breaching its fiduciary duty by not permitting an in-house bid.
- Press for a public consortium with neighbouring authorities and public bodies.
- Urge the authority to send a delegation of Elected/Board Members, officers, trade union and community representatives to authorities, which have radically improved in-house services and avoided outsourcing.
- Consider the advantages and disadvantages of industrial action in your particular situation.

Action to take if council commitment for an in-house bid is not being implemented

If a authority makes a commitment to prepare an in-house bid but officers are either dilatory or it is evident that the way in which it is being prepared does not give confidence, the branch needs to take immediate action. This could include:

- Informing elected members and political parties of the situation and seek a further statement and direction to officers to prepare a bid.
- Try to get the matter raised at Corporate Management Team;
- Organise a lobby of elected members.

Alternatives to in-house bids

There are two alternatives if an in-house bid is not supported:

The authority could establish a council-owned not-for-profit organisation to deliver services in-house via an internal agreement, which would not be subject to the procurement process (for example Newco Products, Newham).

The authority could establish a company – (Clause 96, Local Government Act 2003 or under the well-being powers in Part 1 of the Local Government Act 2000) to provide the services or functions.

Part 8

Capital works and regeneration projects

Introduction

The procurement process for major capital projects, particularly Private Finance Initiative (PFI), Building Schools for the Future (BSF) and NHS LIFT projects, integrates the options appraisal stage into the preparation of the Outline Business Case (OBC) or Strategic Business Case (SBC).

Scope of Outline Business Case

The OBC or SBC is an essential part of the procurement and approval process in PPP/PFI/BSF/LIFT and SSP projects. It is a vital document, which sets the framework and legitimacy for a project. Branches should put pressure on the council to make the OBC as full and comprehensive as possible and to have an opportunity to comment on the draft OBC. An OBC should consist of:

- **Statement of support for the project:** summary of the support, commitment and approvals from the authority, other public bodies and community organisations.
- **Strategic context:** Analysis of the authority's vision, corporate strategies, policies and plans and how the project fits with these strategies.
- **Business need:** This should set out the rationale for the project, detailing why it is needed, recent performance of the service, summaries of service reviews and user surveys.
- **Service or project objectives:** Clear strategic and project objectives which detail the all the aspects – outputs, outcomes, performance standards, inputs and resources are essential.
- **Options appraisal:** The options must be credible - a 'do nothing' option is not realistic – and should range from 'do minimum' to partial or phased implementation to full development options. The OBC should also indicate the criteria by which the options were assessed. This stage should also include examination of procurement options and the development of financial models for each option. The assumptions underpinning options appraisal should also be clearly stated.
- **The preferred option - cost, benefits and affordability:** The OBC should not only state the economic benefits but also the social, environmental, equality, health and sustainable development benefits of the preferred option. It should include a rigorous analysis of the affordability of the project.
- **Project delivery arrangements:** This section should set out the approach to procurement, a project management plan and other issues concerning how the project will be delivered.
- **Employee and other issues:** The preferred employment model, application of Code of Practice on Workforce Matters, pension arrangements, the exclusion of soft services or mandatory bids should also be set out.

See *Infrastructure Procurement: Delivering Long-Term Value*, HM Treasury, 2008, for the government's strategy to broaden the range of procurement approaches, private finance and deliver value for money: www.hm-treasury.gov.uk/media/5/C/bud08_procurement_533.pdf

Building Schools for the Future projects

The SBC for Building Schools for the Future projects must address a broader education policy agenda than a traditional OBC. The authority must prepare, (with support from Partnership for Schools PFS):

“a strategic plan for the provision of secondary education across its estate. This plan integrates a phased building programme for secondary schools with service delivery, ICT, teaching services and school management. In other words, it brings together all those elements that influence educational standards – building condition, ICT, teaching and school management – into one coherent programme where renewals in secondary schools infrastructure and ICT provision are matched by the standard of management and teaching services in those schools. It also reflects the local strategy in respect of educational service provision, e.g. with respect to extended schools and community use.”

(The Local Education Partnership ("LEP") Model: Volume Two: Detailed description of the LEP Model, April 2004)

Consultation on waves 7 to 15 of the Building Schools for the Future programme was launched in April 2008. A revised national programme is planned from 2009. See The Management of Building Schools for the Future Waves 7 to 15: <https://www.dcsf.gov.uk/consultations>

Partnering projects in construction

There are an increasing number of partnering arrangements in construction. These are discussed in Framework Agreements in Part 9.

Part 9

Procurement process

Introduction

The procurement process only becomes relevant when an authority decides to require its in-house service to compete against private contractors and other providers or it agrees to outsource service delivery (no in-house bid). There is no requirement under the European procurement rules to open services to competition. If an authority decides to deliver a service in-house it does not have to advertise the contract. It may also deliver services in-house through a wholly-owned company. However, if the private sector has equity share capital in an arms-length authority company, no matter how small, it must follow the public procurement process (Halle, C-26/03).

This section explains the key stages in the procurement process:

- Procurement strategy
- Types of procurement
- Framework Agreements
- Legal framework
- Overview of the procurement process
- Shortlisting of bidders
- Invitation To Tender (ITT) or Invitation To Negotiate (ITN)
- Evaluation of bids and projects
- Risks in the procurement process
- Monitoring and contract management
- Analysis of procurement spend

Procurement strategy

UNISON branches should identify specific objectives once the formal procurement process is about to start. This will help to highlight the most important stages of the procurement process and to help the branch determine how it can most effectively participate or intervene in the process.

The objectives could include the following:

- Ensure comprehensive efficiency reviews and options appraisal processes **before** a decision is made to start the formal procurement process.
- Branches should assess the implications for services and jobs at each stage with the ability and make elected members, staff and users aware of the consequences.
- Ensure that the authority agrees to the submission of an effective and resourced in-house bid.
- Minimise the range of services, functions and policy roles advertised in the OJEU Notice and the Invitation to Tender/Negotiate.
- Support services should be excluded from the contract whenever feasible or should be subject to a mandatory bid.

- ITT/ITN specification should include standards for the quality of processes and inputs in addition to outputs and outcomes and should require bidders to submit method statements to assess their capability of delivering key parts of the contract.
- Maximise protection of jobs, terms conditions and pensions with full assessment of employment models – in-house retention, secondment and outsourcing.
- Ensure that the evaluation criteria at three stages – options appraisal, selection and bid evaluation – are comprehensive and include economic, social, environmental, equalities, health and sustainable development criteria.
- Ensure that sustainable development is mainstreamed throughout the procurement process.
- Maximise community benefits obtained from procurement.
- Ensure that contracts and partnerships are democratically accountable and subjected to regular scrutiny.

Corporate procurement frameworks, policies and protocols

The authority's corporate procurement strategy should establish policies and procedures, which all departments and directorates must comply with. It should include employment policies and protocols for particular stages or issues.

Corporate procurement

1. Procurement Policy
2. Aims of the Corporate Procurement Strategy
3. Procurement law and the regulatory framework
4. Democratic accountability and transparency
5. Procurement Committee
6. Application of strategic procurement (Services)
7. Application of strategic procurement (Major and Other Projects)
8. Procurement and Best Value
9. Future development of the strategy

Procurement Framework

1. The Procurement Pathway
2. Specialist procurement
3. In-house options and bids
4. Monitoring and evaluation
5. Failing contracts
6. Risk management

Employment policies

Protocols – see list in Part 2

Types of procurement

- Services: delivery of services and management consultancy
- Works: buildings, infrastructure and regeneration
- Supplies: goods, food/produce, equipment

The procurement method will include one of the following:

Provision of single or group of services – contract for delivery of one or more services, usually for 5 – 7 years.

Partnership contracts (Strategic Service-Delivery Partnerships) – 10-12 year contracts usually centred on ICT and related or ‘back office’ services.

Management consultancy and legal, financial and technical advice – wide variety of consultancy tendered from approved select list, invitation or by advertisement. Normally under contract EU thresholds.

Framework Agreements (for consultancy and technical/professional services) an agreement with a supplier(s) to provide specific advice/projects or call-offs over a fixed period (maximum 4 years under EU regulations). Only the framework agreement is tendered, all the subsequent projects or call-offs are allocated by agreement or a mini competition according to the terms of the framework agreement.

Commissioning - spot contracts – community care package for an individual or small number of people is allocated to private or voluntary sector provider. No transfer of staff because no economic entity to transfer.

Commissioning – block contracts (with or without in-house bids) – community care packages are combined into a larger contract for tendering purposes.

PFI/PPP and BSF projects – long term design, build, finance and operate contracts and establishment of a special purpose company in which the private sector has a majority holding.

Joint commissioning or public sector consortia - between two or more local authorities and/or public bodies to jointly tender a service.

Types of contract:

- **Standard fixed price contract** (bids are submitted, evaluated and awarded on a fixed price basis).
- **Negotiated and preferred bidder process** (bidders submit proposals which are evaluated and a preferred bidder selected with one in reserve. Detailed negotiations are held between council, bidder and advisers to produce final proposals which council approves and awards contract).

Use of consultants

Many local authorities engage management and technical consultants during the procurement process to provide assistance with the preparation of an in-house option and the evaluation of bids. They are also often engaged to provide technical and management support in the implementation stage.

Branches should seek consultation on the terms of reference for consultants and involvement in the selection process. They should try to ensure that the brief clearly identifies their role in assisting the in-house team to prepare a bid.

(See Management Consultants Best Value Handbook: www.european-services-strategy.org.uk/outsourcing-library/procurement-and-commissioning-best-practice/)

Framework agreements

Framework agreements (see above) are increasingly used for procuring consultants and construction forms and are likely to be extended to other services. The framework agreement must be advertised in the OJEU and the full procurement process followed. The agreement can be with one supplier or several (minimum of three) for goods, works or services. The EU Directive does not limit the length of call-offs, which may also extend beyond the four-year life

of the agreement. There can be no substantive change to the specification, terms and conditions of the agreement after it is awarded.

Where there are several suppliers in a framework agreement the authority can call-off contracts in two ways. Firstly, it can simply award the call-off to the supplier who provides the most economically advantageous offer based on the award criteria at the time the framework was established. Secondly, it can hold a mini-competition with all the suppliers within the framework capable of meeting the particular need.

Framework agreements may also cover shared services. For example, an authority could include a framework agreement in its OJEU notice that it is acting on behalf of all local authorities in a region. This will enable authorities to obtain services from the authority without having to undertake a separate procurement process.

Framework for procuring External Support for Commissioners (FESC)

Some fourteen management consultants and 'independent providers' have been approved by the Department of Health to provide advice and support to PCTs in the commissioning process. www.dh.gov.uk/en/Procurementandproposals/Procurement/FESC/index.htm

Other types of framework agreements

S-CAT – is a catalogue based procurement scheme for public sector organisations for a range of consultancy and specialist services – IT consultancy, financial services, management and business consultancy, human resources, business information and research and geographical information services and systems.

L-CAT – is a framework agreement for the provision of legal services to government. It has seven categories with 32 firms accredited – IT and telecommunications, property and estates, human resources, construction, company and corporate matters, financial and banking and general commercial matters.

Procure21 framework agreements

Procure21 was developed by NHS Estates and consists of a partnering programme using accredited supply chains in a long-term framework agreement. It has 11 Principle Supply Chain Partners (PSCPs) to work on all publicly funded schemes costing over £1m. The aim is to use standardisation of components and processes, bulk purchasing and achieve continuous improvement. Procure21 also includes an NHS client training programme and achieving excellence in design programme to promote design and value for money.

This partnering approach is widening:

Universities establish Procure21-style framework – Cambridge University is leading a group of universities and colleges to establish a Procure21-style framework. Universities would be able to draw on framework agreements to find suitable contractors – ten universities have a £700m construction programme.

Government department buildings – five construction consultancy firms have been selected by the Office of Government Commerce for a framework agreement covering work on government buildings such as the relocation of public sector organisations, design and management of new-builds, refurbishments and fit-outs. The framework agreements are not mandatory but a department tendering outside the framework will have to justify its decision.

Legal framework

- Consolidated European Union Procurement Directive 2004
- New PFI VFM and quantitative assessment guidance
- Office of Government Commerce (OGC) Gateway Reviews

- Race Relations Amendment Act 2000
- Local Government Act 2003 trading powers – local authorities can trade with any individual or organisation, can charge for discretionary services, use surpluses to reinvest in services or hold down council tax but must trade through a company (Local Authority Trading: Research Report
www.communities.gov.uk/publications/localgovernment/tradingresearchreport
- Equality Act 2006
- National Health Service Act 2006
- Mental Health Act 2007
- Sustainable Communities Act 2007
- Local Government and Public Involvement in Health Act 2007

European regulations

The EU Procurement threshold figures for the full advertising of contracts are:

- contracts for the supply of goods, £139,893;
- contracts for services, £139,893;
- contracts for works £3,497,313.

(Applicable from 1 January 2008 and are net of VAT. Other thresholds apply to transport, utilities and telecommunications services)

Part A services are subject to the full EU procurement requirements – these include most facilities management and business services. The Part B services are only required to publish a contract award notice – these include legal services, personnel placement and supply services, education and vocational education services, health and social services and recreational, cultural and sporting services.

Award procedures

There are three EU award procurement procedures – see Table 6.

Table 6: European Union award procedures

| EU award procedures |
|---|
| Public authorities have a free choice between the open and restricted procedures but may only use the negotiated procedure in limited circumstances. |
| The open procedure under which all interested persons may tender for the contract. The restricted procedure under which only selected persons may submit tenders for the contract. The negotiated procedure under which a purchaser may negotiate the terms of the contract with one or more persons selected by it. As a general rule there must be a call for competition. But in certain specified cases the negotiated procedure may be used without a call for competition. |

Time limits

There are certain time limits imposed by the EU procurement regulations. Local authorities are expected to ensure the time limits reflect the complexity of the Contract.

Open procedures: minimum time limit for the receipt of tenders is 52 days from the date the contract notice was sent.

Restricted and negotiated procedures:

- minimum time limit for requests to participate is 37 days from the date on which the contract notice was sent (a minimum of 15 days or 10 days with electronic notice under certain circumstances).
- minimum time limit for receipt of tenders is 40 days from the date the invitation is sent (a minimum of 10 days for the receipt of tenders in restricted procedures).

When authorities publish a Prior Information Notice (PIN) the minimum time limit for the receipt of tenders may be reduced to 36 days but not less than 22 days.

These are minimum time limits and it is common for authorities to give bidders 60 days to submit tenders for large projects. Imposing restricted time limits can work against the authority, particularly if an in-house bid is being prepared.

Variant bids

Local authorities can authorise tenderers to submit variant bids. The submission of variant bids must be notified in the contract notice. The minimum requirements and specific conditions for variant bids should be stated in the contract documents. Authorities should only consider those variant bids which meet the minimum requirements.

Whole life or lifecycle costing

This is a process of identifying the total cost of ownership including the cost of acquisition or provision and the operational and improvement costs over its life span. It improves the evaluation of options, increases the awareness of total costs, provides more accurate forecasting of cost profiles and enables performance trade-off against cost. One-off and recurring costs are classified into acquisition costs, operational costs and end-life costs (disposal, termination or replacement of the asset).

One-off costs could include procurement (including transaction costs), implementation, facilities, initial training, transition from previous provider and changes in business processes.

Recurring costs could include retraining, operating costs, service charges, contract management, changing volumes, cost of changes, maintenance and repair, and improvement or replacement cycles.

All these costs should be calculated over the contract period and discounted to compare costs and benefits at current prices.

Supply Chain Management

Supply Chain Management (SCM) focuses on all the organisations or suppliers involved in delivering a contract including goods, services, building materials, equipment, subcontractors, consultants and how they can be better managed to improve the implementation of contracts. So assessing the supply chain is an important part of the procurement process, particularly at the selection and bid assessment stages.

There are a number of benefits to improving the management of supply chains:

- better quality solutions provided by suppliers and their supply chains become more efficient and effective by public sector authorities using their leverage to encourage better management of suppliers and subcontractors.
- Improved ability to assess quality of supply chains in selection and contract award stages because public sector will have greater knowledge about how suppliers intend to implement the contract – particularly important in assessing consortia-based bids.
- Improved longer-term sustainability, effectiveness and efficiency.
- Greater visibility of subcontracting opportunities for SMEs, VCOs, BMEs, women-owned businesses and social enterprises.

- Improved identification and allocation of risks in procurement and delivery of the contract.
- Strengthening the 'intelligent' client function understanding of suppliers, subcontractors, consultants and markets.
- Ensure local and regional sourcing is genuine and contributes to sustaining the local /regional economy and employment.

OJEU Contract Notice

A Notice in the Official Journal of the European Union starts the tendering process. The wording of the Notice is important – see Table 7. The authority may have issued a Prior Information Notice (PIN) for PPP/PFI projects to inform potential bidders that a project is being planned and is likely to be formally advertised in an OJEA Contract Notice in due course.

Table 7: **Why the OJEU Notice is important**

| Why the OJEU Notice is important |
|--|
| <p>The wording of the Contract Notice in the OJEU and trade press is very important because it describes the scope of the contract. Local authorities generally favour very broad statements in OJEU Notices with little prescriptive content in order to attract the widest possible interest.</p> <p>Branches should try to ensure that OJEU Notices:</p> <ul style="list-style-type: none">• Limit and specify the scope or range of services rather than an all-inclusive list.• Inform interested parties that an in-house bid is planned.• State which assets (equipment, land, buildings, intellectual capital) are included or excluded.• Inform potential bidders about the broad employment arrangements such as secondment to a Joint Venture Company, the application of the Best Value Code of Practice on Workforce Matters and TUPE Plus agreements for staff transfers.• Whether variant bids with alternative proposals will be considered.• Extend the seven standard evaluation criteria (quality, technical merit, aesthetic and functional characteristics, delivery/completion, price and technical assistance) and to include community well-being, social inclusion, quality employment, vision and added value will be used to assess bids. |

European Services Strategy Unit, 2008.

Pre-Qualification Questionnaire

The OJEU notice can specify the information to be submitted by suppliers with their expressions of interest. However, a Pre-Qualification Questionnaire (PQQ) is widely used because it provides a greater level of detail, elicits a more detailed response from suppliers and the PQQ provides a structured framework to assess the information.

The PQQ should ask for details on:

Organisation – identity and ownership, background, principal activities, organisational chart, contractor/subcontractor approach, professional/commercial affiliations, legal issues (contract disputes in last 3 years).

Financial – copies of two annual reports and audited accounts, turnover in the activity being tendered.

Capability – skills and experience of key staff, specialist knowledge, experience of different employment models, experience and track record – principal activities and experience, type and range of service provided, whether service being tendered is core activity, examples of joint or consortia work with other contractors (if relevant) and proportion of services routinely subcontracted. It should also ask questions about compliance with race equality regulations, evidence of findings of discrimination and the corporate approach to promoting equal opportunities (see Race Equality and Procurement in Local Government, CRE, 2003 for model questions).

Capacity – number of staff in each service area, the amount of work in hand and availability of resources, quality accreditation, evidence of staff training and development programmes.

A Pre-qualification questionnaire and evaluation plan for PCT procurement is available: www.dh.gov.uk/en/Procurementandproposals/Procurement/ProcurementatPCTs/DH_081031

Preliminary Invitation To Negotiate

The Preliminary Invitation To Negotiate (PITN) is used in conjunction with a PQQ in more complex contracts such as partnership projects. The PITN provides the authority with more scope than a PQQ to obtain information about the applicant to allow an assessment to be made of its approach, capability and suitability to be invited to tender. It is normally a two stage process with the authority assessing bidders written responses to the questions in the PITN which are designed to assess the quality of proposals, affordability and acceptability of the contractors financial, environmental, partnership and related proposals. The second stage will normally be a presentation/interview after which the Evaluation Panel may revise the assessment of the written responses. As with the PQQ the authority will be seeking specific concise responses to the project rather than general company information and can set space limits for each question. The authority should expressly state that it might disclose detailed information relating to bidders responses to the PITN questions to elected members, officers, employees, trade unions and advisers.

Overview of procurement process

An overview of the different stages in the procurement is shown in Table 8 with suggestions for action by the Branch.

Table 7: Overview of options appraisal and procurement process

| Stages in the procurement process | Action by Branch |
|--|--|
| Identifying options | <p>Regular meetings of shop stewards to discuss branch strategy, the procurement process, the findings of the assessment of bids, branch policy, the work of UNISON advisers and updating on key issues. The regular attendance of between 10 to 20 stewards at section meetings in the Newcastle City Council ITRS project was very influential in achieving the in-house success.</p> <p>Mass meetings for all members to debate and discuss key decisions such as whether to take industrial action and demands made on the council and bidders.</p> <p>Regular communication with the membership via regular news bulletins is also important and reporting back to members on action taken and responses from the authority.</p> <p>Prepare a UNISON recruitment strategy for the sections affected by procurement if they don't already have a high level of UNISON members.</p> |

Commissioning and Procurement Toolkit

| | |
|--|---|
| | <p>Keep members and Elected Members regularly informed of the key issues – do not let officers treat the procurement process merely as a technical exercise which concludes with a report to Cabinet/Council which pre-empts wider debate and consideration of community well-being and the local economy.</p> <p>Ensure that branch representatives on council working groups, procurement teams and Best Value reviews regularly report back to branch committee, share information and discuss how best to influence the agenda.</p> |
| Criteria for assessing options and impact | This is separate from the criteria for evaluating bids and is not constrained by EU regulations. Branch should ensure these are wide ranging. |
| Options appraisal and decision on in-house service | Branch should be consulted on the selection of potential options and the decision on whether to retain the in-house service or to start the formal procurement process with/without an in-house bid. |
| Planning procurement (Outline Business Case and VFM assessment) | Try to obtain a draft OBC and/or business case for the project and assess its implications. |
| Criteria for shortlisting and evaluation of bids and community benefits required | Important to ensure that the contract Notice indicates a wide range of criteria. |
| Contract Notice in Official Journal of the European Union | See box above. |
| Questionnaire and pre-qualification of bidders | Comment on draft PQQ and PITN to avoid questions which could expose more services to outsourcing and to focus on technical ability and capacity of bidders. |
| Research into companies and performance | Gather information on bidders track record in other authorities, company performance, employment, equalities and environmental records (UNISON Bargaining Support Unit and the Outsourcing and PPP Library at www.european-services-strategy.org.uk). |
| Shortlisting of bidders | Branch should provide information on the bidders track record and contract performance from UNISON and other sources, which may not otherwise be available. |
| Preparation of specification & contract documentation | Comment on drafts to ensure service requirements, employment policies and community benefits are fully stated. |
| Invitation to tender/negotiate issued to bidders including in-house provider | Make sure that in-house team have resources to prepare comprehensive bid and that any proposed changes are negotiated before submission of bid. |
| Bidders prepare proposals | Monitor progress in the preparation of the in-house bid and support service improvement workshops and develop trade union proposals for improving the quality of service. |
| Bids returned | |

| | |
|---|---|
| Evaluation of bids | Seek agreement for the Branch to have an opportunity to access the bids and to submit comments to Procurement Committee. Alternatively, seek agreement from the council and bidders to allow an independent UNISON adviser to assess the proposals and prepare a report for the branch which can be submitted to Cabinet and elected members. |
| Selection of preferred bidder and evaluation report to Cabinet or contract award. | Obtain and comment on evaluation/Cabinet report. Consider strategy if opposed to the recommendations. |
| (Negotiations with bidder) | Normally takes place behind close doors but community representatives/advisers can be involved in regeneration projects. |
| Completion of approvals when necessary (council, community, government) | Regeneration projects will require consultation with community – consider further joint action. |
| Contract signed | |
| Employment model implemented – TUPE transfer and/or secondment. | Ensure all members are treated fairly. |
| Contract starts and monitoring/performance management | Demand that the authority monitors and reports performance from the start of the contract and has a plan for workforce monitoring. |
| Scrutiny of contract management and performance | Demand that Scrutiny Panel investigate all aspects of contract performance and partnership regularly. Branch could submit evidence to Scrutiny Panel. |

European Services Strategy Unit, 2008.

Shortlisting of bidders

Non-commercial considerations

The following criteria *cannot* be taken into account in the selection of contractors:

- The conduct of contractors in industrial disputes
- The contractors country of origin
- The contractors sources of financial support
- The political affiliations or interests of the contractor or their involvement in any other area of government policy.
- The use (or non-use) by contractors of technical or professional services provided by the local authority under the Building Act 1984.
- Whether the terms of any sub-contract with individuals treat them as independent contractors or not.

(Section 17 of the Local Government Act 1988)

Section 17 originally included the terms and conditions and composition of a contractor's workforce but the Local Government Best Value (Exclusion of Non-Commercial Considerations) Order, March 2001, allowed local authorities to include employment requirements such as training and recruitment in contracts to contribute to achieving best value. An authority could include a contract clause requiring the employment of long-term unemployed people so long as it could demonstrate that this contributed to best value.

Qualification

This is limited to:

1. Economic and financial standing;
2. Ability;
3. Technical capacity;
4. Breaches of regulation 14 of Public Services Contracts Regulations 1993 (bankruptcy, winding-up order, criminal offences, grave misconduct, non-payment of taxes or social security contributions)

Method of assessment

- Assessment of the Pre Qualification Questionnaire submitted by organisations expressing an interest.
- Desktop evaluation of company information and research material.

Selection

The Chart below summarises the criteria which can be used in the Selection process – they include vision and strategic aims, capability, capacity, organisation and management, experience and track record (services being tendered, user involvement, production and supply chains, equal opportunities, training and employment), financial and added value.

Method of assessment

- Desktop evaluation of PQQ and PITN
- Interview by Selection/Evaluation Panel
- Evaluation Report

See Table 9 for a summary of the qualification and selection criteria.

An Evaluation Strategy containing high-level evaluation criteria and guidance on the evaluation process for PCTs is available from:

www.dh.gov.uk/en/Procurementandproposals/Procurement/ProcurementatPCTs/DH_081031

Table 9: Qualification and selection criteria

| Qualification and Selection Criteria | Qualification | Selection to bid |
|---|---------------|------------------|
| QUALIFICATION CRITERIA | | |
| Economic and financial standing | * | |
| Ability - Capacity to manage a service contract including experience of managing similar contracts elsewhere. | * | |
| Technical capacity - Experience of providing the required services and functions of similar scope, situation and complexity. | * | |
| Eligibility under Regulation 14 (bankruptcy, winding-up order, criminal offences, grave misconduct, non-payment of taxes or social security contributions) | * | |
| SELECTION CRITERIA | | |
| Vision and strategic aims | | * |
| Capability | | * |
| Capacity | | * |
| Organisation and management | | * |
| Structure of bidder (including group structure and board structure) is coherent, conforms to industry good practice norms. | | * |
| Proposed subcontracting and partnership arrangements and how these will be managed. | | * |
| Supplier's methods for quality management, financial management, performance management, contract management, risk management and change management. | | * |
| Current and proposed management arrangements demonstrate experience, coherence, adequate resourcing, and the capacity to take on the roles required (demonstrated by e.g. key staff CVs, staffing structure). | | * |
| Good employment practice (demonstrated by e.g. staff turnover, current and proposed staff contracts, training policy). | | * |
| Demonstrate commitment to best practice in equal opportunities and encouraging diversity. | | * |
| Commitment to sustainable development and how this is translated into the delivery of projects and/or services. | | * |
| Good practice in Health & Safety in all relevant areas, and ensuring the safety of tenants and residents, staff, contractors, the public, etc. | | * |
| Comprehensive Best Value programme and demonstration of commitment to continuous improvement. | | * |
| Evidence of commitment to public service values, personal development and proactive cultural change at all levels of the organisation. | | * |
| Experience and track record | | * |
| Financial proposals | | * |
| ADDED VALUE | | * |

European Services Strategy Unit, 2008.

Number of bidders

The Open and Restricted Procedures require that a minimum of five bidders are selected. The Negotiated Procedure requires a minimum of three bidders.

Invitation To Tender or Negotiate

The Invitation To Tender (ITT) or Invitation To Negotiate (ITN) is the key client document used by those invited to tender to prepare their bids or proposals. It should contain:

- The aims and objectives of the service or project.
- Scope of the service or project.
- Performance framework with standards and targets.
- Required outcomes and outputs (and inputs and service delivery processes where these are material to the quality of service).
- Quality plan (identify all the critical quality aspects of the work and define mechanisms by which they will be introduced, achieved and monitored).
- Method statements (the bidder must explain how they will organise, staff and operate particular parts of the contract).
- Employment model and application of the Best Value Code of Practice on Workforce Matters and TUPE Plus agreements.
- Meeting race equality objectives such as implementing the local authorities race equality scheme, consultation with potential users, monitoring change in the use of the service by ethnicity of users and training staff in the awareness of religious and cultural traditions of users.
- Contract conditions (the legal requirements and conditions under which the contractor must operate the contract).
- Payment mechanism (for PPP/PFI projects).
- Consultation and participation of services users and community organisations.
- Evaluation criteria.
- The council's corporate policies including sustainable development, employment and social objectives.
- Health and safety requirements.

An three-volume ITT template is available to PCTs consisting of a process overview and guidance, requirements and bidder responses and draft contracts.
www.dh.gov.uk/en/Procurementandproposals/Procurement/ProcurementatPCTs/DH_082218

Also see PCT project specification template:
www.dh.gov.uk/en/Procurementandproposals/Procurement/ProcurementatPCTs/DH_081031

The Department of Health is developing a Standard NHS Contract for Mental Health Services. Following consultation and a contract pilot process in 2008, it is planned to introduce the Standard Contract with the 2009/10 NHS Operating Framework in December 2008. PCTs are required to give notice to mental health service providers to terminate their existing contracts and introduce the new standard contract from April 2009.

www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Dearcolleagueletters/DH_083438

Evaluation of bids and projects

There are certain restrictions on the main headings under which tenders for works, supplies and services can be evaluated – see Table 10. However, there is relatively wide scope within

each heading to carry out a rigorous and comprehensive evaluation process – see the indicative list of criteria in Table 11.

Table 10: Main evaluation criteria permitted by EU procurement regulations

| Criteria | Works | Supplies | Services |
|--|-------|----------|----------|
| Price | * | * | * |
| Period for completion | * | | * |
| Running costs | * | * | |
| Profitability | * | | |
| Technical merit | * | * | |
| Delivery date | | * | * |
| Cost effectiveness | | * | |
| Quality | | * | * |
| Aesthetic & functional characteristics | | * | |
| After sales service | | * | * |
| Technical assistance | | * | * |

Table 11: Evaluation criteria

| Evaluation criteria for bids and projects | |
|---|--|
| Vision and innovation | Partnership working |
| Service and community needs | Management practice |
| Equity, equalities and diversity | Information and communications technology innovation |
| Technical/design assessment | Risk management |
| Impact on service users | Asset management |
| Community well-being and the local economy | Employment, training and human resource proposals |
| Financial assessment | Corporate impact on the authority |
| Development and investment | Governance proposals |
| Sustainable development | Social and organisational impact |
| Production and supply chains | Equality and social justice impact |
| Environmental impact | Contribution to regional strategies |
| Democratic accountability and participation | Change management proposals |
| Transformation strategies | Added value |

European Services Strategy Unit, 2008.

The employment criteria should include an assessment of:

- The contractors ability to recruit and retain an adequately skilled and experienced staff;
- Proposals for the implementation of equalities and diversity policies and practices for service users and staff;
- The contractor’s commitment and ability to implement the Code of Practice on Workforce Matters which will be a condition of contract.

Competitive dialogue

The consolidated EU procurement Directive (Article 29) has the option for a competitive dialogue stage in complex contracts. Local authorities can open a dialogue with the selected list of tenderers “to identify and define the means best suited to satisfying their needs.” They can discuss all aspects of the contract but must ensure equal treatment of all tenderers. Local authorities may not reveal solutions or confidential information to other tenderers without

agreement of tenderers. Once the dialogue is concluded the tenderers are required to submit their final tenders on the basis of the solution(s) specified during the dialogue. The authority can request that tenders are clarified, specified and fine-tuned but this must not distort the basic features of the tender. Tenders are then assessed according to the criteria set out in the contract notice.

Abnormally low tenders

If a authority regards a tender for a services, goods or capital works to be abnormally low it can reject the tender but must first request further information about the elements which it considers to be abnormally low in writing from the bidder. This may cover the economics of the construction method, manufacturing process of services provided; the technical solutions and any exceptionally favourable conditions available to the tenderer; the originality of the work, supplies or services proposed by the tenderer; compliance with employment protection and working conditions; and possibility of tenderer obtaining State aid.

Where an authority establishes that the tender is abnormally low because it has obtained State Aid it must give the tenderer a time limit to prove that this was granted legally. If it rejects a tender in these circumstances it must inform the European Commission.

Best And Final Offer (BAFO)

This is often used in PPP/PFI projects when there has been a second stage shortlisting following evaluation, clarification and negotiation of bids.

Sustainable procurement

The Sustainable Procurement Task Force report (Sustainable Development Commission, 2006) made a series of recommendations to set priorities, implement minimum standards, build capacity and remove barriers. www.sustainable-development.gov.uk

Pre-Qualification Questionnaires, specifications, selection and bid evaluation criteria should mainstream sustainable development issues such as:

- Reducing whole life costs.
- Building regional and local production and supply chains and support for the local economy.
- Minimising waste by optimising material use, recycling and use of renewable energy.
- Design for durability, adaptability and re-use.
- Use products from legal and sustainably managed sources.
- Use low maintenance building materials and install high-efficiency heating, water, air conditioning and other appliances.

Sustainable procurement in health and social care see *Procuring for health and sustainability 2012: sustainable procurement action plan:*

www.pasa.nhs.uk/PASAWeb/NHSprocurement/Sustainabledevelopment/LandingPage.htm

Trade union role in evaluation

Protocol should give access to bids (sometimes in full but excluding financial information or sometimes only the employment related section of the bids).

Confidentiality agreements: local authorities, contractors and/or their advisers usually require that branch officials and staff members can only gain access to bid documents by signing a confidentiality agreement. As long as this does not inhibit the Branch producing their own analysis of the bids for circulation to elected members and staff there is little to be lost in signing an agreement.

Draw together stewards from the affected services to get frontline views of the contractor's proposals.

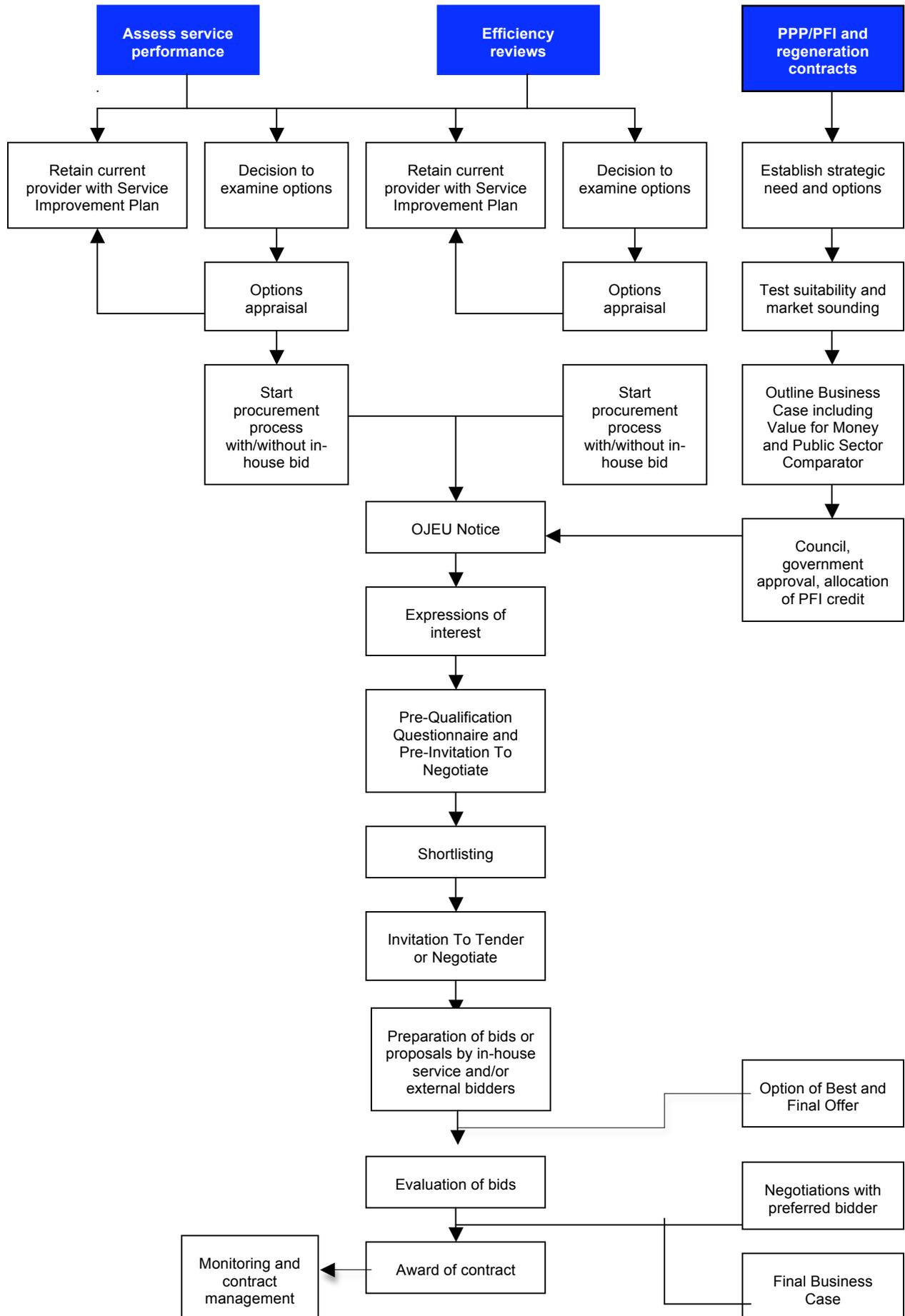
Meeting with bidders

Preparation is essential:

- Understand the scope of the meeting as part of the procurement process and always ensure that more than one representative attends meetings.
- Prepare for the meeting by dividing up the questions and deciding whether and to what extent you will present the branch position.
- Have a list of questions and demands.
- Request written confirmation of any agreements and responses to questions, which have not been answered at the meeting.

Procurement flow diagram

The following diagram explains the different stages in the procurement process starting at the top with service and efficiency reviews or decisions to use a PPP/PFI model. It concludes with monitoring and contract management.



Risk in the procurement process

Procurement is an expensive and high-risk strategy. These risks are in addition to the risks inherent in service delivery. For example, if options appraisal and market research are not carried out in a rigorous manner, the procurement process could be commenced based on wrong information and/or unrealistic expectations of the outcome. The authority could end up with a weak list of tenderers, an ITT or ITN which is not comprehensive or 'fit for purpose', a narrow list of evaluation criteria and could award a contract with higher level of risk than it anticipated.

It is essential that all the risks listed below be addressed in the planning and management of service and efficiency reviews, options appraisals and the procurement process.

Options Appraisal and market research

The risks include:

- Full range of options not considered at appraisal stage.
- Market research information is incidental and lacking evidence.
- Service managers commence procurement process without completing prior review and options stages.
- Options appraisal result foregone conclusion for staff and trade unions and claim 'hidden agenda'.
- Decline in staff morale, increased sickness absence and staff turnover.
- Opposition of user/community and/or staff/trade union to appraisal process and recommendations.
- Authority locked into a single external provider.

Procurement Process

Complying with the EU and UK regulations does not eliminate the many risks in the procurement process:

- Low response to contract advert.
- Consortia or partnerships of variable quality.
- PQQ is constructed in a way which gives bidders opportunities to widen the scope of the contract.
- Poorly prepared in-house option.
- Some shortlisted bidders withdraw before bid submission date
- Track record of provider – service delivery, environmental, employment, health and safety – not revealed until after shortlisting.
- Transaction costs much higher than envisaged.
- Provider with limited capacity is shortlisted.
- Lack of audit trail regarding decisions at shortlisting and/or contract award
- ITN/ITT does not fully reflect user needs and subject to criticism and opposition from user and community organisations.
- Evaluation of options and/or bids is less than comprehensive.
- Some bidders submit incomplete bids.
- Disclosure of confidential information.

- Unequal treatment of bidders, for example information disclosure is unequal or unequal evaluation of bids.

Contract award, secondment, transfer

- Disputes/industrial action prior to secondment or transfer.
- Loss of key authority staff thus reducing capacity.

Monitoring and contract management

The ITT or ITN should clearly set out the responsibilities of the client and contractor for the organisation and management of monitoring, the performance management framework (and the scope of Key Performance Indicators if used), race and equality compliance, systems for receiving, recording and investigating complaints, user and community involvement in monitoring, and scrutiny arrangements for assessing contract performance.

Branches should be involved with the authority in monitoring workforce related issues including implementation of the Best Value Code of Practice on Workforce Matters and statutory and regulatory requirements.

Service delivery and performance

A less than rigorous procurement process can have knock-on effects after a contract has been awarded:

- Corporate policies may not fully implemented by providers.
- Corporate impact more substantial and costly than anticipate.
- Higher than anticipated transaction and monitoring costs.
- Service performance does not meet required standards.
- Provider has high turnover of staff.
- Equalities for users and/or staff not mainstreamed.
- High cost of contract termination.
- Provider imposes price increases, particularly for non-specified work.
- Authority has reduced control and flexibility.
- Provider fails to achieve required environmental performance standards.

Monitoring the two tier workforce

There are at least six different agreements in operation that seek to protect terms and conditions of staff working for private contractors on public service contracts. UNISON research has shown that there is a dearth of evidence from authorities and UNISON branches to indicate whether the codes of practice are effective. Exemptions, exclusions in the scope of the codes and the refusal of some contractors to apply the codeacerbate the situation.

Branches should demand that workforce matters are included in all service contracts – this should be done before the ITN is issued. Equally important, they should ensure that the authority is committed in practice to monitor workforce agreements. This means:

- Identifying the responsibilities and resources for workforce monitoring in the preparation of the ITN.
- Costing workforce monitoring over the contract period and including this in the financial analysis in the appraisal of options and bids.
- Including workforce monitoring as a standard item on JCC agendas.
- Ensuring workforce monitoring is included in the remit of Scrutiny Panels/Committees.

Analysis of procurement spend

Procurement could have a significant impact on the regional economy. The public sector spends some £150 billion per annum (2003/04 prices) procuring goods, works and services. Production and supply chains can assist in strengthening regional businesses and employment, support the Regional Economic Strategy priorities and initiatives on clusters, knowledge transfer and innovation, research and development. However, the privatisation of services from the public to the private sector should not be regarded as 'expansion' or 'growth', because it is merely a transfer between sectors.

Some Regional Centres of Excellence are analysing the current scale of expenditure on procurement of goods, services and capital projects. This may include the employment impacts. Given that procurement is being mainstreamed in local government and other public bodies it is more important to identify the employment impacts relating to specific projects and procurement proposals.

Procurement indicators

The Audit Commission, IDeA, have identified 34 local performance indicators for procurement. They are divided into four groups:

- **Strategy (13)** – these indicators include the value of contracts, corporate spending or the percentage of contracts aligned with best practice, sustainable procurement, use of 4ps Gateways reviews and contracts awarded to SMEs, VCOs and BMEs.
- **Major projects (5)** – these indicators assess procurement timescales, advisory fees, end user/client satisfaction levels and change in construction costs.
- **Purchasing (12)** – focus on invoicing and percentage of orders and invoices raised electronically.
- **Equalities and competition (4)** – One assesses the inclusion of equality in the procurement process and others assess third sector, SME and BME satisfaction with accessibility to contracts.

(for further information see Local Performance Indicators for Procurement, Audit Commission and IDeA, 2004)

Part 10

Protecting jobs, terms and conditions

Introduction

The transfer of undertaking regulations (TUPE) and the Best Value Code of Practice on Workforce Matters are important regulations, which afford a degree of protection for jobs, terms and conditions. Branches should actively ensure that both clients and contractors adhere to the principles and best practice of the regulatory framework. Branch action during the procurement process is likely to have a significant influence on whether a minimalist status quo approach is adopted by the contractor or whether additional commitments and employment benefits can be negotiated in the procurement process. This section covers:

- Employment models
- Employment Risk
- Code of Practice on Workforce Matters
- Pensions
- Exclusion of support services from BSF and PFI/PPP projects
- Education and training
- Changing skills needs and workforce development
- Equalities and diversity

Employment models

There are basically three employment options or models:

- In-house – staff remain public employees.
- In-house – staff remain public employees are managed by a shared services project jointly governed by several local authorities and or public bodies.
- Secondment – staff remain council employees on their existing terms and conditions but are managed by a private or voluntary sector provider on a day-to-day basis' usually in a Joint Venture Company. New staff are generally employed by the authority but there are example where the JVC may directly employ a proportion of new staff.
- Retention of Employment (ROE) for hospital PFI contracts.
- TUPE transfer to a new employer, either a private or voluntary sector contractor, or a Joint Venture Company.
- 'Choices' model where staff have the option of secondment or TUPE transfer.

Procurement, particularly for PFI/PPP projects, is dominated by risk transfer – identifying, allocating and pricing risks associated with the project. However, very little attention is paid to the risks borne by staff. The European Services Strategy Unit has devised an Employment Risk Matrix which assesses the degree of changes in four categories of risk:

- Risk of changes to terms and conditions of service.
- Pensions arrangements (not covered by TUPE regulations).
- Risk of changes to staff consultation and representation.
- Risk of problems with secondment agreement.

Table 12: Employment Risk Matrix

| Risk | Secondment | TUPE Transfer | 'Choice' |
|---|---|---|---|
| Risk of changes to terms and conditions of service | | | |
| Risk of changes to staffing levels after transfer without staff agreement. | No risk because of Change Control Procedure in Secondment Agreement | High risk Code of Practice on Workforce Matters does not prevent changes over time. | Medium risk Code does not prevent changes over time but will not affect seconded staff. |
| Risk of changes to terms and conditions of employment. | No risk as staff remain on authority terms and conditions | High risk Code of Practice on Workforce Matters does not prevent changes over time. | Medium risk Code does not prevent changes over time but will not affect seconded staff. |
| Risk of not meeting annual pay award in full and on time | No risk | Low risk - Code of Practice on Workforce Matters should prevent it happening. | Low risk - Code should prevent it happening and will not affect seconded staff. |
| Risk of changes to the composition of pay and benefits such as holidays | No risk as staff remain on authority terms and conditions | High risk Code allows contractor to change mix of pay, holidays and pension. | Medium risk Code does not prevent changes over time but will not affect seconded staff. |
| Risk of two-tier workforce developing | Low risk- only if large differences between transferees and seconded staff develop | High risk Staff on different terms and conditions could create two-tier workforce | High risk Staff on different terms and conditions could create two-tier workforce |
| Risk of no or inadequate redeployment | Low risk | High risk Not applicable therefore staff bear the risk | Medium risk Applicable only to transferred staff. |
| Risk of inadequate implementation of family friendly policies | Low risk | Medium risk | Medium risk Applicable only to transferred staff. |

European Services Strategy Unit, 2008.

| Risk | Secondment | Transfer | 'Choice' |
|---|--|---|---|
| Risk of changes to pensions | | | |
| Risk of not remaining in Local Government Pension Scheme | No risk as staff remain on local authority terms and conditions | Medium risk Requires public sector to make it a condition of contract | Medium risk Requires public sector to make it a condition of contract |
| Risk of changes to Quality and conditions of private company pension scheme | No risk as staff remain on local authority terms and conditions | Medium risk Code is 'permissive' with regard to defined benefit/final salary scheme | Medium risk |
| Risk of reduction in employer contribution and increase in employee contribution | No risk as staff remain on local authority terms and conditions | Medium risk Code is 'permissive' with regard to defined benefit/final salary scheme | Medium risk |
| Risk of closure of final salary scheme by private sector employer | No risk as staff remain on local authority terms and conditions | Medium risk Code is 'permissive' with regard to defined benefit/final salary scheme | Medium risk Many private companies closed final salary schemes. |
| Risk of changes to workplace conditions | | | |
| Risk of changes to trade union facility time | Low risk | Medium risk of demanding/imposing a reduction | Medium risk of demanding/imposing a reduction |
| Risk of changes to health and safety policies and practices | Low risk | Low risk | Low risk |
| Risk of changes to grievance and disciplinary procedures | Low risk | High risk as private sector has own procedures. | Medium risk Affects only transferred staff. |
| Risk of changes to equal opportunities policies and practices | Low risk | Medium risk in terms of degree of implementation. | Medium risk in terms of degree of implementation. |
| Failure to implement corporate policies and priorities | Low risk | Medium risk of some corporate policies not fully implemented. | Medium risk of some corporate policies not fully implemented. |
| Risk of loss of public service ethos | Low risk as staff remain council employees. | High risk - staff will be private sector employees. | Medium risk Mixture of private and public sector employees. |

European Services Strategy Unit, 2008.

| Risk | Secondment | Transfer | 'Choice' |
|--|--|--|--|
| Risk of changes to staff consultation and representation | | | |
| Risk of lack of consultation with staff over improvement plans and reengineering proposals | Low risk because of Change Control Procedure in Secondment Agreement | Medium risk based on experience of PPP and outsourcing contract | Medium risk based on experience of PPP and outsourcing contracts |
| Risk of lack of consultation with staff in other departments | Low risk because of Change Control Procedure in Secondment Agreement | Medium risk based on experience of PPP and outsourcing contracts | Medium risk based on experience of PPP and outsourcing contracts |
| Risk of changes to working practices which have not been agreed with staff and trade unions | Low risk because of Change Control Procedure in Secondment Agreement | High risk based on PPP and outsourcing contracts. | High risk based on PPP and outsourcing contracts. |
| Risk of inadequate training | Low risk because of Change Control Procedure in Secondment Agreement | High risk based on PPP and outsourcing contracts. | High risk based on PPP and outsourcing contracts. |
| Risk of changes to the industrial relations framework | Low risk because of Change Control Procedure in Secondment Agreement | High risk based on PPP and outsourcing contracts. | High risk based on PPP and outsourcing contracts. |
| Risk of problems with secondment agreement | | | |
| Risk of secondment agreement failing | Low risk based on experience in other parts of the public sector | No risk – not applicable | Low risk based on experience in other parts of the public sector |
| Risk of legal challenge to secondment agreement re TUPE | Low risk based on experience in other parts of the public sector | No risk – not applicable | Low risk based on experience in other parts of the public sector |
| Risk of contractor seeking to reduce or terminate secondment | No risk – not applicable | No risk – not applicable | Medium risk if most staff transfer. |

European Services Strategy Unit, 2008.

Best Value Code of Practice on Workforce Matters

The Code of Practice on Workforce Matters applies across the public sector.

Fair terms and conditions for new staff

The Code requires that contractors (and sub-contractors) employ new staff working alongside transferred staff on “fair and reasonable terms and conditions, which are overall no less favourable than those of transferred employees.” Contractors must consult with trade unions to agree the terms and conditions for new starters.

Pensions

Transferred staff: The Local Government Act 2003 made the Cabinet Office Statement of Practice Staff Transfers in the Public Sector and its Annexe, A Fair Deal for Staff Pensions, legally binding. Staff will have the right to either the Local Government Pension Scheme (LGPS) or a “broadly comparable pension” scheme approved by the Government’s Actuary Department (GAD).

New staff: Contractors are required to offer new staff one of the following options:

- The Local Government Pension Scheme (LGPS)
- A good quality pension scheme – either a contracted out final salary based defined benefit scheme or a defined contribution scheme
- The employer must match employee contributions up to 6% in a defined contribution scheme or a stakeholder pension scheme.

The Code must be included in the contract between the council and the contractor. For further details and enforcement procedures see UNISON Guide: Best Value Code of Practice on Workforce Matters in Local Authority Service Contracts in England, 2003.

TUPE Plus

The ITT or ITN should also contain the local authorities commitment to fair employment policies such as:

- the service provider will not operate a two-tier workforce.
- annual local government pay awards unless otherwise agreed with the recognised trade unions.
- seek admitted body status to the Local Government Pension Scheme so that all TUPE transferred employees have the option of remaining within the authority pension scheme and there is capacity to add that choice for new staff.
- equal opportunities, work-life balance policies, whistle blowing policies and health and safety.
- staff training and development.
- maintaining trade union recognition for transferred and new staff who must have equal opportunity to join a recognised trade union. Bids should specify the recognition agreements contractors intend to honour and if these are different from those currently in place, explain their reasoning.
- no restrictions on staff promotion, for example, requiring transferred staff to transfer to the employer’s own terms and conditions.
- trade union facility time – the new employer will be required to specify the amount and nature of facility time it is proposing.

- check-off – new employer will be required to provide a check-off facility for the deduction of trade union subscriptions.

Agenda for change in the NHS

Staff employed in soft facilities management services such as catering, cleaning and domestic services, porters, linen and laundry services and reception staff. (see *Agenda for Change and NHS Contractor's Staff – A Joint Statement and Implementing Agenda for Change for NHS Contractor's Staff in England: A Best Practice Guide*, 2007. www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_066115)

Employment issues checklist

A checklist to ensure that all employment issues are addressed in the procurement process is provided in Table 13.

Table 13: Employment checklist

| Employment checklist | | | |
|-----------------------------|---|--|----------------------------------|
| | Basic pay | | Trade union recognition |
| | Unsocial hours payments | | Part-time workers rights |
| | Pay related benefits | | Race equality |
| | Bonus schemes | | Gender equality |
| | Equal pay | | Age equality |
| | Pensions | | Lesbian and gay equality |
| | Working patterns | | Disability equality |
| | Health and safety | | Family friendly policies |
| | Education and learning | | Job security |
| | Training | | Changes in location of workplace |
| | Redeployment and retraining | | Workforce development plan |
| | Joint Consultative Committee arrangements | | Role of staff forums |
| | Industrial relations in JVC | | Transfer/secondment arrangements |
| | TUPE Plus | | |

Exclusion of support services from PFI/PPP projects

Government policy states that support or soft services such as cleaning, catering, repairs and maintenance, grounds maintenance and security can be excluded from Private Finance Initiative (PFI) contracts **before** the procurement process commences. A decision to exclude soft services must be based on strategic priorities, the authority's procurement policy and a HM Treasury value for money and quantitative assessment. The Treasury has stated that value for money should not be achieved at the expense of workers' terms and conditions.

The **Retention of Employment** model in the NHS enables ancillary staff in cleaning, catering, laundry, portering and security services remain NHS employees. They will however be managed by the private sector (see PFI: Retention of Employment Model) www.unison.org.uk/acrobat/B935.pdf

How to Exclude Support Services from BSF and PFI/PPP Projects uses HM Treasury's Value for Money methodology to demonstrate how soft services can be excluded from BSF and PFI/PPP projects. This includes the strategic rationale, improved standards of service

delivery, flexibility of public service provision, equity, efficiency and accountability criteria set by the Treasury (www.european-services-strategy.org.uk).

Education and training

A contractor's track record in the provision of education training and learning can be considered at the shortlisting stage of procurement as part of a tender's technical capacity to provide the service.

Bidders should be required to provide a method statement on education, training and learning to demonstrate how they intend to structure rotas and staffing levels, which will permit the required level of education and training to take place. Bidders could also be assessed in respect of:

- proposals for education, training and learning programme for the workforce;
- objectives and how they fit into the bidders workforce development strategy;
- proposed consultation with staff and trade unions on the content and implementation of the Plan;
- staff to be involved in the programme;
- how the bidder intends to accommodate education, training and learning within their service delivery plan;
- how education, training and learning programmes will be funded;
- how equalities issues will be addressed and supported;
- how the contractor intends to monitor and evaluate education, training and learning over the life of the contract.

Changing skills needs and workforce development

Changing requirements on the skill levels required for jobs in local public services have implications for the ability of local authorities and other providers to recruit, train and retain staff. These changes include:

- an increasingly user-centred approach to service delivery;
- technological change which will increasingly change work roles;
- changes in service and ICT knowledge;
- more knowledgeable, expert, empowered consumers;
- increasingly, services will need to be provided on demand, rather than at set hours;
- service delivery is increasingly through non-hierarchical team working which requires a different set of skills and attitudes;
- boundaries between primary and secondary care are continually shifting with closer links between health and social care becoming closer;
- demands for better regulation of non-professionally qualified 'support workers' and employment requirements will increase the need for these staff to possess NVQs or other relevant qualifications;

All of these trends have implications for new ways of working, recruitment and retention and education, training and learning.

Equalities and diversity

The Equality Act 2006 prohibits discrimination on the grounds of religion or belief in the provision of goods, facilities, services, premises, education and the exercise of public

functions. The Act imposes a public duty to promote gender equality. Sex discrimination in the exercise of public functions is unlawful.

The Commission for Equality and Human Rights (CEHR) merged the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission. www.equalityhumanrights.com

Regulations prohibiting age discrimination in the workplace will come into effect in October 2006 as a result of a EU Directive (Consultation on the draft Employment Equality (Age) Regulations 2006, Department of Trade and Industry, July 2005). Recommended action on incorporating equalities requirements at each stage of the procurement process has been included in the relevant sections of this Toolkit.

Part 11

Community benefits from procurement

Introduction

This section describes community benefits and how they can be used in the procurement process:

- Community benefits defined
- The legal position – conditions and regulations
- Evaluating community benefits

Community benefits defined

Distinguish between basic requirements and benefits – equal opportunities, community consultation and sustainable development must be core requirements, not ‘additional’ benefits.

‘Community benefits’ can encompass social, economic and environmental issues which add value to the community plan, but must be within EU procurement laws.

There are two types of Community Benefits:

1. Those that can be required to be provided by the contractor as a legal condition of the contract;
2. Benefits which can be negotiated or voluntarily provided by a bidder as part of the added value of a proposal or contract.

Community benefits obtained as a condition of contract:

- **Local labour schemes** – training and jobs - all major works contracts should include a local labour clause where relevant to the delivery of the contract and allowable within law. Contract clauses covering employment and training should avoid discriminating against non-UK providers by:
 - Using categories of workers that could be provided from anywhere in Europe (such as unemployed people, women, young people, trainees) even though it is anticipated that they would be recruited locally.
 - Specifying that a proportion of ‘new workers’ should be local which allows the existing workforce to be used.
 - Ensuring that all contractors have access to recruitment and training services thereby creating equality for non-local contractors (who may not have an existing local workforce) and for contractors who have no UK experience of training and funding.
 - Referring to ‘industry standards’ in respect of accreditation rather than UK qualifications.

It is also possible for contractors to set allocate funds to directly or indirectly train apprentices and agree to employ a minimum number on a project.

- **Education, Training and Learning** Plans which require a contractor to develop and implement opportunities for staff to engage in educational, training and learning courses.
- **Use of local and regional suppliers**, including Small and Medium- sized Enterprises (SMEs) and social enterprises in the production and supply chain in order to strengthen local employment and sustainable development objectives.
- **Childcare facilities** such as provision of a day nursery as part of a new development.
- **Planning gain** - A requirement that the procurement of a developer/partnership to undertake regeneration or capital works has a Section 106 agreement which requires the provision of open spaces, community facilities in schools, leisure and community facilities in addition to the core provision of the contract.
- **Affordable social housing** – also using Section 106 Agreement to increase the supply of affordable social housing.
- **Environmental policies and benefits**, for example the use of eco-fuels and emission reduction equipment on transport fleets, improvement of particular sites.
- **Community use** of facilities at reasonable cost during 'out-of-hours'.

Community benefits obtained as part of added value

- Support for local and regional Innovation and Knowledge Transfer centres to encourage innovation in services and products.
- Finance a worker(s) to undertake particular aspects or regeneration for example, increasing community participation.

The legal position – conditions and regulations

Community benefit clauses in contracts must be relevant to the **core requirements of the service**. This means addressing three requirements:

- that 'need' must be demonstrated i.e. that the benefits are a key part of the quality of service to be delivered. For example, the quality and effectiveness of the service is dependent on the staff having appropriate skills and experience and therefore education and training programmes are essential.
- that community benefits are part of the value for money - defined as "the optimum combination of whole-life costs and quality (or fitness for purpose) to meet the user's requirement (OGC, 1998). In other words, the provision of community benefits enhances the value or benefit of the service and the contract.
- that community benefits are referred to in the authority's corporate policies and priorities which in turn must be included in the procurement documentation.

There are five tests for the use of community benefits:

- the requirements should be linked to the procurement (e.g. training requirements for the specific contract can be included, but membership of the CITB could not be included);
- the requirements must not contravene, or encourage others to contravene, equal opportunities legislation;
- the requirements must not disadvantage non-local firms in the procurement process (a requirement of the EU Treaties and procurement rules);
- the required outputs must be capable of comparative evaluation and measurement;
- any judgment about 'value for money' must be applied to the whole procurement (Proactive Procurement, 2004).

Evaluating community benefits

The authority must be able to assess the real benefit and value of contractor's proposals. This could include:

- Quantifying the benefits
 - Jobs
 - Training places
 - Facilities
 - Services
- Value of proposals to the community
- Who will benefit and for how long
- Cost to the community – what obligations are placed on the community, for example running costs.
- Who will be targeted and how
- Local recruitment methods for training and employment
- Which SMEs, VCOs and BMEs will benefit
- Monitoring and assessing performance of attainment of community benefits

Further Information

Freedom of Information Act

'Commercial confidentiality' has been used to prevent the public, service users, and trade unions from obtaining information about the decisions to award contracts, prices and the terms of agreements with the private and voluntary sectors. The details of PPP/PFI projects and contracts are even more difficult to obtain.

The Freedom of Information Act 2000 provides access to recorded information held by public bodies. There are 23 exemptions under the Act which information is considered exempt. The two most relevant exemptions regarding public service contracts are Section 41 that covers information, which has been provided in confidence and Section 43 where the release of information is likely to prejudice the commercial interests of any person (including a public body). It applies to new and existing contracts.

Only information which is confidential in nature or which could prejudice a commercial interest if released, can be withheld under these provisions. The commercial interest exemption is subject to a public interest test. "Authorities can only withhold commercially sensitive information where the public interest in maintaining the exemption outweighs the public interest in disclosing information" (Freedom of Information Act 2000 – Annexe to Awareness Guidance No 5 – Commercial Interest – www.informationcommissioner.gov.uk). See UNISON guidance on FOI at www.unison.org.uk/acrobat/B1803.pdf

There are three main approaches to obtaining information in the procurement process:

- *"Access to information via protocols and best practice (which may include signing an Information Agreement).*
- *Access by signing an information agreement to maintain commercial confidentiality. This permits a branch to use the information to lobby Elected Members but it cannot inform UNISON members, staff or the public.*
- *Access information via formal Freedom Of Information (FOI) requests because a decision is made not to sign an Information Agreement.*

Access through the first and second approaches is likely to be much more comprehensive than that which can be obtained through FOI. It is also more likely to be prior to public policy making decisions whereas a FOI request is frequently a post decision making response. There are likely to be significant time differences in the availability of information between the first two approaches and the third because the FOI process can be drawn out if the authority decides to delay and/or dispute the release of information.

It is therefore essential that access to information be discussed as part of the branch strategy at the earliest possible date. Ideally, there should already be Information and Participation Protocols in place as part of the authority's service review, options appraisal and procurement policies. If this is not the case, Protocols should be agreed as a matter of urgency. If local authorities refuse to implement information disclosure and participation protocols then the government should consider legislative action." (Southwest One: Lessons and new agenda for public services in the South West, January 2008 for Somerset County and Taunton Deane UNISON Branches www.european-services-strategy.org.uk/news/2008/southwest-one-lessons/

European Union employee information and consultation Directive

A employee information and consultation Directive was approved by the EU in 2002 and must be implemented in the UK in 2005. Member states were given three years to implement the regulations in full. However, because the UK and Ireland do not have a 'general, permanent and statutory' system of information, consultation or employee representation, the Directive will be applied in three phases beginning with undertakings with at least 150 employees (or

establishments with at least 100 employees) by the March 2005 deadline. Undertakings with at least 100 employees (or establishments with at least 50 employees) have a March 2007 deadline and undertakings with at least 50 employees (or establishments with at least 20 employees) have a March 2008 deadline.

What the Directive means

The EU Directive gives employees the right to information and consultation on:

- information on the recent and probable development of the undertaking or establishment's activities and economic situation;
- information and consultation on the situation, structure and probable development of employment within the undertaking and any planned measures which will affect employment;
- Information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including collective redundancies and transfers of undertakings.

The legislation could be used in a number of ways to improve education, training and learning:

- Request current education, training and learning provision within the company or organisation to highlight a gaps between needs and provision. Learning Representatives could have a key role in identifying information needs and assessing gaps.
- Use the information and communications channels to promote best practice education, training and learning to senior management.
- A focus on education and training could have an important role where UNISON is dealing with companies, which are reluctant or opposed to trade union recognition and/or information and consultation.
- Contrast any potential differences between what the company promotes through corporate social responsibility to the 'community' and the extent to which the same policies are applied to its workforce.

Key web sites

UNISON Bargaining Support Unit

Positively Public

Contractors Update

www.unison.org.uk

How to Exclude Support Services from BSF and PFI/PPP Projects

Shared Services in Britain

Options Appraisal Criteria

Outsourcing and PFI/PPP Library

Public Sector Research Online

www.european-services-strategy.org.uk

Office of Government Commerce – procurement advice

www.ogc.gov.uk

Local authority Private Finance Initiative and partnerships guidance and case studies

www.4ps.co.uk

Department for Communities and Local Government

www.communities.gov.uk

Department of Health (procurement guidance for PCTs)

www.dh.gov.uk/en/Procurementandproposals/Procurement/ProcurementatPCTs/DH_081031

NHS Purchasing and Supply Agency (PASA)

www.pasa.nhs.uk/PASAWeb/NHSprocurement/

Partnerships UK

www.partnershipsuk.org.uk

HM Treasury – PFI policy and guidance and Comprehensive Spending Review

www.hm-treasury.gov.uk

Partnerships for Schools

www.p4s.org.uk/

Community Health Partnerships

www.communityhealthpartnerships.co.uk

Sustainable Development Commission

www.sustainable-development.gov.uk/

Better Commissioning Network – Commissioning eBook

www.icn.csip.org.uk/betterCommissioning/index.cfm?pid=184

Joint Planning and Commissioning Framework for Children, Young People and Maternity Services

www.everychildmatters.gov.uk/strategy/planningandcommissioning/about/

Audit Commission

www.audit-commission.gov.uk

Glossary of terms

Back-office services: Services such as transactional and financial services, human resources, property management, legal services.

Baseline or Measurement Starting Point: The starting point for comparison purposes – in general the metric for a measurement at the start of the measurement period against which change over time can be assessed.

Benefit-Lag: Where there is a time delay between the commencement of an initiative and the start of the benefit being accrued.

Business Plan: A plan setting out how an organisation will operate, invest and improve in the future, usually a three-year period.

Cashable / Non-Cashable: Cashable efficiency gains include those where cash savings have been realised, or input costs have been decreased, releasing cash. Increased input levels (e.g. through reduced absenteeism) or increased output levels represent non-cashable efficiency gains.

Client/contractor: The functional and managerial separation of responsibilities in an organisation between those commissioning or purchasing services and those responsible for delivering the service (see purchaser/provider).

Commercialisation: The process by which the authority and public sector organisations adopt private sector values and organisational structures.

Commissioning: The term has traditionally been used to describe a decision to appoint architects to design a building or to engage consultants. It is also used at a strategic level, for example by the NHS commissioning services from NHS Trusts. In social care it is used to describe the delivery of services at the individual, community or local authority levels. The Audit Commission, the Social Services Inspectorate and the National Assembly of Wales have jointly defined social care commissioning as: Having the vision and commitment to improve services; Connecting with the needs and aspirations of users and carers; Making the best use of all available resources; Understanding demand and supply; Linking financial planning and service planning and making relationships and working in partnerships.

Community benefit: Employment, training and social benefits provided by a contractor in the delivery of services or capital works.

Competitive tendering: The process by which public services are required to compete with the private sector through the procurement process.

Contestability: The degree to which a market has comparable competing firms and organisations to ensure clients receive competitively priced and qualitative bids.

Contract condition: The rules governing the operation of a contract, which sets out the legal responsibilities of both client and contractor.

Contract management: A client responsibility covering how the authority monitors and enforces the contract and relations with the contractor.

Contracting out: Contracting out is another term for outsourcing. Services or functions (and staff) are transferred to a private contractor or voluntary organisation for a specific period.

Core activities: Activities that are integral to the delivery of front-line services.

Efficiency: The Gershon Review defined 'efficiencies' as being achieved by five types of reform to delivery processes and resource (including workforce). Efficiency in the context of Productive Time is defined as: producing more output for the same input cost and with the

same or greater quality, or producing the same output at lower input cost and with the same or greater quality.

Evaluation: The process by which proposals and bids are assessed including financial, technical, employment, management and corporate assessment.

Externalisation: The transfer or trade sale of Direct Service Organisations or business units from the public to the private sector.

Front-line staff: Staff who serve their organisation's aims directly, usually through regular, direct contact with the people for whom the service is provided, by undertaking core activities.

Gateway Review: An Office of Government Office designed process for best practice procurement and project evaluation.

Gershon Review: A review of ways of increasing public sector efficiency carried out for HM Treasury by Sir Peter Gershon and published with the 2004 Spending Review in July 2004.

Green procurement: Another way of describing sustainable procurement.

Implementation-Lag: Where implementation issues, e.g. introduction of business process changes or changes to ICT support, contribute to a time delay between defining a measurement and having the ability to collect metrics.

In-house bid: A bid to provide a service prepared by the in-house service or DSO.

Marketisation: The process of preparing public services so that they can be packaged and priced into a contract and open to competitive tendering. The process may also include establishing regulations, subsidies and other mechanisms to encourage the development of market conditions.

Offshoring: Offshoring is the combination of outsourcing and transfer of services and functions overseas, usually to Asia.

Options appraisal: The assessment of the effects of options and selection of the option, which is most effective and efficient in meeting the objectives and priorities.

Outsourcing: Outsourcing is another term for 'contracting out'. Services or functions (and staff) are transferred to a private contractor or voluntary organisation for a specific period.

Preferred bidder: Selection of a provisional contractor, which will be followed by detailed negotiations on service delivery, employment and prices.

Prime Contractor: a single contractor who acts as the sole point of responsibility to a public sector client for the management and delivery of a project. Widely used in construction industry.

Privatisation: The sales of assets or transfer of services and functions from the public to the private sector.

Procurement: "the process for acquiring goods, works and services, covering both acquisition from third parties and from in-house providers. The process spans the whole cycle from identification of need, through to the end of a service contract or the end of the useful life of an asset. It involves options appraisal and the critical 'make or buy' decisions, which may result in the provision of in-house services in appropriate circumstances." (National Procurement Strategy, LGA 2003)

Productive Time: Time spent by public service professionals on core activities.

Productivity: Commonly defined as a ratio of a volume measure of output to a volume measure of input.

Public Service Agreement (PSA): An agreement between a government department and the Treasury, as part of the Spending Review, including objectives and targets.

Purchaser/provider split: The functional and managerial separation of responsibilities in an organisation between those commissioning or purchasing services and those responsible for delivering the service (see client/contractor).

Social Enterprise: A business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community.

Soft Services: Cleaning, catering, routine repairs and maintenance, security and similar support services which are considered separate from the 'hard' services, which are directly connected to the building fabric.

Specification: A description of the work, quality and standards required in the delivery of a service.

Strategic Partnerships: There are different types of partnerships but those which involve the delivery of services and functions are usually determined through the commissioning and procurement process and are established by contract. Since SSPs are long-term, multi-service, multi-million pound contracts involving the secondment or transfer of between 100 – 1000 staff there is substantial scope for the inclusion of comprehensive education, training and learning provisions within the contract.

Subcontracting: When a contractor engages another contractor to undertake part of the contract.

Supplier: An organisation or company delivering goods, services and works.

Supply chain: Suppliers and sub-contractors which are involved in the supply and transport of materials, goods, services and equipment during the construction and operation of the building and services.

Sustainable procurement: Procurement which takes maximum account of environmental and sustainable development factors.

Tendering: Tendering is the 'old' term used to describe the contracting process which usually began with the selection of services to be tendered, specification and contract documents through to contract award. The system remains largely the same. Commissioning and procurement encompass the earlier stages of planning, needs analysis, service review and options appraisal.

Time-Lag: Where there is a delay between the delivery activity and reporting of a metric.

Transaction costs: The costs incurred in the process of planning, contracting and procuring goods and services including the cost of advertising contracts, engaging consultants, officer time in preparing contract documentation, client costs of managing and monitoring the contract.

Value for money: The optimum combination of whole life cost and quality to meet the users requirements.

Weighting: A means of expressing the prioritising criteria by allocating different numerical values to each criteria.

Whole-life costing: Assessing the total costs of a building or projects over a contract period taking account of responsive repairs and maintenance, planned maintenance and renewal/replacement cycles.