



A Provider's Guide to Procurement



First published by Sitra June 2008

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Charity Reg No 290599
Company Reg No 1862908
ISSN 0956-6678

Sitra is partly funded by the CLG and London Councils

**This publication was funded by the Department
for Communities and Local Government**



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Foreword



Sitra is an umbrella organisation committed to raising standards in the housing, care and support sector. We are a membership organisation and registered charity with over 20 years experience of influencing policy makers and providing capacity building support to practitioners.

One aspect of our work involves working with members to achieve excellence in service provision. This includes helping them respond to each new regulatory and funding framework that has been introduced to our sector. Current challenges for providers include: the personalisation agenda; new arrangements for the governance of public services and of increasing significance across the sector and the drive to use competitive procurement of support care and housing services to achieve value for money.

Many providers of housing, care and support services have concerns about the implications of introducing market like pressures into such a socially orientated domain. The new business language sounds alien to those rooted in working with vulnerable service users. Engagement with new procurement methods can often seem like a distraction from (rather than an enabler of) delivery of quality services. So this guide, which we have developed in partnership with Communities and Local Government (CLG) and our members, intends to help service providers pick their way through a process that many find daunting. It recognises that competitive procurement is a fact of life, whilst clearly setting out the challenges it poses. It also includes positive examples of how the sector has adapted to new ways of doing business.

Most notably, current commissioning and procurement developments have given impetus to moving from talking the talk of partnership working to putting it into practice - both for commissioners to address the realities of jointly commissioning with their statutory partners and for providers to form alliances and find new, innovative ways of working together to meet service users' needs and expectations. Against the background of the drive to meet efficiency targets, this can boil down to doing better for less. However work also goes on to improve the understanding of those who hold the purse strings of the benefits and value to society of preventative welfare services. The need to achieve good value for money from the public purse is widely accepted. The next debate is how any commissioner's definition of value for money can include recognition of the less easily measured outcomes for local communities and society delivered by services for vulnerable people.

Whatever the outcome of these developments, all stakeholders want to see high quality, responsive and effective welfare services available to those who need them, and Sitra will continue to make its contribution to achieving this goal.

Margaret Malcolm
Acting Chief Executive, Sitra

Section 1



1.1 Introduction

Who this guide is for

This guide aims to help managers of organisations that provide welfare services to respond to the procurement practices of the public sector bodies that commission services and offers guidance to help in preparation of bids. The information and guidance it contains will be of value to all service managers, finance and human resources staff involved in preparing to bid for or negotiate contracts for new or existing services.

It focuses on the commissioning of housing related support by local authorities, although it has wider application. The regulations it describes apply to other public sector bodies such as central government departments, NHS Trusts and others, and while the welfare services which local authorities commission include residential and domiciliary care, day care and advice services as well as housing related support, it is in the commissioning of housing related support where there has been most recent change and which provides most of the examples of current practice in this guide.

How to use this guide

Section 1 of this guide provides an overview of the policy context of current public sector procurement practices and can be used to brief staff, management boards and other stakeholders. It includes:

- Central government policy on public services
- National procurement regulations
- Local government procurement practices
- Commissioning from the Voluntary and Community Sector
- Supporting People
- Local Area Agreements
- Personalisation and Individual Budgets

Section 2 aims to give more detailed guidance to those involved in preparing for and participating in procurement exercises, particularly competitive procurement. It covers:

- Procurement processes
- Business planning and risk management
- Planning and preparing to bid
- Costing and pricing

- Working in partnership
- TUPE and HR
- Tender evaluation and selection
- Post tender action

Key terms and processes

Those used in this guide are defined as follows:

Commissioning – can be seen as a series of linked processes which enable services to be purchased which meet stated requirements. It should take a whole system approach and:

- be based on a sound analysis of need
- link strategic objectives to service and individual level outcomes
- develop policies and service models to ensure that needs are met in the most effective and efficient way, taking account of the resources available for these and related public services
- develop the capacity and capability of the provider market to deliver services which meet the needs identified and achieve the outcomes and outputs specified
- support continuous improvement of service delivery and performance.

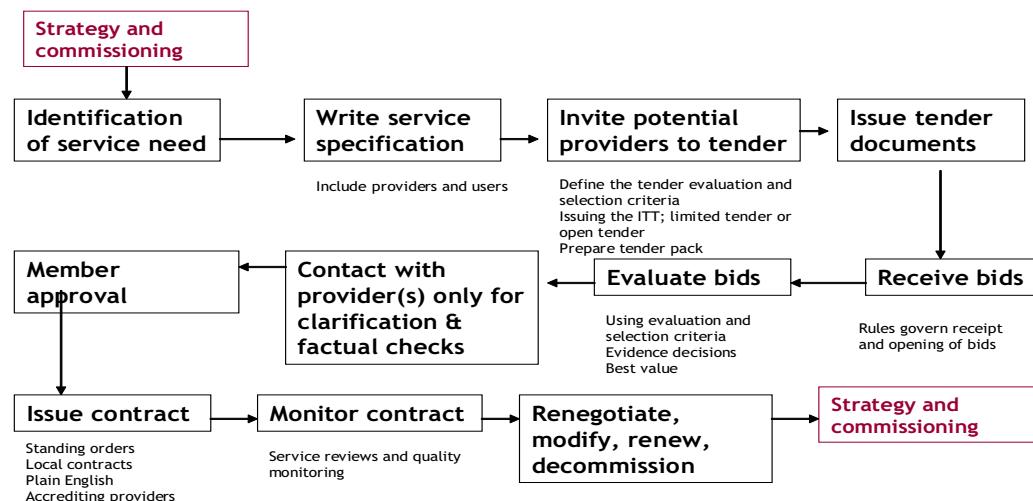
Good commissioning practice would encompass working in partnership with statutory, voluntary and private sector partners, service providers, service users and local communities to ensure a broad understanding and proper consideration of the full range of possible delivery options.

Procurement – in the context of an overarching commissioning plan, is the process of purchasing goods or services from third parties, under legally binding contracts. It is generally focused on the identification and selection of service providers or suppliers.

A public body will have a procurement policy or strategy which sets out its overall aims and how it will support delivery of commissioning plans. These aims could include achieving value for money, improved outcomes for service users and innovation. Its procurement procedures will include the detail of who is authorised to make decisions and what procurement methods should be used for what spending levels or contract values.

Value for Money – the optimum combination of whole-life cost and quality to meet the user's requirements. The term "most economically advantageous" is sometimes used and similarly takes account of quality requirements and does not mean simply the cheapest.

Tendering – a procurement method which involves inviting bids from potential providers (suppliers) who set out what they can provide at what price, and selecting which one will be chosen. The information provided to potential bidders should be sufficient to enable all to understand what the commissioner wants and how the selection will be made. A typical tender process can be represented as:



Find out more

Department for Communities and Local Government produced a Guide to Procuring Care and Support Services in October 2006 for staff of local authorities and other public bodies, see http://www.spkweb.org.uk/Subjects/Capacity_building/Procurement+guide+templates.htm

The Office of Government Commerce produces a number of publications for those working in public sector procurement, see www.ogc.gov.uk/procurement.asp. For information on the Care Services Improvement Partnership's Better Commissioning Programme, working with health and care commissioners, see <http://www.integratedcarenetwork.gov.uk/betterCommissioning/>

1.2 The Policy Context

Central government policy on public service procurement

Central government is currently working on a range of initiatives aimed at improving public procurement practice. Local authorities are offered support and direction from the Office of Government Commerce (OGC) and from regional advisers at what were called Regional Centres of Excellence which are being reformed as Regional Improvement and Efficiency Partnerships.

The development of Local Area Agreements, referred to later in this section, is seen as playing a part in delivering the Government's aim to reduce the burden of inspection and regulation and create better opportunities for local authorities to work in partnership with others to deliver effective and innovative local services.

The OGC advises local authorities that their procurement and contracting practices should:

- promote continuous improvement in service delivery
- help the authority to achieve year on year efficiency gains or savings
- encourage providers to see them as partners rather than adversaries
- identify and manage risks to service delivery

National procurement regulations

Public sector procurement contracts within the European Union (EU) are covered by the EU Treaty which sets down Principles to prevent member states from discriminating against firms and restricting the free movement of goods and services. The Principles apply to all procurement. They are non-discrimination, equal treatment, transparency, mutual recognition and proportionality. The Principles of the Treaty are backed up by a series of EU Procurement Directives. Both the EU Principles and Directives have been implemented in UK Regulations. The Directives apply to contracts above certain threshold values and set out the procedures to be followed in procuring goods, services and utilities. The threshold values are based on the total value of the contract and are adjusted periodically. For services they were updated in January 2008 to £139,893 (€206,000). There is a further significant distinction in the procedures for services categorised as Part A or Part B. Part B includes services which include a significant personal element, so all welfare services, such as care and support, are classed as Part B. Part B regulations are lighter touch and refer only to non-discriminatory specifications and publishing award notices. Part A regulations are much more detailed, require advertising in the Official Journal of the EU (OJEU) and include minimum timescales for each stage of the process and a post-award standstill period.

Detailed information on the regulations and the procurement methods that can be used by public bodies is provided in Section 2 of this guide.

Local government procurement practices

Local Authorities' duties and responsibilities are created by legislation and the way they carry these out are set out in standing orders. Each authority's approach to the procurement of services will be written up in a strategy or policy accompanied by the more detailed procedures which include who is authorised to make decisions and what procurement methods should be used for what spending levels or contract values. These policies and procedures will be publicly available, as are most local authority documents except where confidential, commercially or personally sensitive information is included.

Every authority is required to comply with the UK procurement regulations referred to above and to demonstrate how its approach to procurement contributes to its efficiency targets but within those constraints there will be some differences in policy and practice between different authorities. These differences will be shaped by a variety of influences including different political positions, interpretations of the legislation and local historical, economic or other factors. All standing orders will provide for some discretion in their application through the use of waivers and exemptions. It is for these reasons that service providers working across local authority boundaries can experience very different approaches to procurement in different localities or by different departments of the same authority.

Commissioning from the Voluntary and Community Sector

The Government has produced a number of reports and guidance documents on commissioning services from the Voluntary and Community Sector (VCS), also referred to as the Third Sector. It developed a national Compact, agreed between government and VCS representatives, and required all local authorities to produce a similar local Compact. It has issued a Code of Good Practice on funding. A National Programme for Third Sector Commissioning has also been launched, supported by the Improvement and Development Agency (IDeA) on behalf of the Office of the Third Sector. The combined messages of these initiatives are that while the overall aim of procurement is to achieve value for money (and the VCS cannot get preferential treatment) its independence should be recognised, i.e. it should not be treated as an arm of government. It should also not be disadvantaged by unnecessarily onerous demands for information. The main recommendations of the early guidance are that processes should be fair and effective and set out clear principles for both purchasers and providers which:-

- Ensure early supplier involvement to gain a supplier perspective when shaping policies and programmes
- Encourage informal consultation
- Consider benefits of dividing contracts into smaller lots
- Aim for three year settlements
- Choose evaluation criteria carefully to ensure they do not rule out small but otherwise competent VCS organisations
- Purchasers should keep information requirements to the minimum needed to ensure value for money and avoid duplication in information requirements;
- Payment should be made in advance of expenditure rather than in arrears where appropriate
- VCS organisations must be able to understand all their costs including indirect and support costs
- Funders should agree to meet the full cost of services, including the overheads that relate to the activities they have commissioned and which are necessary for the proper management of the organisation.

The Third Sector Commissioning Action Plan published in December 2006 similarly sets out eight principles of good commissioning: –

- Understanding the needs of users and other communities by ensuring that alongside other consultees, you engage with third sector organisations as advocates to access their specialist knowledge
- Consulting potential provider organisations, including those from the third sector and local experts, well in advance of commissioning new services, working with them to set priority outcomes for that service
- Putting outcomes for users at the heart of the strategic planning process
- Mapping the fullest practical range of providers with a view to understanding the contribution they could make to delivering those outcomes
- Considering investing in the capacity of the provider base, particularly those working with hard to reach groups
- Ensuring that contracting processes are transparent and fair, facilitating the involvement of the broadest range of suppliers, including considering sub-contracting and consortia building, where appropriate
- Ensuring long-term contracts and risk sharing, wherever appropriate, as ways of achieving efficiency and effectiveness
- Seeking feedback from service users, communities and providers in order to review the effectiveness of the commissioning process in meeting local needs.

Among the VCS there is some scepticism that any of this guidance is having any significant influence on local authority procurement practices. An Audit Commis-

sion investigation of commissioning services from the VCS found that Government initiatives, such as capacity building, have had little impact and that smaller VCS organisations still find it difficult to compete for contracts. Its report recommended that local government develop what it called more intelligent commissioning and that VCS organisations should develop better understanding of their own value for money and how to demonstrate this to commissioners.

Supporting People

The Supporting People (SP) programme brought support services previously funded from a number of different sources together into a local authority administered funding system. Prior to the introduction of SP in 2003, the majority of housing related support services had been developed by provider organisations. Robson Rhodes found that 80-90% of provision at 2003 could be described as "provider led not commissioning led" although this terminology obscures the extent to which providers worked with and responded to local statutory partners to identify and address local needs.

The SP funded sector includes a very diverse range of service providers - statutory bodies, voluntary sector organisations and private companies and individuals. They range in size from very large to tiny. Some provide a wide range of services with funding from different statutory agencies or charitable sources, such as residential or domiciliary care, day services, housing management, drug treatment, training or education as well as support. Some work across local authority and regional boundaries while others may provide one SP funded service in one area only. The sector therefore encompasses very different histories and experiences of the commissioning and management of contracts.

The introduction of the new SP system saw a wealth of specific guidance produced by central government for local administering authorities (county and unitary councils) to assist them with their new responsibilities. All existing providers of housing related support services entered into a contract with their Administering Authority (AA) to continue to receive the funding which had been transferred from its previous source into the SP pot. AAs set up SP Commissioning Bodies, a partnership of housing, social services health and probation, (CBs) and developed five year strategies which identified and prioritised the needs of its area and set out how its resources, including the current supply of services, would be deployed to meet those needs. Government guidance and grant directions envisaged that in the interim period of April 03 – March 06 an intensive service review programme would enable AAs to decommission any non-strategically relevant or poor and un-improvable services and re-commission those which it wanted to keep. AAs were advised to carry out these reviews on a sector by sector basis to assist them to maintain a strategic approach. Once the reviews were completed, the

government envisaged that SP would be managed like any other mainstream local authority programme and the end of the so-called interim period saw the beginning of competitive procurement applied to SP funded services. This means that, although many organisation have simply had contracts renewed, others are subject to 'market testing' as local commissioning bodies, working within corporate procurement strategies, develop their local approach to procurement and decide whether or which services should be put out to tender.

In 2007/08 the SP grant allocated to all "non-excellent" local authorities was still "ring-fenced", i.e. it can only be spent on SP services. Local authorities designated as "excellent" by the Audit Commission have fewer constraints on their spending and can in theory spend SP grant on any welfare service, although in practice there has been no major shift away from funding housing related support services. Since its introduction in 2003, the total SP grant budget has reduced with, including allowance for inflation, an overall reduction estimated at 17% by 2007/08. The allocation of grant to individual authorities has been capped at no less or more than a 5% increase or decrease on that of their previous year. Because of this and their general efficiency targets, many AAs have had to manage steadily reducing SP budgets alongside increasing demand for services.

The CLG produced a national SP strategy Independence and Opportunity in June 2007 which, among other themes, signalled their expectations that authorities be ready for their SP programme grant to be delivered through the non-ring-fenced Area Based Grant (ABG) from April 2009. Delivery through ABG is subject to an evaluation of a number of Pathfinders in 2008/09 who are testing the impact of delivery in a non-ringfenced setting.

Local Area Agreements

The government describes LAAs as being about improving local services and increasing economic prosperity for local people. They are three-year agreements with priorities agreed between all the main public sector agencies working in the area and with central government. Partners are brought together under the umbrella of the Local Strategic Partnership (LSP), which agrees a Sustainable Community Strategy (SCS) for its area. The Third Sector is usually represented on the LSP by local Councils for the Voluntary Sector. The LAA is based on the objectives in the Sustainable Community Strategy and the LAA translates these into targets.

Agreeing local priorities for public services through LAAs and the removal of ring-fencing grant conditions may improve prospects of joint commissioning and more flexible and holistic responses to meeting needs. However, there are concerns that, against a background of reducing resources, preventative services may lose resources to acute or statutory welfare services. SP commissioners and providers

in many areas are aware of the need to raise the profile of housing related support services and their contribution to meeting the objectives of the SCS and LAA targets. This would include identifying members of the LSP who could be briefed on the achievements and issues for their sector and service users.

Personalisation and Individual Budgets

The principles of person-centred services and the value of service user/client involvement are widely accepted in the housing, care and support sectors. An aspect of this approach is the use of Individual Budgets (IBs). These were initiated in the learning disability sector with care funding but their wider use is currently being piloted. IBs include social care money and, for the pilots, a number of other funds from Access to Work, Disabled Facilities Grant, the Independent Living fund, Integrated Community Equipment fund and Supporting People Grant, which are brought together to give the individual a more joined-up package of support. IBs give people a choice on how they receive their care and support package. It can be a cash direct payment, services commissioned by the local authority or a broker who manages the budget on an individual's behalf, or a combination of both. There has been to date little experience of their use for short term services or for client groups other than people with learning disabilities and older people.

Policies on support for the use of IBs do not always sit easily with policies on the use of competitive tendering to procure services. The drive to achieve efficiency savings has seen an increase in large, generic contracts. The move to more strategic commissioning had been seen as reducing the use of "spot purchasing", i.e. ad-hoc contracts for an individual's service.

Actions

- Understand the aims and priorities of the local authority in whose area you work for the future provision of services for your client group and service type
- Check what your local authority has documented on its approach to the procurement of welfare services
- Check how your local SCS and LAA priorities reflect the outcomes your service is working to achieve
- Identify who on your LSP could represent the interests of your service users

Find out more

National SP strategy Independence and Opportunity June 2007 at <http://www.spkweb.org.uk/Subjects/Supporting+People+Strategy+-+DCLG/Independence+and+Opportunity+our+Strategy+for+Supporting+People.htm>

Audit Commission report: Hearts and Minds – Commissioning from the Voluntary Sector, July 2007 at <http://www.audit-commission.gov.uk/reports/NATIONAL-REPORT.asp?CategoryID=&ProdID=418C38AF-0D97-49dd-95D6-EE7E7BA43773&fromREPORTSANDDATA=NATIONAL-REPORT>

Office of Government Commerce website at
www.ocg.gov.uk/procurement.asp

Communities and Local Government information on LAAs at
www.communities.gov.uk/localgovernment/performanceframeworkpartnerships/localareaagreements/

For more on Individual Budgets see:
<http://individualbudgets.csip.org.uk/dynamic/dohpage5.jsp>

The environment in which housing, care and support services are delivered changes continually and any publication can soon become dated. For regular updates, refer to journals and websites of organisations such as:

Sitra – www.sitra.org
hact – www.hact.org.uk
Homeless Link – www.homeless.org.uk
National Housing Federation – www.housing.org.uk
Care Service Improvement Partnership – www.csip.org.uk
Supporting People – www.spkweb.org.uk
Community Care magazine – www.communitycare.co.uk

Section 2



Introduction

This section outlines the key features of the range of procurement options open to commissioners of welfare services, including:

- Non-competitive negotiation
- Competitive tendering
- Open
- Restricted
- Framework agreement
- Competitive dialogue

2.2 Business planning and risk management

This section considers how procurement will impact on a provider's

- Business planning
- Approach to risk management
- Communication with its Board, staff, service users and stakeholders

2.3 Planning and preparing to bid

This section outlines how providers may prepare in advance of any specific tender by:

- Keeping basic organisational information for pre-qualification questionnaires updated
- Collecting evidence of the value of their organisation's particular approach or position
- Considering project planning requirements for a typical tender process

It examines the principle elements of a typical service specification, including:

- Terminology used
- Extent of prescription versus discretion
- Monitoring and performance management information requirements
- Delivery or method statements
- Creativity, innovation or added value

2.4 Costing and pricing

This section looks at the issues of costing and pricing as part of the procurement process. The objectives are as follows:

- Understanding an organisation's own costs and methods of apportioning
- Assessing value for money and considering the 'support hour cost'
- Considering the Compact and the principle of full cost recovery
- Establishing the factors involved in setting a contract price
- Considering the practical issues regarding benchmarking
- Looking briefly at some TUPE cost implications.

2.5 Working in partnership

This section:

- Examines how providers might consider partnership working and the benefits
- Explores the different options for partnership
- Looks at what issues to consider when thinking about partnership
- Offers practical ideas about how to develop partnerships
- Provides case study examples

2.6 TUPE and Human Resources (HR)

This section looks at the implications of TUPE when winning or losing a contract, and includes:

- Understanding the main aspects of the TUPE regulation
- The steps that need to be taken when transferring staff out of or into the service or changing contractor
- Considering the practical issues when managing the TUPE process

2.7 Tender evaluation and selection

This section describes possible tender evaluation options and the balance between price and quality. It will set out the range of selection methods used by commissioners procuring services and their implications for providers including:

- Scoring systems
- Interviews
- Presentations
- Site visits

It outlines:

- Requirements for contract award notices

- Procedures for feedback, complaints or appeals

2.8 Post Tender Action

This section:

- Refers to post-tender evaluation and learning for both successful and unsuccessful tenders
- Outlines the project planning implications of tender outcomes for either new or existing services
- Sets out the principles of good contract management to be followed for new or existing services.

2.1 Procurement Processes

Procurement options

Providers delivering welfare services need to understand the legal framework within which commissioners procure services and be aware of the scope for discretion and different interpretations of what is required of them by different commissioners. The following questions are a starting point.

- Is the procurement by a public body?
If yes - EU Principles apply, EU Directives may apply
↓
- Is the contract value* under £139,893 (€206,000)?
If yes, EU Principles only apply
↓
- Is the procurement of a welfare service?
If yes – it is a Part B service, EU Principles apply and only the requirements for non-discriminatory specifications and contract award notices from EU Directives apply.

(*The contract value is normally the annual price x years of duration of the contract but if the contract has no fixed term the value is what would be payable for a maximum of four years. There are other detailed regulations relating to calculation of aggregated values not covered here.)

As set out in the previous section, the EU Principles apply to all procurement and are of non-discrimination, equal treatment, transparency, mutual recognition and proportionality. Government guidance to local authorities on interpretation of the procurement regulations states that: “some degree of advertising, appropriate to the scale of the contract, is likely to be necessary to demonstrate transparency.” It further advises that Government procurement policy is that value for money “should be achieved through competition, unless there are compelling reasons to the contrary”. The extent to which a local authority’s decision makers have shared this belief in the ability of market forces to deliver what is best for service users influences their interpretation of what are compelling reasons. Examples of these have been:

- Where a service is delivered holistically with other separately commissioned welfare services and could not be procured by separate competitive tender without damage to the delivery of the service or the viability of the provider organisation

- Where the separate competitive tendering of a housing related support service would result in the withdrawal of the accommodation currently provided for the support service users, and those units of accommodation could not be replaced
- Where the resources of the commissioning staff team are insufficient to effectively manage competitive tendering of services in large tranches so a phased process is required
- Where a service is of such a specialised nature that no market of suitable potential providers exists
- Where the commissioner wants to retain service provision by small, community based provider organisations who do not have the capacity or resources to take part in competitive bidding procedures and the principles of proportionality and supporting diversity are therefore not met through competitive tendering.

Non-competitive negotiation

Where staff of a commissioning team believe that there is a “compelling reason”, such as one of the above or any other local circumstance, to negotiate the renewal of a contract instead of putting it out to competitive tender, they would expect to have to justify this decision to the commissioning authority’s head of procurement. In making the case for non-competitive tendering, they would normally have to demonstrate that they had achieved value for money by alternative means. This could include:

- Benchmarking of the price, plus performance and quality standards, of the current provider with comparable services in the local area and region, using the range of tools available to the authority
- An open-book review (i.e. where all information is shared openly and in good faith) of the current provider’s costs, and the factors and practices that drive those costs, and the commissioner’s budget, to reach agreement on an economic but sustainable price
- Negotiations, which can incorporate any combination of the above.

The authority’s standing orders are likely to rule out any blanket, or across the board, exemptions to competitive tendering, so this would have to be done on a case by case basis.

Where the grounds for not proceeding with a competitive tender are the need to synchronise with another commissioning cycle or the manageability of the workload for the commissioning staff team, the application for exemption or waiver would be supported by a programme for future years procurement plans.

Competitive tendering

The main differences in the range of competitive procurement methods which can be used are the number of stages in the selection process and their application to single or multiple contracts. The four competitive tendering methods currently approved by UK regulations are:

- open
- restricted
- framework agreement
- competitive dialogue

The Office of Government Commerce advises that another method previously approved, the negotiated procedure, is now considered to have been replaced by the competitive dialogue option.

The definitions and key features of these processes are set out here:

Method	Stages	Application
Open	<p>One An invitation to tender for a service is advertised. All those interested receive the full tender documentation and all proposals received are evaluated prior to one being selected</p>	<p>Where the commissioner can resource dealing with large numbers of tenders and either does not wish to rule out any potential tenderer or lacks information on the market of potential providers.</p> <p>The service can be offered as one lot, or tenders can be for one or more subdivided parts (lots). Bids by consortia or tenderers intending to sub-contract may or may not be encouraged or allowed.</p>
Restricted	<p>Two The intention to tender for a service is advertised. First, all those interested are asked to complete a pre-qualification questionnaire so that their organisational viability, competence and track record can be checked OR an existing accreditation method is used for the same purpose. Second, those selected (or short-listed) for the next stage can receive the full tender documentation and all proposals received are evaluated prior to one being selected</p>	<p>Where the commissioner wishes to limit the numbers of full tenders received and is confident that after restriction there will still be a sufficient number of competent and experienced providers from which to choose.</p> <p>The service can be offered as one lot, or tenders can be for one or more subdivided parts (lots). Bids by consortia or tenderers intending to sub-contract may or may not be encouraged or allowed.</p>
Framework agreement	<p>Two or three The intention to tender for a group or sector of services, using a framework agreement, is advertised. First, all those interested are asked to complete a pre-qualification questionnaire so that their organisational viability, competence and track record can be checked OR an existing accreditation method is used for the same purpose. For a framework agreement used as defined in the UK procurement regulations, the main terms (a price or pricing mechanism, the scope and type of services included) are set out at this stage precisely enough for a "call-off" to be made. Second, those selected for inclusion in the agreement (preferred provider list) can be "called-off" i.e. invited to deliver a service on terms already set out or submit a proposal to deliver a specified service. Alternatively: Third, those selected for inclusion in the agreement can be invited to participate in a mini-competition to tender for a specified service. A framework agreement should be for a maximum of four years. Inclusion in the agreement does not guarantee a</p>	<p>Where the commissioner wishes to avoid tendering service by service and is able to specify its requirements for a group or sector of services.</p> <p>Not all of the framework agreements used so far for Part B/welfare services have referred to price or pricing mechanism or a detailed service specification at the first selection stage. In these cases, those placed on the equivalent to an approved or preferred providers list are subsequently provided with specifications and asked for price and quality/service delivery proposals.</p>

	provider any offer of a contract to deliver a service.	
Competitive dialogue	<p>Three</p> <p>The intention to tender for a service is advertised.</p> <p>First, all those interested are asked to complete a pre-qualification questionnaire so that their organisational viability, competence and specialist knowledge can be checked.</p> <p>Second, those selected (or short-listed) for the next stage are invited to enter into a dialogue with the commissioner to contribute their specialist knowledge to the development of the specification for the new service.</p> <p>Third, when the specification is finalised, those who were short-listed are invited to submit a tender.</p>	<p>Where the commissioner wishes to develop a new specialist service or seeks an innovative form of service delivery and needs significant input from specialist providers to draw up the service specification.</p> <p>It would be unlikely that such services would be sub-divided into lots as they are unlikely to be large scale. Consortia or sub-contracting bids could be involved if that had been agreed to be appropriate for the specialist service being designed.</p>

Application to low value and Part B (welfare) services

Any of the above competitive tendering processes can be used for any procurement of services. However the detailed minimum time periods specified in the UK regulations for each stage of the process and for the standstill period which follows contract award apply only to services covered by the full EU Directives, i.e. Part A services (such as IT, property management, refuse collection) which have a contract value above £139,893 (€206,000). When using any of the competitive tendering processes listed above for low value and any Part B services, staff carrying out procurement must comply with their own authority's standing orders, which have to incorporate the EU Principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality. An authority's standing orders may specify minimum time periods for procurement not covered by the Directives but are more likely to use words such as "a reasonable time" or "time sufficient to facilitate fair competition". In these circumstances the procurement timetable will be set up by the staff responsible for the commissioning of services, often with advice from the authority's specialist procurement staff. They may make reference to the minimum time periods specified in the Directives for Part A services but are not required to by the regulations. For information, restricted tendering (the form most commonly used to date) for Part A services is 37 days for requests to participate (i.e. the pre-qualification questionnaire or equivalent) and 40 days for receipt of tenders. The regulations use calendar days, except that where the last day falls on a non-working day it moves to the next working day.

Many of the difficulties providers have experienced in the early use of these competitive tendering procedures for the procurement of support and care services have been caused by either shortening of timescales due to delays in the publication of tender documentation

or insufficient prior information or consultation on significant proposals for changes to service or contract configuration. Information on complaints and appeals is included in a later section of this guide.

Case example

Extract from Supporting People Provider Briefing by London Boroughs

Scope of the procurement exercise

The procurement exercise and subsequent framework agreement will cover:

Accommodation based services

- Mental health
- Offenders
- Young people
- Substance misuse
- Single homeless people/rough sleepers/refugees
- Homeless families (including mother and baby services)
- Generic

Floating support services

- Mental health
- Offenders
- Substance misuse
- Young people
- Homeless families (including mother and baby services)
- Generic

Providers can submit tenders to deliver services for any/all of the service user categories above.

This procurement exercise process will exclude accommodation and floating support services for older people, learning disabilities, domestic violence, physical disabilities, community alarms, home improvement agencies (HIAs)

It will also exclude floating support for rough sleepers/single homeless.

What is a framework agreement?

A framework agreement is an agreement between a local authority and a preferred provider to provide services to an agreed price and quality. The life of the framework agreement is four years and each authority will 'call off' or contract services from the framework using their own SP contracts.

Both the Royal Borough of Kensington and Chelsea (RBKC) and the London Borough

of Hammersmith and Fulham will enter into a joint framework agreement with each provider that successfully tenders for services and is accepted onto the boroughs' preferred lists of providers. When either Borough needs to procure a service the framework is used to 'call off' (this essentially means to select) a provider from the preferred providers list, either through a mini tendering exercise or through selection of the most economically advantageous bid (based on both quality and price).

The Framework Agreement will be divided into different categories by service user groups and service type (i.e. floating support and low/medium/high support accommodation) so that the selection arrangements relate to each of these categories rather than all providers being consulted each time there is a 'call off' for a service.

What is the process and time scan?

We envisage a two/three stage tender process whereby interested providers will initially be asked to register an interest in response to a national advertisement:

1. Providers accredited in West London, or by ROCC, will be passported through the pre- qualifications questionnaires (PQQ) stage. The only requirement on these providers will be the submission of an expression of interest (if selected as preferred providers they will also need to demonstrate that they still meet the West London accreditation criteria at stage 3; this allows for where there has been significant time period since the award of the current accreditation status). For those providers not accredited in West London, or by ROCC, a PQQ will need to be completed which will be used by the Tender Approval Panel [TAP] to carry assess technical competence.
2. Successful providers (including interested West London accredited providers) will then be asked to submit a full tender to become a preferred provider within one or more of the defined categories. Providers not accredited in West London, or by ROCC, will be also assessed for accreditation at this stage.
3. Each boroughs will then 'call off' (contract) service providers from the approved provider list to provide services, without the need to go out to advertisement.

Procurement timetable

June seminars for providers

End of July place advert and send out PQQ

2nd week of September TAP assessment of PQQ

End of September send out tender documentation

End of November deadline for tender submissions

December evaluations of tenders to agree preferred providers

Procurement programme once the preferred provider list is established

This procurement process is currently being processed through both Councils' Key Decision Report (RBKC) and governance systems. The full procurement strategy for all SP services and the associated procurement timetable will be reported as a public document to Commissioning Bodies later in 2007 (RBKC will approve this in June 2007). This will set the timetable for selecting providers to deliver services through the framework agreement in future years.

How will small to medium providers be supported?

Existing West London accredited providers will be passported through the PQQ stage. Accredited providers will simply have to register an interest and define which client groups and services they wish to tender for. This process is intended to help all providers by reducing the administrative burden.

The boroughs are in the process of trying to identify an independent advisory service for all providers in developing consortia and capacity building. A provider seminar will also advise all providers on the process.

What does this mean for your existing SP contract?

Providers that wish to continue to deliver an SP service in any of the service categories, which are subject to this tender, must participate in the tender process.

Both authorities will then use the framework agreement to select a preferred provider from the preferred provider list to deliver these services. Existing SP contracts will confirm the end date for the current service and any handover to any new service provider will be managed using the boroughs' exit strategy processes. The majority of the contracts subject to this procurement process in Kensington and Chelsea are due to end in March 2008.

The procurement strategy and timetable submitted to the Commissioning Bodies in both boroughs will set the timetable for selecting providers to deliver services through the framework agreement in future years.

Current contracts may therefore extend beyond 2008 in line with the agreed procurement timetable. The Councils will reserve the right to extend contracts for these services, subject to value for money, performance and quality considerations.

Both boroughs are acutely aware that the new procurement process will naturally cause all providers concern. Over the coming months providers will be updated on progress through our Provider Strategy Groups and Provider Forums.

If you want clarification on the process please email the Supporting People Team on spteam@rbkc.gov.uk.

Checklist for action

- Check what your local authority has documented on its approach to the procurement of welfare services
- Work with your local Provider Forum or other local or cross-authority networks to ensure good communication between commissioners and providers and compliance with Compact principles on information and consultation

Find out more

Department for Communities and Local Government produced a guide to Procuring Care and Support Services in October 2006 for staff of local authorities and other public bodies, see:

[http://www.spkweb.org.uk/Subjects/Capacity_building/
Procurement+guide+templates.htm](http://www.spkweb.org.uk/Subjects/Capacity_building/Procurement+guide+templates.htm)

The Office of Government Commerce produces a number of publications for those working in public sector procurement, see:

www.ogc.gov.uk/procurement.asp.

2.2 Business Planning & Risk Management

Business planning

Housing, support and care providers are under differing internal and external pressures to provide up to date, relevant, high quality and cost effective services. The sector is affected by continual change and the increasing use of competitive procurement processes will have a significant impact on organisations which have not previously had to bid to retain existing services or develop new ones. This means that organisations must have up to date flexible business plans that allow them to respond to a changing environment.

An organisation reviewing and updating its business plan in this environment will have to consider what new skills and/or reallocation of resources may be required to enable it to respond to invitations to tender. It may want to purchase training for staff or to plan for buying in consultants to support a small staff team. It will need to review its policies or decision-making arrangements to determine whether it will bid only for its existing services or will seek out opportunities to bid for services being newly set up or services currently provided by others.

Business planning is a systematic process of:

- assessing and determining an organisation's goals and objectives for the years ahead (usually three years in the care and supported housing sector),*
- analysing its current position with regard to its activities, resources and the environment in which it operates, and*
- developing strategies and action plans for obtaining and using its resources to realise the objectives.*

The pressure on commissioners to achieve efficiencies has led to many instances of separate small or specialist contracts being combined into larger ones. This has been seen as a way of both achieving efficiencies for the authority in administering those contracts and pushing providers to achieve economies of scale in the infrastructure which supports service delivery. In some areas, this move to larger contracts has been accompanied by recommendations that small organisations form partnerships with other providers to enable them to bid as members of a consortium or as sub-contractors for tenders that they could not otherwise consider. Even where a commitment to partnership or collaborative

working is written into the organisation's mission and values, the step from that to forming legal, i.e. contractual, alliances to deliver services in a different way will require the support and approval of its governing body. Considering this in advance rather than within the short timescale of a specific tender will increase the likelihood of it working. (For further information on partnership options, see later section of this guide.)

In many areas the continuing downward pressure on prices for services has also generated the need for smaller organisations to review whether their financial viability and ability to deliver quality services can be sustained at their current size. In these cases the senior managers and governing body may need to consider not just joint working for particular contracts but the question of mergers or joining group structures. This can generate conflicting positions among staff or governing body members between those with a strong attachment to the independence of the current organisation and who see themselves as fighting for the principle of maintaining the diversity of the sector and those convinced they have to grow to survive.

A risk assessment and management approach can assist organisations to think more clearly about how they might manage these pressures.

Business risk assessment and management

Risk assessment and management of any kind involves asking the questions:

- What can go wrong?
- What can we do about this?

Business risk involves the same questions but across a comprehensive range of factors or activities which could include, among others:

- Adherence to organisational mission or objectives
- Compliance with law and constitution
- Reputation and public image
- Safety and welfare of staff and service users
- Cash management
- Protection of assets and property
- Solvency

There is no one definition of risk and similarly no one model of risk identification,

assessment and management that will be helpful to all organisations. The larger and more complex the organisation, the more complex its systems for dealing with risk are likely to be. The organisation's approach to risk-taking will also vary and may be influenced by factors such as its financial strength or a history of positive or negative outcomes from high risk initiatives. It may also be influenced by the expectations of funders or lenders and restricted by the approach to risk of its regulatory bodies.

The Housing Corporation has defined business risk as: any event which may affect an association's ability to survive and compete in its market as, and maintain its financial strength, positive public image and the quality of its people and services. It has produced guidance on risk management, one for supported housing includes a template risk register with a traffic light system for prioritising risks. Other systems include those which have either numerical or high/medium/low scoring systems or a matrix for impact/likelihood (or probability) plotting.

Whatever model or system is chosen, its usefulness is dependent upon

- a self-assessed identification of risk being comprehensive and fully exploring all potential risks and
- the risk register and its action points being regularly reviewed, followed up and up-dated.

Risk associated with tenders

Any organisation which provides services commissioned by a public authority must now include in its risk register the activities of bidding in a competitive tender process for:

- Its existing services
- Services being newly set up
- Services currently provided by others

In each scenario there are a number of risks attached to:

- Bidding or not bidding
- Bidding alone or in a consortium or other formal partnership
- Winning or losing a contract

For each organisation these risks, and their impact and probability, will vary, dependent on the extent to which any one service is critical to the financial and operational viability of others. It may be a flagship service which supports the organisation's expertise and reputation in a particular professional field or may

be a loss-making, problematic service from which the organisation would gladly withdraw. Consideration of the above will strengthen your organisation's position when making a decision to bid for services. See later section for further information on portfolio analysis and understanding service costs.

Communication

Business planning and risk management both require the involvement of participants from all management levels and functional areas of an organisation, no matter the size of the organisation. While governing body members and senior managers are responsible for these tasks, they should always enable those with knowledge of front-line issues and service user views and experiences to contribute to them.

The board and staff of an organisation where a service commissioned by a public authority is a core function would be expected to be kept informed about procurement issues through regular reports on service performance and development and through briefings made in the course of business plan or risk register reviews.

Where such a service is a very small part of a larger organisations activities it can be more difficult for the service manager to keep the rest of the organisation informed. In such cases this can create challenges for staff trying to respond to invitations to submit pre-qualification questionnaires or full tenders if finance or personnel colleagues in central teams don't understand the critical nature of either deadline. Service managers in this position will need to identify a minimum number of key people, such as a senior finance manager and a service champion on their board, in whom they can invest time for more in-depth communication.

Front line staff

The time needed for briefings and discussions with staff affected by any potential change should never be underestimated. Front line staff may not be involved in submitting tenders, but they are likely to be most affected if a tender is won or lost. They may well face significant changes in working practices where services are re-configured or may have to transfer to new organisations. Communication with staff is therefore essential to ensure that services are not affected. See Section 8 of this guide for information on the implications of the Transfer of Undertakings Protection from Employment (TUPE) Regulations.

Service users

The involvement of service users in preparation for competitive tender has some parallels with involvement in service reviews.

Good practice in service user involvement will always reflect these general principles:

- *Keeping users at the heart of a service, listening and responding to their views and experiences has to be integrated into everything an organisation does, not parcelled off as a discrete activity. Having a specific user involvement lead-person or budget will only help if it does not lead to it being seen as a separate activity.*
- *Service users must be able to choose the issues they want to get involved in, how they want to contribute and the pace at which they want to work. Every individual has different preferences, interests, capacity and a person-centred service works with this diversity.*
- *There are risks and costs associated with this way of working as well as benefits which organisations must take into account.*

Communication with service users about competitive procurement processes will be at both a general and a service/contract specific level.

At a general level, providers will have service descriptions in information packs or handbooks which are explained verbally on entry and whenever needed. For Supporting People funded services these were likely to have been updated to explain that the service is provided under contract with the local authority which funds and monitors it. Over time these explanations will be supplemented with the information that the authority may award the contract to an alternative provider.

At a general level, some commissioning authorities have been working with service providers to identify service users who are prepared to work with them on an authority or sector-wide basis as lay inspectors for contract monitoring visits, and now in relation to procurement, through participation in service specification development, or on evaluation panels. Sustaining involvement at this level requires a significant time commitment by the service user (and those providing any support required). Training needs and re-imbursement issues must also be addressed.

At a service level, staff can use discussions with and feedback from service users on what they value in the service, or what their priorities are for service improvement, in preparation for tendering. While good practice means this is an on-going process not a special activity, getting user views on a new service proposal would be an additional task.

Providers will need to make clear to service users that however good their proposal it may not win the contract for reasons outside their and the service users' control.

External stakeholders

External stakeholders significantly affected by the impact of competitive procurement processes could include:

- Commissioners, funders and regulators of other services provided holistically with or aligned with the services that may be tendered
- Informal or formal partners with whom the provider works on this or related services
- Referring or nominating agencies who look to this organisation to provide services to its clients
- Any professional advisers or consultants who need to be updated on the changing context for the work they do for the organisation
- Any local politicians or community organisations, who might be involved as supporters or fund-raisers or reciprocal sharers of facilities, etc.

This will be different for each organisation. Organisations will also vary in terms of whether they have a stakeholder communication or other public relations strategy or plan in place and whether they carry out a stakeholder analysis as part of their business plan.

Communication with what will often be a long list of stakeholders will need to be prioritised. In a case where the viability of a service depends on provision of a parallel service funded by another public body providers will need to alert both commissioners to this. Where strong community links are the basis of an organisation's successful "reach" and achievement in involving excluded groups, those community associations and networks would be its priority for communication of why it needed to collect evidence of its achievements and of their support.

Action

- Check current business plan addresses commissioning environment
- Update current risk register and report to board
- Review communication with key stakeholders, including where evidence of added value or references are required
- Review involvement of staff and service users in current service evaluation
- Check availability of standard information required for pre-qualification questionnaires and up-date as needed
- Research example tenders and identify skills needed in staff project team

Find out more

There are many publications on business planning and business risk management available. The Housing Corporation produces guides, including: *Ahead Of The Game: A Good Practice Guide to Business Planning Risk Management Toolkit for Supported Housing* available through their website, www.housingcorp.gov.uk

The NCVO and local umbrella groups for voluntary sector organisations also produce guidance.

Many training providers, including Sitra and local voluntary sector based training organisations, offer training on public programmes or in-house on business planning and risk management, see www.sitra.org

2.3 Planning & Preparing your Bid

Pre-tender preparation

The length of time which any provider has in which to prepare a tender proposal will vary. Where the commissioner uses the minimum timescales set out in the EU Directives for Part A services this could be:

- 52 days (i.e. just over 7 weeks) for an open tender or
- 37 + 40 days (around 5 + 6 weeks) for the two stages of a restricted tender.

It should be safe to assume that providers will have advance warning of a competitive tendering process. However, while general intentions to use competitive procurement methods are publicised, specific or concrete information is sometimes not available until late in the day. It is best to be prepared for this and ideally, the more of the general (i.e. not specific to any one tender) preparation a provider can do, the less scrambling to meet the deadlines of an actual tender process there will be.

The on-going work on business planning, risk management and communication described above all contribute to the preparedness of an organisation, but these additional actions may also help.

Pre-qualification questionnaire or accreditation information

All competitive tendering procedures require potential bidders to provide basic information about their organisation – usually through a pre-qualification questionnaire (PQQ). The PQQ is an important part of the process as commissioners will use this to shortlist prospective bidders.

Information requirements can include:

- Staffing information such as staff numbers, skills, experience and qualifications, professional membership and staff training
- Financial information, usually accounts, turnover, length of trading, insurance and bank references
- Details of policies such as health and safety, equal opportunities and diversity, harassment and protection from abuse, environmental sustainability, complaints procedures, data protection, lone working and disaster recovery, needs and risk assessment and support planning for a support service.

Compact principles encourage authorities not to ask for information they already have, but some still use lengthy pre-qualification questionnaires for each tender.

Regularly updating this organisational information will help reduce the pressure. In larger organisations, accessibility of information may be an issue particularly for services where finance or personnel staff are based elsewhere. In this case preparation may include noting where and by whom the information is held or keeping local duplicates.

Tenderers may be asked to supply references for similar work done for other commissioners. It is common to ask for three references. If a smaller organisation has only delivered similar projects or services for one or two commissioners it could consider asking for references from any professionals with whom it has relevant relationships, e.g. a referring social worker. Developing a list of those who have agreed in advance to be referees will help avoid delays when the tender clock is ticking.

Checklist

- Answer all the questions in the PQQ.
- Only provide the information requested. Don't be tempted to include irrelevant information, even if it shows your organisation in a positive light.
- Keep your information. Your first bid is unlikely to be your last. Much of the information included in one bid will be relevant to the next bid.
- Keep your information up to date
- References. Plan ahead and develop a list of referees-in-waiting to help to speed things up when time is short.

Project planning

The preparation of a tender bid will for many organisations have a significant impact on the workload of senior staff. It will require information on finance, staffing and operational or service delivery matters being drawn together. In many cases this will require contributions from a number of different staff, even in small organisations. The following plan, using a simple What / Who / When layout, would be a starting point for an organisation preparing for a restricted tendering procedure which used the EU's Part A timescales. Looking through any examples of tender documents that are available will help staff new to this process to get an idea of the amount of work involved.

Stage 1: pre-qualification questionnaire

What <i>(list all tasks)</i>	Who <i>(responsible person)</i>	When <i>(target date)</i>
Project team meeting agree tasks & dates	Director, Service Manager, Finance Manager, Administrator	7/1/08
Organisational information, sections a – a	Service Manager	31/1/08
Staff structure & skills, sections b – b	Service Manager	31/1/08
Policy information, sections c – c	Administrator	31/1/08
Financial & insurance information, section d – d	Finance Manager	31/1/08
References	Service Manager	31/1/08
Collation	Administrator	1/2/08
Final check, proof-read, signatures	Director	4/2/08
Submission (email-received/hand delivery)	Administrator	8/2/08

(closing date 13/2/08)

Stage 2: Tender

What <i>(list all tasks)</i>	Who <i>(responsible person)</i>	When <i>(target date)</i>
Project team meeting – review tender, check evaluation criteria, agree team tasks & dates	Director, Service Manager, Finance Manager, Administrator, Service Team Leader	3/3/08
Draft service delivery method & staffing	Service Manager & Team leader	7/3/08
First draft costing	Finance Manager	12/3/08
Draft referrals, quality assurance, monitoring, added value	Service Manager & Team Leader	18/3/08
TUPE estimates, second draft costing	Administrator & Finance Manager	24/3/08
Review service delivery & costs	Service Manager, Team Leader, Finance Manager	28/3/08
Agree final method statement & price	Director, Service Manager, Finance Manager, Administrator, Service Team Leader	31/3/08
Collation of proposal and appendices	Administrator	3/4/08
Final check, proof-read, signatures	Director	7/4/08
Submission (email-received/hand delivery)	Administrator	9/4/08

(closing date 14/4/08)

The tender

A competitive tender is all about selling and showing the commissioner how your organisation can deliver the service they want, and do so more effectively and efficiently than others.

It is vital that you understand what the commissioner wants, not only in terms of a very careful reading of the tender requirements but also more broadly through knowledge of their overall strategic plans, for the sector or the client group, which form the context for their commissioning of this particular service. Ideally your organisation will have been able to contribute its expertise and knowledge of client needs and service delivery to the development of the commissioner's strategies. If consultation with service providers on commissioning plans for the sector or for particular service specifications has either not taken place or has resulted in service proposals with which you disagree, a competitive tender submission is unlikely to be the best place to express those disagreements. If you believe strongly that the service model really required is very different from that specified, you should raise that with the commissioners and take their response into account when deciding whether to bid.

Key points to consider at the outset include:

- Do you know what the 'customer' wants?
- Does delivering the service they are asking for fit with your organisation's objectives and business plan?
- Can you make a realistic bid describing how you will deliver the contract, meet users' needs and the commissioner's requirements?
- Do you know the weighting being given to quality and price?
- Are you sure you know the real costs of delivering the service?
- Can you or must you comply with TUPE legislation if you win the contract?
- Will collaboration increase the chances of winning the contract – due to price skills, quality or added value?
- Will the commissioner agree to consider collaborative bids by a consortium or with sub-contractors?

Invitations to tender packs

Invitations to tender documents are presented in many different ways, use different terminology and include different requirements so no guide can tell you exactly what to expect. Most have structured questions that you will need to follow but in some cases you may get no direction as to how much information is required and will be left to make your own judgement on what to include. In any event, be succinct and clear about what you can deliver.

Most tender packs will include some version of the following:

- An introduction with definitions and general background information about the area or the services
- Instructions to tenderers which sets out how you are to present your tender, deadlines, how questions will be dealt with, and may include information on evaluation criteria, contract start dates, period for which tender price is binding, how to identify what information you provide is commercially sensitive and not for disclosure (under the Freedom of Information Act)
- A copy of the contract to be used or summary of the main terms and conditions (may be referred to as heads of terms)
- Service specification (see below)
- Either a proforma/questionnaire or a request to describe how you would deliver the service (often called method statement but can also be referred to as a service quality plan or service delivery plan)
- A pricing proforma/questionnaire or some structured way of presenting your pricing information
- TUPE information relating to existing services
- A “form of tender” which you sign to confirm you are submitting this tender as the organisation’s authorised representative
- A number of other certificates/statements to be signed relating to insurance, collusion, canvassing, confidentiality or declarations of interest

It is absolutely vital that you answer all the questions and address all the points in the documentation and are not caught out by simple technical errors, so your first task is to go through the pack to check all the practical questions of dates and

deadlines, method of submission, who has to sign what certificate, etc. You can then incorporate this into your project plan.

Contract terms

While most of the information you need to prepare your method statement/service plan and price your bid will be in the specification, you should also check whether any of the information related to business risk management has been put in this section. It may be here that requirements such as those relating to voids or penalties for under-performance have been included.

Service specifications

The service specification is probably the most important part of the tender. Addressing the requirements set out here will be key to winning a tender and it is vital that you ensure that your bid fully addresses this area. You will base your price and resource structure largely on the service specification so it is a really important document to understand. Ideally providers will already have been consulted about the specification during a pre-tender consultation period but for many providers the tender documentation will be the first sight of the specification.

What to expect

The amount of detail included in a specification will vary according to the type and amount of control required by the commissioner and the way the service is provided. Where this relies solely on the specification more detail will be included. Where there is a greater degree of partnership and influence, and a joint commitment to achieving certain outcomes rather than closely defined outputs, then there may be a more open specification. At its simplest, the specification will state an hourly rate for a stated number of hours, the service to be provided and to whom, together with some issues of respect and sensitivity, confidentiality, handling of complaints.

Increasingly commissioners are looking to develop outcomes focussed specifications and you as provider must aim to demonstrate how you will achieve the outcomes specified and be able show how you achieve and monitor outcomes in other services.

As well as outcomes, the following areas will be included in the specification and you will need to ensure your bid addresses these areas, whether you have a structured proforma to use or have had no direction on what is required:

Inputs to the service

This includes the broad aim of the service, together with a description of the service to be provided: for whom, where, for how many, and how the service is to be accessed:

- the price for the service.
- what facilities and equipment are required
- what staffing levels, with what qualifications, training, experience or other characteristics

Every specification will include the above. The amount of detail must adequately define the service inputs, and will vary with the scale and complexity of the service being provided.

In some cases the service to be tendered may be linked to another separately commissioned service and issues arising from this should be addressed in the documentation. For example, where a support or care service is to be delivered within designated accommodation, e.g. supported housing or extra-care housing rather than a floating or domiciliary service, the specification should make clear who is the current accommodation provider and what has been agreed with them on any possible changes to the housing management arrangements.

Processes of delivering the service

The processes which may need to be specified are particularly those aspects of the service that impact directly on the service users and will include the key service principles and values. For services in this sector user (or client) involvement will always be important and you will want to demonstrate your strengths in this area. This dimension of the service is a mix of what is to be provided, and how it is to be provided represented by your policies and procedures. Much of this will already have been provided at the PQQ stage but there may be additional requirements at tender stage.

Outputs – performance requirements

The specification may set out requirements or ask you to state what you will be able to achieve in relation to specific areas. The example below is taken from a Plymouth specification for a floating support service:

Key Performance Indicators

- % of service users who have established independence
- % of service users who have established long term housing
- Number of people accessing the service
- Fair access to Supporting People services

Service Performance Indicators

- % of service users other support services
- % of service users signposted to and engaging with intellectual, social and leisure activities that enhance their sense of integration.
- Cost per successful outcome
- Time between NASS notification of decision and start of service provision
- Service user satisfaction on leaving the service

Strategic Indicators

- % of service users accessing service as a % of asylum seekers receiving positive decisions

Quality

Every tender specification should provide information on the quality standard required. For most SP services, it is likely that the national Quality Assessment Framework will form the minimum quality standards expected. Providers will need to be able to demonstrate a track record in relation to working to these standards and how they will specifically be applied to the service to be tendered, how quality will be maintained, improved and monitored. Think about what you offer here in terms of added value (see below).

Outcomes

Many good practice guides on commissioning encourage greater use of outcomes focussed commissioning. In 2007 the CLG introduced a national outcomes framework for providers and commissioners of support services and it is likely that most SP tenders will specify the need to report on the national outcomes framework. There are still some local variations and depending on the service being tendered providers will need to demonstrate in the tender how they plan to achieve the outcomes and how they will monitor this. Outcomes focussed support planning will facilitate this process and help providers demonstrate their achievements.

Outcomes – what are they?

Outcomes are the benefits to the service user. The benefits may be a consequence of the quality of the service, for example in terms of the quality of life within sheltered housing. Or they may be opportunities that result from the service, for example in terms of the development of skills. The benefits could also be described negatively in terms of the avoidance of some situation. The inclusion of outcomes in a contract specification depends on whether outcomes are being purchased - rather than a service which the commissioner believes will have or will contribute to certain outcomes.

Issues to look out for:

- Outcomes are likely to be included with the specification as the function of the service. They are an important measure of achievement. To provide a service without stating its function beyond the provision of a number of places and activities, is to fail to provide a means of evaluating its effectiveness and relevance. Reference to increased ability for independence or access to employment, are much more powerful measures.
- In general the greater the emphasis on outcomes the more the flexibility required to adjust services to achieve those outcomes. Providers may need to address this in the bid.
- The ability to achieve outcomes will be constrained by the inputs into the service. So be realistic. The developmental opportunities for users where the staff to user ratio is 1:10 may be expected to be greater than if 1:20.
- Outcomes can be defined differently by the different parties involved in a service. User evaluation will be an important principle and if not specified should be included in your bid as part of the process of providing the service.
- Even if it is difficult to define clearly the desired outcomes, an explicit commitment to work toward certain outcomes is essential.

Evidencing added value

Any tender proposal must ensure that it focuses on setting out how the bidding organisation (or partnership) will deliver the service specified by the commissioner. It must also show, assuming all minimum requirements are met, what is special about it, for what it is valued. Organisations need to be able to answer the question “why us?”

This could be done in the course of business planning or as part of a Best Value review. An organisation can initiate a discussion session that focuses on identifying its particular values, strengths and “unique selling points” – USPs in marketing jargon. In many cases this may be done as a joint board, staff and service user event. This discussion must then move on to how this can be evidenced and communicated. Assertions must be backed up by facts. If the “added value” claimed for a particular proposal has a cost, the organisation must be clear about how it resources this.

The Audit Commission report on commissioning services from the voluntary and community sector Hearts & Minds referred to the need for organisations to be prepared to provide evidence of their value rather than assume that their status as voluntary and community organisations is enough in itself to commend them to commissioners. Providers should not take anything for granted when submitting a bid, for example, responsiveness to service user needs. Commissioners may not be aware of how good an organisation is at this and you need to ensure it is highlighted in your description of your approach.

What can you expect from commissioners?

Practice in commissioning and procurement varies considerably across the country but there is a wealth of government guidance for commissioners on good practice in commissioning. The joint publication Think Smart Think Voluntary Sector, OGC Home Office Guidance 2004 advises commissioners to adopt the following good practice guidance when drawing up specifications.

Drawing up the specification

Focus on outcomes - not on how they are to be delivered. This challenges suppliers and gives them freedom to develop expert or innovative solutions. “Getting Better Delivery” notes that the achievement of outcomes should be used as a key indicator of success in service delivery.

Involve relevant stakeholders - particularly users, in the development of a specification to ensure it properly reflects the requirements for delivering the service.

Appropriate consultation with suppliers - specifications should be underpinned by appropriate consultation with providers. However, these consultations should not lead to a specification which favours a particular supplier.

Be alert to how the specification is assigning risks - the key to success lies in ensuring that risk is handled properly and sensibly. Risks should be allocated to the parties best able to manage them.

Make requirements clear and concise, avoiding jargon - avoid both under-specifying and over-specifying the requirement. The results could be costly and unnecessary.

Find out more

For examples of tender documents, the spkweb carries advertisements for SP funded services being tendered in its news and events section.

Check your own local authority's website for any services currently being advertised for tender.

The OJEU website has information on "Tenders Direct" – a service which tracks and notifies subscribers of tenders relevant to them, see www.ojec.com. There are a number of other similar commercial services available.

The Guide to Procuring Care and Support Services, produced for staff of local authorities and other public bodies, includes a template for a pre-qualification questionnaire, together with other model documents, see: http://www.spkweb.org.uk/Subjects/Capacity_building/Procurement+guide+templates.htm

2.4 Costing and Pricing

Cost

One of the first steps for a provider in understanding the service it is offering, or planning to offer, is to calculate its costs. Costing is defined as the classification, recording, analysis, reporting and interpretation of expenditure associated with the provision of services. It is an integral part of the management information systems of an organisation as it provides information on a routine or ad hoc basis to those who perform the functions of planning, control and decision making, including pricing. The fact that costing contributes to the task of pricing indicates that cost does not necessarily equal price.

Difference between cost and price

The amount of money a purchaser pays for a service is the price. In order for a provider to ensure that the price is at the right level for the service the price needs to be compared with the cost. It is important for both providers and commissioners to realise that cost is likely to be different from price, and that the price set may legitimately include elements such as direct costs, indirect costs or overheads, contingency amounts and a projected surplus or profit.

Analysing costs

Costing a service will be carried out regularly for internal or comparative purposes but one of the main reasons for costing is to be in a position to tender for contracts and justify funding bids. To assist these processes it is important to include all relevant costs that contribute to providing a service and not just those that are most easily identifiable and direct.

There are several aspects to consider when costing a service. It may be useful to choose to follow the commissioner's likely method of analysis to enable later bidding to be straightforward. In SP there are no agreed national rules for how cost or price is set, but there are some common breakdowns used. These include:

- Direct staff
- First line management
- Non staff direct scheme cost / price
- Indirect or overhead cost / price

It will probably be necessary to estimate costs for a time period longer than one year, and although these figures will be less exact than current year estimations

it should be possible to make reasonable assumptions. Such assumptions may include inflation levels, salary agreements, long term financing costs and internal strategic development plans. When costs are later used to influence the setting of a bid price it may become necessary to explain the logic or justifications used to calculate the price for reasons of transparency. This will encourage commissioner challenges to be made towards such assumptions rather than to the price itself. Including an element of surplus or profit in the bid price, in order to transfer to reserves or invest in service improvements, is reasonable and this should be explained to commissioners. Although it is impossible to state a specific level of surplus, common practice suggests that between two and five percent is acceptable. The Charity Commission has recommended that charities' reserves should be kept as a minimum at six months running costs.

Apportioning costs

One of the most important aspects of understanding accurate and appropriate costing of a contract is how to apportion costs. Apportionment could be both across services within an organisation, and across funding streams or functions within a scheme. Different funding streams may include housing, support, care, health, etc. Where costs are shared across the organisation or parts of it, or are shared within a scheme but there are multiple funders, it is essential to develop a clear and transparent method of calculating the cost burden to each section.

Likely costs to be apportioned are office rent and other indirect organisational expenses such as stationery, telephone, and shared direct and indirect staff such as Housing / Support Officers or Finance Managers. As salaries tend to be the highest area of expenditure within the sector it is worth focusing on making accurate apportionments of staffing costs as a starting point.

Apportioning staff time and costs

Initially it is important to be clear how staff posts are split between different services, showing which are scheme specific and which are shared. For shared posts it will be necessary to calculate a specific number of hours worked at each scheme. As an additional and separate calculation, for posts which are shared across funding streams within each scheme, it is also necessary to allocate the number of hours worked on different functions, such as housing and support, or support and care.

For example, the following grid A shows how staffing may be shared between different schemes in an organisation:

Grid A

Staff	Hours	Scheme 1	Scheme 2	Scheme 3
Housing Manager	35	17.5	17.5	
Support Manager	35	12.5	12.5	10
Support Officers	70	25	25	20
Director	35	14	14	7
Finance Manager	28	11	11	6
Administrator	35	14	14	7
Total	238	94	94	50

Total direct staff	140	55	55	30
Average proportion of direct staff time	100%	39%	39%	22%

The number of hours apportioned to each scheme should correlate to contracts already held for these schemes, or to staffing structures included in new bids. In this example, direct staff (housing manager, support manager, support officers) have been apportioned according to hours spent working at each scheme. The indirect staff have been apportioned according to the average proportion of time spent by direct staff. This is one way of apportioning staffing costs, but any method can be used as long as it makes sense and can be justified if challenged.

See below for an example of an organisational expenditure budget showing different schemes with some shared costs.

Organisational expenditure budget showing different schemes with shared costs:

	Total	Scheme A	Scheme B	Scheme C	Scheme D
Income					
Supporting People	781,434	261,301	311,574	147,259	61,300
Adult Social Care	121,050				121,050
Rent / chgs less voids	125,970	125,970			
Interest / donations	39,500	10,270	14,220	6,715	8,295
Total income	1,067,954	397,541	325,794	153,974	190,645
Expenditure					
Staff costs					
Support workers * 15	421,200	105,300	175,500	84,240	56,160
Care workers * 2	56,160				56,160
Housing manager	28,080	28,080			
Support managers * 2	69,030	17,751	28,598	13,806	8,875
Director	43,289	11,255	15,584	7,359	9,091
Finance and admin	62,595	16,275	22,534	10,641	13,145
Travel and subsistence	33,653	8,750	12,115	5,721	7,067
Training	53,847	14,000	19,385	9,154	11,308
Recruitment	19,231	5,000	6,923	3,269	4,039
Volunteer expenses	11,538	3,000	4,154	1,961	2,423
Accommodation costs					
Bad debts	6,299	6,299			
RSL sink fund and maint	30,000	30,000			
Council tax	8,775	8,775			
Water rates	3,500	3,500			
Heat and light	17,500	17,500			
Furniture replacement	25,000	25,000			
Redecorations	15,000	15,000			
Repairs and renewals	25,000	25,000			
Elec and fire alarm test	13,500	13,500			
Garden	10,500	10,500			
TV	680	680			
Other costs					
Office rent and services	17,000	4,420	6,120	2,890	3,570
Office rates	3,500	910	1,260	595	735
Office furniture and equip	8,000	2,080	2,880	1,360	1,680
IT and telephone	13,400	3,484	4,824	2,278	2,814
Print, post and stationary	6,000	1,560	2,160	1,020	1,260
Legal and professional	5,000	1,300	1,800	850	1,050
Insurance	7,000	1,820	2,520	1,190	1,470
Publications and subs	5,000	1,300	1,800	850	1,050
Health and safety	6,500	1,690	2,340	1,105	1,365
Depreciation	2,500	650	900	425	525
Audit	4,500	1,170	1,620	765	945
Bank charges	1,000	260	360	170	210
Sundry expenses	3,500	910	1,260	595	735
Total expenditure	1,037,277	386,719	314,637	150,244	185,677
Surplus / (deficit)	30,677	10,822	11,157	3,730	4,968

The following Grid B shows how staffing may be shared across funding streams within the same scheme, using Scheme 1 from Grid A above:

Grid B

Scheme 1	Hours	Housing	Support	Care
Housing Manager	17.5	17.5		
Support Manager	12.5		10	2.5
Support Officers	25		20	5
Director	14	4.5	7.5	2
Finance Manager	11	3.5	6	1.5
Administrator	14	4.5	7.5	2
Total	94	30	51	13
Total direct staff	55	17.5	30	7.5
Average proportion of direct staff time	100%	32%	54%	14%

The number of hours apportioned to each funding stream is based on reality as far as possible according to the number of hours spent on different functions within the scheme.

Once direct and indirect staffing costs have been apportioned the indirect or overhead costs will need to be assessed. Again there are a number of different ways of sharing these costs across funding streams and it is important to select a method that makes most sense when analysing a specific scheme. Some methods are outlined below:

- Using the same proportion as direct staff apportionment (eg. 81% support, 19% housing)
- According to the specific function of the overhead (eg. rent of a specific room which is used for support only)
- According to the estimated use of the overhead (e.g. telephone used approximately 50% housing, 50% support)
- Using any other method based on a common sense scenario

See opposite for a scheme expenditure budget showing costs shared across different funding streams.

Scheme budget showing costs shared across different funding streams:

Expenditure	Total	Housing	Support
	£	£	£
Staff costs			
Support worker	21,060		21,060
Housing manager	5,616	5,616	
Support manager	3,550		3,550
Director	2,251	428	1,823
Finance and admin	3,255	619	2,636
Travel and subsistence	1,750	333	1,417
Training	2,800	532	2,268
Recruitment	1,000	190	810
Volunteer expenses	600	114	486
Accommodation costs			
Bad debts	1,260	1,260	
RSL sink fund and maint	6,000	6,000	
Council tax	1,755	1,755	
Water rates	700	700	
Heat and light	3,500	3,500	
Furniture replacement	5,000	5,000	
Redecorations	3,000	3,000	
Repairs and renewals	5,000	5,000	
Elec and fire alarm test	2,700	2,700	
Garden	2,100	2,100	
TV	136	136	
Other costs			
Office rent and services	884	168	716
Office rates	182	35	147
Office furniture and equip	416	79	337
IT and telephone	697	132	565
Print, post and stationary	312	59	253
Legal and professional	260	49	211
Insurance	364	69	295
Publications and subs	260	49	211
Health and safety	338	64	274
Depreciation	130	25	105
Audit	234	44	190
Bank charges	52	10	42
Sundry expenses	182	35	147
Total expenditure	77,344	39,801	37,543
Direct staff proportional split:			
Support	81%		
Housing	19%		

Value for money

Value for money has long been high on the agenda of government commissioners. In 1998 the government made its first large scale review of all spending programmes using a zero based analysis. After a number of subsequent reports the Gershon Efficiency Review in 2004 committed government to deliver gains through efficiency savings of £21.5 billion by 07-08. £6.45 billion of this was to be saved through local authority efficiencies alone. The report clearly defined 'efficiencies' which can be broadly summarised as the ways and means to achieve more for the same or the same for less.

The government defines value for money as: "...the optimum combination of whole life cost and quality (or fitness for purpose) to meet user's requirements", Office of Government Commerce. Various methods have been used by commissioners to test for value for money, and in SP teams there has been an increasing focus on refining these methods in line with the general government direction towards more 'efficient' working. Central government SP guidance has always paid attention to the importance of assessing quality as well as cost although reducing budgets and the continuing pressure to make savings has resulted in some areas having a significant focus on price reductions.

Unit cost or 'support hour cost/price'

One common method of assessing value for money recently has been to calculate a unit cost or price for providing an hour of support in a particular scheme, sometimes known as the 'support hour cost / price'. It is important to verify with SP teams how they specifically define this measure because different methods are in use in different local authorities. Some of the methods are:

- Direct support staff costs - the weekly cost of direct staff salaries (as defined in the contract) including first line management divided by the number of support hours provided in a week.
- Direct and indirect total costs - the weekly total cost of the scheme divided by the number of support hours provided in a week.
- SP contract income - the weekly price paid by SP (as defined in the contract) divided by the number of support hours provided in a week.
- Total income - the weekly income total for the scheme (including SP and non-SP income) divided by the number of support hours provided in a week.

Each method analyses a different piece of data and, as such, each can offer useful

information both to the provider and commissioner. It is important to understand that the different methods cannot be arbitrarily compared as only a like-for-like comparison will be meaningful. In other words, if one local authority calculates a support hour cost based on direct staff salaries only, and another bases their calculations on the SP contract price, the results cannot be meaningfully compared.

Although few commissioners will examine submitted bids based on price alone it is worth finding out how much emphasis will be placed on this. Each set of tender documentation should include a breakdown of how bids are to be assessed and it is likely that price will form a significant percentage. It is also worth getting an informal feel for how a particular local authority approaches matters of price and quality. Through discussions in a local forum, website or other publication, or simply through conversation it may be possible to build a picture of the commissioner's likely direction of decision making. Anecdotally, some SP teams have suggested that 'A grade' services are too expensive for their budget, whilst others appear to be looking for the highest possible quality. Some will benchmark minimum quality first and then look at cost on those only passing the quality test.

The Compact and Full Cost Recovery

The Compact is an agreement between the government and the voluntary and community sector (VCS). It is designed to improve the relationship by outlining commitments to which both sides have signed up. The principles of the national compact are set out in a number of Codes of Practice including one on funding and procurement.

The intention is to deliver value for public money by securing the best possible outcome for all parties promoting, for example, fair and effective processes and longer term planning. There are individual Local Compacts in every local authority to support relationships between local government, the VCS and other public bodies.

Included in the Compact is the recommendation that funding is carried out using the principle of full cost recovery. This means that VCS organisations are committed to knowing their own costs and are able to show the full and realistic costs of providing services, including appropriate levels of indirect and overhead costs. Government commissioners are similarly committed to understanding the necessity of including reasonable overhead costs in service calculations and to offering funding to meet the total cost of services.

It will be no surprise to many that the Compact and the principle of full cost

recovery have not always been recognised in local authority commissioning. If it were used more within the sector on both sides of the funding divide it would certainly do much to encourage long term viability and strengthen contract relationships. For the moment, there is some work being done by NCVO to challenge breaches in the Compact through advocacy and mediation, and the Compact remains as a voluntary agreement.

Whether or not commissioners understand the need for full cost recovery it is essential that provider organisations start the process of establishing their own costs by using such techniques. Pricing may not always follow costing figures, as outlined below, but the risk of not starting from a place of full information is significant.

Full cost recovery cannot always even out the differences between organisations. Some providers may have access to additional resources that serve to subsidise the full costs. It is also possible that competitors will not analyse their own costs in full and will risk setting a price to undercut the true cost of provision. This is risky not only to that service and its organisation, but also to the whole sector. If unrealistic expectations are created by undercutting price techniques it will inevitably follow that the true cost of providing quality services may begin to seem high to commissioners. The quality and stability of services may eventually suffer.

Although it is important to include the full cost of service provision, it is equally essential that providers are aware of the need to make their organisations as efficient as possible. The national budget for services is unlikely to increase and the reality is that only those organisations that are able to adapt to changing circumstances will continue with a stable future.

The principles of full cost recovery should not be difficult to include in day to day finance processes in provider organisations. If help is required a tool has been developed by New Philanthropy Capital and the Association of Chief Executives of Voluntary Organisations (ACEVO). This practical application may help voluntary organisations to understand and calculate their costs and allocate them appropriately. The guide, called Full Cost Recovery: A guide and toolkit on cost allocation (2005), includes step by step explanations to help calculate the full costs of a service.

Setting the contract price

Price setting may take a slightly different form in different tenders. When bidding for a new or current service provider organisations may be asked to comply with one of the following:

- To set a price for a specified service
- To specify a service against a set price
- To meet a price cap
- To specify a service and set a price

We have established that there is a clear difference between cost and price. The price may be higher or lower than the cost and it is essential to know which it is, especially if the price is fixed by the purchaser. Decisions about whether to bid for a fixed or capped price should be made carefully and with full knowledge of the realistic and full cost.

In addition to full cost recovery implications it is important to consider the following: the need for a surplus or profit to build reserves and long term viability; contingency for unplanned events; the position of the organisation in the market; and internal longer term plans around development and sustainability.

A price should always be set once the costs have been calculated. There is not, however, one single method of setting a price. As long as all factors have been considered, and decisions have not been made in ignorance, pricing policies may be flexible to meet the needs of the organisation. Policies may be cost related, market related or competitor related; other factors that may determine the price set include:

- Whether or not the organisation is a market leader
- Whether there is anyone else able to deliver the service
- Which other organisations may be tendering to provide the service
- What price the purchaser is willing or able to pay
- Whether this service will lead to further commissioning in the future
- Whether marginal costs only need to be covered
- Whether subsidy is available from internal resources

Other factors to consider include economies of scale for your own and other known organisations, the reputation of your own and other organisations and the uniqueness of service.

If pricing is decided at a level below cost then careful calculation of future projections must take place. The service and the organisation as a whole need to work towards ensuring a viable future and as such should be able to answer the following questions:

Why is the price being set at this level?

What are the actual costs?
How will the costs be covered in the long term?

When pricing a bid for a specific tender it is worth remembering that the figures submitted may well form the basis for a subsequent contract, which is legally binding. Although there may be some scope for contract negotiation it is unlikely that a significant change to bid price will be accepted. Thus the potential scheme structure regarding staffing levels, salaries, other direct and indirect costs and details of provision of service must be prepared carefully and realistically.

Benchmarking

In this time of increased competition and detailed analysis of service delivery it would seem wise to make some effort to ensure that work that is carried out in our own organisation compares favourably with others. Much emphasis has been put on comparisons made externally by commissioners through service reviews, quality monitoring and cost analysis; little attention has been paid, until recently, to the benefits of providers carrying out their own assessments. Taking responsibility for comparing services gives a sense of ownership of the results and is likely to lead to action to work towards improvement.

Benchmarking describes a practice of comparing like with like. It can be both a formal process, such as a written agreements between two or more organisations to share specific data, or informal, including checking the local paper for job adverts showing salaries offered for comparable posts. We probably all do some form of benchmarking in our organisations although we may not identify it as such. Benchmarking is not just about cost comparison. It is equally a measure of quality, even if this is often forgotten. Sitra, the National Housing Federation and HouseMark have been running a successful provider benchmarking project for a number of years. For more information go to: www.sitra.org.uk or www.housing.org.uk

SP teams have used different methods of analysis when carrying out service reviews, but there is a common form of analysing costs within organisations that has most often been used. For benchmarking purposes it may be useful to follow the practice of using the following divisions:

- Direct staff
- First line management
- Non staff scheme costs
- Overheads or indirect costs

Where costs do show higher than a group average it is important to consider what the reasons for this may be. It cannot be assumed that poor value for money is being offered until issues of quality are taken into account. Some example questions to be asked include:

- Is the quality at the right level for this service?
- Is the comparison between like services?
- Are support levels affecting the comparison?
- Is the service unique such that comparison is difficult?
- Have there been recent changes since the data was produced?
- Does the service offer added value?
- Have issues of economies of scale been taken into account?
- Is the infrastructure of the service / organisation appropriate or expensive?

TUPE – financial implications

TUPE is likely to be part of many procurement situations. This is a complicated issue and specialist legal advice should be sought as early in the process as possible.

Commissioners give information of varying quality with regard to likely TUPE implications in a tender. It is important to ask for as much information as can be given as early as PQQ (pre qualification questionnaire) stage, or before, including numbers of staff involved, salary levels, terms and conditions, etc.

Some issues to consider when setting a price for a contract where TUPE is likely to apply include:

- Salary levels of TUPE staff
- Other terms and conditions of TUPE staff – including pensions, annual leave, sick leave, other leave, redundancy, etc.
- Office or building costs associated with TUPE service if relevant, plus overheads and relationship with new landlord
- IT costs both in terms of capital equipment and software for the new service staff and for potentially aligning a new system with a current one
- Legal costs
- Team building, training and induction needs for current and new staff including

dealing with differences in terms and conditions, learning new systems and processes, organisational or team away days to address values

- New systems and processes including payroll (dates of pay, amounts) and personnel files and records

A full risk assessment is essential before beginning a process of TUPE. There is likely to be a huge investment in time and other resources in order to carry out a smooth and successful transition. It is a procedure that will inevitably have an emotional impact on many of the individuals involved and the need to address, and to budget for it, is as important as all other financial implications. TUPE may have a significant impact on all areas of an organisation and the implied costs need to be taken into account.

Find out more

- Office of Government Commerce www.ogc.gov.uk
- The Compact www.thecompat.org.uk
- NCVO Compact Advocacy team www.ncvo-vol.org.uk/compactadvocacy
- The Benchmarking Project www.sitra.org.uk

2.5 Working in Partnership

Introduction

The term partnership working is widely used and can mean different things to different people. In the context of this section we use the term partnership to mean a formal joint collaboration between providers to bid for and deliver contracts for Welfare or Supporting People services. We will examine why providers might want to consider partnership working and the potential benefits. We will explore the different options for partnership and look at what issues to consider when thinking about getting into partnership arrangements. We are not using the word partnership in its formal legal sense which is a partnership created by two or more parties to make a surplus or profit. In a legal partnership the partners will be jointly and separately responsible for all the partnership's debts and liabilities. In any case, we would advise providers considering partnerships to get legal advice on arrangements where necessary.

Why work in partnership?

So far, in the SP world providers have been slow to embrace partnership to win competitive tenders for Supporting People services. This does seem unusual in a sector which has a strong history of partnership working between housing associations and voluntary agencies and between the voluntary and statutory sector. Is there perhaps some reluctance from providers and commissioners because of the perceived risks if it doesn't work out? Or has the focus on competition distracted us from the potential of working together?

There have been relatively few contracts won by consortia or other forms of partnership but interest in partnership is growing and there have been some recent successes. The size of some tenders in particular has led to many organisations to consider that partnership is perhaps the only way to secure a role in delivering Supporting People services. Some smaller organisations just don't have the capacity or experience to bid and wouldn't be able to cope with the sudden expansion a large contract might bring. Failure to win existing contracts can lead to significant loss of business, threaten the viability of organisations and lead to less choice for service users. Working in partnership can bring advantages for organisations and communities by enabling the sharing of expertise and resources and bring greater choice for the service user. They can also be a more effective voice with local commissioners. For commissioners they allow some rationalisation of the number of contracts they manage and protect the diversity of provision without the duplication of effort that the sector can sometimes be criticised for.

There has been some encouragement from central government for the third sector to work collaboratively and look at the added value partnership might bring. Independence and Opportunity, the CLG strategy for Supporting People (2007) states:

"We would also like to see more partnership and collaboration, as part of the ongoing effort to improve services and value for money. Developing consortium approaches, for example, where one organisation holds the main contract as an umbrella for others (including smaller and specialist organisations), can provide a number of opportunities to streamline delivery and improve efficiency through reduced overheads."

On a more cautious note though a report on collaboration by the National Council for Voluntary Organisations (NCVO 2005) 1+1=3 Does Size really matter? concluded that although there are many benefits to be achieved by partnership working, it should not be seen as a panacea. It states that 'partnerships have to be about more than competitive advantage; organisations crucially need to share the same vision and partnerships have succeeded where time has been taken to thrash out the nuances of their shared vision'

For providers considering partnership bids, there are a number of critical factors to consider in advance. Section 3 looks at business planning and risk management as a way of managing better the challenges of competitive procurement. This applies equally to the risks associated with partnership working and organisations should consider the following questions ideally in advance of any tender opportunity:

- What is the purpose of the collaboration – is it to win the contract or learn from others and gain a track record?
- Will collaboration increase the chances of winning the contract – due to price, skills, quality or added value?
- Will the authority agree to consider joint or consortium bids?
- What are the strengths and weaknesses of potential partners and what they will bring to the collaboration – will the benefits be equal or acceptable?

The expectations of regulatory bodies

Registered charities

The Charity Commission identifies a number of key questions which need to be considered when considering partnership working including:

- Does your governing document include a power allowing you to co-operate with, other voluntary organisations?
- Will there be measurable benefits to service users and beneficiaries?
- Will there be cost savings for your organisation?
- Will collaboration affect your potential income?
- Will collaborative working 'add value' to your organisation's work which justifies the time, effort and money invested in the collaboration?
- What will you lose by working on your collaborative project?
- Do you risk 'mission drift' because collaborating would mean moving away from your organisation's main aims?
- Will the structure of your organisation be affected by the change and, if so, how will you deal with the long-term implications?
- Will collaboration change your organisation's other existing relationships?

Collaborative Working and Mergers (RS4), Charity Commission 2003 places a particular emphasis on considering the risks associated with collaborative working. It states: "Risk assessments should also be carried out for collaborative working. Due diligence (sometimes called 'full disclosure') is an exercise which unearths the information that organisations need to be able to judge whether they should go ahead. Due diligence tailored to the voluntary sector should uncover potential legal, financial and operational liabilities". This obligation applies to a registered charity whether it is a consortium provider or a lead agency for the consortium.

Key issues

- Trustees must be informed of any plans for partnership
- Participation must be in the interests of the charity

Registered Social Landlords (RSLs)

RSLs are also required by the Housing Corporation to fully assess the business risks associated with entering into a contract with another organisation

The Housing Corporation's Regulatory Code requires RSLs to:

- Be clear about what services they are contracting and ensuring that these are set out in an appropriate agreement.
- Assess the business risk involved in entering into a contract with another organisation

This risk assessment should cover governance, financial viability, employment of staff and competence to provide the service.

Benefits of partnership working

There are benefits to working in partnership and the NCVO have identified the following:

- New or improved services with better outcomes for service users
- Wider geographical reach or access to new groups
- More integrated approach to needs
- Financial savings and better use of existing resources
- Knowledge, good practice and information sharing
- Sharing the risk in new and untested projects
- Capacity to replicate success
- Stronger, united voice
- Better co-ordination of organisations' activities
- Competitive advantage
- Mutual support between organisations

Ultimately collaborative working should enable you to better meet need.

There are risks, though, which potentially include

- Outcomes do not justify time and resources
- Loss of flexibility in working practices complexity in decision making and loss of autonomy
- Diverting energy and resources away from core aims
- Damage or dilution to your brand or reputation damage to organisation and waste of resources if collaboration is not successful
- Lack of awareness of legal obligations
- Stakeholder confusion

The challenges of partnership working

- Shared vision and values
- Shared business planning
- Board commitment from all partners
- Formal written agreements and protocols
- What are governance arrangements?
- Where does start up finance/working capital come from?

- Understanding of different cultures and working practices
- Mutual understanding and trust
- What are strengths and weaknesses of members?
- How well do you get on with each other?

Options for partnership

The NCVO study (2005), looked at collaborative working between large and small voluntary organisations. It identified four basic structures which are recognisable in many of the arrangements we are beginning to see develop under Supporting People.

1. Consortia, with a large organisation acting as accountable body
2. Consortia with a new independent body
3. Large organisation which formally sub-contracts with a range of small organisations
4. 1 Large + 1 small: “a partnership of equals”

The study sets out four models in terms of the variety of management arrangements between the organisations, but in legal and financial terms the options are more limited. In all cases except for the independent consortia arrangement, one lead agency held the contract and the arrangements with partners involved sub-contracting. For example, in one case study described as a ‘partnership of equals’ a joint management board oversaw the project but one organisation held the contract and bore the financial risk. (The equality referred to was therefore related to mutual respect and valuing each other’s contributions rather than legal or contractual equality.) In contractual terms this effectively means subcontracting to the other body. So, whatever the management arrangements are, there appear to be three options in legal and contractual terms:

- Consortium where a separate organisation is set up as a new independent body;
- Consortium where one agency as accountable body and lead agency, holds the main contract with the commissioner and sub-contracts with the other partners, with an over-arching consortium agreement between all the partners and usually some form of steering group or governing body to oversee it;
- A sub-contracting arrangement where one agency holds the contract with the commissioner and sub-contracts to other service providers

It is outside the scope of this publication to look at how to set up a separate independent organisation. We believe that for most SP tenders, providers are unlikely to want to set up independent partnership bodies. In relation to the risks, time and effort, the short term nature of most SP contracts would lead to questions about whether or not it might be worth the effort to do so.

Options for partnership - Consortia

Setting up a consortium does take time and requires a very realistic appraisal of the risks for all partners. It can't happen overnight and the experience in the supported housing sector and in other sectors indicates that the time spent on relationship building is as important as getting the legal framework right. It also requires commissioners to be supportive and open to the idea that a number of organisations with a common goal is a credible way to effectively deliver services.

Consortia have been described by cynics as “the suppression of mutual loathing in the pursuit of cash”! If this does form the backdrop for a consortium it will surely fail. The experience of others is that mutual trust is vital for their success. It may be preferable to think of consortia as mutual co-operation to fulfil shared goals. This perhaps is more easily achieved if they develop out of existing working partnerships. Where this isn’t the case, organisations need time to develop mutual goals and commissioners need to support that process.

Case example 1 Community 4 Consortium in Wiltshire

The Community 4 Consortium was the first in the country to win a Supporting People Contract for floating support. Consortium partners are Alabare Christian Care (Alabare), Drugs and Homeless Initiative (DHI), Splitz and Westlea Housing Association

Establishing Community 4 (C4) was a bit like creating a new company from scratch yet more complicated, as C4 is not a legal entity. It also had to be compatible with the four partnering organisations' ways of working and institutional cultures!

The first step to forming C4 was for one organisation to take the lead and contact potential partners to set the ball rolling. It was clear from the outset that the potential partners were committed in principle but in practice there were a number of concerns and unknowns with the added complication of the partners being potential competitors. A number of key factors enabled C4 partners to overcome this:

Creating a shared vision

Creating a consortium identity

Understanding each organisations culture and expectations

Openness and honesty

Appointment of a consortium project manager

Commitment of all four Chief Executives

And above all a shared determination to ensure that quality-floating support services continued to be delivered by local providers.

What worked?

C4 identity

Very early on in the process the consortium was given its own identity and branding which enabled the partners to focus on winning the tender rather than on internal differences.

A Project Manager with teeth!

A project manager with the authority to lead and direct all members of the consortium was essential to the successful formation and sustainment of the consortium by managing the multiplicity of tensions between and within the partner organisations

Timely, excellent legal advice

From the outset the consortium took legal advice about the creation of a consortium and the necessary legal agreements and as time went on the inevitable subject of TUPE.

Lessons learnt

One of the biggest challenges was the development and implementation of IT systems that worked for the individual organisations and for C4 and managing the TUPE process. In hindsight appointing a project manager from day one to co-ordinate the participation of all partners' IT, HR & finance representatives, may have avoided some teething problems.

Mark Lake Westlea HA and Rachel Wetton, Alabare

Case example 2 The SNAP Experience

In 2006 Suffolk Supporting People decided to reconfigure the existing floating support services for 600 clients being delivered by 19 different organisations. Suffolk's commitment to existing providers and partnership working meant the tender was divided into seven individual tenders, one for each of the seven district councils. The tender documents and specs made clear that partnership working was to be encouraged.

The tender was in two parts. A PQQ stage (Pre Qualification Questionnaire) followed by an invitation to tender where PQQs were successful.

IHAG, a small voluntary organisation delivering services to homeless people, principally in Ipswich arranged meetings of all the existing providers - 19 in total of which only 13 were interested in bidding.

Prior to submitting the PQQs, a further 3 members pulled out for their own internal organisational reasons. The remaining 10 entitled themselves the Suffolk Non Accommodation-based Partnership (SNAP) and jointly submitted their PQQs.

All of the 10 signed an agreement and a set of guidelines confirming that by submitting their PQQs jointly, they would not bid separately. Secretly, three of the organisations also submitted independent PQQs contrary to the agreement and later withdrew to pursue their own bids in a loose partnership arrangement. One of the remaining seven later decided on strategic grounds to bid on their own for one part of their district. This left six organisations with a combined contract sum of about one third of the total on offer.

These six organisations were a good mix of small and local voluntary sector organisations, housing associations and national providers covering a range of client groups which supported the provision of a holistic service under the new contract.

SNAP has been provisionally offered six of the seven districts with the seventh district offered to the seventh member who left to bid on their own. Currently we are waiting the result of a stand-still period, following a challenge by a losing provider who was one of the ones who was in SNAP originally but who secretly submitted a separate PQQ at the same time as the SNAP ones.

The key ingredients in winning this bid were: -

- having a determined, knowledgeable and motivated person to get the process underway.
- employing an excellent and experienced consultant who, in consultation with the partners, wrote the bid but also provided valuable clarity, direction and an objective perspective which greatly assisted us to work together.
- having a Supporting People team and Commissioning Body committed to maintaining a diversity of providers.
- SNAP providers working together positively, openly and equally.
- having a complete diversity of skills mix and organisational type.

- each of the partners being well respected locally and particularly by SP already.
- being bound together by a common purpose and in the spirit of integrity, honesty, openness and respect which became the four key principles on which the partnership was formed.
- Commitment to improving the service for service users.

Tips for Providers

- 1 Don't trust anyone - sadly, this is the most important lesson to be learned.
- 2 Conversely finding people who you can absolutely trust and work closely with and whose integrity you respect is one of the joys of forming a partnership.
- 3 However good your individual service is it is amazing how good other people's can be, how they can bring different things to the table and how you can complement each other if you get the right mix.
- 4 Keep the consortium small; the ten original consortium members already had 70% of the service that was being tendered for so room for flexibility was limited. Too many predetermined individual organisational requirements would have had to be met before the service could be delivered.
- 5 Of the six that remained, each had relatively small contracts with few pre determined organisational requirements to accommodate and so could be totally flexible - designing the new services as if from scratch.
- 6 Meet often, discuss everything, don't talk to people outside the partnership, except to gather intelligence on what your rivals are up to. Use whatever networks and forums available to you to influence strategic direction.
- 7 Create a name for your group as soon as possible and build a brand.
Creating a website only costs £30.00.
- 8 Make sure all your communication with the procurement department, SP and other providers is through one nominated person and adheres to your corporate profile.
- 9 **BUILD A BRAND**
- 10 Communicate, communicate, communicate; with existing staff, with service users, between yourselves. We held meetings, we issued newsletters, promoted the brand, talked it up, paid attention to detail.
- 11 Every procurement is done in a points-driven way. Ensure you understand what you get points for. Make sure that you mention everything - use your method statements, to bring to their attention what you will deliver and evidence your expertise.
- 12 Costings; get these right, no one is going to win a tender at much over £18.00 per hour. However make sure your costs will allow your service to be sustainable for the duration of the contract, in our case three years with a two year extension, and convince SP that quality costs money but is sustainable and cost effective in the long run.

Halford Hewitt (IHAG)

Contractual arrangements for consortia

Before submitting tenders consortia will have to demonstrate that they have robust arrangements in place to enable the group to manage the contract and deliver services. It will have to demonstrate that legal arrangements have been considered and are in place including:

- Overarching consortia agreement
 - values, vision etc
 - roles and responsibilities
 - joint working practices
 - governance
 - practical arrangements
- Sub-contract or service level agreement with each consortia member

A lead agency

The lead agency model so far seems to be the most common way of developing consortia. The lead agency will hold the main contract and enter into agreements with their consortia partners – effectively subcontracting, but an overarching consortia agreement will set out how members work together, including decision making, management of risks and responsibilities along with a number of schedules or sub-contracts for the parts of the service delivered by consortia members. Projects can be jointly managed in a transparent way by setting up a consortium management group to balance the power relationship within the consortium, but partners must recognise that the lead agency is ultimately accountable. Arrangements need to acknowledge and consider risks for lead agency and consortium members.

Role of lead agency

Consortium partners will need to choose a lead agency which has the infrastructure to handle its role as contract manager. The lead agency will:

- Be legally and contractually responsible for the services provided by the consortium
- Receive payments and provide monitoring information to commissioners
- Collect performance data from the support provider and ensure they completes the SP client record and outcomes forms
- Ensure that the Quality Assessment Framework self assessments take place and that these are communicated to commissioners

- Check the quality of the contracted services (i.e. periodic performance reviews based on risk)
- Participate in any contract reviews
- Work with consortium partners, make payments to the partners

The lead agency may be one of the consortium members delivering some of the front line services or may have a purely managing and co-ordinating role. In either case, the cost of this work must be accounted for in the consortium's budget. In the latter case there may be implications for VAT liability, see later section of this section.

So far we have focused on consortia as the way to tender in partnership for large contracts. These have real potential as a positive way for providers to come together to deliver services and successful consortia have been set up well in advance of services going out to tender. They have had most of the agreements in place before putting together a bid; looked at how they will manage the risks involved in partnership working and will have gone through all the difficulties associated with group formation. Management of consortia is time consuming, but the advantage they have over other arrangements in that there is a greater equality between partners.

Options for partnership - sub-contracting

There are times when it may not be possible to set up consortia, either because of time factors or because providers have chosen different arrangements. So what are the alternatives? One solution is a simple sub-contracting arrangement. In this case, the SP commissioner awards the contract to one provider who then sub-contacts a range of services (with agreement from the SP Team) to other providers. In the early days of SP this was seen as unnecessarily bureaucratic, especially when it was possible for the first time for all organisations to get their revenue funding directly from the commissioner. As SP teams seek to reduce their administrative costs, contracts may be bundled together sometimes making it increasingly difficult for small and even medium sized organisations to bid on their own. The sub-contractual model allows organisations to work together, on the basis of their strengths, expertise and diversity. It is probably wise to ensure that a largish organisation holds the main contract and can manage a range of sub-contractual relationships. It needs to be recognised though, that the administrative costs of managing contracts do not disappear – they are passed on to the main contractor who becomes responsible for contract compliance of their sub-contractors. As for consortia, the main contractor may also provide front line services or may be a company or voluntary sector organisation providing only management and co-ordination services.

This sub-contracting relationship is not quite a collaboration in the same way as a consortium might be, though there are similarities, as the main contractor holds a greater balance of power. The sub-contracting organisations need to be pragmatic about equality as the main contractor will also have to manage much of the risk. Any provider who has been or still is involved in an RSL/agency relationship will recognise the similarities of this model and the importance of relationship management to make the arrangements work.

VAT implications for partnerships

Value Added Tax (VAT) is not an issue for providers where the service meets HM Revenue and Custom's definition of "welfare" and the provider organisation has recognised charitable status. If however one of the members of a consortium is not a recognised charity it may have to charge VAT on services provided to other members. If one of the members (whether or not a charity) provides administrative or management services which were not accepted by HM Revenue and Customs as ancillary to an exempt service, they may have to charge VAT. Briefings on VAT for Supporting People services and VAT for partnerships have been produced by Sitra/NHF and the Association of Chief Executives of Voluntary Organisations (acevo), see listing at end of this section, but for any specific proposal expert advice must be sought. Any advice obtained from HM Revenue and Customs must be in writing to avoid misunderstandings.

Case example 3 Sub-contracting partnership

Northern social inclusion charity Developing Initiatives Supporting Communities (DISC) and 12 Lancashire charities banded together in 2007 to win two Supporting People contracts worth £2m over 3 years to provide floating support across North, West and South Lancashire. They agreed to bring together all the many types of housing support previously on offer into a more equitable and accessible gateway service known as Compass. It provides a single point of access. Anyone in need of help can ring, text, email or visit a free COMPASS contact number and address, talk to an outreach worker and arrange an initial assessment to agree what help they need and which specialists will help them.

Services offered

Users range from people facing difficulties coping because of their age, such as teenage parents and older people, to people coming out of hospital or prison, and people with drug, alcohol and mental health problems. Services offered include help setting up and maintaining a home, assistance with benefits and grants, practical independent living skills, help with health, and support to access work and training opportunities.

Contractual arrangements

DISC is the main contractor for floating support services to a wide range of groups in North, West and South Lancashire. The 12 charities are legally 12 sub-contractors. But in practise DISC works with them as partners. It does so by putting a set of arrangements in place to allow everyone to feel they are genuinely part of a partnership. For instance there is a Compass steering group, which meets monthly, and has a remit to drive forward service development on a mutually agreed basis. The contracts were awarded by Lancashire County Council on behalf of the Supporting People Partnership, which includes all of the 13 District, Borough, City and County Councils, Lancashire Probation Board, and the three Primary Care Trusts in Lancashire.

How DISC got the partnership up and running

DISC staff went over to Lancashire to talk about DISC's culture and values to other voluntary sector organisations who were aware that they were too small to bid for the new Supporting People contracts by themselves. DISC then held a consultation event, and asked those who attended to get in touch if they wanted to work in partnership in a way which preserved their local knowledge and expertise. DISC executive director Mark Weeding said: "We didn't say that we pay x pounds an hour for this and y pounds an hour for that. We talked about what we believe in and how we work. The main lesson to pass on is that it's important to work with organisations who share your culture and values, otherwise it's difficult to resolve issues when they arise."

Background on DISC

DISC (Developing Initiatives Supporting Communities) is the lead partner. It is based in Co Durham and works across the North East, Yorkshire and Lancashire to combat deprivation and engage with people with lives in crisis. Its work is structured into 4 main areas: employment and training, problematic substance abuse, independent living and housing support, and vulnerable children, young people and families. It has a track record of providing adaptable and flexible floating support services in Co Durham and the Tees Valley, which enable people to access appropriate accommodation, make a success of their tenancies and live independently.

Names of 12 Lancashire charities

Lancashire Young Homeless Project, Lancaster and District Homeless Action Service, Inward House Projects, Lancaster and District Women's Aid, Preston Women's Refuge, West Lancashire Women's Refuge, Progress Care Housing Association, Richmond Fellowship, South Ribble KEY, Chorley and South Ribble Mind, Together: Working for Wellbeing, and North West Community Services.

Case Example 4 One small, one large – sub contracting arrangement

Look Ahead Housing Association is a large specialist organisation and works in 21 local authority areas. They believe that it's the diversity of the sector which feeds innovation, new service models, new insights into how to support emerging needs. They work with EACH, a BME agency working in West London with people with support needs relating to substance misuse or domestic violence. They applied jointly to the National Treatment Agency (NTA) for funding for a supported housing project with on-site after-care counselling. They have been awarded the NTA money, and are working on putting together the rest of the capital and revenue package. Look Ahead was introduced to EACH by a Board member who knew both organisations well, and thought they could work usefully together. This was an ideal start to a partnership since it wasn't driven by specific commissioner demands and time pressures.

Working together on this initiative for several months meant that they got to know and trust each other enough to think about other joint initiatives. When Brent SP team indicated they wanted involvement of small local groups in their re-tendered floating support service, EACH and Look Ahead were obvious partners. They were successful, and have decided on a sub-contractual arrangement. Look Ahead will sub-contract around one third of the contract to EACH.

They will recruit and employ their own staff, but both organisations will share an office and work as an integrated team. A Look Ahead manager will manage the team on a day to day basis but the EACH staff will retain strong links with other EACH colleagues. They can both see clear gains: the best practice from each organisation will be shared with the other; EACH have won part of a contract which they would not otherwise have been able to bid for; Look Ahead increased its chances of winning by working in partnership, and has gained access to a new range of expertise and contacts.

Check list for submitting a tender in partnership

- Consult with board/management committee about intention to enter into partnership
- Assess risk of entering into such a partnership
- Secure agreement of board/management committee
- Develop/sign agreement (including confidentiality) with partners about how to proceed
- Agree (if not already done) who will act as lead agency if a consortium
- Set up steering group amongst consortium members

Ensure you have agreement on the following:

- contract with partners
- hourly rate for any tender submission (consider benchmarking)
- management fee for lead agency re contract monitoring
- approach to quality and outcomes monitoring
- approach to collection of information
- referral arrangements
- service capacity of each provider
- TUPE implications
- set up a tender steering group
- ensure there are arrangements for board/management committee sign off

Hact, the housing associations charitable trust is currently undertaking research on partnership bids. The results of this are due to be published in 2008.

Find out more

Further guidance can be obtained from the Charity Commission website at www.charitycommission.gov.uk and Housing Corporation www.housingcorp.org.uk, NCVO collaborative working unit www.ncvo-vol.org.uk

hact www.hact.org.uk

VAT Briefings have been produced by Sitra/NHF, A Simple guide to Supporting People and VAT, see www.sitra.org and by acevo VAT *made simple when working in partnership*, see www.acevo.org.uk

HMRC's website for advice telephone lines www.hmrc.gov.uk

2.6 TUPE and Human Resources

Understanding the main aspects of the TUPE regulation

Instructions to tenderers will always advise the organisations bidding for the contract to have regard to TUPE. The local authority commissioning the service may or may not give their opinion on whether TUPE is likely to apply. They may suggest that the bidders need to take professional advice on this.

When does TUPE apply?

1. when a business or undertaking, or part of it is transferred to another employer
2. when a service provision change takes place, this is when,
 - an outsourcing; or
 - in-sourcing; or
 - a change of contractor takes place

A service provision change may include situations where an existing provider loses a contract following a tender by SP teams; where a local authority tenders out its own services or brings services back in-house; or where there is a merger of organisations.

The regulations only apply in service provision which involve “an organised grouping of employees...which has as its principle purpose the carrying out of activities concerned on behalf of the client.”

It would therefore exclude cases where there was no identifiable grouping of employees. This is because it would be unclear which employees should transfer in the event of a change of contractor, if there was no “organised grouping”.

Employer's duty

The new employer (the transferee) takes over;

- Contracts of employment of all employees
- All rights and obligations arising from those contracts, except for criminal liabilities and some benefits under the occupational pension scheme
- Any collective agreements

The new employer does not take on contracts of anyone who is only temporarily assigned to the “organised group”. This is dependent on many factors for

example the length of time the employee has been there and whether a date has been set by the transferor for the return of the temporary employee to another part of the organisation. Examples of this may include the use of staff engaged on a non permanent basis or who may be engaged for a short period such as casual workers or agency workers. This is the case in particular for bank staff that do not have fixed hours but are available to work as and when required to cover during periods of staff sickness or shortage.

It can also apply to staff that have been seconded or are covering a post on a temporary basis as they have been temporarily assigned to the “organised group”.

Rights and liabilities that transfer

The new employer takes over all rights and obligations arising from the contract of employment:

1. outstanding holiday pay and non payment of wages
2. liability for personal injury claims against the transferor
3. liability for sex, race, disability discrimination claims against the transferor
4. liabilities for any breach of contract
5. all statutory rights and liabilities for example, unfair dismissal claims
6. continuity of service that has accrued with the old employer is preserved
7. non-contractual benefits do not transfer to the new employer, for example discretionary redundancy payments.

Dismissals

TUPE gives employees added protection making a dismissal connected to the transfer automatically unfair unless the employer can show an economic, technical or organisational reason for the change. This also applies to dismissals before the transfer has occurred.

Employees who choose not to transfer to the new employer are treated as having resigned and are not entitled to a redundancy payment.

Disclosure of employee liability information

The regulations place a duty on the old employer who is transferring to supply written information to the new employer at least two weeks before the transfer.

This information should include the following:

- The identity and age of employees
- Terms and conditions of employment
- Any disciplinary or grievance proceedings issued in the last two years where the statutory dispute resolution applied
- Any court or tribunal cases brought by employees in the last two years, or any court case or tribunal cases which the transferor may believe that an employee may bring
- Any collective agreement which will have effect after the transfer

Failure to provide this information can result in the transferee making a complaint to the Employment tribunal. Compensation is £500 for each employee for whom written information was not provided.

Contractual disclosure

In addition to the requirements of the regulations, there may be a contractual responsibility to supply information. For example, the model Interim Contract for Supporting People services included the following, some version of which is likely to have been used by all local authorities:

“Subject to clauses [17] (Data Protection Act) and [19] (Confidentiality) you must provide us with such information as we may reasonably require to enable us to comply with our obligations under TUPE when either this Agreement comes to an end or it ceases to apply to a particular Support Service.

You must supply us with the information referred to in clause [30.1]:

- at our reasonable request made at any time in the 9 months before an Expiry Date; or
- (if this Agreement or its application to a particular Support Service is terminated on notice) within 20 Working Days of your giving or receiving notice of any such termination; or
- (if this Agreement or its application to a particular Support Service is terminated immediately) within 20 Working Days of termination.”

Where there is a contractual obligation to provide such information, the commissioning authority may collate what is provided by the current services and include it in the tender documentation to assist with the calculation of costs for the bids. If

doing this, they are likely to warn that they give no warranty on the accuracy of the information provided to them.

Due Diligence

Making adequate provision for the costs and management time entailed in complying with TUPE is a key area of risk for providers preparing to tender for an existing service. Commissioning authorities will warn that they cannot guarantee the accuracy of any information supplied to them and will not accept liability for unanticipated costs or other problems caused by reliance on that information. Providers will therefore be advised to exercise due diligence – a term used to mean taking all reasonable steps to check that information provided is comprehensive and accurate. This can include using professional advisers such as solicitors and accountants.

Information and consultation with the workforce

There is a duty on both the employers to conduct a meaningful consultation with the representatives of the employees at the earliest practicable time. The employers must inform the representative before the transfer of the following:

- That a TUPE transfer will be taking place
- The date on which the transfer is taking place
- The reasons for the transfer
- The legal, economic and social implications of the transfer for employees
- Any action envisaged by the new employer that will affect transferred employees (for example a reorganisation)

There is no specific time when consultation should begin, however there is an obligation for the information to be given to representatives long enough before the transfer, to enable a meaningful period of consultation. The employer must consult before the transfer with a view to seeking representative agreement to the measures being taken.

It is important to note that categories of employees affected by the transfer are broader than just the employees transferring.

If there are no existing representatives then new representatives should be elected for all the employees who are affected by the transfer. The employer can decide on a reasonable number of representatives. If the employees fail to appoint a representative then the employer must consult with the affected employees directly.

Occupational pensions

If the previous employer provided a pension scheme then the new employer has to provide some form of pension scheme for employees who were eligible. It does not have to be the same as the previous arrangement but will have to be of a minimum standard specified by the Pensions Act 2004.

The new employer does not have to offer the same type of pension but will have a choice of: –

- A defined final salary scheme which meets statutory minimum standards
- A defined contribution scheme where the employer makes a contribution up to a maximum of 6% of the employees basic pay
- A stakeholder pension, where the employer makes a contribution up to a maximum of 6% of basic pay

The Pensions Act 2004 includes a provision to opt out. The employee and the new employer can agree different pension terms at any time after the transfer.

Harmonisation of pay and benefits

If the new employer tries to change or offer a new contract of employment to the transferring employee after the transfer has occurred it will be invalid if it is due to the transfer or a reason connected to the transfer. Changes can only be made if the reason is “economic, technical or organisational” and unrelated to the transfer.

The same rule applies to the old employer (transferor) who may consider changing the contract of employment before the transfer.

The Department for Business, Enterprise and Regulatory Reform suggest the following example for economic, technical or organisational reasons.

- Economic, relating to market performance of the organisation
- Technical, relating to equipment and production processes
- Organisational, relating to the structure of the organisation

The steps that need to be taken when transferring staff out of or into the service or changing contractor

Step one

Making contact and getting hold of the information

When transferring staff in or out of a service the initial step is to communicate with the organisation that is either transferring or the transferor and to exchange the

relevant and correct information. It is crucial that the information is correct and relevant as this will form the basis for future calculations, negotiations and discussions with individuals and the foundation for the transfer. It is important to ensure that the following steps are taken:

- make contact with opposite numbers in the other organisation
- focus on what you need to know
- get the correct and relevant information as quickly as possible
- if the transferring organisation is not co-operating try hard to establish good relations
- consult with staff and union representatives

Step two

Making contact with transferring staff

It is important to understand that for most individuals transferring there will be a huge cultural change and many concerns regarding being transferred into a new organisation. Whether you are transferring individuals in or out of a service you should ensure that individuals have access to information and that all parties are available to answer their questions and allay any concerns. The following are steps that can be taken to encourage channels of communication.

- build trust and confidence with staff by being honest and available
- make contact by letter and face-to-face as quickly as possible
- anticipate questions and concerns staff and unions may have and have answers to them
- hold information days where managers are on hand to talk through the process, deal with questions and talk through training and development opportunities
- encourage staff to keep communicating with you, give them different ways to communicate through their unions, via human resources, by phone, email, text, letter, by organising information days for new staff etc
- make use of your own previous experience and others

Step three

Multiple terms and conditions

The reality of transferring individuals is that you will have multiple terms and conditions within your organisation and this will undoubtedly have an impact on your systems and processes. Planning for the changes before the transfer will enable you to be able to create new systems and procedures or adapt current systems.

- understand the impact of the new staff terms and conditions on your contract pricing
- understand the differences between the various sets of terms and conditions
- assess the impact on your systems/processes and think about how you might resolve some of these,
- take into account the systems that need to be amended for example, pay dates, expenses, time sheets, IT networks and phone system
- make sure that any changes you make fall within the legal parameters

Step four

Starting up

Finally, the induction is an important aspect of the process, as it can ensure that organisational cultures, values and expectations are understood by everyone. It is vital that individuals are on board and working as a team as soon as possible, it is also important to be understanding of individual needs and concerns. The following steps can help towards achieving a settled team.

- plan a thorough induction
- organise away days to ensure understanding of the organisations culture, values and expectations
- identify shared objectives to encourage team building
- identify training and development needs
- communicate information on policies, procedures, systems and processes
- identify office space if necessary
- plan ahead with IT issues, phone requirements and seating arrangements
- remember change is unsettling so plan to help people adapt

Case example of a transfer

Knightstone Housing Association were awarded last November a contract to deliver a floating support service in three of the six districts in Gloucestershire. They had 4 months to transfer in 27 staff from seven different organisations. They had to find and commission office accommodation, set up systems and make the transition seamless from the service point of view. Initially it was difficult to get hold of the people in the various organisations. Knightstone managed to meet two out of seven organisations in December and the remaining five in January.

They started with a “getting to know you session” with the incoming staff. People wanted to know what the real impact of the transfer would be on them individually. Once Knightstone had received all the information on terms and conditions they had to compare them with their own. There were seven organisations which varied from small neighbourhood projects with basic entitlements to large national organisations. They finally ended up with four sets of terms and conditions for a single SP contract and had to make major changes to their in-house electronic time recording system and expenses system.

Knightstone were expecting 27 staff to transfer, in the end 22 staff transferred at the beginning of the contract. Some of the staff were lone workers and had to contend with working as part of a team. The largest team had comprised of six people, so it was a challenge to facilitate the gelling of a team that had come together with seven different organisational cultures and practices.

The induction period and process was very important, a venue away from the office and a two week induction programme was organised. The two weeks induction was designed for half day delivery with staff rotating between induction sessions and running the service. Clients were kept informed throughout the process via a newsletter jointly with the SP team and Knightstone have had 40 new referrals in their first three weeks.

What made the transfer successful?

- Making contact with the right individuals and getting hold of the information as soon as possible
- Taking control of the situation when other organisations were not co-operating
- Understanding what people were feeling
- Encouraging staff to communicate and being available to answer their questions and concerns
- Assessing the impact of various terms and conditions on their systems and processes and creating solutions
- Planning a thorough induction taking into account organisational cultures, values and expectations.

Checklist of information needed for a transfer

- copy of contract for each transferring employee
- type of employment (permanent, part-time, fixed term etc)
- salaries and pay structure
- notice periods
- contractual hours, overtime, sleep-in and on-call allowances
- pension scheme details
- details of collective arrangements and recognition agreements
- leave entitlement including annual, maternity and paternity
- redundancy policy and procedure
- sick pay and policy
- car user allowances and expenses arrangements and rates
- any on going employment and tribunal claims
- copy of accident book - Health and safety or insurance claims
- disciplinary and grievance policy and procedure

Find out more

Advisory Conciliation and Arbitration Service (ACAS)
www.acas.org.uk

Department of Trade and Industry (2007) Employment rights on the transfer of an undertaking: a guide to the 2006 TUPE regulations for employees, employers and representatives.
www.dti.gov.uk

Chartered Institute of Personnel and Development (CIPD)
www.cipd.co.uk

2.7 Tender Evaluation and Selection

Tender evaluation

As outlined earlier, competitive tendering is intended to enable a commissioner to achieve value for money in the procurement of services. Value for money is defined as: "the optimum combination of whole-life cost and quality to meet the user's requirements". Evaluation of tenders should therefore consider both cost (i.e. the cost to the commissioner which is the price set by the provider) and quality. This is referred to in some procurement guidance as commercial and technical evaluation.

The criteria for evaluation of the tenders received should be determined by those commissioning the service at an early stage in the process. The balance between cost and quality considerations can be expected to vary from one service to another. The *Guide to Procuring Care and Support Services* produced by CLG for local authority staff suggests that a higher level of expertise required of a provider could determine a higher weighting for technical (i.e. quality) considerations and provides as an example this table showing sample weightings for different types of contract.

Type of contract	Technical weighting (%)	Commercial weighting (%)
Contracts for well-defined goods, works or services where the skills, experience and resources of the contractor are contributory factors (e.g. single service provider contracts for routine supplies and maintenance).	20–40	80–60
Contracts for works and services where the skills, experience and resources of the contractor are significant factors (e.g. construction projects, cleaning and catering services, outsourcing).	40–60	60–40
Contracts where specialist professional and technical expertise are critical (e.g. design, IT, management consultants).	60–80	40–20

In practice, evaluation criteria set for what appear to be similar services can be very different. The cost and quality balance for generic floating support services recently tendered have been set at from 70% cost - 30% quality to 20% cost - 80% quality by different local authorities.

The evaluation criteria should be published within the tender documentation sent out after the initial short-listing stage (or to all applying if it is an open tender process). If it is not, then an organisation proposing to tender should ask for this information. It is considered good practice to apply the evaluation criteria by scoring

the tenders received. In this case the overall cost/quality percentage figure will be broken down further to set out how many points, or percentages of the total figure, will be allocated to different aspects of the tender, and this also should be included in the documentation sent out to tenderers. The guide referred to above includes the following example of criteria for evaluation of a floating support service to refugees as a template:

% Weighting	Evaluation Criteria	Breakdown of criteria
10%	Price	<ul style="list-style-type: none"> ▪ Total cost ▪ Cost per service user ▪ Financial breakdown
10%	Management and operation of the service	<ul style="list-style-type: none"> ▪ Direct delivery / subcontract/ partnership / consortium arrangements ▪ Staffing details ▪ Approach to TUPE ▪ Admin and finance controls and processes ▪ Quality management ▪ Service commencement date ▪ Service set-up
15%	Partnership working to achieve effective outcomes for refugees	<ul style="list-style-type: none"> ▪ Working with other agencies ▪ Linkages with relevant organisations ▪ Engagement of stakeholders ▪ Information and good practice sharing
15%	Skills, knowledge and experience of working with refugees and providing housing related support.	<ul style="list-style-type: none"> ▪ Organisation strengths and weaknesses ▪ Use of policies and guidance to shape services ▪ Previous experience
15%	Assessment of needs and risks and support planning	<ul style="list-style-type: none"> ▪ Needs assessment process ▪ Development of support plans ▪ Achievement of support plans ▪ Understanding of refugee issues ▪ Meeting the needs of refugees
25%	Details of proposed service	<ul style="list-style-type: none"> ▪ Capacity of service ▪ Location and times of delivery ▪ Hours of frontline support ▪ KPI achievement levels ▪ Other performance indicators ▪ Performance management ▪ Meeting the purpose – key tasks ▪ Managing withdrawal of support ▪ Equality of access and parity of outcomes
10%	Engagement of refugees in the design and continuous improvement of the service	<ul style="list-style-type: none"> ▪ Engagement of refugees ▪ Participation in consultation

Any published evaluation criteria should be taken into account by a potential provider when proposals for the service are being drawn up. If there is any lack of clarity on the criteria or lack of correlation between them and other sections of the specification, this should be checked out with the procurement staff. Providers should note when asking questions that it is seen as good practice to publish all questions and answers on tender documentation up to the agreed cut-off date, to ensure that all have access to the same information. It is therefore recommended that the questioner words the question in a way that does not identify their organisation.

Public bodies must keep records of the contracts they have awarded and sufficient information on the process to enable them to answer queries on it. They must set up a procedure which meets the general EU Principles of fairness and transparency.

Evaluation of tenders will often be carried out by a panel set up for that purpose by the commissioner's staff. They are likely to aim for a mix of expertise, including those with knowledge of the service type and client group, finance and procurement procedures. Some commissioners have involved people who are service users or are representatives of service users via community groups or advocacy services. Good practice in running such evaluation panels would, as for recruitment and selection panels, include involving all parties from an early stage and providing training and briefings to ensure that all can contribute effectively.

While tenders may be evaluated and the contract be awarded on the basis of only the written submissions, it is also possible to add further stages to the selection process by requiring tenderers to attend an interview, make a presentation or, in some cases, visit a current service. The evaluation panel should identify what it wants to gain from this next stage but if this is not communicated to the tenderer, they should ask for more information to help them to prepare. It is important to find out:

- Who is on the panel and if possible what is their area of expertise or how familiar they are with the sector
- Are there any specific points or issues the panel wants to explore
- How much time has been allocated for the interview
- If a presentation is required, how much time has been allocated for this and for questions on it, and what equipment will be available if visual aids are appropriate
- Where the interview or presentation will take place (if the address given does not make it clear whether it will be a large council chamber, small interview room etc as this may affect numbers who can come or use of visual aids)

The organisation can then prepare its interview or presentation team and materials. When deciding who should attend, the organisation will want to select someone who can answer questions about the nuts and bolts of service delivery and someone who can answer detailed questions about finance as well as a senior member of staff who will demonstrate the commitment of the organisation to this bid. It is usually thought inadvisable to heavily out-number the panel, so the numbers on the interview or presentation team may be limited by that. The question of how "glossy" a bid should be cannot be answered in a general guide. Some feedback from evaluation panels has been that they are not impressed by smart presentations from marketing staff who know little about front-line issues but in other cases organisations inexperienced at presentations have felt out-done by those who can give a good performance in this competitive environment. Whatever the level of "gloss" aimed at, the organisation will want its team to have:

- A sound, in-depth knowledge of the bid
- Prepared itself by working through the main points to get across, deciding who will focus on each one,
- Rehearsed to check timings or to practice fielding difficult questions
- Produced a (probably short) information pack or handout to take with them which backs up the main points of the presentation, or proposal or image of the organisation, but does not attempt to replicate the tender submission.

Some providers have considered the inclusion of current service users in their presentation team. Whether service users play a part in the different stages of preparation for a procurement process will depend on their interest, capacity and experience as outlined earlier, but providers should also be aware of the potential drawbacks of involvement of service users in presenting a bid. It can be seen to involve a significant identification with the organisation, rather than the service, in a way that involvement in service improvement or service re-design does not. After involvement in a losing bid, the future support relationship with the organisation that won the tender could be adversely affected. A presentation or interview is also likely to be experienced as a highly pressurised situation where it could be difficult to avoid creating significant anxiety about the service user's contribution to the success or failure of the bid.

As part of a selection process, a panel may want to visit a service currently run by the tendering provider. Again, it is important for the tenderer to find out what the panel seeks to gain from this and to find out who will be coming, for how long and if they have any specific requests on what they want to see or do. As it is likely that meeting and talking with service users and staff will be the main focus. People affected will need to be briefed on the nature of the visit. In Supporting People funded services there is likely to be some familiarity with this from experience of

service review validation visits, although the panel will be considering how this organisation would provide the service being tendered which may not be the same as the one being visited.

In the course of the evaluation and selection process, there may be discussions between the commissioner's procurement staff and the provider organisations but this should be only for checking information or clarification. It is good practice to ensure that all prospective tenderers have access to the same information, which is usually done by circulating or publishing questions and answers, as referred to above. There should not be any negotiations with any one potential provider or agreement to change any significant aspects of the tender at this point. If the commissioner does discover, after preparing all documents and advertising a service, that they had failed to take account of some significant issue raised in providers' responses, they should withdraw the tender and start again.

Contract award

There is no set period for how long a commissioner may take to make a decision on which bid to accept in procurement Regulations and it is unlikely that a local authority's standing orders would specify this. However expiry of current contracts and a service start date will be known and the commissioner's own tendering timetable will have been set up with an estimate of how long it will take them to make their evaluation, check factual queries, take up any references and make a decision. In some cases decision making may be delegated to the evaluation panel, in others they will make a recommendation to a Commissioning Body or its equivalent. The local authority's standing orders will set out who is authorised to make decisions at the different levels of contract values.

Most instructions to tenderers will specify that the tender they submit must be unconditional, i.e. not subject to any changes after acceptance. Some may specify that the tenderer must commit themselves to accepting the contract if it is offered to them on the terms on which it was made. All will make clear that the commissioner may choose not to award the contract at all if it is not satisfied with any of the bids.

When a decision is made, and the selected provider has agreed to accept the contract, the procedure for announcing the decision will vary according to the local authority's standing orders and practices. If a public body is commissioning a service defined as Part A by the EU Directives, there is a requirement for a ten day "standstill" period to follow notification by the commissioner to all unsuccessful tenderers. This period is to allow them to get feedback or make objections before the award of contract is acted upon. As support and care services are defined as Part B this will not be a regulatory requirement for them, although the commission-

er may choose to do it. The Regulations specify that the unsuccessful tenderers must be advised of the name of the winning tenderer, of the evaluation criteria, and of how they scored and how the winning tender scored. If asked, the commissioner must also advise the unsuccessful tenderer what were the characteristics and relative advantages of the winning tender. It is considered to be good practice to provide feedback even where not a regulatory requirement to do so. The nature of the feedback is unlikely to be specified but it would be intended to help providers learn from the process and develop the capacity of the provider sector for future tenders.

It is a requirement for both Part A and Part B services that the commissioner completes a contract award notice within a set period after the decision. This includes specified information including name of winning contractor, type of tendering process, evaluation criteria, value of contract and description of service. This information has to be submitted to the OJEU for publication unless there is a case that it is not in the public interest to do so or would prejudice fair competition, legitimate commercial interests or law enforcement. Any organisation can subscribe to the OJEU website and search for contract award notices (as well as for tenders). A local authority will have its own policy on whether or how it publishes contract award information locally. Some list all contracts awarded on their websites, others may publish selectively or make selected information available on request.

Complaints

Where a tenderer believes that a procurement process has been unfair or that mistakes have been made which have hindered their participation, there are actions which they can take.

The first level of response is to always contact the named responsible officer as soon as a problem is identified. As with any complaint, it is advisable to follow up a phone call with written confirmation of the problem and the solution requested, and to approach the next level of seniority if staff fail to respond. If the problem is likely to affect any potential tenderer, such as a seriously shortened timetable, then a collective response from providers through a local Provider Forum or network can be made and can carry much more weight than an individual one. Local authorities all have complaints procedures with stages of appeals to be followed. Complaints of maladministration can be made to the Local Government Ombudsman where it has caused injustice to the complainant. The difficulty for providers in this situation is that a tender timescale will be often very tight and the process through the stages of a complaints procedure relatively slow. Unless they can get the authority to respond urgently, they may have to continue trying to work within the process which is the subject of their complaint. However, given the serious impact

on services and organisations which can result, it is always worth registering an objection. Providers may worry that their making a complaint will prejudice the commissioner against them and sometimes decide that it is tactically unwise to do so. While this is understandable, it should be possible to maintain good professional relations as long as all involved remain constructive, focused on maintaining good services and don't allow concerns about the complaint to spill over into other areas of their relationship or partnership.

Where a tenderer believes that the commissioner is in breach of the UK procurement Regulations they can take action in the High Court. The High Court has the power to suspend or set aside a contract award decision where the contract has not yet been signed, or to award damages where the contract has been entered into. This course of action is only open to an unsuccessful tenderer. Anyone, i.e. not just an unsuccessful tenderer but any aggrieved person, can ask the European Commission to take action against the national government concerned in the European Court of Justice. This however is obviously not a quick or easy remedy!

Action

- Check your local authority's procurement or contracting standing orders
- Find out how to make a complaint, should you need to do so, against your commissioning department
- When dealing with an actual tender, check every aspect of the instructions to tenderers and raise questions (worded with care for anonymity) on any matter that is unclear or which appears to hinder fair competition

Find out more

CLG's guide to Procuring Care and Support Services for staff of local authorities and other public bodies, see http://www.spkweb.org.uk/Subjects/Capacity_building/Procurement+guide+templates.htm

Office of Government Commerce's guidance on the procurement Regulations, see www.ogc.gov.uk/procurement.asp.

2.8 Post Tender Action

Learning from experience

Whether a tender is successful or unsuccessful, an organisation will have invested considerable time and effort in it and will want to maximise the benefit of that investment. A de-briefing or review meeting by the team who prepared and presented the tender can consider:

- Feedback from the commissioner – what did they think was good and what was not so good about the tender
- What did the team think was good and not so good about the tender
- What worked and what didn't work about the process of putting the tender together
- What should the organisation do similarly and what differently next time it has to tender
- What actions need to be followed up to ensure benefit from this learning experience (e.g. reports to board, briefings to other staff, re-write of a tendering procedure or project plan, up-dating of standard information held etc.).

Loss of tender

If the organisation failed to win a tender for a new service, then learning how to do it better next time may be all that it needs to do. If however that proposed expansion was crucial to its financial viability, loss of the tender will mean revisiting its financial projections and business plan to identify alternative courses of action.

If the organisation failed to win a tender for an existing service, there may be a number of consequences, depending on the type of service and the scale of the organisation and its other activities. At one end of the scale, the loss of a small organisation's sole service can result in the organisation going out of business and having to be wound up. At the other extreme, a very large organisation losing a small service may be able to redeploy or re-allocate a relatively small amount of management hours and overheads to other services or functions. If, as will nearly always be the case, the service was delivered by "a defined staff grouping" then TUPE will apply to those staff, see earlier section of this guide. In addition to the good communication with staff vital for managing TUPE, the organisation must ensure good communication with service users and other stakeholders affected, such as relatives or carers, referral agencies, partner landlords etc. A project plan

for managing the transfer of service will need to be drawn up and agreed by the out-going service provider, new service provider and commissioner. The timing will be based on the dates for termination of the current contract, the start of the new service and any lead in time or temporary extensions agreed by the commissioner. The plan would be likely to include:

- publicity and communication - who will be notified of what by which party
- staffing - TUPE requirements, redeployment or redundancy, induction to new service
- service users – any handover to new keyworker, transfer of case records, induction if new working methods
- partner agencies - notice of withdrawal from agreements, alternative referral arrangements
- premises - termination or assignment of leases, contracts for utilities or equipment, disposal of any other premise-related assets
- service termination - final payments and accounts, any transfer or disposal of records

No party involved should underestimate the emotional impact of a service handover and the need for timely, clear, objective information to be available throughout the process. Even those assured of continuation of service provision or employment may be anxious about their future, and anxiety, or any other strong emotion generated by the change, makes it more difficult to take in information given. In such circumstances the people in daily contact with service users and with front-line staff may themselves have limited knowledge of exactly how the new specification and new provider will make a difference to service delivery so the publicity or communication plan is likely to have to include regular issue of written, plain language briefings that can be referred to by all staff.

Winning a tender

When an organisation wins a tender for an existing service which it currently provides, if it is to be delivered on exactly the same basis as it is now, then reviewing the success of its tender in order to continue to be successful in future may be all that it needs to do. However, it is more likely that service delivery practices may have to change, either because the new specification requires reconfiguration of some kind or because the price offered requires the same service to be delivered at lower cost or increases capacity for the same cost. In these circumstances, the plan for the lead-in to the new contract start date will, as above, be focused on communication. Staff teams will need to work through with their managers how the new specification is to be put into practice, e.g. there

may be new referral routes or changed monitoring requirements. If availability or any aspect of the nature of the service is changing, different rota systems or additional training may need to be planned. Where any changes impact on service users or other stakeholders such as referral agencies, the communication plan will need to include briefings and discussions with them.

Winning a tender for a service currently provided by another organisation will require joint planning for handover with the out-going provider and the commissioner as outlined in the section above on loss of tender and in the earlier section in this guide on TUPE. A major focus for the new provider will be induction for the transferring staff and service users and integration of the new service into its existing organisational systems. This integration may require additional briefings for central or head office staff who were not involved in the tender process but need to know the background to the change to play their part in it running smoothly. The volume of work involved in the transfer will be significantly affected by factors such as whether the new service can be accommodated in current offices or whether the increase in size of the organisation means that current management systems need to be up-graded. If the organisation's tender took full account of these issues there is a greater chance of a painless transfer. "Expect the unexpected" is advice not easily acted on! Apparently minor but unpredicted practical problems can consume large amounts of staff time. One organisation's unexpected headache was that their head office could not meet their deadline for supplying the swipe cards that all staff needed to access the offices and sign in, resulting in complicated arrangements for other staff having to be there to let them in and use of temporary paper records.

Additionally, an organisation in this position may have proposed in its tender a service specific steering group or multi-agency group which it will now need to set up and integrate into its current management and governance structures.

Taking on a service where there is a significant inter-dependence with another service delivered by a separate organisation will require some level of participation by that other organisation in the handover plan. For example where a support service is accommodation based and the organisation providing the housing management service was previously but is no longer the support provider, the two organisations will need to develop joint working protocols and information sharing agreements to ensure that all staff and service users understand the different roles and responsibilities and how any unforeseen overlaps or gaps should be managed. There may again be practical problems to resolve on use of office space and utilities where separate provision was not foreseen in the building design or there was insufficient consultation in the drafting of the service specification.

Winning a tender for a completely new service will involve the same issues of expanding or upgrading office space and management systems and induction of new staff. These staff will however be recruited to new posts instead of TUPE transfers. If the tender proposed staff terms and conditions different from those of other staff, without prior consultation with HR staff or trade unions, negotiations may now be needed. New referral or access arrangements for service users will be adopted or set up. As above, if a new steering group was proposed, it will have to be recruited, serviced and integrated with current structures.

Contract management

It is usual practice to include a copy of the standard contract to be used by the authority with the tender documentation. This may include information on how the performance of the contract is to be monitored. The service specification may also include any monitoring required for this particular service. Every authority's contract may be different but there will be some common features.

The basic terms of a contract as defined by UK law are:

- parties to it
- period of time it covers
- price to be paid and how payment will be made
- product or service to be delivered for that price – usually described in more detail in an attached specification.

Most contracts will also have terms which set out:

- any requirements for insurance or security bonds, compliance with relevant legislation or key commissioner policies
- if any terms can be varied and how this is to be done and recorded
- communication channels, e.g. identified persons or posts on each side with responsibilities for aspects of the contract
- how performance and delivery of the service will be monitored, including by reports, meetings, user feedback
- a price review mechanism
- what to do if things go wrong, i.e. grounds for termination, penalties for under-performance, complaints, disputes and appeals procedures
- exit arrangements, e.g. break clauses, notice periods, information to be supplied prior to re-commissioning, ownership of records

Local authorities are further advised by central government that their contracting practices should:

- promote continuous improvement in service delivery
- help the authority to achieve year on year efficiency gains or savings
- encourage providers to see them as partners rather than adversaries
- identify and manage risks to service delivery

As soon as possible after the contract has been awarded, the commissioner and provider should meet to go through and set up the contract management arrangements. A joint meeting of staff with both strategic and operational responsibilities may help to initiate mutual understanding and good working relationships. At this point commissioner and provider will want to agree the specific arrangements for this service contract including:

- Contact or communication responsibilities and protocols
- A schedule of regular operational review meetings and more infrequent, e.g. annual, strategic review meetings
- Performance reporting and benchmarking
- Quality self assessment reporting and validating
- Payments and any price reviews if provided for in the specification
- Procedures for agreeing variations
- Disputes and complaints responsibilities

Both parties may wish to meet more frequently in the first six months or so of the contract, particularly if it is a new service or there are going to be significant changes such as a new access or referral route to be implemented. Thereafter the frequency of meetings and level of performance reporting required by the commissioner should be based on their assessment of the risk of service failure.

The OGC guidance to local authorities on contract management suggests that its activities can be grouped into three areas:

Service delivery management ensures that the service is being delivered as agreed, to the required level of performance and quality. The provider must ensure that all their staff who are involved in service delivery and administration understand the requirements of the new service specification and contract. As outlined above, this may be a particular challenge where staff valued the previous service and are reluctant to accept the necessity for change. It can also be problematic where there is significant staff turnover and those who were very involved in the tender or the set up of the service move on without an understanding of the new requirements having been sufficiently embedded or documented for their successors.

Relationship management keeps the relationship between the two parties open and constructive, aiming to resolve or ease tensions and identify problems early. Regular face to face meetings will help build good working relationships. Openness and understanding of each other's priorities and constraints is important. Getting the frequency, method and tone of communications right is vital. Many organisations have learned of the perils of "email-rage"! It is advisable that those involved communicate horizontally with the other organisation, i.e. with those at their equivalent level of management. Both parties should be aware that they should not try to direct the work of the staff of the other organisation. Regularly acknowledging that both parties are working for the benefit of service users may help deflect focus from clashes of personality or culture.

Contract administration handles the formal governance of the contract and changes to the contract documentation. Clear procedures set up at the start and signed up to by all involved are essential. A common tendency is to slip into informality because recording all decisions seems burdensome and unnecessary when things are going well. Then when things go wrong or there is a dispute, one party will reach for their formally documented agreements and find that they don't reflect current practice, that there is no audit trail for an allegedly agreed variation or that they can't identify which is the latest version of an agreement. Even if operating with one relatively straightforward contract, an organisation should have a simple document control system with a summary sheet logging all changes and all emails, letters or variation notices filed in the same place with a copy of the original specification and contract. Who in the organisation is authorised to agree changes must also be clearly understood.

Contract review

All contracts must be for an identifiable period of time so will have an end date. Contracts for Supporting People funded services have often been for a fixed period such as three years with an option to extend for either two years, or for one year twice, subject to satisfactory performance. In such cases the commissioner will need to send up the end of three year review with sufficient time left of the contract to allow for possible re-tendering. Commissioner and provider will need to have a clear, shared understanding of what constitutes satisfactory performance and, if the contract has been managed well, will not be springing any surprises on each other at this point.

Actions

- Use de-briefing or review meetings to learn from tendering experiences
- Ensure sound knowledge in the organisation of the service specification and contract

Find out more

For TUPE related information see references in that section

For Office of Government Commerce Contract Management guidelines see:

http://www.ogc.gov.uk/documents/Contract_Management.pdf

Many training providers, including Sitra and local voluntary sector based training organisations, offer training on public programmes or in-house on www.sitra.org

Commissioning, Procurement & Partnership

The increasing use of competitive tendering to procure housing, care and support services is having a significant impact on the sector. Providers and commissioners are having to work with unfamiliar procurement regulations and procedures. Maintaining quality and flexibility in the face of efficiency targets is a challenge for all. For some provider organisations, new service delivery or governance models may be needed to cope with such changes and building capacity through mergers, consortia or subcontracting can be an option.

Through its base of regional and national staff, Sitra can support the housing, care and support sector with a range of services and products. See below for some of the ways we support the sector.

Advice and Consultancy

Our policy team can provide advice, support and consultancy on all matters relating to personalisation. Our email Sitra Helpline is available to answer any query or information request (sitrahelpline@sitra.org). To work with you in more depth, our consultancy service could help you to address areas such as:

- **Working with your Managers and Board to review their Business Plan for this new environment**
- **Advice on preparation of budgets for flexible service purchasing**

Want to keep updated about the changes impacting the sector?

Become a member of Sitra and receive the Bulletin on a monthly basis. See inside cover for membership information.

Publications

The Sitra Bulletin regularly covers information about Personalisation in the Housing with Support sector. Sitra's Bulletin Editor, writes:-

Personalisation

This is potentially the biggest medium term challenge for Sitra members. And, in a sense, it is already with us. SP is arguably a much more service user focussed funding regime than those it replaced and recent initiatives such as the National Outcomes Framework have consolidated that position.

Independence and Opportunity, the national SP strategy, talks about putting service users at the heart of the programme. To some extent, this can be viewed as a steer towards more user involvement. But recent developments, such as Self Directed Support (SDS) and Individual Budgets (IBs) have already affected practice considerably.

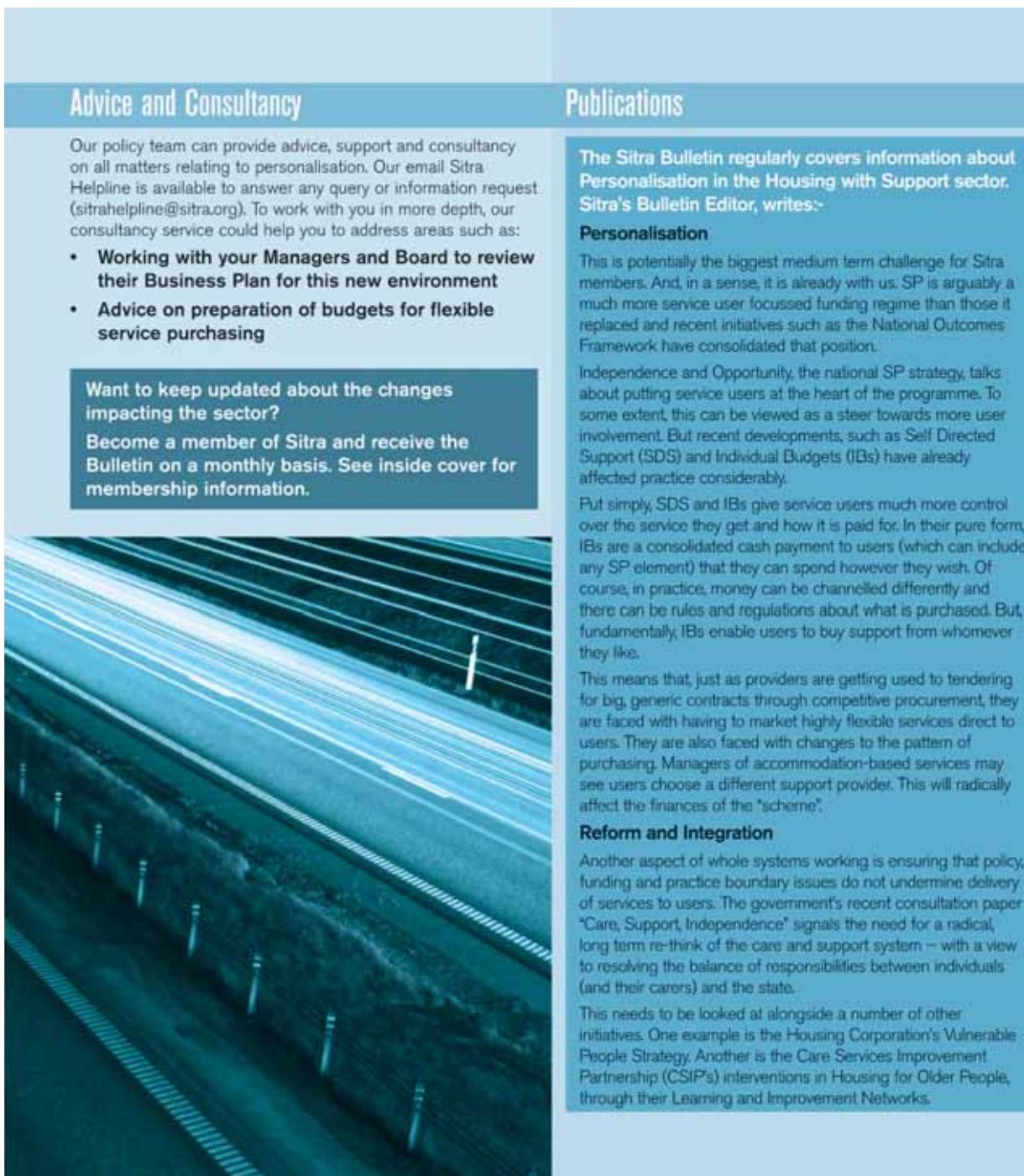
Put simply, SDS and IBs give service users much more control over the service they get and how it is paid for. In their pure form, IBs are a consolidated cash payment to users (which can include any SP element) that they can spend however they wish. Of course, in practice, money can be channelled differently and there can be rules and regulations about what is purchased. But, fundamentally, IBs enable users to buy support from whomever they like.

This means that, just as providers are getting used to tendering for big, generic contracts through competitive procurement, they are faced with having to market highly flexible services direct to users. They are also faced with changes to the pattern of purchasing. Managers of accommodation-based services may see users choose a different support provider. This will radically affect the finances of the "scheme".

Reform and Integration

Another aspect of whole systems working is ensuring that policy, funding and practice boundary issues do not undermine delivery of services to users. The government's recent consultation paper "Care, Support, Independence" signals the need for a radical, long term re-think of the care and support system – with a view to resolving the balance of responsibilities between individuals (and their carers) and the state.

This needs to be looked at alongside a number of other initiatives. One example is the Housing Corporation's Vulnerable People Strategy. Another is the Care Services Improvement Partnership (CSIPs) interventions in Housing for Older People, through their Learning and Improvement Networks.



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About Sitra

Approximately 1000 organisations are members of Sitra countrywide.

Membership benefits include discounts on all services and events, access to free consultancy and advice, an annual subscription to the Bulletin and regular briefings on key policy developments in the sector.

Sitra works with local and central government to ensure that the needs of its members are recognised, understood and met by resource providers.

If you would like to join Sitra please contact the Membership Administrator on 020 7793 4712 and ask for an application form.

Mission

Sitra believes all individuals have a right to the housing, support and personal care services appropriate to their needs, delivered according to their own personal preferences. Such services should be easy to access, of the highest possible quality, and equitably reflect the diversity of user needs. To this end, our mission is to:

Seek influence those with the power to affect the quality and affordability of housing, care and support provision

Provide policy makers and practitioners with accurate, up-to-date and timely information, guidance and practical support on relevant technical and policy issues to maximise the chances of people with housing, care and/or support needs receiving an affordable and high quality service

Contribute to the baseline professional standards that typify the sector through the provision of training

Promote best practice in the design, commissioning, delivery, monitoring and evaluation of services

Values

We exist to promote exceptional service provision for people requiring housing, care and support.

We strive for excellence in our own service delivery and that of member organisations through our leadership both in our own adoption and through promotion of best practice,

We are committed to diversity and valuing difference, both internally and through our delivery of services. We will monitor and report on this commitment to ensure continual improvement.

We will operate with integrity, internally and externally; hence, being competent, honest, accountable and independent.

We will provide accessible and accurate information, and use the most appropriate modes of communication with our internal and external stakeholders.

We will continually monitor and benchmark our services to ensure that we offer good value for money.

We will monitor feedback in order to remain customer focused in the delivery of our work internally and externally.

