

5 Checklist for SME Procurement

For Providers

You may find it useful to use the checklists as a starting point for discussions with the local authority around their procurement practice, for example, in a provider forum.

For Local Authorities

There have been significant changes to the UK procurement regulations. This section will help frame conversations between commissioners and procurement staff around what is good procurement practice for SME providers. Use the case studies as inspiration for how you could improve practice. You will find it helpful to use the checklists below in section 5.2, 5.3 and 5.4 to challenge your existing procurement practice.

Standard 5.4 “*Commissioning, procurement and contracting processes are designed to promote a varied and diverse market and seek to reduce burdens on provider organisations.*”

University of Birmingham/ADASS (2014). [Commissioning for Better Outcomes – A Route Map](#)²⁸

Much has been written about how complex procurement processes can impose disproportionate burdens on SME providers (see the annotated [bibliography](#)). Making the procurement process more accessible to SME providers is a key facet of good market shaping practice. Recent changes to legislation aim to help this and the checklist below is designed to pull together existing advice on good procurement so that local authorities can reflect on their practice.

5.1 All change? A recap on recent procurement changes and advice

The UK’s implementing regulations, the [Public Contracts Regulations 2015](#), took effect on 1 April 2015. These introduced a number of changes designed to make public procurement processes more accessible to SMEs. The changes contained within the EU Public Contracts Directive (2014) and UK Public Contracts Regulations (2015) are sufficiently significant for the need for training of procurement and commissioning staff to be recognised. Training materials are available at <https://www.gov.uk/transposing-eu-procurement-directives>.

²⁸ <http://www.adass.org.uk/policy-documents-commissioning-for-better-outcomes/>

Points to be aware of include:

- The Directive introduces a **new threshold** of £625,050 (€750,000).
- Recognising the administrative burden of bidding, a self-declaration form is being developed for providers to demonstrate that they prequalify, for example, that they do not satisfy any of the grounds for mandatory/discretionary exclusion and that they fulfil economic or technical selection criteria. The **European Single Procurement Document (ESPD)** is expected to cover most of the 'standard' PQQ questions (company information, accounts, technical ability etc.) and it is intended that suppliers will be able to re-use the same form where possible to further cut the administrative burden of bidding. Where information can be verified through accessing national databases, authorities are compelled to conduct follow up investigations themselves, thus reducing – at least initially – the burden on organisations. This reflects the abolition of pre-qualification questionnaires (PQQs) for tenders below the threshold as recommended by Lord Young in his report 'Growing Your Business' (2013).
- As a general rule, local authorities must not require organisations to have a **minimum annual turnover** of more than two times the estimated contract value.
- A new, fifth, award procedure has been introduced: the **innovation partnership procedure**. This gives the local authority flexibility to seek innovative approaches, whilst ensuring some protection for intellectual property rights, where there is no suitable existing 'product' on the market.
- However, local authorities are not obliged to follow one of the five award procedures for **Schedule 3 services** (which cover most care services) as long as they are compliant with principles of transparency, equal treatment of suppliers, non-discrimination & proportionality.



**MYTH
busting!**

Myth: EU Procurement Rules say that we have to do it this way.

Reality: The threshold for EU Procurement Rules was £172,514 up to February 2015 – it is now £625,050. Contracts valued below this amount are only subject to the principles of proportionality, transparency and equal treatment under EU rules. However, local procurement rules may place further constraints.

Good practice indicates that services are more likely to be innovative and promote wellbeing when commissioning drives procurement activities rather than the other way around. Both functions should work with each other throughout the commissioning cycle, not just at the point of procurement. Commissioners should:

- Involve your procurement colleagues early in the commissioning process
- Draw on the expertise and support of procurement specialists
- Enable procurement colleagues to understand your market and your commissioning goals

5.2 Pre-tender phase checklist

Checklist for local authorities		Why?
	1. Are we engaging with providers?	New EU procurement rules place an increased emphasis on consultation before and during the tender process to assess user need, help gain a better understanding of the feasibility of delivery, and understand the capacity of providers to deliver, as well as develop the market where necessary.
	2. Have we considered the most appropriate way of funding the service?	A grant can be an effective way of funding a voluntary organisation to deliver local services – particularly if the service is niche, small scale and/or innovative. A service contract may be more appropriate where the commissioner wants a detailed specification fulfilled. Often this will where effective practice is well understood and the commissioner wants to get best value by comparing a range of bids.
	3. Do we know and use the options available beyond standard competitive procurement, avoiding full EU process when not needed?	It is important for procurement to understand the commissioning task to be able to recommend the procedure most suitable for the task, provider market and size of contract.
	4. Are we splitting larger contracts into smaller lots? (see case study below) If not, can we provide reasons for not doing so?	Authorities are being encouraged to think about SMEs from the outset in their tender processes and to consider whether contracts can be divided into lots and explain why they do not subdivide contracts on a case by case basis.

Pre-tender phase checklist

	Checklist for local authorities	Why?
	<p>5. Have commissioners, procurement officers and SMEs worked together to produce compliant but simple and proportionate processes? E.g.</p> <ul style="list-style-type: none"> ■ Allow adequate tendering periods ■ Allow sufficient time for suppliers to form consortia ■ Offer flexible interview dates 	<p>Unlike large providers, SMEs rarely have a dedicated or specialist bid writing function or development capacity. Working together, commissioners, procurement officers and SMEs can agree a process that meets the needs of all parties in securing a timely, informed response.</p>
	<p>6. Do we advertise our tender opportunities on Contracts Finder?</p>	<p>Local authorities must ensure that when they advertise a new procurement opportunity above £25,000¹⁴, that the advert is placed on the new national Contracts Finder portal. https://www.gov.uk/contracts-finder. This website must be used in addition to, or instead of any local or regional portals currently being used.</p>

Case Study: Splitting larger contracts into smaller lots

Salford City Council and CCG – redesigning the support accommodation pathway to better support mental health recovery

Salford’s aspiration to provide excellent mental health services has seen, over the past two years, the redesign of a range of services which promote recovery, independence and successfully supports people to continue living in their own home and community. Salford commissions a range of mental health supported accommodation which contributes to this. The end of the existing contract offered an opportunity to review and redesign these services to match recent wider service developments and the strategic approach to supporting recovery. This led to services being grouped into three “lots” for the procurement process to ensure sufficient diversity of provision to meet as wide a range of needs as possible:

- short-term and step-down provision as a route to more independent living
- higher dependency (e.g. 24 hour) or more specialist (e.g. women only) support
- accommodation requiring further development to meet the Council’s strategic aim to maximise contracted provision of self-contained accommodation, fostering independence and step down

Services needed to work together across the whole pathway so they were expected to work to an “alliance contract ethos” and drive collaboration, innovation and integration.

5.3 Tendering phase checklist

Checklist for local authorities		Why?
	7. Are we engaging with providers?	New EU procurement rules place an increased emphasis on consultation before and during the tender process to assess user need, help gain a better understanding of the feasibility of delivery, and understand the capacity of providers to deliver, as well as develop the market where necessary.
	8. Is our invitation to tender documentation clear, concise and jargon-free?	If a provider cannot fully understand what the commissioner wants, then they will not be able to offer a service that is fit for purpose.
	9. Are we using contract terms which are proportionate to the scale and complexity of the contract (standard ones wherever possible)?	One of the biggest concerns for SMEs is often the degree of monitoring required for a relatively small contract. The level of monitoring can exceed that of what would be expected if the service was delivered internally by the local authority, raising questions about fairness and proportionality.
	10. Have we explained the evaluation process to tenderers at the outset, including the criteria to be used and their relative importance?	Evaluation criteria are a strong indicator to providers of the nature of the response desired and relationship expected, and they will influence the nature and focus of the response. For example, if cost carries a high weighting then it is rarely worth a provider spending time on a low scoring 'innovation' criteria when it will increase costs.
	11. Are we including economic, environmental and social value criteria in all contracts?	The new Public Contracts Directive also makes clear that there is some scope for building into the specification equality issues (e.g. access issues for the disabled) and social/environmental issues (e.g. a requirement to conform to social or environmental labels).
	12. Do our evaluation criteria look at the 'best price-quality ratio'?	The new form of Most Economically Advantageous Tender (MEAT) in Public Contracts Regulations 2015 encourages evaluation of the bids offering the best price-quality ratio. It would allow an authority to award to the bidder submitting the lowest priced bid provided that that bidder meets minimum quality standards established by the authority. Greater interrogation by authorities of the lifetime cost of bids being offered should take place.

Tendering phase checklist

	Checklist for local authorities	Why?
	<p>13. Are we confident that the lowest price we accept is sustainable and lawful?</p>	<p>The Public Contracts Directive places a duty on the contracting authority to investigate tenders it considers abnormally low. The authority must reject the tender if the low price is the result of a breach of specified social and environmental law. See Section 1.1 and Annotated Bibliography for further information around understanding cost.</p>

Case Study: Including social value criteria

East Sussex County Council and the Commissioning Grants Prospectus

East Sussex wanted to promote the role of local communities and social capital (the non-financial value added by local knowledge, networks and action) in meeting care and support needs. They developed an outcomes-based Commissioning Grants Prospectus with the local NHS. The new grants-based commissioning process was implemented and evaluated during 2011 to capture the value added by social capital in delivering prevention, information, advice, advocacy and other support such as home to hospital schemes and carers' support. A local definition of social capital was created which was scored equally alongside cost and quality during the appraisal of proposals. The outcome was over £7m awarded to community-based organisations in one proportionate, competitive exercise that involved service users and carers. Independent evaluation confirmed that the process delivered a streamlined, accessible and unified approach that valued social capital appropriately and the process was mainstreamed into an annual commissioning cycle as a result.

5.4 Post contract checklist

Checklist for local authorities		Why?
	14. Are we engaging with providers?	New EU procurement rules place an increased emphasis on consultation before and during the tender process to assess user need, help gain a better understanding of the feasibility of delivery, and understand the capacity of providers to deliver, as well as develop the market where necessary. Unsuccessful providers may still be operating within the local authority area, and therefore the local authority should continue to engage with them as outlined in Section 4.3.
	15. Are we offering and providing feedback that is as helpful as possible and designed to promote future improvement?	Helpful and positive feedback is a powerful personalised market shaping tool.
	16. Are there arrangements in place to ensure that providers are paid in a timely manner?	Ensuring good cash flow is vital for the sustainability of most SME providers. Contracting authorities must ensure that all public contracts contain suitable provisions stating that valid undisputed invoices will be paid by the contracting authority within 30 days. Public contracts must also contain a condition requiring contractors to include similar provisions in their contracts and so on down the supply chain.