

Points on Practice

Housing Support – Commissioning and Procurement event - 11th May 2017

Background

This event was attended by 42 people from a range of provider organisations as well as local authorities and regulators. The focus of the session was on procurement and commissioning legislation; an examination of the different models of procurement in practice as well as the risks associated with them.

Presentations

Dee Fraser, CCPS set out the way the purchasing of social care has developed since local authorities took on the task of purchasing social care in the 1980s rather than simply providing it themselves. More recently local authorities have been responsible for promoting a local market of social care providers and adopting more collaborative practices. Dee set out the rules that govern procurement ('red rules') and some that don't but which people tend to think they are bound by ('blue rules'). This distinction was something that participants really identified with as evidenced in the group discussions later on. In the past the use of competition to determine who should provide social care services has helped to foster adversarial purchasing relationships. This does not need to continue and legislation allows for a collaborative approach which engages with prospective providers before the specification and service design have been decided on.

'The problem with competition is that it takes away the requirement to set your own path, to invent your own method, to find a new way'. Seth Godin

Resources:

Solve the right problem at the right time:

<http://locality.org.uk/resources/saving-money-local-default-replace-diseconomies-scale>

Create the conditions for collaboration:

<https://collaboratecic.com/building-collaborative-places-infrastructure-for-system-change-50329af06498>

Lead the change:

https://ssir.org/articles/entry/the_dawn_of_system_leadership

Des McCart, ihub examined the role people and communities can have in commissioning and procurement arrangements, thereby creating more equal relationship with providers. Des pointed to evolving evidence of better outcomes for individuals in terms of health and wellbeing as well as efficiency savings and promotion of citizenship. Various collaborative commissioning models were examined: Public Social Partnerships; Alliance Contracting and Commissioning for Outcomes and examples included the Lambeth Collaborative; Falkirk's Supported Living PSP and Glasgow's Community Transport PSP.

Des concluded by reflecting on what we mean by market facilitation:

'market facilitation is the process by which strategic commissioners ensure there is sufficient, appropriate range of provision, available at the right price to meet needs and deliver effective personal outcomes.'

Resources:

Increasingly used by the public sector:

Public Social Partnership

<http://readyforbusiness.org/case-studies-public-social-partnerships/>

New approaches:

Alliance Contracting

<http://lhalliances.org.uk/frequently-asked-questions/>

Barcelona model <http://e3m.org.uk/wp-content/uploads/2016/09/The-Barcelona-Open-Procurement-Challenge.pdf>

Sam McLean, McLean Consultancy set out the various risks associated with commissioning and procurement at a strategic level, programme level and operational level. He considered the risks posed by particular procurement arrangements including framework agreements, competitive dialogue, innovation partnerships and alliancing and partnering.

Sam considered the necessary steps for developing partnerships including establishing compatibility, common purpose, culture of partnership, establishing leadership or a lead agency and establishing support for the partners.

Resources:

Summary of Contract Award Procedures – Scottish Government

<http://www.gov.scot/Topics/Government/Procurement/Selling/SupplierJourney/identify-business-ops/tender/procedures/CompetitiveNegotiation>

The Orange Book – Management of Risk and Concepts – HM Treasury

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220647/orange_book.pdf

Good Practice Contract Management Framework – National Audit Office https://www.nao.org.uk/wp-content/uploads/2016/12/Good_practice_contract_management_framework.pdf

Group Discussions

Experience of commissioning / procurement arrangements and their outcomes

Collaboration

A number of participants have either undertaken or been part of collaborative procurement processes.

In one case a set of principles were agreed and time was taken to build trust between the parties. Initially providers felt uncertain about playing a part in deciding what sort of provision to stop delivering and to decommission. A shared understanding of needs, assets and provision has been developed and providers are now playing a lead role in decision making.

Although a collaborative process was deemed to produce more positive outcomes and better services it involves more resources on the part of providers and commissioners. For providers there is no guarantee of gaining further work through it. One group observed that collaboration requires resources to make participation possible.

Competitive tendering

Competitive tendering processes have been a common experience across housing support providers. Experience of a recent homelessness tender was that it was overly bureaucratic and there was a concern about the cost of undertaking the process. Providers were not involved early on in the process.

Framework agreements

A fixed price framework was used in one case and provided an opportunity to build relationships with providers by organising meetings with them.

In one area the homecare market has been growing after a framework agreement was put in place. This has partly been due to a change in the way assessments are conducted. They are now conducted in a person's home rather than in hospital.

In another example, providers were invited to take part at the last minute and there was no opportunity to build relationships. There was evidence of 'blue rules' being followed when the local authority set out what could and could not be done. Competition was used as a basis for

decision making and relationships were adversarial.

Public Social Partnerships

Block contracts used but hourly rates varied for what looked like similar services in some cases and it was not apparent why there was such variance.

Having a say at a strategic level

A common theme was the value of providers being involved early on in defining the problem and mapping out solutions. A cultural change is required in some areas to make this possible so that local authorities move away from telling provider partners what is required and instead work with them to determine what is required.

Length of contract or agreement

Contract length can have a significant impact on the delivery of housing support and other forms of social care. One year contracts offer little security for the workforce particularly in smaller organisations where the loss of a contract cannot be accommodated by re-assigning roles. This can have a negative impact on morale, staff turnover and on outcomes for individuals.

In other cases 2/3/4 year contracts have been offered which are too short to offer stability. At the same time any contract that is overly prescriptive can become challenging to deliver in the face of changing needs. To avoid this, the focus of the contract should be on outcomes.

Whole systems approach

One group discussed how the whole system has to be realigned rather than simply changing the relationship between local authority commissioners and providers.

Risk associated with different models of procurement

Alliance model

The risks identified by one group stemmed from the longer timeframe over which the alliance would operate. It was felt that there was a risk of legal challenge because of the longer time frame associated with alliancing and the possibility that legislation, needs and expectations would change in this time. Related to this was a concern about compliance: participants thought there would be a risk that as regulations and expectations

change, contract compliance over a relatively long period of time could be at risk. This could be mitigated by ensuring that the approach was outcomes focussed and flexible to need.

Another area of risk is that relationships between commissioners, providers and service users could deteriorate over time and during periods of change. Adopting a transparent approach from the start will help to avoid this.

Alliance model and Public Social Partnership

The importance of having the right people and organisations involved from the start was regarded as a key to success by this group and risks were identified arising from not doing so. These risks included the risk to service user choice if links with the wider resources in the community were not made and maintained; risk of legal challenge greater if the partnership excludes those with an interest in it and the risk that the wrong problem is identified (ie lack of temporary housing may be presented as the problem when in fact temporary housing itself may produce poor outcomes). At the same time, the ability to bring in new partners as the work of the partnership develops was also seen to be important particularly in the case of the PSP model. A limited financial envelop was highlighted as a risk to the ability to deliver the solution.

Public Social Partnership and Lead Provider models

Being clear about procurement legislation and threshold limits as well as a process conducted openly was seen as important in minimising the risk of legal challenge.

The services being planned may go beyond current areas of operation or service delivery and may therefore pose a risk to service quality. Well informed innovation is necessary in order to break existing cycles of poor outcomes. The partnership needs to build its reputation jointly and partners should be able to challenge the partnership on an equal footing.

There is a risk that a lack of capacity in the wider system may impact negatively on the work of the partnership e.g. access to mental health services.

Competitive Tendering

The risk of legal challenge is low but the process can be very detailed and time-consuming.

Relationships can be at risk as the process makes it difficult to collaborate and disrupts relationships between providers and service users who will not be aware that it is their council that is pushing for change. Related to this is the reputational risk faced by provider if they do not win the tender and the council is not very visible in the process – those using the service will question why such a change is being undertaken. Service quality and the ability to meet obligations may be at risk when price goes too low.

In terms of sustainability, providers are at risk because if they lose business they will face instability as staff will be unsure about their future position and terms and conditions. The process of competitive tendering is time consuming and costly for organisations.

Service users may be at risk as services close and transfer to another provider. This also impacts on choice.

Competitive tendering can result in TUPE being applied (the laws governing how staff move from one organisation to another) which creates uncertainty and instability of the workforce. This does not help with recruitment as it exacerbates the fact that providers are all 'fishing from the same pool'.

Competitive tendering does not allow for innovation and risks addressing the wrong problem i.e. the supply of temporary housing rather than addressing the more complex problem of market gaps, increasing demand, and transitions from one type of housing to another.

Practice points

- Be clear about the rules so as to avoid being bound by 'blue rules' (not real) rather than 'red rules' (actual).
- Consider the problem to be addressed and how best to frame it realising that procurement process impacts on the degree of innovation possible.
- Consider the cost of the various processes and who bears the cost. The cost of the procurement process may restrict who can take part or risk stability of those that do. Make resources available to assist participants take part in collaborative processes.
- Involve a wide range of partners initially and be prepared to develop links with further agencies as required throughout the process eg where gaps in other service areas emerge which have in impact on individual outcomes.
- Focus on outcomes for individuals rather than being overly prescriptive in contracts and agreements to mitigate against risk of non-compliance.



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