Profiling the Commodity/Service

Quickfire Guide

Quickfire Guide

Profiling the Commodity/Service

- Whole life costs;
- Quality;
- Meet the end user(s) requirement;
- Identify any current contracts in existence;
- Estimate the relative spend on the goods/services in question;
- Use a **sustainability test** to maximise the positive impact the procurement process can provide. This is in terms of social, economic and environmental impacts;
- Consider whether it is relevant and proportionate to ask bidders to supply their Scottish bidder 'relevant contract' Climate Change Plan at the selection stage if: environmental impacts have been identified for your contract when using the sustainability test; and/or the contract value is estimated to be equal to or greater than £4,000,000; and/or where the commodity procured is identified as a climate change priority by your organisation;
- Where the contract value is estimated to be equal to or greater than £4,000,000, would you impose community benefit requirements as part of the procurement?
- Consider Commodity/Service Characteristics (does not apply to **Care and Support Services**);
- Consider how relevant Fair Work practices are to the scope of requirements (including Sub Contract requirements where relevant). Ensure inclusion in accordance with the **Statutory Guidance** on Addressing Fair Work Practices, including the **Living Wage**, in Procurement. The Practical tools are included there to

help inform your decision e.g. – Fair Work commodity / service strategy – "**Checklist**" and "**Flowchart**" will help inform your decision;

- Consider any cyber risks, with reference to the Scottish public sector **Guidance Note on Supplier Cyber Security**
- Consider how relevant Rights of the Child provisions are to the scope of requirements. Ensure inclusion when relevant and proportionate in accordance with UNCRC guidance;
- Assess the current state of the market;
- Identify market key players who could meet the requirements;
- Assess the current market for opportunities. For example such as the purchase of supplies or services labelled or certified as having specific environmental, social or other characteristics (e.g. fairly traded or equivalent);
- Understand current and future needs of the participating market organisation(s). Include this in your approach to market;
- Identify any early opportunities to explore. Provide options for meeting these requirements;
- Identify any special conditions relating to the *performance* of the contract. For example economic, innovation-related, environmental, social or employment-related conditions, that should be included in the contract. These can be included as long as they are linked to the contract subject matter and proportionate.

The profiling the commodity/service stage will help you understand and scope requirements to help ensure that they achieve the best combination of the considerations above to achieve significant and ongoing benefits from your procurement process for the lifetime of your contract.

Care and Support Services

Open or close

Developing a Service Strategy

When developing a service strategy, an organisation must decide how the service will be put in place and develop the service specification. An organisation should consider service characteristics and develop a procurement plan which describes:

- The introduction and description of the purchase (considering the purpose, critical nature of it and any sensitivities etc.);
- Whether it is advertising the requirement and awarding the contract or framework agreement by competition, extending an existing contract or making a direct award without competition;
- The reasons for that decision;
- The procurement process (for example, open procedure) that will be followed and relevant timescales;
- How it can be demonstrated that the procurement exercise will be fair, transparent and non-discriminatory, i.e. compliant with procurement legislation;
- The roles and responsibilities of staff involved in the procurement process;
- The applicable governance arrangements and approval process;
- How and when it will communicate its intentions to people who use the service and also their carers and proposals for their involvement in the procurement process;
- How it proposes to address Fair Work practices in order to impact on the quality of the service. The Practical tools, Fair Work commodity / service strategy checklist and Flowchart, have been developed to help identify relevant Fair Work practices when developing the service strategy. An example **completed service strategy checklist** and **example contract award criterion question** is also available for home support services;
- Any cyber risks, with reference to the Scottish public sector **Guidance Note on Supplier Cyber Security**
- How the service specification will be developed with the involvement of people who use the services and also their carers and suppliers in its development (including any opportunities to contribute to economic, social and environmental wellbeing and to reduce inequality);
- The type and duration of the proposed contract of framework agreement, available budget and estimated contract value;
- Research of the supplier market to identify current suppliers providing the same or similar service and any spend analysis available;
- Risks identified that may impact on the progress of the procurement;
- Anticipated benefits and outcomes;

- What criteria will be used to select suppliers and award the contract or framework agreement (including whether award criteria or performance indicators should include equality considerations);
- What transitional arrangements will apply if an existing service transfers to a different supplier;
- How the contract or framework agreement will be managed;
- how the relationship between the organisation and supplier will be managed;
- Arrangements for reviewing the service;
- What action it proposes to take at the end of the contract term; and
- How the procurement exercise will be evaluated.

Establishing individual needs and intended outcomes

As a matter of best practice an organisation should have a local commissioning strategy and/or service(s) plan which establishes strategic and individual needs and determines what type of service should be put in place to meet those needs and deliver the intended outcomes. An organisation should ensure that there is clarity about:

- The needs to be met and the outcomes to be delivered by the service taking into account requirements of the public sector equality duty;
- How people who use services and their carers will be involved in defining their needs, expressing their wishes and choices and influencing the design of the service;
- What choice and control the service will provide for the people who use the services;
- How the service will meet the National Care Standards;
- How the service will contribute to the organisation's overall objectives.

Contract Renewal and Direct Award without Competition

An organisation should analyse the benefits and risks to people who use services, and also to service delivery, of advertising the requirement and awarding the contract or framework agreement by competition. For existing services, this will require consideration, through consultation with people who use services and their carers, of the impact that any change in service provision of supplier will have on:

- People who use services and their carers;

- Continuity of care;
- The quality of the service and the outcomes delivered;
- The cost of the service;
- The market;
- The workforce.

This analysis may suggest that, where an organisation is satisfied with the quality of a service and that best value is being achieved, the existing supplier should continue to deliver the service. If an organisation's contract with the existing supplier includes an extension option that is within scope, the contract may be extended for the specified period. In the absence of an extension option, any decision by an organisation to renew (or "roll forward") its contract with the existing supplier must be compliant with public procurement legislation. Legal advice should always be sought in respect of any procurement decisions.

Alternatively, the analysis may suggest that the requirement should not be advertised at the current time and that a staged approach should instead be adopted. If an organisation decides to adopt a different timetable for advertising the requirement, it should describe this in relevant procurement documents and set out how it intends to move towards competition in the future.

Risk of legal challenge for breach of the procurement rules

An organisation should assess the risk of legal challenge if it decides not to advertise the requirement and proceeds to award the contract or framework agreement without competition. A legal challenge may have serious implications for procurement activity and future service delivery. For example, for a "light touch" contract with a value of at least £663,540 such a challenge would be pursued as a commercial action.

Digital / ICT Procurement

Open or close

If your procurement is Digital or ICT in nature, consideration must be given to the **Digital Public Services Scotland Programme**. This strategy sets out the ambitions and actions at sector, cluster or organisational level.

Further standards and guidelines can be found in the **ICT High Level Operating Model** and the **Digital First Service Standard**.

The activities at this stage must be carefully managed and comply with the **Principles of Procurement** in **The Public Contracts (Scotland) Regulations 2015**. The processes must be undertaken in a transparent and proportionate way. This will ensure no market distortion, treating bidders equally and without discrimination. The procurement outcome unduly favour or disadvantage a particular bidder. It is the responsibility of the Organisation to make sure these requirements are met.

Any documents you need are listed below

Stakeholder Map Template

(file type: docx)