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TOP 10

CONSIDERATIONS WHEN CHANGING PROVIDERS



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NEW SUSTAINABLE PUBLIC PROCUREMENT GUIDANCE PUBLISHED BY IRISH GOVT

The Irish Government has been implementing improvements to its procurement over the last few years to effect efficiencies in how it procures for infrastructure projects. As such new guidance has recently been published which acts as a reference guide for public procurement practitioners and policy makers. The new guide "Opportunities and Approaches for Sustainable Public Procurement" demonstrates the potential of strategic public procurement bringing together a range of national and international policies and guidance to support green and socially responsible procurement. This shift potentially heralds shifts by other governments within the EEA toward more sustainable and social focused initiatives as has been the trend in recent years.



DIGITAL INNOVATION – PROCUREMENT FRAMEWORK FROM DORSET COUNCIL

Dorset Council has plans to set up a procurement framework in support of its aspirations for digital innovation which could be significant internationally.

A notice was recently published advertising a dynamic purchasing system requesting innovation as a service. This is part of the Council's wider plan to help establish the UK as a leader in digital innovation, fuelling growth in the area.

The result may be the creation of hundreds of Jobs in the Dorset area. The notice advertises that the DPS is proposed to last for 4 years allowing suppliers to apply to join at any time during that period.

In-tend procurement services have been involved in establishing dynamic purchasing systems for numerous authorities, supported by In-tend's leading DPS functionality which relieves much of the administrative burden normally associated with establishing and maintaining a DPS. If you'd like to speak to us about a planned dynamic purchasing system, you can contact procurementservices@in-tend.co.uk for more information.

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PROCUREMENT STRATEGIES ESSENTIAL TO ENSURE SUCCESS OF UK GOVERNMENT PROJECT

The success of the UK's Project Gigabit, an initiative aiming to achieve 85% ultrafast broadband coverage by 2025, is contingent upon the establishment of a robust network infrastructure. According to the 2024 Telecoms procurement report, a collaborative effort by Altnets and ISPA, key challenges in the industry revolve not only around the acquisition of materials for network expansion but more crucially around connecting users and constructing compelling business cases to sustain investor support.

The report suggests that ensuring future commercial success for UK fibre operators involves adopting strategic procurement approaches that complement in-house operational teams.

One such approach involves leveraging external expertise through supply chain consultants, offering fully managed services and valuable advice. This external support, the report argues, enhances the overall robustness of network infrastructure. The report outlines three key procurement strategies for UK fibre operators: knowledge, pace, and quality. Embracing these strategies is deemed essential to ensuring future commercial success built on a resilient network infrastructure.

This becomes another example of organisation's seeking external procurement support from the private sector, possibly in part due to recruitment challenges.

CABINET OFFICE WORKSHOP DETAILS ADDITIONAL INFORMATION ON COMPETITIVE FLEXIBLE PROCEDURE

The Cabinet Office conducted an online workshop recently on the new procurement procedures that will come into force when the new procurement act becomes law. The workshop highlighted some additional detail on the mechanisms of the new competitive flexible procedure. The process is described as a flexible pathway toward procurement of goods, services or works, via direct contracting or establishment of framework agreements and describes a process whereby an authority is able to communicate in advance a bespoke process they intend to follow.

There are multiple configurations for the competitive flexible procedure, but this would still allow authorities to run procedures akin to any of the current procedures that will be discontinued when new legislation comes into force. This includes a restricted like process, as well as processes that utilise negotiation or competitive dialogue, however, theoretically authorities can run any process suitable to procurement with the aim of delivering the best procurement outcome. Currently, due to the abilities and flexibility of the In-tend system, functionality is already present for users to design multiple stage procurements, as well as the tools to configure the names and timescales of these stages, which means that whilst it continues to be a compliant choice for contracting authorities, is also future-proof for the new procedures, one of which remains unchanged from the already existing open procedure. Additionally mentioned were a number of new notices and requirements, including the



addition of a contract notice that is sent prior to entering a mandatory standstill period, with a further requirement to publish a final notice following standstill, as well as several pre-procurement notices that can be used under particular scenarios, circumstances and values. In-tend continues to keep appraised on new requirements, in its ongoing commitment to it's market-leading solution for electronic procurement. The Procurement Services Team at In-tend engages with clients daily and is in position to advise when changes are announced.

A STEP CLOSER TO REALITY - VALUE BASED PROCUREMENT

Value-based procurement, an effort to deliver a new methodology across the NHS put forward by Lord Hunt is gaining increasing exposure across Government and Healthcare, with the government taking action to revolutionise procurement in the health sector.

The methodology places more consideration on patients and patient outcomes when making purchasing decisions, looking at the bigger picture and taking into account more than simply unit costs. A tool-kit is expected to launch later in the year to land at the same time as new procurement legislation, with a view to coming into force the following year. This is something that may aid the £1bn savings target for NHS Supply Chain by 2030.



Naturally such practices also have potential to deliver improved outcomes across all public sector, by taking a wider view rather than a narrow immediate cost savings view that can compromise public services as a whole. In-tend Procurement Services engages with clients to deliver many outcome based procurement exercises.



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TOP 10

CONSIDERATIONS WHEN CHANGING PROVIDERS



By Dr Ray Carter
Director
DPSS Consultants

In my experience, when public authorities decide to change providers, the rationale for change is sometimes to overcome the gaps in the current provision. These were created by less-than-optimal selection of current contractor, poor scopes of work and the terms of the contract. It could sometimes make more sense to review the current contract or at least review the original process to ensure a better outcome next time. Otherwise, they run the risk of a repeat performance.

However, there are other reasons than just less than expected outcomes from the current provider. The authority may have decided to bring responsibility for service delivery back in-house. They will have undertaken a make or buy analysis and determined that in-house provision is better value for money and less risk.

The authority is not satisfied that it is securing value for money and that other options are now available in the marketplace. In some cases, the current agreement is nearing its termination date and the contractor does not wish to continue or to take part in the forthcoming competition. Often the authority's leadership has changed and the new regime wants to adopt a radically different approach to service delivery of public services. This is sometimes with the focus on in-house delivery. The UK rules for public procurement require authorities to go to the market to seek value for money and this competitive process may lead to change in service providers. One of the most common is deterioration in the relationship with the current provider. Both sides may feel that there is a lack of mutual benefit being derived from the contract. Whatever the reason, the transition from one provider to another has the potential for disruptions to service delivery (for which the authority may have a legal obligation to provide) contractual claims and additional costs. These can be reduced and avoided by a robust and well-planned exit process.

A lot will depend upon the terms of the original contract and the provisions made for the transfer from one service provider and the relationship that existed between the parties involved. If the relationship is poor, the current provider may be less than fully cooperative in facilitating a smooth transition. This is an important risk in the changeover process, which is not always considered by the authority.

To facilitate a smooth transition and reduce the risk of disruptions and costs, there are some well-known key elements in the process that have to be considered and provisions made for, these include:

1 Termination

A key consideration is whether or not the current agreement provides for transition support during the termination period. If the original contract was properly drawn up then it will include the development of a transition plan and coordination with the new provider. The agreement should also include the delivery of relevant services by the current provider for a set period of time and at specific rates and costs.

2 Costs and Assets

The agreement needs to address the return of tangible or intangible assets from the current service provider. These may include equipment used by the current provider and any IP that belongs to the contractor, for example construction drawing, designs and operating manuals. However, depending on the services provided, the authority may consider licensing critical software directly to mitigate any transition risks.

3 Implementation costs

The authority will need to budget for the implementation costs associated with the transition and onboarding the new provider. Therefore, they will be the need to create a well-resourced project team to manage the process. There may be a need seek support and advice from legal counsel and/or consultants. These costs will also include any internal management changes.

4 People

The authority will need to ensure that it has continued access to key people and resources during the handover period. Another interesting question is whether the new provider will have the right to recruit key personnel from the departing provider? This may be affected by the said employees' contract of employment. The agreement should require that the provision of the

“ Whatever the reason, the transition from one provider to another has the potential for disruptions to service delivery (for which the authority may have a legal obligation to provide) contractual claims and additional costs ”

ongoing services provided during the termination period will still be required to meet current KPI's and other standards of service.

5 TUPE issues

The authority would need to ensure that if staff from the original contractor are to be transferred to the new provider, that this process has been properly and professionally conducted. The authority does not want to inherit a dissonant and demotivated provider work force. It is very important that the authorities HR specialists are involved early in the decision to transition to a new provider.

6 Software

Will the new provider be able to with work with the authority's software system and successfully interact with other applications. What are likely to be the system integration and implementation costs and who will be responsible to cover them.

If the authorities are changing the provider of software, then IT dept will need to confirm that the new software service provided by the contractor will not create security vulnerabilities to the system or compromise its GDPR compliance.



7 Intellectual Property
The authority will need to arrange for the return of the current providers IR in an agreed form.

However, depending on the services provided, the authority may consider licensing critical software directly to mitigate any transition risks.

8 Knowledge Transfer
The authority should have access to all data that relates to its operations for purpose of knowledge transfer and training. All such data should be transferred in an agreed format to avoid unnecessary data entry or conversion costs.

9 Third-Party Contracts
The need to assign third-party contracts between the service provider its subcontractors have to be reviewed. The original agreement should require the current service provider to include appropriate provisions in its third-party agreements to ensure that they will be assignable to the authority or the new provider to ensure continuation of service.

10 Data and Information
The current agreement should make provision for the return of appropriate data and relevant documentation. This is an important element given that the current provider may delay the transfer of critical data or information which will affect operations as leverage to

make claims to recover costs that should have been covered included in the original agreement.

The transition for one provider to another (if not managed properly) is full of risks and negative consequences to the authority. These could include claims from the current contractor to recover costs and the new provider if for example they are unable to perform due to lack of data. The disruption of service provision and the inevitable reputational damage are often the most lasting consequences to poor handover. The reader will have no doubt noticed that many of the risks associated with service provider change should have been covered in the original agreement. However, if they have not been covered in precise and unequivocal terms then the authority may experience a very difficult and costly transition period. This will be especially true if the parties are separating on bad terms. Therefore, the first step should be to carefully review to current agreement to see if the 10 points are properly covered. However, if the 10 considerations are not, then the authority will need to negotiate and amend the contract with the cooperation of the current provider. As we all know, agreements should be designed to allow them to evolve, to reshape and change to guide all parties to work together to achieve the best outcomes. The authority will need to persuade the current provider that an orderly transfer would be in both their interests and will avoid costs and maintain their respective reputations in the marketplace as professional operators.

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