

The Case for

commissioning and procurement transformation

in English local government

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Ken worked in central government until 1995, serving in various senior IT project management and procurement roles at the MOD, Cabinet Office, H M Treasury and Home Office.

In recent years he has been the Director of the London Regional Centre of Excellence, and Commercial and Procurement Advisor to Capital Ambition. He specialises in procurement and commissioning transformation which includes digital technology, knowledge management, contract management and savings generation.

He is a Fellow of the Chartered Institute of Purchasing and Supply (CIPS), Fellow of the Royal Society of Arts, and a Liveryman in the Worshipful Company of Information Technologists.



www.sps-consultancy.co.uk

foreword

Rob Whiteman

Dear Colleague,

Public services are undergoing radical change, not least in English local government which sees unprecedented reductions in expenditure.

These changes include the way in which client bodies commission and deliver services, in particular the nature of the providers that are selected and the way we manage outcomes and expectations. These changes are often made in a climate of rising demand for services but with far less resources to meet it.

This means that we have to become smarter in the way we commission, procure and then manage the resultant contracts. This is difficult when different people and stakeholders are involved throughout this commissioning cycle. But, it should not be used as a deterrent to delay the transformation of a process common to all public bodies. In the case of councils, local government is responsible for the management and control of £55bn each financial year.

As well as the financial case, third party organisations, including social enterprises, employee owned mutuals, small and medium sized enterprises and the voluntary sector, are going to be an integral part of service delivery. We need to think 'public money' and not just 'public sector'.

Well controlled and organised contract and relationship management is essential to ensure we get the right outcomes, contain or reduce costs and avoid failure. We have all seen at first hand the bad effect of contract failure when it involves our essential services.

Actual contract management starts as soon as the commissioning and procurement processes have finished. However, success or failure can be reliant on how well the whole process is undertaken from the original commissioning request, through the sourcing and acquisition process to the execution of the final contract. This is why CIPFA is eager to raise the profile of this crucial aspect of commissioning and procurement transformation and encourage earlier participation of all relevant stakeholders.

We commissioned Ken Cole to write this short White Paper which is designed to help CFOs across the UK to ask the right questions to ensure that their body is fully committed to this essential transformation. Ken has 35 years direct experience and a comprehensive understanding of the essential management, cultural and leadership changes that are required to achieve lasting transformation.



Rob Whiteman
Chief Executive
CIPFA

understanding the challenge

Overview

English local government continues to face unprecedented challenges driven by a combination of financial, legislative, demographic and economic factors. The extent to which they apply varies between councils, but collectively they mean that members and officers alike have to rethink:

- the type of services that are provided to their communities
- how they should be delivered
- who is best positioned to achieve the best outcome
- the cost for delivering the service and who should pay for it.

All treasurers are acutely aware that their financial position means that whatever service delivery models are agreed in the future, they will have to cost a lot less than at present and involve far less resources. The emerging consensus is that local councils will essentially become commissioning bodies and will become more reliant on external organisations to deliver their services.

The current realities

Current levels of third party spend with suppliers and providers across English local government suggests that our current expenditure¹ is about £55bn² each year. Upper tier authorities are responsible for about 85% of this total. The scale and range of services, supplies and works each year is only matched by the largest and most diverse multi-national businesses. Yet the way we collectively acquire this vast array of services and supplies makes little commercial sense. We do not leverage our collective strength as much as we could, and this has a subsequent impact on our ability to shape markets or achieve the best outcomes from our contracts.

It is ironic that central government has recognised this by creating the Crown Commercial Service – departments are increasingly collectively engaging with key contractors as ‘the Crown’ rather than as individual bodies. The approach appears to be working, and judging by the cross party support for Lord Young’s report³ and recent changes to the EU Public Procurement Directives, it is likely to accelerate. It is inevitable that sooner rather than later local government will be challenged as to why they are not doing something similar.

Although on paper this seems to be a reasonable proposition, the complexity and organisation of local government makes this more difficult in reality. But it is not impossible to achieve. The main challenges are a combination of structural and cultural factors:

- Different approaches are used to commission, procure and contract manage between local councils even though the underlying process is identical.
- The process is often highly fragmented as the overall activity is cross cutting, whereas most councils are organised on a vertical basis.

1 This is influenceable spend and excludes all statutory payments, pension contributions, grants, rebates, fixed subscriptions etc.

2 This figure has been regularly quoted by both DCLG and the Crown Commercial Services

3 Growing Your Business 2013

- In-house skills, knowledge and the capacity to do this varies widely – many district councils struggle to justify the investment in people to manage on a dedicated basis.
- Local government pay structures are not competitive to recruit, retain and reward people with the right skills and capabilities.
- Most supporting IT systems currently used in service departments are rightly ‘vertically’ focused for operational delivery. Yet they rarely link with financial, procurement and contract management functions which need to operate on a ‘cross cutting’ basis.
- Concerns that shared contracts and supplier engagement will lead to unacceptable compromises and loss of control of the commercial process and contractor selection.

The outcomes from this combination of factors manifest themselves in different ways:

- Failure to undertake effective and consistent contract and relationship management, beyond isolated pockets – in some councils this is a serious weakness.
- Diluted ability to remove costs as a part of a robust savings regime.
- Cost overruns and contractor performance issues.
- Difficulty with carrying out effective management reporting, budget management, benefits exploitation (i.e. ensuring business cases deliver their promised return on investment) and exploitation of capital assets.
- Controlling and resisting requests for cost uplifts.
- Inability to use collective strength to stimulate markets and influence contractor behaviour.
- Restrictions on the ability to resource and project plan effectively.

National governments are finding that dealing with global corporations requires cross border collaboration and joint working. Similarly local councils are finding it problematic working in isolation to shape markets and influence the behaviour of major contractors.

The case for commissioning and procurement transformation in local government is widely accepted by chief officers. This has been given further impetus with the launch of a new **National Procurement Strategy** for local government in 2014 by the LGA.

This white paper helps to:

- generate an understanding of what that transformation could look like
- help to make the financial case to justify finding the resources to make it happen.

building the common vision

2.1 Our starting point

Many authorities have already begun the wider transformation process in different ways, including:

- the development of multi-authority shared services⁴, such as architects, environmental health and planning
- creation of new local authority controlled or owned social enterprises to deliver local services
- a growth in employee led public service mutuals, some of which allow some profits to be distributed to employee members and others where profits generated are ploughed back into the local community
- broadening of contracts to include social value⁵ criteria (eg creation of apprenticeships or use of local workforce).

These developments have already started to change the way services are shaped and delivered and have broadened the choice beyond the traditional ‘make or buy’ (in-house versus outsource provision) and the well rehearsed arguments that go with it.

Similarly, the legislative process has also created the conditions that promote commissioning and procurement transformation. Significant examples include:

- the Care Act 2014 represents the largest reform in adult social care in over forty years and formalises the concept of personal budgets – this change fundamentally redefines the way commissioning is undertaken in this area
- the Public Health Act 2013 started the process of integrating the provision of aspects of health and social care under local council control, removing the possibility of overlaps and duplication of effort
- the Public Contracts Regulations 2015 came into effect in February 2015 and incorporates both changes made to the EU Public Procurement Directives with changes being driven by central government. Although some provisions are not live until 2018, totally electronic systems (including invoicing) will force a re-appraisal of the way systems are set up and lead to the removal of wasteful, manually intensive, paper-based systems.

Even the often maligned EU Public Procurement Directives were designed to help deregulate markets and encourage greater competition. Although sometimes described as a bureaucratic nightmare, they form a logical and sensible way to undertake a commercial acquisition in a regulated environment. Most of the problems that local councils encounter are because of a combination of:

- poor contract planning and timing – common sense dictates that multi-million pound contracts need to be planned 12 to 18 months before they are required
- lack of commercial awareness – modernising specifications and encouraging the development of outcome specifications and innovative bidding
- too rigid interpretation of the ‘rules’ by some legal, finance and procurement colleagues
- inflexible contract standing orders and/or approach to risk management.

⁴ According to the LGA 96% of local councils now have at least one shared service www.local.gov.uk/productivity

⁵ Public Services (Social Value) Act 2012 – came into force in 2014

2.2 Transformation process

While the need for a supporting financial case is imperative and is covered in the next section, the transformation process for commissioning and procurement will need to revolve around five major themes.

New models for service provision

This is already being widely addressed through numerous policies including place shaping, use of digital services and changing working patterns. It is clear that effective commissioning and procurement requires clarity on the agreed vision for future services so that the opportunities generated by these policies are fully understood and exploited.

Risk management versus risk aversion

Risk is an inherent part of any business or operational function – something can always go wrong regardless of the best of intentions. Managing risk allows a suitable evaluation to be made of the likelihood of a risk occurring and the associated consequences that may be created. Risk aversion seeks to remove options that may carry risks often without any consideration as to how they could be avoided or what actions could be taken to minimise the likelihood of occurrence. In commissioning and procurement, a risk aversion culture can result in:

- a reluctance to allow new market entrants to bid for work, preferring to stay with ‘what we know’
- overzealous use of pre-qualification questionnaires designed to support a ‘one size fits all’ model
- the prevention of essential market research and analysis for fear of later legal challenge
- continued use of conformance specifications as opposed to outcome based ones to encourage greater innovation and enterprise.

The new Public Contracts Regulations 2015 now contain provisions that will try to minimise this risk aversion culture, by making authorities plan and prepare their procurement documents much earlier and prevent or limit the use of pre-qualification questionnaires.

Shaping markets and influencing thinking

The markets from where we source all our work are highly diverse in capacity, maturity and structure. Collectively, we can influence markets by issuing a clear exposition of what we want (e.g. Market Position Statements being issued for adult social care). We can also shape markets by the way we construct our specifications and bid documentation and most importantly how we approach markets – see the next section on optimum engagement.

Looking forward not backwards

Tradition dictates that examining three years' worth of accounts and checking with credit agencies will help determine the viability of a contractor. Yet few local councils undertake a forward evaluation of a potential contractor by looking at things such as company ownership, growth plans, and analyst reports.

Many major contractors undergo routine changes of ownership and/or be subject to take-over or merger in the space of a five year contract. This can change the way a contract is delivered almost overnight. While this cannot be used as grounds for eliminating suppliers and providers it can help inform: the approach to market, the specification structure, bid documentation as well as the contract terms and conditions.

Contract and relationship management

Few people realise that as little as 20% of the total contract value is committed at signature. Up until this point a potential contractor can be expected to undergo extensive review and evaluation. Only the largest of contracts can be expected to have any form of ongoing management. Even then it can be more about legal compliance rather than extending it to include cost control and performance outcomes. No local authority can afford not to have formal processes, trained people and robust information systems in place to manage their contracts as the commissioning council becomes the norm.

making the financial case

3.1 The Transformation Themes

Broadly speaking, a commissioning and procurement transformation project will have five main streams:

- defining the strategy and policy – this should encapsulate what the completed project will look like and the steps that need to be taken to achieve it
- preparing the marketing and communications plan – this will address key messages, addressing concerns and managing the accompanying cultural changes that will need to happen
- building the delivery structures – what needs to be in place to ensure that the transformation is successful and capable of giving a financial payback
- streamlining the business processes and supporting technology – accurate, complete and timely information is essential
- skills and knowledge transfer – upskilling of people is critical, particularly in relationship management, negotiation and analytical skills.

The primary goals are likely to be the creation of:

- sustainable reductions in third party expenditure without compromising the quality of appropriate outcomes – following the public pound
- fundamental cultural change to establish the ‘commissioning council’ as a natural business model
- a fully up-skilled workforce with an appropriate commercial outlook capable of ensuring sustained provider performance while containing costs and maintaining flexibility
- An integrated digital economy between the council, its providers and its citizens.

3.2 Savings Delivery Points

Creating a clear business case which can be managed to ensure effective returns is an essential starting point for any project. As mentioned earlier, the annual third party spend which could be influenced to generate savings is about £55bn per annum. Typically, this expenditure will display the following characteristics:

- Over 90% will be with 5% of the supply base at most.
- About 35% of invoice transactions each year will have a value of at less than £100⁶ but only account for 1% of overall expenditure in total – taking the invoice value to £500 will account for 65-70% of the volume but only account for 4-5% of overall expenditure.
- While the main, high value contractors tend to remain stable each year, many upper tier local councils will have a 40% annual churn rate (i.e. 40% of suppliers/providers will be replaced/added each year) – up to 50% of these will not be used in the following year. Most of these will be for mid to low value contracts/orders.

⁶ For London boroughs in 2011, the figure was 32% accounting for less than 0.8% of London's combined £8.7bn 2010/11 third party spend

- An average upper tier local council will have 5,000 to 7,000 active suppliers, whereas an average district council will have 700 to 1,300.
- Up to 20% of suppliers/providers will trade with multiple authorities and this will account for about 70% of annual third party expenditure⁷.

These statistics can easily be produced at little or no cost and provide the key metrics for business case creation and the communication of the need for transformation to a wider audience. It also provides crucial information for:

Financial system review – few organisations really exploit the supplier and ordering capability in their systems, particularly things such as low value order/invoice automation⁸, use of a parallel procurement classification⁹, supplier categorisation, contract order cross referencing.

Supplier Management – ensuring that the use of new suppliers/providers is monitored at an appropriate level.

Optimum engagement analysis – using procurement classifications to determine at which level to engage with markets (national, regional, sub-regional or locally).

Contract and relationship management – details of all contracts with a full-life value of over £100K should be captured on a corporate contracts register including electronic copies of the actual contracts. This will provide the starting point for introducing robust management and review arrangements. Research carried out by the Institute for Commercial and Contract Management showed that private companies were losing 9-12% of their annual revenue because of poor contract management.

Management and performance reporting – measuring progress with the transformation and savings delivery using easy to measure and relevant performance indicators. This should also extend to giving budget holders the information to see the effectiveness of their commissioning arrangements.

There are lots of variables in the way savings are calculated and effort and dedication is always required to make them before they are spent elsewhere. Introducing better controls, automation or even simply asking for a cost reduction can achieve reductions of up to 5% of non-core third party expenditure (about 30%). Greater sophistication is needed to deliver savings from the remaining expenditure yet the rewards can be up to 15% measured against current costs. It is a prize worthy of at least more investigation.

7 **London Councils 2011 Report**, Delivering for London – modernising local authority procurement

8 Thurrock Council went live with Oracle i-supplier in April 2014 and has over 700 suppliers now signed up. This removes all human intervention and allows orders to be flipped into invoices, sent, approved and scheduled for payment in five clicks

9 In 2006 English local government adopted ProClass. 75% of upper tier councils were using it in 2012 and 30% of district councils www.proclass.org.uk

Useful websites and organisations

Here is a list of organisations with further useful resources. Listing here does not imply support or endorsement from either CIPFA or the paper's author.

CIPFA Procurement and Commissioning Network:

www.cipfa.org/procurement

Chartered Institute of Procurement and Supply (CIPS):

www.cips.org

Crown Commercial Services (CCS):

www.gov.uk/government/organisations/crown-commercial-service

International Association of Commercial and Contract Management (IACCM):

www.iaccm.com

Local Government Association:

www.lg-procurement.org.uk

Local eGovernment Standards Body (LeGSB):

www.legsb.i-network.org.uk

ProClass:

www.proclass.org.uk

Social Enterprise UK:

www.socialenterprise.org.uk

You may also be interested in:

- Training and development in procurement
- Further CIPFA Thinks white papers and guides
- CIPFA Advisory and transformation offer



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