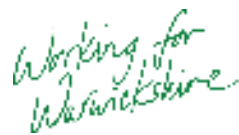


Working Together

Warwickshire County Council

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**Warwickshire Community and
Voluntary Action**



Introduction

The Council is committed to sustainability and to working with a diverse range of suppliers to deliver environmental, social and economic benefits through its procurement activities.

In March 2008 Warwickshire Community And Voluntary Action (WCAVA) conducted a survey of 60 organisations from the voluntary sector Compact Signatory Register, together with some other organisations which may have had tendering experience in Warwickshire in the previous 3 years.

A report *Managing Reality*, based on findings from the 19 responses, was published by WCAVA in May 2008, identifying some satisfaction with the procurement process and outcomes, but also areas of concern. The report was discussed at a meeting of Warwickshire County Council (WCC), WCAVA and Warwickshire Welfare Rights Advisory Service (WWRAS) in October 2008, when specific concerns were raised:

1. The effect of the shift from grant funding to earned income, and future changes to service delivery as a result of Adult Individualised Payments
2. Stalling of tenders part-way through the procurement process
3. Consultation and briefing events
 - a) with potential providers and service users prior to starting the procurement process
 - b) clarity on suppliers' involvement in the consultation, commissioning and procurement process
 - c) planning ahead to enable market consultation
 - d) briefing events to help suppliers understand specifications
4. Written guidelines on commissioning and the procurement process for WCC staff
5. Contract review prior to extending contracts
6. Advertising of contracts
7. Guidance for suppliers on how to earn good marks in Pre-Qualification Questionnaires and tenders
8. Financial assessment of suppliers
9. WCC contract terms and conditions relating to payment
10. WCC contract terms re termination periods
11. WCC insurance requirements
12. Post-tender feedback

It was agreed that a WCC WCAVA Procurement Working group would be formed to look at these in more detail and consequently 2 meetings were held in January and March 2009, attended by Charles Holmes and Paul Tolley (WCAVA) and Janet Chapman (WCC). The issues were investigated within WCC and the findings are reported here.

WCC Response to *Managing Reality*

1. The effect of the national shift from grant funding to earned income, and the impact of Adult Individualised payments

There has been a shift nationally from Grant Funding with Service Level Agreements for the provision of services, to the letting of contracts and frameworks for those services, using formal procurement processes.

Putting People First, the ministerial concordat launched in 2007, introduced reform of provision of services to adult social care clients, to give them control and choice in how the services they require are delivered. Our understanding is that individual budget holders will be able to choose to:

- Buy the service required from the Council (delivered through a contract let by WCC), or
- Buy the service required from a supplier on a framework let by WCC, or
- Buy the service elsewhere, from a supplier not connected to a Council contract or framework, or
- Take a 'mix and match' approach using some or all of the above options

The Council will work with service users and the supply market to develop ways in which these choices can be met, but we envisage there will be fewer and smaller block contracts, and some framework agreements.

Service providers should be aware of the need to adapt to the new ways in which demand may arise, and plan for how they will meet it.

2. Tenders being stalled part-way through the procurement process

Stalling of tenders happens for a variety of reasons, some of which are unavoidable, or not within the Council's control, for example:

- The procurement process was begun in anticipation of funding in order to meet funding timetable/deadline, but the funding was later withdrawn.
- There were no acceptable bids (eg. bids do not meet the Specification or exceed the available budget)
- Supplier references are not acceptable
- Changes in public procurement regulations or directives from Central Government.

We are trying to reduce stalling of tenders where it is within our control eg. through pre-tender consultation with the supply market.

We will endeavour to identify in tender adverts and/or documents, those tenders where there is potential for stalling, to enable Suppliers to make an informed decision on whether to bid.

Much of the Council's procurement activity is regulated by public procurement law, and challenges in the European courts show that it is being stringently applied. Recent case law has implemented rules on evaluation criteria and sub criteria; and the application of EU rules to tenders below the financial threshold and to Part B services. Laws can change quite rapidly and the Council may sometimes need to stop and review current tenders to ensure that they are fully EU compliant with the most up to date rules.

Major changes eg those brought about by Central Government for services for adult social care clients, can have a big impact on our procurement activities and make it difficult for us to get things right first time, but we will involve service users and the supply market to develop good, compliant specifications.

3. Supplier briefings and consultation prior to commencement of the procurement process

Consultation with a diverse range of suppliers, including those from the profit-making and not for profit sectors, and with service users, takes place where we need it to help develop specifications. A range of factors such as changing needs and priorities, strategic importance of the service and financial value, help determine the extent of any consultation which takes place.

Suppliers are encouraged to participate in market consultation and to attend supplier briefings in order to raise concerns they may have.

4. Written guidelines on commissioning and the procurement process for WCC staff

The Council follows both internal rules and external public procurement regulations. It has a devolved approach to procurement, led and supported by a professional Strategic Procurement team (SPU). Many of our devolved commissioners and procurement officers have undertaken externally verified procurement training. Some officers are also studying for professional Chartered Institute of Purchasing and Supply (CIPS) qualifications.

We run in-house Procurement and Contracting courses for staff new to procurement, and Sustainable Procurement training on environmental, social and economic issues.

All officers are required to observe the Council's Contract Standing Orders (CSOs) and Financial Standing Orders (FSOs).

They must also follow our Procurement Code of Practice and further controls and advice are provided by our inter-active Procurement Tender Checklist.

A Procurement Plan must be completed for contracts in excess of £140,000 value, and approved by the Strategic Procurement Unit, before the procurement process begins.

We have specific guidance (*Commissioning Procedures*) for staff commissioning social care, health and housing related support services for adults and older people in Warwickshire.

5. Contract review prior to extending contracts

Contracts may be reviewed and extended in order to maintain service delivery where analysis is taking place to identify changing needs, or where future funding is anticipated but not yet finalised eg the introduction of Individualised Payments.

The Council has a rigorous CSOs Exemption process, which must be used when commissioners and procurement officers propose to extend contracts. Exemptions are granted by the Strategic Procurement Manager and the Corporate Legal Services Manager only where there are robust, justifiable reasons.

Contract reviews may also be carried out by commissioners and procurers during the life of a contract eg. if a significant risk to the service is identified.

6. Advertising of contracts and tenders

Contracts are advertised in accordance with our CSOs:

- Contracts under £10,000 do not have to be advertised. They are let by obtaining a minimum of 2 written quotations from selected suppliers.
- Contracts of £10,000 and over are advertised on www.warwickshire.gov.uk/tenders.

Contracts between £10,000 and £29,999 value are let by obtaining at least 3 written quotations using a formal quotation process.

Contracts of £30,000 and above are let using a formal tender process.

- We also comply with the EU rules on advertising:
 1. Contracts above the EU thresholds * (currently £139,893 for goods and services and £3,497,313 for works) are advertised in the European Journal Tenders Electronic Daily www.ted.europa.eu.
 2. The EU rules apply differently to Part A 'priority' services and Part B 'residual' services.

Part A Services must be advertised and include maintenance and repair of vehicles, transport by land and air, telecommunications, financial, computer and related services, R&D, accounting, market research, management, consultancy, architectural, advertising, building cleaning, publishing and printing, sewerage and refuse disposal.

Part B Services may, but do not have to be, advertised. It is our usual practice to place a voluntary OJEU notice for Part B Services. Part B Services include hotel and restaurant services, transport by rail and water, legal, personnel placement and supply, investigation and security, health and social services, recreational, cultural and sporting and 'other' services.

Contract award notices must always be placed (even for non-advertised tenders) within 48 days of the contract being awarded. Contract award notices are *always published* for Part A Services, but *may not be published* for Part B Services.

We do not place contract notices on www.supply2.gov.uk but our contract notices may be picked up by that organisation and added to their web site.

We have recently appointed in-tend (www.in-tend.co.uk) as our e-procurement portal provider. The main purpose of in-tend is not to function as an advertising portal for all our tenders, but tenders conducted electronically using in-tend will appear there.

We may also advertise in local, national and relevant trade press.

Pilot contracts and trial projects are not always advertised, but this can vary with the circumstances of the pilot or trial.

Contracts that are being extended are not advertised.

* EU financial thresholds change on 1st January every alternate year, the next amendment will be on 1st January 2010.

7. Guidance for suppliers on how to earn good marks in Pre-Qualification Questionnaires and tenders

EU competition law prevents us from assisting any provider or group of providers with completion of bids in response to specific tenders.

General advice on tendering for Council contracts, what we look for in our suppliers and how tenders are evaluated can be found on our website www.warwickshire.gov.uk/procurement

The Council runs briefing events from time to time for suppliers, to help them understand the procurement process and how to earn good marks on Pre-Qualification Questionnaires (PQQs) and tenders.

We are developing a new PQQ and will share it with the voluntary sector via WCAVA.

We will develop case studies for providers to illustrate good bids and poor bids.

Guidance for our commissioning and procurement staff includes the requirement to produce clear tender information which shows how specification criteria will be scored and weighted.

8. Financial assessment of suppliers

The Council must ensure that suppliers have sufficient financial and resource capacity to deliver contracts awarded to them. Financial evaluations are flexible, depending upon the service requirement and total value of each contract.

Grants and other funding are deemed to be part of turnover.

Where young or start-up organisations are unable to provide audited accounts we may accept other evidence of financial stability eg. monthly management accounts, business plans and a stable relationship between the provider and their bank.

Alternatively we may sometimes offer a portion of the business initially, or look to secure additional financial security e.g. via a parent company bond/guarantee.

This flexible approach to awarding low value/low risk contracts can help providers develop their business and build capacity to bid for larger tenders.

Award of high risk/high value contracts is of necessity more stringent to ensure the sustainability of both provider and service delivery.

Providers should make provision for Full Cost Recovery when pricing their bids for Council work, in order to ensure their own financial sustainability.

The OGC recommend that annual turnover for contracts should be 4 x the annual contract value (also referred to as the 25% rule). We are mindful of the recommendation but do not apply it routinely.

9. WCC contract terms and conditions relating to payment

We understand that payment on invoice following delivery of goods or services may create financial pressure for some suppliers, regardless of their legal status.

It is our practice to pay voluntary sector suppliers in advance of service delivery, in accordance with the requirements of the Warwickshire Compact.

We meet the BVPI of payment within 30 days of invoice, for 95% of invoices received.

We are currently paying the majority of invoices within 10 days, in accordance with the Recession recommendation from central government.

Providers should be aware that the introduction of Individualised Payments for Adults may impact their own cash flow because of the potential for payment by WCC or directly by the service user, depending on their preference for service delivery.

10. WCC contract terms re termination periods

Termination clauses can appear to be unfairly biased in favour of the Council. In cases where termination is triggered by poor performance it is extremely unlikely that the contract would be terminated without prior communication and detailed discussions.

The Council would only in exceptional circumstances invoke a termination clause against a supplier without first attempting to work with them to resolve any issues on non or poor performance.

Where there is a need for continuity of service provision the Council would be required to put in place alternative arrangements, making termination at short notice very unlikely.

Guidance for commissioning and procurement staff will highlight the importance of contract performance management, improving the dialogue with providers and facilitating early resolution of any problem areas.

11. WCC insurance requirements

The requirement for specified levels of insurance is part of our CSOs. The levels have been fixed to protect the Council and providers from exposure to risk.

We understand that insurance levels may sometimes be considered onerous or expensive and recommend providers to:

- Check the amount of insurance on their current policy (levels can increase automatically as part of industry practice).
- Ask their insurance broker or company about the cost of increasing cover to the required level. There is sometimes no charge, but any extra cost incurred should be factored into Full Cost Recovery.

It may be possible for WCC to reduce the amount of insurance required for appropriate contracts (we can do this subject to the approval of our Insurance Manager, through our CSO Exemptions process).

12. Post-tender feedback would be beneficial

It is standard practice for WCC to offer post-tender feedback to all providers, regardless of whether they are successful or unsuccessful. We will show where their bid earned good and not so good marks, and the range of marks earned by other bids. This enables the provider to identify areas for improvement in future bids, both for WCC and other public bodies business.

Public procurement regulations forbid us from giving any more detailed information on other providers' bids.

Conclusion

The procurement regulations we are governed by are complex, and can make our processes difficult for providers to work with. We will endeavour to make our tenders more accessible by developing procurement guidance for the supply market, and will work with WCAVA and other representative bodies to promote it to the Voluntary Sector.

Janet Chapman
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Warwickshire County Council
April 2009.