

Pilot Learning Group

Round Table Action Learning Session 3: Procurement (Competitive Dialogue) Sharing of Experiences

Introduction

The Academy for Justice (AJC) pilot learning group was established following a requirement to develop Learning Groups for members. The pilot learning group focuses on one key area of commissioning; provider development, that was seen by the AJC membership as important in improving learning.

The make-up of the pilot learning group consists of members of the AJC who come from public, private and voluntary sector backgrounds. The bringing together of people from all business sectors will significantly help in developing a better understanding of provider development and will ensure that any learning disseminated via the AJC is suitably informed. Whilst this mix of people from different sectors is beneficial, each member of the group is also committed to adopting an open approach to engaging in the pilot, exploring differing issues regardless of the sector they work in which will ensure any learning is not biased towards a specific market sector.

The inaugural meeting of the pilot learning group took place on the 24th February 2012 in Birmingham. Future activity will consist of a series of facilitated round table action learning sessions with a view to the sharing of experience and learning across the group and to report back to Academy for Justice Commissioning for wider dissemination.

There will be five round table events covering the following subject areas:

	Subject	Location	Date
1	Models of partnership working	Havant	April 2012
2	Localism	Norwich	June 2012
3	Procurement (Competitive Dialogue) - sharing of experiences	Wakefield	August 2012
4	Balancing operational and commercial interests in commissioning	Poole	October 2012
5	Influences - Government, Media, Public Sector – what is the evidence base?	Luton	December 2012

On completion of the round table sessions it is proposed to share the findings and experiences of the Pilot Learning Group with members at one of the formal AJC evening seminars early in 2013.

Round Table Action Learning Session 3: Procurement (Competitive Dialogue) Sharing of Experiences

The third round table action learning session focused on public sector procurement and in particular the Competitive Dialogue process that is becoming more popular as the vehicle by which public sector Contracting Authority's purchase central government and community based goods and services. The group made a number of observations and highlighted some reoccurring issues that they felt could be resolved through better management of the process and closer involvement with stakeholders.

These observations and issues are explored in the rest of this paper and have been recorded to share with the AJC membership and other interested parties.

Procurement in General

Initially there was a level of criticism of public sector procurement process from within the group based on personal experiences and the level of bureaucratic management employed when undertaking a tendering process. It was also felt that many procurements were protracted, taking an unacceptable period of time from identification of need through to contract award.

However once the group shared their personal experiences in more detail and explored the reasons for the associated problems, it became clear that more often than not it was the way Contracting Authorities deployed the procurement process that was the problem and not the process itself. The group identified several weaknesses that seemed consistent across procurements that members of the group had been involved in, these are highlighted below:

- Poor preparation and planning for procurements
- An overly vigorous compliance to public sector procurement regulations when some level of flexibility can be deployed
- Inappropriate deployment of dialogue based procurement procedures

These weaknesses are explored in more detail in the following section.

Poor preparation and planning for procurement.

The group identified that poor preparation and planning often resulted in an unacceptably short tender submission turnaround time for bidders or a protracted tendering process that took many months to complete. In the examples discussed by the group there was a clear indication that the poor planning was generally linked to internal housekeeping, governance and administration issues at the contracting authority. For example one consistent theme identified was poor management of contract or service renewal requirements. This often led to compressed procurement timescales so that the Contracting Authority could maintain service continuity.

Other examples included the early advertising of opportunities without specifications and tender packs being finalised which misleads potential bidders and leads to long procurements. Resources requirements are also seen as a delaying factor in the procurement process. The problems in co-ordinating appropriately qualified resources to carry out tender evaluations or to provide the necessary authorisation and sign off activities is often underestimated.

Vigorous Compliance to Public Procurement Regulations

The group recognised the importance of the procurement regulations in assuring best use of public money; however it was felt that the government's transparency agenda and an increasing willingness by disgruntled providers to seek recourse through the courts had led to the adoption of a risk averse culture across both commercial teams and senior managers in the public sector. The result has been the introduction by many public bodies of a self imposed procurement compliance process that lacks flexibility and stifles innovation.

For example some members of the group had experienced of innovative ideas not being explored through partnership working because the public sector partner would have to apply the procurement rules and tender for the opportunity. This is regardless of the fact that the funding required was significantly below formal EU procurement thresholds and was an exempt service (Part B in EU parlance).

In general the group felt that the vigorous application of overly prescriptive procurement compliance rules was both unwarranted and unnecessary. It was recommended that Commissioners should adopt a more pragmatic approach, applying a sensible compliance policy in line with HM Treasury and EU requirements (which are reasonable minimum requirements) but at the same time fostering the ability to innovate and improve service outcomes. To achieve this outcome Commissioners would need to adopt an entrepreneurial culture moving away from the more traditional process/compliance driven approach and become less risk averse.

Inappropriate deployment of dialogue based procurement procedures

This was a particularly interesting area of discussion within the group and highlighted a number of perception issues that are becoming embedded in the terminology often used by non procurement professional. In particular the use of the term Competitive Dialogue is now being employed as a generic term for all dialogue based procurements regardless of whether that procurement is actually following the procedure laid out in the EU Directives.

It is important to differentiate between a Competitive Dialogue procedure as defined by the Directives and that of a procurement that includes a dialogue phase. They are very different processes and as highlighted during the discussion, the experiences of members who have been involved in each raised an interesting observation.

The formal competitive dialogue process, when deployed correctly, proved to be a positive experience to those members that had been through a procurement of this type. This is because the process has a clearly defined path to achieving the end result and all bidders are aware of the process in advance. The Contracting Authority is also aware of its obligations during the process and to be successful the necessary planning and preparation is required to ensure compliance. The value of these contracts often dictates that extra care is taken during the preparation phase which could be a reason why a positive experience is achieved.

Conversely those members of the group that had participated in procurements that include a dialogue phase had a less positive experience of the process. The group felt that there had been a significant increase in the number of procurements which included a dialogue phase and this had significantly increased bidding costs and contributed to the lengthening of the procurement process. The group felt that while some dialogue was required in a small number of cases (because of the complex nature of the service requirements), others were thought to be unjustified, with little supporting rationale for its inclusion.

The group looked at the reasons for the increase in the number of procurements that included a dialogue phase and concluded that the likely contributing factors were as follows:

- A lack of skills and competencies within the Contracting Authority to produce a robust and well researched specification of requirements
- Lack of resources within the Contracting Authority to undertake the necessary analysis and consultation in order to determine market capabilities
- A level of laziness by the Contracting Authority, relying on potential providers to shape service design through dialogue

What was clear from the group was that a number of them were becoming more wary of this type of procurement, raising concerns that the process forced them to give up any business and competitive advantage they may have had at the dialogue stage. Often this was then included in the final specification that all bidders were then required to submit a final offer against. The net result was that the final evaluation was often made on price as all competitive advantage was lost. Most of the group were reviewing their bidding methodology in light of these issues with some already applying more robust criteria to which opportunities they would bid for in the future.

Conclusion

This roundtable provided an interesting level of debate within the group. The make-up included individuals who were commissioners and those who represented providers so the debate was on occasions challenging but also rewarding. What was pleasing was that the group was both open minded and forthcoming in sharing and discussing experiences which made for a valuable learning experience.

The outcome of the session can be summarised as a general level of concern across the group that the public sector commissioning and commercial teams, including procurement are currently too process driven, risk averse and lack the vision and flexibility to move to the more innovative culture that will be required in a multi sector public service delivery model. The future of public services is likely to be more dynamic with an environment where innovation, collaboration and continuous service redesign will be the foundation on which successful payment by result models are constructed. To achieve this the traditional purchase provider culture will need to be dismantled and replaced with a true partnership culture and much more involvement of smaller localised specialist organisations. In the current economic climate, Commissioners have a real opportunity to make this happen.

The discussions proved to be complimentary to the first two round table events and this paper should be read in conjunction with the reports from these sessions to fully understand the wider learning of the group.