

Better Commissioning for Local Skills and Employment

ERSA Guide for Commissioners in Local Authorities

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ersa
Employment Related
Services Association

The ERSA guide for commissioners: Why now?

This document has been developed by the Employment Related Services Association (ERSA), the representative body of the employment support sector, to support local authorities in relation to employment and skills commissioning.

ERSA has around 250 members, spanning the public, private and voluntary sectors. Two thirds of ERSA's members are not for profit, with charities, social enterprises, local authorities and housing associations in membership.

Looking forward, local authorities are set to take a stronger role in relation to the commissioning of employment and skills support. Many are already active in this space; others may seek to be going forward. Given the ongoing backdrop of constrained public sector expenditure, ensuring that local authorities are equipped with the skills and the knowledge to make good commissioning decisions will be essential.

The employment support sector has delivered a wide range of government schemes over many years, whether commissioned by Westminster, devolved authorities or local government.

As such, it has unprecedented insight into the impact of commissioning approaches, both good and bad, and how unintended consequences can sometimes flow from well-intentioned decisions.

Our shared interest is in ensuring that jobseekers have the best possible quality employment support, regardless of their distance from the labour market.

However, we also understand local authorities' need to obtain the best value for money and to apportion risk appropriately. This guide for commissioners has therefore been designed to help local authorities navigate through the maze of questions and pitfalls which face them.

To learn more about ERSA or to discuss any issue related to this guide, please contact the ERSA policy team at ersa@policy.org.uk
020 3757 9416

Before you begin:

Commissioning for effective delivery

Commissioning is a challenging and complicated process and this is particularly the case when procuring employment and skills support, particularly for those further from the labour market. As such, services need to be designed carefully to ensure that they are able to meet the specific needs of jobseekers, whilst also suiting the needs of employers and complementing any existing services on the ground.

The Crown Commercial Service (CCS) has extensive guidelines for all commissioners of services, available here: www.gov.uk/guidance/transposing-eu-procurement-directives

In addition, the Cabinet Office has established the Commissioners' Academy programme, a set of five sessions over five months that teaches commissioners best practice and offers practical advice. You may also find the Public Service Transformation website useful, which features numerous case studies of effective local commissioning (see Useful Resources on the last page).

Alongside the official CCS procurement rules, the following key points are important to keep in mind when you are deciding how to commission and procure services.

Complementing existing employment and skills services

Many employment and skills programmes are already likely to exist in your area, including, but not limited to, the Jobcentre Plus regime. Understanding how your programme interacts with these will be important to streamlining jobseeker

journeys, ensuring efficiency of use of public money and avoiding confusing employers.

Assessment of need & existing services

Evaluating and understanding the need for services in your area is vital to commissioning a service that performs well. Undertaking a rigorous assessment prior to drawing up a contract allows you to take advantage of existing services and more accurately gauge potential costs.

Thinking through service design

Be clear about what you want to achieve and for which groups of jobseekers. What does success look like for you? Is it purely about moving jobseekers into work? If so, is the nature or level of the work a factor for you and do you want to reward long term jobs? If not, what sort of 'interim measures' might you also want to see? Some contracts also reward work placements, volunteering activity, completion of skills training and other steps towards work.

Such progress measures can have a place. However, be careful that the balance is not skewed so far towards these that few jobseekers actually enter into paid long term employment.



Similarly, do you want your contract to build in flexibility or innovation? This is something you should consider as early as possible as it has fundamental implications in terms of assessment of bids and service design.

Consultation

When designing a contract, consulting with stakeholders and providers on defining outcomes and developing assessment metrics will help you make sure that they are correctly balanced between being ambitious and achievable.

Transparency

This is vital to ensuring a smooth commissioning process. Commissioners need to be open about what they are trying to achieve, the criteria on which they are basing decisions and in sharing data that may be of relevance to bidders. Not only does this ensure that bids are of a high quality, it also reduces the likelihood of your ultimate decision being challenged.

Clarity

The specific reasons for service levels in your contract must be clearly communicated and consultation with bidders should be part of how those levels are set to prevent raising needless bureaucratic hurdles to service delivery. Furthermore, if your contract is dealing with a particularly challenging issue, make clear early on that your contract is designed with shared risk in mind.

Payment by Results (PbR)

Under a PbR model, providers are paid for their services based upon the number of outcomes they achieve throughout the contract (with outcomes being defined by the commissioner). PbR can be an effective way to drive innovation, efficiency and

savings; however it can also lead to issues if the contract is not suited to a PbR model. In particular, if you are focusing on jobseekers further from the labour market, it may be that some of your desired outcomes are less clear and/or longer-term in nature than in programmes for those with fewer barriers to work. If you are considering using a PbR model, Russel Webster's simple PbR tool can help assess whether it would be a good fit <http://pbr.russellwebster.com/>

A balanced contract

When designing your contract take care to create a fair balance of liabilities and indemnities. Placing the onus too heavily on the provider is likely to discourage bidders, particularly from smaller organisations.

Understand the impact of your contract clauses

It is easy in contract design to inadvertently exclude some groups from bidding by seemingly innocuous contract clauses. For example, in the past, clauses requiring that the commissioner signs off all relevant external communications have excluded charities well suited to the contract, who felt that their campaigning responsibilities would be impugned by that restriction.

Tailored contract design

It can be tempting to simply use an off-the-shelf contract, make minor alterations and re-issue it, but this can result in considerable costs for providers as they must put it through rigorous due diligence tests, effectively excluding smaller organisations, including charities and non-profits. One way to alleviate this is to have your legal staff draw up a 'plain English' version of the contract, laying out exactly what each clause in your contract is intended to



achieve. This would allow bidders to assess your contract much more quickly whilst reducing costs.

Staying in proportion

In a similar vein, when commissioning with very small amounts of funding, it is important to ensure that the tendering process is proportionate. In many cases very small tenders are as complex and time-consuming as equivalent multi-million pound contracts, which can again be prohibitive for smaller organisations hoping to bid.

Monitoring

is crucial to ensuring that your contract is running healthily throughout its lifespan. From the outset, work with providers to establish milestones and other criteria for assessment which will allow you to ensure proper oversight of the contract as early as possible. If milestones need to be changed through the life of your contract, you should make sure that change control clauses are in place so that changes are not perceived as simply 'moving the goalposts'.

Explore alternative funding

If you believe you may be working with voluntary, community or social enterprise (VCSE) organisations, you should explore the option of contracting in partnership with a social investment group. Social investment not only allows you to increase your purchasing power, but also allows you to split some of the risk associated with procurement between yourself and the investor.

Working with supply chains

should be a particular consideration when commissioning employment support services. Prime contractors of national programmes in particular operate via large supply chains and your contract should account for them:

- Understand the supply chain – bidders should let you know who is in their supply chain, as well as what proportion of the business they are likely to receive. However, this requirement may need to be relaxed if you wish to build a lot of flexibility into your contract to account for changing client groups.
- Build supply chain transparency into your contract – as above, so below. If you intend to contract services on a managing agent model, management fees to subcontractors must be transparent and available to you throughout.
- Good commissioning supports potential bidders to form local networks and partnerships – something as simple as a forum in which parties can register interest and contact one another can be enough, allowing for better-informed co-operation between organisations and saving time and money for smaller bidders who don't have substantial business development resources.





The DWP's **Merlin Standard** sets out good practice in supply chain management. Designed for the employment support sector, it is based on a generic model suitable for working with supply chains in any sector, and is one of the most comprehensive sets of guidelines available.

You can learn more about the Merlin Standard at <http://www.merlinstandard.co.uk/>



Beware of potential pitfalls!

There are a number of areas in which contracts can experience issues, but many of them can be avoided with proper planning and effective communication at an early stage. A few examples are listed below:

EXAMPLE:

In June 2015, an investigation was launched into procurement in North-East London for elective services. This was the result of a complaint from an unsuccessful bidder, Care UK, against the commissioning CCGs.

The complaint alleged that the design and conduct of the tender had been inappropriate, and that the commissioners had failed in their responsibility to provide appropriate service quality by focussing too heavily on pricing in bids. The investigation continued for almost a year before the procurement process was abandoned entirely and the existing contract, provided for by Care UK, was extended.

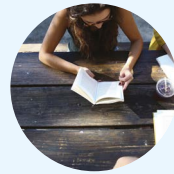
Legal challenges

Don't leave yourself open to a legal challenge. The UK and EU have stringent rules ensuring that a level playing field is present for all organisations putting in a bid, whether they are private organisations, charities or local authorities hoping to deliver services in-house.

In addition, commissioners have a responsibility to accept bids that offer the best services for value for money – this does not necessarily mean the cheapest, but rather the delivery of the best services at the most cost-effective price.

Focussing too heavily on cost rather than value is one of the most common issues on which commissioners leave themselves vulnerable to a challenge.

One of the most common ways imbalance can creep into the commissioning process is when councils take services in-house – in some cases internal bidders fail to account for basic running costs such as premises and materials, leaving external bidders at a tangible disadvantage. A legal challenge to your commissioning process can be hugely disruptive, delaying contract commencement by months and costing the commissioning body, central government and provider valuable time and resources. The best way to protect against these kinds of challenges is to ensure that the processes through which decisions are reached are transparent, and that you are providing all the information required by providers to write effective bids. If your organisation succeeds in this, declined bidders are more likely to accept the decision.



An appropriate timeframe

A short contract can be appealing when commissioning as it incurs a lower cost, but it comes with substantial drawbacks. As a commissioner, you need to account for set-up time at the start and close down towards the end of the contract period. In these opening and closing stages, outcomes are likely to be less impressive while the provider makes necessary adjustments to begin work or reduces intake in preparation for close.

Short contracts are dominated by these less productive periods, and in turn outputs are significantly reduced. Essentially, the longer a contract is allowed to run, the more likely it is to be able to meet or exceed expected outcomes as your providers will have more time to hone their approach. Ensuring that your contract runs for an appropriate period is a key factor in ensuring that you get good value for money.

Communication

Good communication is vital for effective commissioning. You need to clearly communicate to potential providers relevant information at the earliest stages, and make clear what is expected in terms of outcomes, engagement and investment.

Without clear communication of available data, core aims and contract stipulations, commissioners leave themselves open to damaging complications from inappropriately-modelled bids.

EXAMPLE:

The UnitingCare partnership was commissioned by the Cambridgeshire and Peterborough CCG to provide five years of integrated community support from April 2015, however errors at the commissioning stage foundered the project after just eight months.

Key problems included the contract not being clear about the expectation that providers would invest their own funds in transformation, the scope of the services to be involved, and data provided by the CCG being extremely limited (meaning that providers could not accurately price their bids).

When UnitingCare was awarded the contract there were 71 cost and clarification issues still unresolved. Additional funding was needed as a result, and when it was not forthcoming the partnership collapsed at an estimated cost of £8.9m to signatories.

What can you do to guard against things going wrong?

- In the event that the commissioning process does encounter barriers, communicate with your providers – you should maintain open and frequent contact with bidders and providers throughout the process.

Their support and input is vital to a smooth commissioning process, while a lack of communication can foster distrust between parties.
- Once a decision is made, ensure you have in place a robust system of monitoring agreed with your provider, so that you are able to identify and address any issues in the running of the contract as early as possible.
- Once the contract is complete, carry out a rigorous evaluation and make sure the findings are shared to ensure that the experience can be used to enhance future commissioning.

What can providers do if things go wrong?

If issues arise, there are official routes which external organisations can take to raise concerns about procurement practices. We should stress that these are last resorts – if you pursue a collaborative approach to commissioning, the best and easiest recourse for both parties will be a joint assessment of the contract at which point issues can be raised and, if necessary, this can lead to dispute resolution via an independent arbitrator. A clearly articulated process for joint review will almost always trump a formal complaint to any of the following groups.

- The Crown Commercial Service's **Mystery Shopper** is the primary route for suppliers to raise concerns about procurement. Suppliers can approach the government's Mystery Shopper team to lodge a complaint

or concern about how a service is being commissioned – the team will then approach the commissioner to assess the process and make recommendations as appropriate.

In the event of serious or persistent issues, cases may be referred on to the **Crown Representatives** for further study and potentially stronger intervention.

- In the case of CCGs and NHS commissioning, **NHS Improvement** (formally Monitor) exists to ensure that accountability is maintained and mistakes investigated and learned from. NHS Improvement can initiate independent inquiries of poor practice in procurement if they are flagged up by a provider, and was responsible for investigating and acting on both of the examples found in the last section.

Useful Resources

The **National Audit Office** has written an accessible and thorough Successful Commissioning Guide, available at: <https://www.nao.org.uk/successful-commissioning/>

Public Sector Transformation has a range of in-depth commissioning case studies from local government available at: http://publicservicetransformation.org/images/Public_Sector_Transformation_Network_-_Hyperlinked_version.pdf

The **National Audit Office** has also published a study of PbR in public service contracts, offering an in-depth look at when it is most and least appropriate. It can be found at: <https://www.nao.org.uk/report/outcome-based-payment-schemes-governments-use-of-payment-by-results/>

Big Potential has written an extensive guide to what social investment is, how it can be used, and which organisations can access it: <http://www.bigpotential.org.uk/resource/social-investment-guide>



Employment Related Services Association (ERSA)
Elizabeth House, York Road, London, SE1 7NQ

ersa.org.uk | membership@ersa.org.uk | +44 (0)20 3757 9415
