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New guidance on outsourcing and contracting with the private sector in delivery of public services

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The role of outsourcing in public services

Outsourcing and the public sector's contractual arrangements with the private sector to deliver public services continue to come under immense scrutiny. This has been heightened by the collapse of Carillion in 2018, and reported challenges faced by some other companies in the outsourcing sector.

There is in any event a keen public interest in the approaches adopted, and results achieved, by private sector outsourcing firms due to the volume and value of the public services they operate.

For example, during 2015/16, central and local government spent a combined £251.5 billion externally with suppliers of goods and services. In the same period 13.7% of GDP was spent on government procurement. In any event, political sensitivities (with the two largest UK political parties adopting very different stances on private sector involvement) mean that outsourcing arrangements will continue to be in the public eye.

However, such public/private partnerships are likely to continue for some time. And, whilst these arrangements may present challenges, a review carried out in March 2018 by the government concluded that 'when interactions with the private sector are done well, they can bring efficiencies, scale and fresh perspective'.

Outsourcing guidance

However, not even the most enthusiastic supporter of outsourcing could assert that, in all cases, they have been 'done well'. The Outsourcing Playbook (the Guidance) issued in February 2019 by the Cabinet Office brings together a number of policies showcasing best practice across government when outsourcing and contracting with the private and third sectors. It offers a useful framework for professionals within commercial, finance and project delivery to use when making decisions and implementing those decisions to outsource delivery of services or through the use of other alternative arrangements.

The new policies address the following:

- **Publication of commercial pipeline** – which enables suppliers to understand government's future demand for services, and prepare for these opportunities. It also seeks wider participation from different enterprises from the private and third sectors, and to achieve greater diversity of supply.
- **Timeframes** - which will of course depend on the type of services/project being planned. However, the National Audit Office regularly stresses that allowing insufficient time for commercial activities is an indicator of project failure.
- **Market health and capability assessments** – this is to be carried out by project teams to identify potential limitations within the market, and consider approaches such as contract disaggregation to increase competition.

- **Project validation reviews** – applicable to all complex outsourcing projects (not only major projects) to utilise expertise and assure deliverability, affordability and value for money.
- **Make v buy assessment** – a thorough assessment should be conducted before deciding on outsourcing to ensure informed decision making between delivering services in-house, using other alternative models of delivery and outsourcing.
- **Should-cost modelling** – applicable to all complex projects with the modelling to be produced as part of the make vs buy assessment. Its purpose is to provide a better understanding of the costs associated with different service delivery models and to help protect against 'low bias bids'.
- **Requirement for pilots** - where a service is being outsourced for the first time, there is a presumption that a pilot should be run. This is to assist with understanding the environment, constraints, risks and opportunities. Pilots are also expected to offer quality data and can inform drafting of technical specifications.
- **Key performance indicators (KPIs)** – it is important for all new outsourcing projects to include performance measures that are 'relevant and proportionate to the size and complexity of the contract' (with three KPIs being made publicly available). Setting the right KPIs builds strong foundations for smarter contracts to incentivise delivery and provide clarity to the public as to what they can expect.
- **Risk allocation** – greater scrutiny should be applied to ensure this is determined based on genuine and meaningful market engagement. This is not only meant to deal with concerns of suppliers, but also the expectation is that government will be seen as a more attractive client.
- **Pricing and payment mechanisms** – linked to risk allocation, this will be subject to greater scrutiny to ensure it incentives the desired behaviours in order to make the outsourcing market dynamic and sustainable long-term.
- **Assessing economic and financial standing of suppliers** – minimum standards will apply and consistently applying these will provide a better understanding of financial risk in order to safeguard the delivery of public services.
- **Resolution planning** – suppliers of critical public service contracts required to provide resolution planning information in order to prepare for any risk to continuity posed by insolvencies (even if infrequent).

Getting the most out of the Guidance

Little in the Guidance is novel or controversial. However, it brings together useful and timely direction for central government departments when considering outsourcing and contracting, and provides reassurance, through various examples, to professionals engaged in outsourcing. Of course, not all of the processes set out in the Guidance will be applicable to every procurement.

A make v buy assessment can only be effective if various models, including 'alternative models of delivery', are identified and the cost and benefit analysis carefully considered in relation to each. For example, public service mutuals, in-house provision (Teckal companies), collaboration with other public authorities (Hamburg exception), outsourcing to an existing or forming a social enterprise and joint ventures.

A should-cost model is a must for only certain project but its application is likely to be useful for all procurements. This requires a clear specification and performance measures. By engaging with one of the policies, procuring bodies are likely to achieve other recommendations set out within the Guidance and be better equipped to manage the contractual arrangement.

Some commissioners may view outsourcing as a means to outsource risk. However this is unlikely to be appropriate, as it unlikely to shield the public sector from various risks that may arise during the life cycle of a contract or deliver value for money. Instead a wider assessment should be conducted in relation to risk allocation, as well as payment mechanisms. The take-away from the Guidance in respect of risk allocation requires recognition of a simple yet effective principle – ensuring that risk sits with the party best able to manage it. More widely, risk allocation could be determined by undertaking the following:

- identification (based on market information and lessons learnt),
- quantification (considering the likelihood of an event based on past experience), and
- allocation (compiling a risk allocation matrix to determine who is best placed to control a particular risk or whether it is a joint risk).

Engaging with the Guidance is important because a number of the recommendations are likely to enhance the ability of the public sector to manage outsourced contracts. Further, the use of these different approaches is likely to result in better engagement with the private sector, the latter viewing the public sector as a client of choice and greater involvement of SMEs and the third sector to achieve efficiencies, social objectives and innovation.

Whilst the Guidance is aimed at central government, different policies can also be a useful tool to professionals in the wider public sector, including those in local government working in commercial, finance and project delivery when making decisions to outsource or contract with the private or third sector.

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