Competitive Compassion

Public bidding – why is it like this?

Welcome – this is workbook for those in charities that are:

- new to public bidding and not sure what to expect;
- those that have been exposed to it and found it very strange,
- or those that have worked with public authorities and want to step back to the basics on what constraints their commissioner will be working to.

This can be worked through individually or as a group.

Back to basics

Public commissioning works a certain way because it has to. You may have a great reputation with your public authority, but when it comes to deciding who they want to deliver their services for them they will be working under a heavier set of regulation.

Firstly – a walk through the absolute basics:

Public services are state responsibility, paid for with public money and provided or commissioned by public authorities

Public authorities can take this responsibility by running these services themselves, or they can opt to commission independent organisations to deliver on their behalf. They often choose this for various reasons, including gaining access to expertise and resources, for economies of scale and where services are better received from a perceived independent source.

Where they take this course of action, it is achieved through procurement, which is the process of selecting the best provider for the service and issuing and managing a contract with them.

Procurement is more heavily regulated than grants, donations or earnt income.

This regulation, originating with the EU and now transferred to UK law, is based on the core principles of:

1. **Open competition**, with equal access to all suppliers
2. **Fairness of decision-making**, with no bias or uncompetitive practices
3. Producing the best **value for public money**
4. **Transparent** and auditable processes to demonstrate the above

These principles run through every nuance of how the procurement process is run and are accountable by law.

The below sections can be used either as a set of activities or simply a few key pointers on how these principles play out at each stage of the process.

Preparation stage

Commissioners deal with a constant cycle of contracts starting and ending. As they prepare for a new service or re-contracting an existing one, they will have support from the authority;s procurement team to ensure that the decisions made adhere to legal principles.

Activity: Imagine that you are a commissioner and a contract for one of your services is due to end.
What would you need to consider at this stage to make sure that your ultimate decision process demonstrably adhered to the above principles?

Some, though not exhaustive, answers below:

Open competition	Unlike, say, an employment contract, a contract for a public service has to have an end date – an organization cannot be given a service perpetually as they may not continue to be the best value provider.
Fairness of decision-making	Requirements of a service must be clearly defined, with transparent and objective criteria what a good service looks like. These are set out in a **service specification**
Producing the best **value for public money**	Commissioners will undertake research during the final part of a contract's delivery to understand what the best use of public money is in that area. That may include reviewing data, dialogue with the current provider, and engaging with the people that the service is there to support. "Value for public money" may look different for different services. A commissioner must give their definition of "value" and clearly state what will be taken into account in the assessment **Price**: the obvious form of "value" is that it goes to the provider that can deliver the service for the lowest amount of public money **Quality**: value created by delivering an impactful service **Social value**: value created by benefiting wider society beyond the service outcomes e.g. through employability practices and work with the local community **Organisational viability**: ultimately, no value will be created if the provider goes bankrupt or does not have the infrastructure to deliver the service. Usually a service will be decided on a mix of the above, e.g. 60% based on quality, 30% based on price, 10% based on social value. This must be stated up front with clear criteria for each. Viability is usually a pass/fail against set criteria.
Transparent and auditable processes to demonstrate the above	A commissioner can best demonstrate a fair bidding process if they have multiple viable bidders putting forward quality proposals. It is in their interest to attract bidders to the procurement – this may take the form of public "market engagement" events, advertising, and individual conversations with providers. Conversations with providers are not restricted at this stage and organisaitons should be comfortable talking to their commissioner about upcoming procurement – it is a vital time to influence the shape of the service

Bidding stage

Once the above decisions and preparation have been made, commissioners will publish an open opportunity for organisations to bid for the service.

Similar to applying for a job against a job description, the commissioner will set out the criteria that submissions will be tested against. These criteria are focused on ability to achieve of outputs and outcomes, realistic resourcing, and understanding of the subject matter and commissioners' objectives. Organisations can submit proposals of their offer against these criteria.

Activity: Consider what it would take to make the submission of proposals a fair, open process.

Answers below:

Open competition	Public authorities must advertise contract opportunities **publicly**, or to a framework that any organisation can apply to join The **time window** to bid must be the same for all bidders, with enough time for a provider to mobilise a bid (minimum 30 days)
Fairness of decision-making	**Fair access to information** must be given. In the case of an existing service, the current provider will know information such as the details of buildings, demographics of those needing the service, etc. Effort must be made to make this information accessible to all. Commissioners may <u>not</u> communicate information about the bid to some providers and not others or discuss the bid directly while it is live. Questions can be asked where clarification is needed, but only through a portal and with the responses shared with all bidders. Providers will have the same scope for their proposal, answering the same questions within the same word counts
Producing the best **value for public money**	A live tender must include a service specification that outlines the definition of a value service. This will transfer to the contract of the awarded provider Tenders require bidders to submit their intended budgets for how the public money will be spent.
Transparent and auditable processes to demonstrate the above	The majority of proposals are in written format as the easiest means for an audit trail Where there are interviews, presentations and negotiation happen they must not undermine overall fairness and cannot outweigh the bid scoring.

<u>Decision-making stage</u>

Once proposals are submitted, a commissioner can assess proposals against their criteria to decide the organisation offering the most value for money.

Open competition	All bids submitted compliantly (i.e. without deviating from the standards of the process) must be evaluated All providers must be made aware of the result at the same time
Fairness of decision-making	Commissioners cannot take into account any knowledge that they have of the provider other than what is included in their bid
Producing the best **value for public money**	All bids must be assessed equally against the definition of value stated within the service specification.

Transparent and auditable processes to demonstrate the above	Commissioners must provide debriefing to unsuccessful bidders to understand rationale for the decision. A ten day standstill must take place between decision shared and contract awarded to allow for challenges on the fairness of the process to be made before the contract is awarded.

Contract delivery stage

Once an award has been issued and the standstill passed without a challenge to the fairness of the process, a contract can be awarded and the service start on the commencement date agreed in the procurement.

Open competition	The contract must remain aligned to the service specification Where there are necessary changes e.g. unexpected new funding, or a significant change in customer need, this must be issued as a variation to the contract to change its scope.
Producing the best **value for public money**	A provider will be held accountable to the commitments in their bid, usually with inclusion in their contract. Performance management is taken against the agreed service value e.g. KPIs
Transparent and auditable processes to demonstrate the above	Commissioners must provide debriefing to unsuccessful bidders to understand rationale for the decision A ten day standstill must take place between decision shared and contract awarded to allow for challenges on the fairness of the process

Once the contract comes to the end of its term, the cycle begins again.

Some consideration for what these restrictions mean for you as a charity:

- *Fairness:* ultimately, these restrictions mean that if a charity is able to make a case that its expertise can best meet the needs of the contract then they are in with a shot at winning it, regardless of whether other organizations are bigger or have better lobbying/policy teams.

- *Capacity needed:* Unfortunately, since bidding needs to be detailed enough to demonstrate the advantage between bidders, it is often a largescale piece of written work as well as needing a well thought out budget and clear evidence of capability. This means that it is always a **significant call on capacity** across leadership, operations and central functions (finance, HR etc). Charities must assess whether they can make this capacity available, and what impact this may have

- *Value*: This process places emphasis on public value, incentivizing competitive pricing and capping the finances available. This can lead to charities, deliberately or not, taking on contracts that do not meet the full cost of delivery and overheads, In 2020, 57% of charities delivering public contracts were **subsidizing the genuine costs** of their delivery through their own income or fundraising. While this can be strategic in some cases, it creates risk does not lend itself to long term sustainability.

- *Publicity*: Transparency, such as commissioners holding **market engagement events** before a bid, creates a good change to understand whether the service is for you before you commit to the bid. You will get sight of other bidders – are they organisations of your size and type or very different? Are they talking about the service in a way that lends itself to charity delivery e.g. do they emphasise a person-centred approach or local connections?

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Plus, if you are interested in delivering a service but are not in a position to prime, consider how you use this space to market yourselves. In person events are obvious networking, but online events can give you a chance to write a tailored, opportunity-specific pitch into the chat function and follow up to specific emails to other potential bidders