

NATIONAL PROCUREMENT STRATEGY FOR LOCAL GOVERNMENT

CJC response to consultation draft of statutory guidance

Key - quoted extracts from the consultation draft are in italics, followed (indented) by the CJC response

CHAPTER 1 - Best Value and CPA – *while authorities have discretion over how individual services are provided, the highest standards of service provision are more likely to be achieved where there is a genuine competition, choice for service users and a mixed economy, rather than where any one supplier dominates the provision of services.*

CJC - we agree entirely that market domination by any one supplier is bad for service standards. Like many practitioners we are for this reason unconvinced of the long-term benefits of contracts in which authorities contract out a large proportion of their support services and other activities to a single contractor, often for very long periods.

Cost drift and quality drift are well known to be exceedingly hard to stop, for contracts of this length. The likely upheaval as a result of terminating a contract of such size and complexity, or even of awarding a successor contract to a different contractor, tend to create undue strategic dependency on the winner of the first contract.

This is particularly unhelpful for contracts for long periods, during which time the assumptions made in packaging, specifying and pricing are certain to become increasingly obsolete. This is of course because of continuous changes in the political and statutory framework within which services are delivered; demographic changes in the populations served; and the changing expectations of the public and other stakeholders.

It would be constructive, and show balance, for the guidance to mention that the jury is still out on the wisdom of placing such contracts

CHAPTER 2 - what should councils be doing ? - demonstrate political leadership of procurement . . . the strategic importance of procurement should be reflected in an executive portfolio - creating a member procurement champion.

CJC - we doubt whether such champions would add value, or not where officers of the necessary calibre are in place; and we see no way of persuading sceptical elected members to designate a champion, except to tell them that this is now required by statutory guidance. We feel sure that quoting such a reason would put the guidance in a light which would be unlikely to secure useful cooperation.

CHAPTER 2 - what should councils be doing ? - implement a corporate procurement strategy. Councils should . . . define the contribution procurement is to make to strategic objectives, and . . . develop appropriate procurement strategies and policies, including option appraisal (the 'make or buy' decision) . . . checkpoints . . . does the council have a corporate procurement strategy that is clearly aligned with the council's strategic objectives ?

CJC - we agree entirely with the need for enlightened procurement strategies and policies, but believe these have to suit the different services and activities being procured, and the fundamental differences between the markets which provide for them.

We therefore doubt the value of **corporate** procurement strategies and policies except as to

- ¥ the wider benefits to be sought from procurement, such as ESEWeb and better race relations; and
- ¥ the corporate allocation (not take-over) of procurement roles and responsibilities; for some activities, including construction and social care, procurement is often departmental, and so far as we know no case for transferring responsibility for it has been made

We therefore suggest that the guidance should instead stress the need for sound service and activity strategies and policies.

CHAPTER 2 - *what should councils be doing ? - adopt a business plan and monitor its implementation using strategic performance indicators*

CJC - we are puzzled in this instance about what particular business the guidance sees as calling for a plan. Business planning tends to take up the time of the busiest and most skilled staff, and it would be unhelpful to make authorities feel that they have to comb chapter 2 to find something to compose a business plan about.

CHAPTER 3 - *by 2005 the average time taken from OJEC notice to contract award in a partnering project should be reduced by 10 per cent*

CJC - we know of no credible evidence of undue delays in awarding contracts, and have to warn that the duties involved (including for example the conducting of gateway reviews) is getting steadily more time-consuming. We are not therefore convinced that such a target is practical or even desirable, and we note that Chapter 3 does not advance any evidence or arguments to support it.

CHAPTER 3 - *by 2005 the smaller district councils without procurement resources of their own, should be collaborating with others to create shared services for procurement and project management*

CJC - we do not believe that many small district councils are so small that they do not have procurement resources suited to their own regular needs. Most local authorities, big and small, have for many years shared experiences and technical information more readily and effectively than other bodies of comparable size. Indeed, recent research for the Department by ORC International stated that 67% of local authorities use procurement consortia.

We therefore doubt whether any gain from sharing procurement and project management services would be worth the resulting office-work and loss of direct responsibility. We suggest that the guidance should make clear that this expectation for 2005 relates only to
¥ procurement in what, for the council in question, is an unfamiliar field; and
¥ high value procurements which are particularly amenable to advantages of scale.

CHAPTER 3 - *what should councils be doing ? follow best practice in the partnership procurement process. Partnership procurement processes should follow . . . the service-specific guidance contained in the 4ps procurement packs*

CJC - these packs are among a large number of service-specific guides, including several of our own in subjects not previously covered by *other bodies* (social care, education, and IT). There is no obvious reason why only the 4ps packs should be made subjects for statutory guidance.

CHAPTER 3 - *what should councils be doing ? - implement a gateway review process. Councils should adopt the 4ps gateway review process for all medium and high-risk projects. Guidance includes the 4ps Gateway Workbooks.*

CJC - we agree entirely that the case for gateways for medium and high-risk projects has been made out but see no reason for statutory guidance to preclude local authorities from devising their own gateway processes producing the same outcomes.

CHAPTER 3 - *what should councils be doing ? - procure and commission jointly. Joint commissioning in the health and social care sectors is now well established. However, the benefits of joint commissioning and joint procurement of services is less well developed in other sectors as is collaboration on the procurement of construction projects. Councils should explore all the opportunities.*

CJC - the joint commissioning of services and collaboration on the procurement of construction projects are two different propositions with different pros and cons.

Experience suggests that **joint commissioning** is labour-intensive, and calls for major organisational upheavals. There is nevertheless a sound operational case for it where (as for health and social care, and for children's services and education) two agencies are buying services for the same end-users. We suggest that the guidance should make clear that it is urging joint commissioning only in these special circumstances.

Collaboration on the **procurement of construction projects** can mean either the cooperation of different tiers of local government in the development of construction projects; or combined purchasing in construction, at times when (unlike now) there is a lot of construction to do. Local government does however have a long record of both types of collaboration in construction, and local authorities pioneered innovative techniques for it, sometimes in the face of marked scepticism on the part of central government.

It would therefore be unconstructive for the guidance to suggest that there are unexplored fields for joint operation, and it would be factually incorrect to imply that local authorities have been slow in exploring those which exist.

CHAPTER 5 - *from 2003 all councils shall consult staff during procurement projects and build employment considerations into procurement processes and contracts, including compliance with the 2003 Act and circular 03/2003 including the associated code of practice*

CJC - It would probably save misunderstandings if the guidance were to make clear that it is pointing to the requirement to consult staff when councils propose to market test, or to buy instead of make, and means the staff whose jobs are thereby directed affected. If indeed this is what the guidance means, we most certainly support it. Obviously there are good management reasons for consulting other staff on other occasions, but (unlike the staff just mentioned) there is no reason to believe that they are not consulted anyway.

The point of the guidance might therefore be lost if readers were, unnecessarily, left wondering how many staff have to be consulted, about what.

CHAPTER 5 - *by 2004 . . . procurement processes for partnerships should include . . . inviting bidders to demonstrate their track record in achieving value for money through effective use of their supply chain, including the use of small firms; this should continue to be examined as part of contract management.*

It might be helpful if the guidance were to say so if the Department believes that track record can, when the EC directives apply, be taken into account in tender evaluation, as distinct from tenderer selection. We agree with this ourselves, but the view is widely doubted

CHAPTER 5 - *how to achieve community benefits through procurement - adopt whole life costs and benefits as your contract award criteria. Procurement strategies and contract standing orders should establish 'the optimum combination of whole life costs and benefits to meet the customer's requirement' as the best value contract award criteria.*

CJC - we agree wholeheartedly that procurement decisions of all types have to take account of whole life costs. We believe however that the best juncture at which to address whole life costs is when drawing up packages, briefs, specifications and contract conditions, and we intend to cover this in our own forthcoming guidance on commissioning work & services.

In conventional tender evaluation, future costs can only be estimated subjectively, and then have to be converted to their present values using one of a number of different techniques about which economists disagree, and which produce very different answers. Often the amounts of the tenders for the work in question are, compared with the present values of whole life costs, of small significance. This can nevertheless be handled for any single element of whole life costs, but so far as we know nobody has done it for them all simultaneously, in tender evaluation. The scale of the figures would rob tender evaluation of any credibility, except perhaps with the supposed winner. We therefore suggest that the guidance should stress the need for consideration of whole life costs from the earliest stages in commissioning; and then add that contract award is the right occasion for addressing any whole life costs which for any reason were not allowed for earlier.