

# From Commissioning to Contract Evaluation

UNISON's guide to campaigning and  
negotiating around procurement

# Contents

CHAPTER	PAGE
1	Introduction – the background to commissioning and procurement _____ 3
2	The politics behind procurement and commissioning _____ 6
3	Understanding the main stages of the commissioning and procurement process _____ 10
	Diagram 1: Understanding the main stages of commissioning and procurement _____ 12
	Diagram 2: The main stages of commissioning and procurement and the gateway review process _____ 13
4	Stage 1: pre-procurement _____ 14
	A: Negotiating a service transformation and procurement agreement _____ 14
	B: developing a branch strategy _____ 17
	C: employment issues _____ 20
	D: the public sector equality duties and equality impact assessment _____ 23
5	Stage 2: moves towards procurement _____ 26
	A: Service reviews and improvement plans _____ 26
	Diagram 3: from service review to business case _____ 28
	Diagram 4: Government procurement cycle and gateway reviews _____ 29
	Table 1: The scope of a service improvement plan _____ 34
	Table 2: Extract from an SIP action plan _____ 35
	B: options appraisal, in-house bids and business cases _____ 37
6	Stage 3: Active procurement _____ 44
	Diagram 5: the active procurement phase _____ 45
7	Stage 4: post procurement _____ 58
8	Procurement and the law _____ 62
9	Appendices _____ 66
	Appendix 1 – contract notice/OJEU notice _____ 66
	Appendix 2 – Pre-qualification questionnaire _____ 68
	Appendix 3 – sources and further information _____ 70
	Appendix 4 – Useful websites/contacts _____ 71
	Glossary of acronyms _____ 72

# 1 / Introduction

## – the background to commissioning and procurement

In recent years 'commissioning' and in particular 'procurement' has become the centrepiece of the government's modernisation strategy. The UK government has sought to use procurement to pursue a policy agenda about how public services should be delivered and to achieve efficiencies across the public sector.

The move to a procurement exercise will often be coupled with claims that improvements can be made and money can be saved, sometimes to be re-invested in front line services. It is important to remember that procurement, particularly tendering and large scale procurement programmes, have their own costs in time, money and morale. These costs and their impact on services, or the alleged future benefits of the procurement exercise must always be fully considered and taken into account as part of the real cost of procurement.

This guide is not intended as a detailed explanation of the law or the vast amount of technical information about procurement. It is intended to be used as a handbook which will allow you to be clear about your strategy, enable you to access and deploy resources and identify the key pressure points within the process where you can maximise the opportunity to influence the outcomes of the procurement process.

Within the guidance you will find boxes labelled "Key Issues". These are reminders of UNISON's role, our policy and the things that we should be thinking about during procurement activities. Other boxes labelled "Key Actions" contain lists of actions that should be taken to ensure that UNISON is taking a pro active role in retaining in house services and protecting the terms and conditions of our members. Where this is not achievable or an option, this guide gives action and advice on how we can secure maximum influence in the procurement process to protect our members' employment/terms and conditions.

### Why is commissioning and procurement a key issue for UNISON?

UNISON is a public services union. Its members are employed in the NHS, local government, police and fire services, probation and education and children's services. The commissioning and procurement agenda could lead to fragmentation in the delivery of public services and could see the transfer of thousands more jobs to private companies and/or the voluntary and community sectors.

It could lead to the break-up of national bargaining frameworks and potentially undermine the terms and conditions of many UNISON members, including their pension benefits. This is despite government commitments to ensuring that those affected by staff transfers will not have their employment rights and pensions undermined by outsourcing jobs and to avoiding the creation of a "two tier" workforce with staff employed on different terms and conditions.

Of course UNISON welcomes statutory protection for employees afforded by the code of practice on workforce matters. But this is difficult to police and even harder to enforce. The only guarantee of safeguarding jobs and services in the long run is to ensure that they are retained and delivered as far as possible by in-house teams.

UNISON needs to retain a strong organisation at a local level and sustain the integrity of its local bargaining and negotiation machinery. That is why it is vitally important that UNISON branches are capable of responding effectively to initiatives by public authorities which could lead to the outsourcing of services and continue to support members transferred to private contractors. Ultimately this is about UNISON organisation and membership and the need to preserve the strength of a united public services union.

### The purpose of this guide

This agenda poses big challenges for UNISON, particularly at branch level.

Research by UNISON shows that when branch officials get involved in the procurement process early they are more likely to influence and shape an authority's decision.

This handbook is designed to provide two important areas of support for branches:

- information about what procurement in the public sector is likely to look like if it is carried out properly
- guidance on the UNISON agenda and how to work effectively to deliver this by taking appropriate action prior to and within the procurement process.

While UNISON is actively opposed to the privatisation of public sector services, we recognise that if we are to effectively protect public services and our members we have to both understand and fully engage in the procurement and commissioning process.

## Terminology

You will find that a number of terms are used throughout this guide to refer to a process of acquiring public goods, works and services through some form of competitive procedure. A brief summary of some of the terminology is listed below:

---

### Commissioning

The term is used in its broadest sense to mean the role performed by a public authority or across public authorities (joint commissioning) in determining needs and the best means of securing outcomes for communities and service users utilising all of the available resources (public, private, voluntary) available. This can involve different ways of providing services and can involve procuring services externally. It has different meanings in a health and social care context, but has come to be associated with an approach to procurement that confines the role of the public authority to that of a strategic decision maker which procures or ‘commissions’ services from separate delivery agents that may also be in the public sector but are most likely to be private sector companies.

Strategic commissioning. This means that the role of a public body is restricted to just deciding what services should be provided. It then buys these in from the private sector rather than providing them in-house.

### Procurement

The process used by governments, regional and local public authorities or bodies to obtain goods, works and services with taxpayer money. A procurement process may be the legal and technical process by which public bodies seek bids from the private, voluntary/third sector and in-house, but it is not necessarily competitive.

### Contestability

The extent to which the market for provision of a good or service is open to alternative suppliers. Proving contestability does not necessarily involve competition and may involve other means of bringing pressure to bear on monopoly providers whether public or private.

### Competition

An environment in which individuals and or firms bid to gain a greater share of a market to sell goods and services. In a highly contestable market competition is the process by which prices are minimised and profits kept at what economists refer to as normal levels. In a less contestable market profits, and therefore prices, can and do rise to reflect the dominant position of a small number of suppliers.

### Market testing

Examining the market to establish whether there is a level of interest and or capacity to provide goods and services and to determine appropriate strategies for competition. The degree of contestability can be established through this process. Market testing may involve some form of competition, but could equally apply to sounding out a range of suppliers or benchmarking costs and performance against another supplier or suppliers (commonly referred to as soft market testing).

### Client

The client role is the function performed by a public authority in planning and overseeing a procurement exercise, awarding a contract and then monitoring contract performance on behalf of the public authority. The separation of the client role from the service delivery role is sometimes referred to as the client/contractor split or the purchaser/provider split. It is also associated with the commissioning role in local government and in health, although it may not always be referred to as a “client role”.

### Intelligent client

The traditional client role is most directly associated with contract monitoring, payment and performance. This was about close supervision of a contract to ensure that its terms were fully complied with by the contractor and to authorise variations to contracts where appropriate and to issue penalties and financial deductions for non-performance of the contract. The so-called “intelligent client” is supposed to provide strategic direction and high level guidance to the contractor, has good sound data on which to base decisions, and performance manages the contract rather than purely monitors it as in a traditional client role. It is supposed to work in partnership with the contractor rather than the more adversarial nature of the traditional client role.

### Thin client

The thin client also sometimes referred to as a ‘lean client’ as the name implies simply means a client organisation with the number of staff and internal resources being intentionally small. The intention is that contractors would provide a flexible resource and skills to compensate for this.

---

**Within this guide we will cover the following key points:**

- Commissioning and contestability are being mainstreamed in all public services. This is driving more services into competitive tendering with some authorities taking steps to increase competitive markets. Efficiency targets and the shared services agenda also drive this approach.
- Procurement no longer starts with the issue of a Contract Notice in the Office Journal of the European Union (OJEU) and trade press – it now starts much earlier with the assessment of service performance and options appraisal.
- Involvement and action by branches at the assessment of service performance and options appraisal stages is vitally important. Decisions will be made at these stages whether the service will remain in-house with a service improvement plan or whether a procurement process will be commenced.
- Branch strategy should try to eliminate the need to commence a formal contracting process, and if this is not possible, ensure that an effective in-house bid is submitted.
- Arguments and tactics to defend members' terms and conditions and employment security.
- Branches cannot assume that the public authority will automatically allow an in-house bid. The authority may argue that if a service is not performing well then management and/or local politicians may 'assume' that another provider will be able to improve performance. They may think 'why spend money preparing an in-house bid when we are looking for efficiency savings?'
- Under the commissioning model public bodies may no longer have the capacity or expertise to also deliver services
- What our legal entitlements are at various stages of the commissioning and procurement process. It will clarify that there is greater legal entitlement for engagement in the more formal procurement phase, but it will contain advice on how we can get involved at all stages of the process.
- Procurement is not simply a technical or legal process. Political decisions are made at various stages such as the criteria used to evaluate options, the extent to which the authority 'stimulates' or creates markets and whether it supports an in-house bid. For example the questions asked in a

Preliminary Invitation to Negotiate (PITN) inevitably have a political content. In addition branches need to ensure that procurement officers and managers do not treat procurement solely as a technical and legal process. Branches should ensure that, where appropriate, local councillors are made aware of progress and developments. Larger projects should be reviewed by overview and scrutiny committees in local authorities at key stages of the commissioning and procurement process.

### Key issues for UNISON in influencing the early stages of commissioning and procurement

UNISON branches should ensure they have significant involvement at key stages of the commissioning and procurement process. These include:

- Pre Procurement
  - defining of future needs;
- Moves Towards Procurement
  - assessment of current service performance
  - need for in-house service improvement plan
  - identify need, scope, cost, risk of procurement
  - decision to retain current provider or initiate procurement process
  - options appraisal criteria including impact assessment;
  - options appraisal
- Active Procurement
  - selection of options including in-house option
  - supporting in-house bid
- And at all stages secure the views of service user and staff
 

Assessments and decisions will be made about the current performance of the service and whether an in-house or outsourced service can be improved or not.

There are both direct and indirect triggers, which could start the procurement process. Poor performance, pressure for efficiency savings and shared services projects, poor comprehensive performance assessments or internal support for a strategic service-delivery partnership (SSP) could trigger a procurement process. Capital projects, commissioners moving directly to outsourcing, the transfer of services to arms length companies and trusts and political dogma could also be direct triggers of the procurement process.

It is vital that the branch strategy is based on a clear understanding of the key drivers behind your own authority's decision to start the procurement process.

## 2 / The politics behind procurement and commissioning

### The UK wide context

Public authorities in England are now expected to adopt commissioning, competition and contestability strategies in the provision of all services. These are seen as essential tools to secure service improvement, service transformation, and value for money in public services. There is also an expectation that new investment and development will be delivered through 'partnership'. It should be noted that while the policy drivers behind procurement are similar in all parts of the UK this is not a universal position.

In Wales there is a different approach which stresses collaboration and co-operation across the public sector and in Scotland at policy level a commitment to delivering better quality public services through partnership working and co-operation. However, the general thrust of public policy on procurement poses challenges across the whole of the UK. For example in local government there have been major transfers of services to the private sector through Strategic Service Delivery Partnerships (SSDPs). In Wales and Scotland, although PFI is not favoured by either administration it has been used as a means of delivering investment in public sector infrastructure in health and local government. In Scotland the term Public Private Partnership (PPP) is used for the type of infrastructure projects more commonly referred to as PFI in England. A derivation of PFI is being promoted by the SNP called the Scottish Futures Trust (SFT).

A new public services framework introduced in England as a result of the Local Government and Public Involvement in Health Act 2007 is underpinning a wide and increasing use of markets and competition in the delivery of public services, guaranteeing that procurement will remain centre stage for the foreseeable future.

There is also strong pressure on budgets in all four countries, and a regime of very challenging efficiency savings. Despite significant cost pressures council tax in England rose by an average of less than 4% in 2008/09, the lowest increase for over a decade. In Scotland council tax was effectively frozen for 2008/09.

The efficiency agenda adopted by governments across the UK has expanded into the shared services

agenda. Annual efficiency targets of around 3% are accompanied by pressure to draw up shared services projects with other public bodies, particularly for corporate and transactional services. In England this efficiency drive follows on from the Gershon Review, in Scotland it is called the 'Transforming Public Services' agenda, in Wales it is part of the 'Making the Connections' agenda and in Northern Ireland the "Draft Priorities and Budget 2005-2008" document issued by the Northern Ireland Office sought £588m of efficiencies by 2008.

Against this background, the process of options appraisal, the procurement process itself and contract management all have a key role in decisions about who provides services, how they are delivered, their quality and the terms and conditions of the staff.

### Political forms of procurement

Procurement is a legal and technical process but the context in which it is undertaken and the decisions made in the commissioning and procurement process are highly political. This section looks briefly at:

- marketisation of public services
- commissioning and contestability
- Public Private Partnerships
- efficiency and shared services agendas
- social enterprises and voluntary and community bidding
- opposing the contract culture.

### Marketisation of public services

The marketisation of public services is driven by a 'liberal' or 'neo-conservative' economic philosophy. It has a number of components such as a belief in the superiority of markets; that competition drives down costs; that the private sector is more efficient and innovative than the public sector; and that individual choice will improve the quality of services. It is also claimed that extending choice in public services will reduce inequality because market forces are believed to be an equalising mechanism. The school of thought most associated with marketisation is known as New Public Management (NPM) which provides the intellectual support for efficiency and downsizing

as successive governments have sought to move functions from the public sector into the private sector. For a description of NPM see the APSE publication *"Towards a Future for Public Employment (2007)"*.

Public services are being marketised in four ways:

- the specification of services – the reorganisation of work so that it can be contracted
- the introduction of market mechanisms in the financing, organisation and management of public bodies
- treating service users as individual consumers and reducing direct democratic accountability by transferring responsibility to new companies, boards and trusts
- embedding business interests in public policy-making.

In England, where the government is leading this agenda, its method of increasing choice in public services inevitably means that it will be exercised through competition between schools, hospitals and other public facilities and the introduction of market forces. Procurement will have a central role in the exercise of choice as public facilities and services seek to compete by cutting costs and improving quality.

### Commissioning and contestability

Commissioning has been described as the means by which the public authority *"seeks to secure the best outcomes for their local communities by making use of all available resources – without regard for whether services are provided in-house, externally or through various forms of partnership"* (Department of Communities and Local Government, 2008).

The Department of Health (England) has a similar description of 'world class commissioning': *"The commissioning process involves assessing and prioritising population needs, focusing on strategic outcomes, procuring services, and managing providers to deliver the required outcomes"* (Department of Health, 2007).

The Department for Children Schools and Families' (England) description of commissioning children's services is: *"Developing an overall picture of children's needs within an area, and developing provision through public, private, and voluntary and community providers to respond to those needs"*.

It is worth noting that while the guidance referred to above relates to England only, it has resonance across the public sector. While the context may be different, the issues are essentially the same.

A number of public authorities are exploring the commissioning approach. In each case the outcome is likely to be a significant shift away from direct service provision and, over time, a reduction in internal capacity. This is because the model is based on the notion that effective commissioning does not require operational expertise. The so called 'intelligent' client is expected to be skilled in procurement, not service delivery while the concept of the 'thin' or 'super' client clearly envisages a minimal organisation. Under commissioning the public organisation of the future in local government or in health is expected to 'enable' others to provide rather than to act as a provider itself.

### Contestability and making markets

The UK government is concerned that, parallel with procurement, local authorities and public organisations should help to 'make markets', in other words, take initiatives to improve the capacity and competitiveness of the supply side (private and voluntary sector contractors) and minimise fragmented commissioning. The intention is to increase the contestability of public sector service markets as well as to address perceived weaknesses in the effectiveness of the public sector as a client.

### Public Private Partnerships

In England the Private Finance Initiative (PFI) has been used for infrastructure projects in local government, health and other public services. PFI contracts are normally for a period of 25 to 30 years. In Northern Ireland all major public investment is controlled by the NI Strategic Investment Board whose preferred route for delivery is PFI and in Scotland, despite promises to abandon its use, a derivation of PFI/PPP, the Scottish Futures Trust, is being promoted by the SNP-led government.

In addition, the NHS Local Improvement Finance Trust (LIFT) programme is used to renew primary health care facilities. A LIFT company – 60% privately owned – rents premises to doctors, pharmacies and other health organisations and retains ownership of the assets after the 20-year agreement expires. It has an exclusivity agreement to undertake the provision of additional facilities/services during the contract period.

A Strategic Service-Delivery Partnership (SSDP) is a long-term (usually 10-year with an option for a further five years but can be longer) multi-service, multi-million pound contract between a local authority, or other public body, and a private contractor. Anything from 50 to 1,000 staff will be transferred to a private contractor

or seconded to a joint venture company (JVC). The range of services usually include IT and related services such as human resources, payroll, revenues and benefits, financial and legal services and often include property management and other professional services (highway management, technical services). SSPs can also be used to outsource front-line services such as waste management and street scene services as well as professional, back office or support services.

Building Schools for the Future (BSF) programmes are similar to LIFT and are used for projects to build new schools and refurbish existing schools. They usually include both the construction and the related facilities management roles, such as property maintenance, grounds maintenance and sometimes information technology and building cleaning.

### Efficiency and shared services agendas

The Comprehensive Spending Review 2007 set out Labour's spending plans to 2010/11. The tax take will increase by 1% of national income (£14 billion) while public spending will be cut by 0.5% of national income (£7 billion). The Institute for Fiscal Studies concludes that this would, if delivered, "take the tax burden to a 24-year high and public spending to an eight-year low" (IFS, 2008).

The efficiency agenda right across the UK is a key part of the modernisation agenda, and will be a driver for procurement. It has gained even greater significance in the light of the recent financial crisis.

### Social enterprises and voluntary sector bidding

Governments across the UK are encouraging community and voluntary sector organisations (CVS), and social enterprises (sometimes known as the third sector) to bid for public service contracts; in England councils and NHS trusts/PCTs are being encouraged to ensure that these organisations are included in market analysis and informed about contracts. It is worth noting that in some governmental and policy circles procuring services from the "third sector" is seen in ideological terms as being a kind of third way between the public and private sectors and having many of the benefits of private provision but without the profit motive and a more public service orientation. While UNISON is supportive of the role played by CVS organisations in providing niche services, and there are many UNISON members who work in the sector, UNISON does have concerns about CVS organisations delivering mainstream services and being seen as a substitute for public sector provision.

**Co-production** – co-production is a term that is normally defined as citizen involvement in, or participation in, the delivery of services. At its most benign this can involve local people in community clean-ups or the use of volunteers in day centres, but it has other connotations which involve transferring responsibility for service delivery or assets over to individuals or groups. One benefit claimed for such an approach is engaging and empowering citizens, but it has been claimed that empowering individuals and citizens in this way can also reduce the burden of public expenditure. The danger is that this could be used as a pretext for cutting spending on public services. UNISON also believes that genuine co-production must involve the staff in shaping the delivery of services.

### Opposing the contract culture

UNISON supports the need for efficient, responsive and high quality public services and believes that the transformation of public services can be achieved by using different strategies, which avoid the negative impact of marketisation and privatisation.

#### Key arguments for UNISON in opposing commissioning and contestability.

- It reduces the focus on in-house improvement plans, in-house options and the submission of in-house bids and leads to increased outsourcing and PPP projects – thus creating a vicious circle.
- Public service principles and values are eroded as business practice and commercial values increasingly dominate service delivery.
- The growth of arms length companies, trusts and joint venture companies will lead to fragmentation of service delivery, reducing democratic accountability and transparency.
- Public sector resources are diverted into 'making markets' by shaping contracts to suit business, consulting business interests and designing business-friendly regulatory frameworks. The notion of creating a 'mixed economy' and 'level playing field' are simplistic and ignore the economic realities of private sector cherry picking, cross subsidising contracts, using loss leader strategies and exploiting the workforce.
- A client-contractor split is imposed on service delivery followed by the transfer of in-house service delivery units to arms length trading organisations or companies and their eventual privatisation.
- Public sector employees will be more regularly transferred between employers with consequences for the continuity of terms and conditions,

- pensions, training and career development.
- Issues of equality in terms of employment and service impact are more likely to be overlooked by commercial operators who will only pay attention to the very minimum legal requirements
  - Job security is dependent on TUPE, TUPE Plus and secondment but they have weaknesses and require local authorities to monitor the employment practices of contractors. There is little evidence that this is being done now so there can be little trust that it will happen in a contract friendly culture.
  - The scope of public management is reduced as an increasing proportion of staff is engaged in commissioning, procurement and contract management. The planning, management and operational skills required to deliver public services are increasingly taken over by private contractors.
  - There is a wider use of management consultants, legal and technical advisers as contracts get larger and more complex. This is not only costly but reduces the capability of in-house services and ultimately leads to more privatisation.
  - There have already been moves to outsource commissioning itself, which is the logical next step if the commissioning and contestability policy is accepted. This will involve private consultants and contractors assessing needs and services, writing specifications, selecting outputs and outcomes, carrying out options appraisals, managing the procurement process, evaluating bids from other private contractors and monitoring their performance.
  - More and more shared services projects will bypass in-house provision and are likely to consider only outsourcing options.
  - A greater share of public spending will be absorbed by transaction costs – the cost of management consultants, lawyers, managing the procurement process, managing and monitoring contracts. This is already diverting resources from frontline services.
  - It increases reliance on contract monitoring, which has rarely been rigorous and comprehensive, as it is often the target of budget pressures and 'efficiency' savings.
  - Financial savings are exaggerated. Competitive tendering savings were claimed to be 25% but government funded research proved conclusively that savings ranged from a maximum 8% to a -16% cost (Whitfield, 2001).
  - The International Monetary Fund concluded "Much of the case for public private partnerships rests on the relative efficiency of the private sector. Whilst there is an extensive literature on this subject, the theory is ambiguous and the empirical evidence is mixed" (IMF, 2004).
-

# 3 / Understanding the main stages of the commissioning and procurement process

## Introduction

It is important for UNISON branches to understand the key stages of the procurement cycle in order to develop an effective branch/regional strategy. Procurement does not begin with a decision to go to the market to buy a service. The decision to procure is normally preceded by a strategic approach by the public authority which will be part of an agreed procurement policy or commissioning strategy. This can often relate to other strategies and policies such as a community plan/strategy, a corporate plan, an asset management plan, a customer services plan or even an IT strategy.

The point to remember is that UNISON branches need to intervene at an early stage in order to influence and shape the overall strategic approach of the public authority since this will impact significantly upon whether the public authority will ultimately outsource a service/activity or pursue an alternative approach involving service improvement and in-house services.

In Diagram 1 UNISON has broken down the commissioning and procurement process into four stages, set out below: The 'rules based' active stage of procurement is only one stage.

## Stage 1: pre-procurement

This is the stage which occurs long before a decision to procure is made. It will usually set out the public authority's strategic approach to the commissioning or outsourcing of public services. At this point the branch can have the most impact in ensuring that any strategic approach encompasses both support for in-house services and the value of the workforce, trade union involvement, access to information etc. Branches should always seek to ensure that effective agreements are in place with the local authority, probation service, police authority, school, PCT or health trust which set out the broad principles of support for efficient and effective in-house services.

## Stage 2: moves towards procurement

This will usually involve a review of services often using best value principles, but it could also involve the engagement of external consultants to undertake an efficiency review or options appraisal. A key point to note is that many such reviews involve all kinds of assumptions and assertions about the benefits of outsourcing. This is the point of the process in which the branch can be most effective in challenging the process and putting forward alternative options. It is also the point at which a 'political' strategy of opposition to outsourcing can be effectively utilised engaging with a range of stakeholders including the members themselves, councillors, communities and service users and the local media. Arguably the most important point to establish at this stage is that any movement away from direct service provision should only take place if it is justified by a detailed examination of service and cost data. UNISON's 'twin track' policy on commissioning and procurement is set out below:

---

### UNISON's 'twin-track' policy

Seeking to influence commissioning and procurement decisions through negotiations isn't an alternative to campaigning. They are both vital parts of the twin-track strategy successfully followed by many UNISON branches. This will usually involve campaigning activities – for example lobbying against a proposal to outsource a service – but at the same time seeking to influence the tendering process by negotiating a Service Improvement Plan or an in-house bid or TUPE plus agreement. In many cases industrial action by members may have failed to stop an outsourcing but has strengthened the union's negotiating position and influence. The key point is that campaigning and negotiating aren't alternative strategies and can be most effective when running alongside one another

---

## Stage 3: active procurement

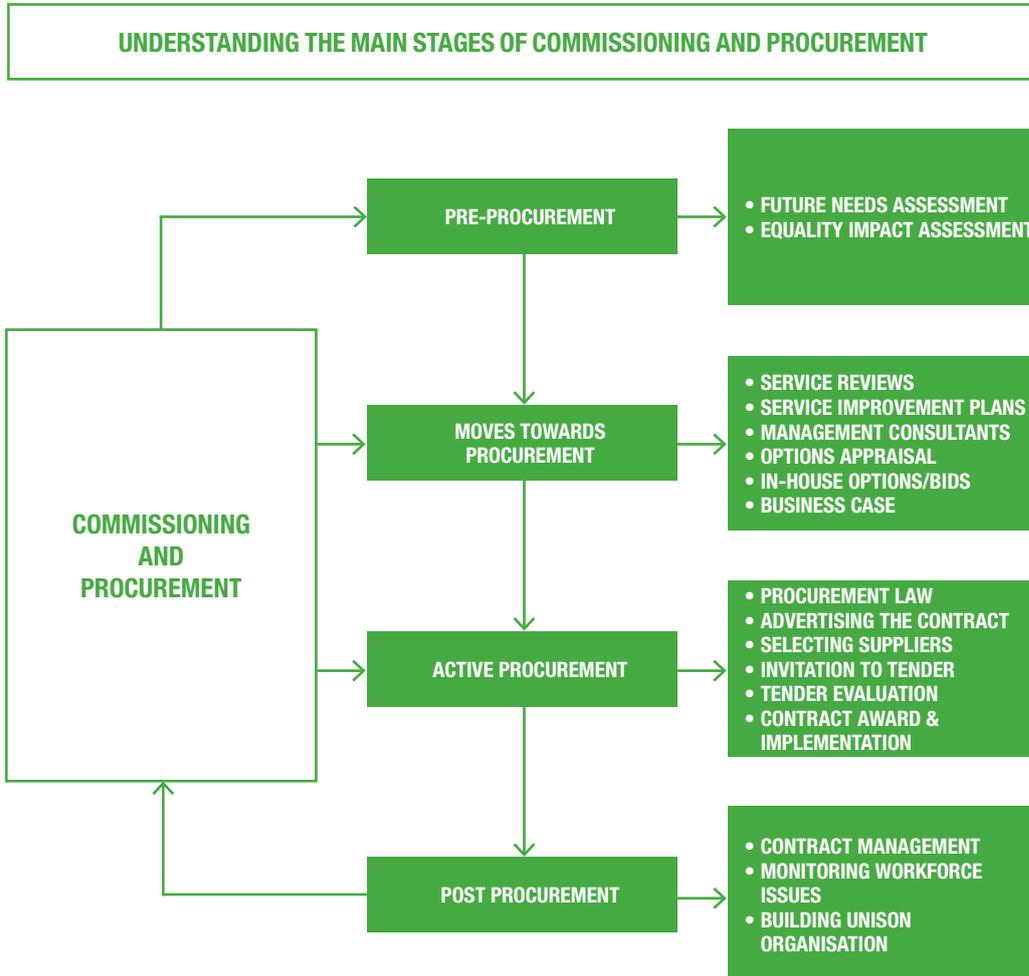
Active procurement is where a decision to go to the market, outsource or partner has been taken and the legal and technical process of procurement takes place. This period usually has defined stages and timescales from advertising the service for tender through to contract award and closure.

Depending upon whether there is an in-house option/bid, this is the period in which the branch should be maximising support for the in-house bid and/or securing the wider employment rights of the staff affected. Nor does it preclude opposing privatisation or challenging the process in terms of the validity of the approach and the key assumptions underpinning it, but it is often more difficult to secure the kind of changes that UNISON may want to see when the legal procurement stage is underway.

#### **Stage 4: post –procurement**

When a decision to award a contract externally has been made and staff are being transferred to another service provider either in the private or third sectors, there is still an important role for the branch to play. Agreeing the detailed bargaining and negotiating arrangements with the new employer and effectively monitoring whether the relevant “two tier” workforce code is being applied properly is one aspect of this, but often public authorities have very weak client side monitoring arrangements and governance arrangements in place for outsourced contracts. The Audit Commission study published in January 2008 “For better for worse: value for money in strategic service delivery partnerships” found examples of inadequate investment in client-side contract management, inappropriate risk allocation and poor performance management. UNISON branches can play a vital role in monitoring how contracts are performing by challenging public authorities on the arrangements they have in place for monitoring contracts. UNISON branches can play a role in ensuring that local authorities and their elected members effectively scrutinise external contracts through the overview and scrutiny function. They can also ensure that, at a regional and national level, there is good intelligence about the impact of outsourced contracts and effective learning about successes and failures in terms of branch strategy and tactics. This will help the union to refine and improve the way in which it deals with procurement exercises that lead to service outsourcing.

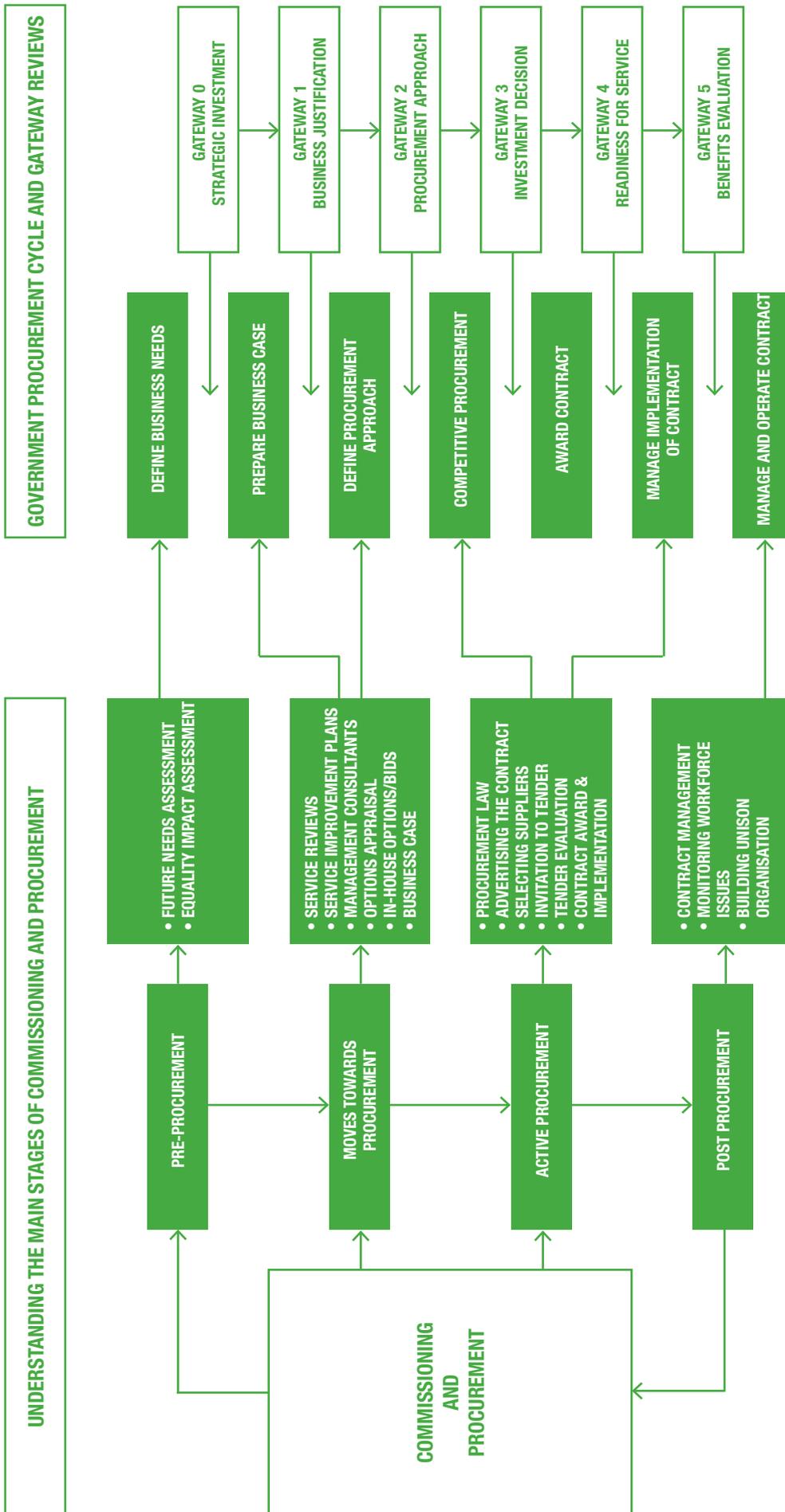
**Diagram 1** below sets out the main stages of the procurement process and the key issues for UNISON at each stage of the process.



**Diagram 2** opposite also shows the gateway reviews that have been developed by the Office for Government Commerce (OGC) as an independent review of major procurement exercises to establish the robustness of the procurement approach. Such reviews are a technical assessment of the process, but the intention is that procurement should only continue if it can fulfil the requirements of each ‘gateway’. A procurement exercise should only proceed to the next stage of the exercise if it does so.

While this is a technical process designed to support effective procurement by public authorities, the importance for UNISON is that it sets out key stages of a procurement process at which that process can be scrutinised and can provide an important opportunity for UNISON to intervene in order to challenge a procurement exercise.

The gateway process is explained at Section 5 of this guide and the key points of intervention under the gateway and what UNISON can do are illustrated at the relevant section of the guide, as illustrated in diagram 2.



## 4 / Stage 1: pre procurement

In this section we will cover:

- A: negotiating a service transformation and procurement agreement
- B: developing a branch strategy
- C: employment issues
- D: the public sector equality duties and equality impact assessment.

### **A: Negotiating a service transformation and procurement agreement**

#### **Introduction**

As we have seen there is an immense amount of work and pressure within the public sector to adopt commissioning, competition and contestability strategies in the provision of public services. Although this is most pronounced in England, other pressures, particularly budget savings, are increasingly placing procurement centre stage in all parts of the UK.

Wherever possible UNISON branches should take action to influence the way this agenda is implemented before a formal procurement or tendering process begins in order to protect members and services. The aim will be to ensure that the branch is fully involved from the start of the process, well in advance of any decisions being made by the employer or public authority.

---

#### **Summary of key issues for UNISON branches:**

##### **1 Why should we get involved?**

It is important for a UNISON branch to have an agreement with their employer or public authority which sets out a corporate approach to service reviews which includes involving the union at the earliest possible stage in any process. This can ensure a vital early commitment to a policy which commits the employer or public authority to supporting in-house service improvement or at the very least always considering a properly resourced in-house bid.

##### **2 What will happen if we don't?**

If UNISON branches are not involved at the earliest possible stage of the process, it is possible that the public authority could adopt an approach to commissioning and procurement that limits or negates the role of in-house services and supports outsourcing as the preferred option for service improvement. It could also undermine members' terms and conditions and put public services under threat

##### **3 What will happen if we do?**

The branch will be in a much stronger position to influence the overall approach to procurement and

ensure that in-house service delivery is considered as a viable and in some cases the preferred option.

#### 4 How can we be involved?

Under the duty of best value and various guidance issued by the government including on workforce involvement, the trade unions have an entitlement and are encouraged to be involved as a 'stakeholder' in reviewing services and in any decisions about future service delivery. Many UNISON branches will also have in place an existing negotiating and consultative procedure that can be used to good effect.

#### 5 What remedies can we use if we are refused involvement?

Where a public authority fails to involve the trade unions in a strategic decision about the future of services, there are few, if any, legal remedies available. However, there is enough weight in terms of the existing statutory framework to support UNISON branches in their arguments. A public authority which refuses to engage with UNISON may be in breach of a wider public duty to consult key stakeholders and could be challenged.

### Service transformation and corporate procurement agreement

A locally drawn up agreement should set out how the employer/public authority will undertake the key stages of a service transformation and procurement process. The agreement should contain a description of its scope, how it will be applied at different stages of the transformation or procurement process, responsibilities, rights to information and how staff and trade unions will be involved. An agreement should aim to establish corporate best practice thus ensuring directorates and departments follow a common approach.

Service transformation will usually include service reviews, efficiency reviews, options appraisal and procurement so UNISON should seek to negotiate the following in a Service Transformation and Corporate Procurement Agreement:

- A corporately agreed process for trade union and workforce involvement in service reviews; efficiency reviews, options appraisals; and all stages of the procurement process.
- Procurement could result in an alternative provider of services. Therefore the employer should adopt an approach which ensures that the option of an in-house service improvement plan (see Section 5) will precede and inform the procurement process. Thus whenever it is decided to carry out a formal procurement exercise it should include a clear commitment to an in-house bid.
- An agreed policy for managing job loss to avoid compulsory redundancies and maximise redeployment opportunities.

- A commitment to workforce development which maximises opportunities for training and development and recognizes the positive role of trade unions and union learning reps in workforce development.
- A commitment to fully protecting the pay, conditions, and pensions of the workforce where possible through a TUPE plus agreement and where possible and appropriate a secondment type arrangement.

Where this approach is not achievable the branch should still seek to reach agreements that will ensure that it is fully informed and consulted at all stages of a service review and procurement exercise before any key decisions are made. This may involve separate agreements on for example the union's involvement in designing and carrying out an options appraisal.

### Information and confidentiality agreement

If the union is to be fully informed and able to influence key decisions it will need access to as much information as possible. Some of the information it receives may be defined as commercially confidential and if it is to be made available there will need to be a clear understanding about who in the union has access to the information and how it is used. It is therefore important that an information and/or a confidentiality agreement is negotiated which could include the following:

- the key information to be made available to the trade unions at different stages of a service review, options appraisal and procurement process outside of a commercial confidentiality agreement
- clarification of how public and confidential information is defined and classified and the relevance and application of the Freedom of Information regulations
- that the employer/public authority will seek agreement with bidders that will ensure appropriate and timely access to information and its publication
- how confidential information will be made available to the branch and the how it will be used
- the format of information
- assistance in the interpretation of information and proposals - this may include financial support to the union to have complex information analysed
- responsibilities of the branch to maintain the security of any sensitive or confidential information made available
- responsibilities and responses if there is a breach of confidentiality.

Where the branch is asked to sign a confidentiality agreement it must seek advice from the regional office. Any agreement must be signed on behalf of UNISON by a designated regional organiser.

## Key issue for UNISON on confidentiality agreements

As part of the procurement process UNISON branches will probably be asked to sign a confidentiality agreement stating that information given to the trade union during the process cannot be disclosed to third parties or reproduced in any form and that this information is used solely for the purposes of giving the trade unions the opportunity to comment on the information given to them as part of the procurement process. Sometimes this is restricted wholly to employment information included in tender proposals (eg TUPE/TUPE + and pensions). However, UNISON branches should press the public authority to include within any confidentiality agreement access to commercial and other aspects of the tender bids. This may be resisted by public authorities and bidders on the grounds of “commercial confidentiality”, but UNISON branches should press for access on the basis that there is a need to know in order to effectively represent the members.

In any event, because of the restrictions placed on the use of information by trade unions, UNISON branches should always seek the advice of the regional office before agreeing to sign a confidentiality agreement. Any confidentiality agreement must be signed by a designated regional officer of the union.

### Advantages of signing confidentiality agreements:

- provides legitimate access to information on tender bids for UNISON branches
- allows UNISON branches to submit comments on tender submissions to the public authority and to engage effectively with the bidders themselves
- provides an opportunity to represent members’ interests more effectively where staff transfers are proposed.

### Disadvantages of signing confidentiality agreements:

- the information provided under the agreement may be restricted to certain aspects of the bids (eg employment proposals) and may therefore limit the UNISON branches ability to critique wider financial and technical aspects of proposals.
- The restrictions placed on the use of information provided under confidentiality agreements can limit the ability of UNISON branches to inform their members about bidders’ proposals and the way in which the public authority has dealt with them. It can also limit UNISON’s ability to use information disclosed to them as part of a wider political strategy of opposing outsourcing.

## Newcastle City Council’s corporate procurement strategy makes a commitment to:

- provide appropriate information to staff and trade unions at all stages of the procurement process
- establish regular consultation processes with staff and trade unions at appropriate frequencies
- provide an opportunity for trade unions to comment on all aspects of the procurement process at key milestones of the procurement process
- facilitate meetings between trade unions and potential providers at key stages of the procurement process
- the trade unions will select their own representatives for meetings with contractors and site visits
- allow full discussions between trade unions and the City Council’s preferred bidder prior to contract award
- use a minimum of temporary and agency staff during the procurement process, consistent with service and operational objectives.

## Key action points for UNISON branches

- Ensure that the corporate procurement policy or in the case of PCTs the PCT development plan includes arrangements for staff, and trade union consultation and involvement before any key decisions are made; information disclosure and provisions for sharing confidential information; and full involvement in the options appraisal and other key aspects of the procurement process.
- Assess the scope of any existing agreement or policy and if necessary negotiate revisions or new ones.
- Make sure that the procurement policy/development plan allows for options appraisal before the formal procurement process is commenced.
- Seek a commitment to support in-house services and to include a properly resourced in-house bid in any procurement exercise
- Ensure that the policy addresses sustainable development, community well being and equalities and provides criteria to assess social, economic, equity and environmental impact at both options appraisal and bid evaluation stages.
- Ensure that the procurement policy fully implements the relevant code of practice on workforce matters (to protect against a two-tier workforce) and the cost of monitoring the workforce is included in options appraisal and bid evaluation.
- Press for an agreed policy that minimizes job losses and maximizes opportunities for staff training and development.
- Negotiate an information agreement and where appropriate a confidentiality agreement

## B: Developing a branch strategy

### Introduction

This section stresses the importance of putting in place a well thought out branch strategy in response to a proposed procurement exercise.

We have already emphasised the importance of taking early action to influence the agenda before the formal procurement or tendering process begins. Key to this is the service transformation and procurement agreement that aims to ensure that the union is fully consulted by the public authority at the beginning of the procurement planning stage.

There will also be situations where the branch is not consulted and is faced with a threat to move to the formal procurement stage immediately, or where a decision in principle has been taken to enter into a contract/partnership with the private sector.

### Summary of key issues for UNISON branches

- 1 **Why should we get involved?** UNISON branches need to have a well thought out and properly resourced branch strategy if they are going to be effective. It is the difference between reacting in an ad hoc way to proposals which may lead to the outsourcing of services or being able to plan UNISON interventions at key stages of the process.
- 2 **What will happen if we don't?** UNISON branches will not have the capacity to respond to a process which could very quickly become a procurement exercise where the in-house service improvement option is marginalised, terms and conditions are threatened and equalities issues ignored.
- 3 **What will happen if we do?** Well planned interventions following on from a clear branch strategy can, and have, played an important role in preventing a procurement exercise and building support in the public authority and among UNISON's membership for an in-house improvement strategy, protecting terms and conditions and service standards including due consideration of equality impact.
- 4 **How can we be involved?** Developing a branch strategy is the responsibility of individual UNISON branches in consultation with the regional office. A branch strategy needs to be responsive to local circumstances while reflecting UNISON's national policies on commissioning and procurement.
- 5 **What do we need to do?** Make sure the branch meets at an early stage to plan its strategy. Involve the regional officer; decide on your objectives and then identify the resources you will need to implement your strategy.

Whatever the situation the branch needs a clear strategy if it is to successfully influence the proposed procurement exercise. The checklist below will help the branch to develop a strategy in response to the particular threat it faces, and one that is tailored to meet and react to the local factors and circumstances.

### Branch checklist for action in response to a proposed procurement exercise

#### Contact the regional office

The region should be contacted and your regional organiser (RO) should become directly involved, helping you to develop and implement a branch strategy. All major procurement exercises are likely to have a potential strategic impact on the wider union. A planned shared services project is likely to have implications for UNISON members employed elsewhere in the region or even wider. For example the NHS Xansa Shared Services project has just three operational centres in England that cover the whole country.

### Checklist

- Contact the regional office about all procurement exercises
- Involve your RO where the procurement exercise is significant and work with them to:
  - assess the potential impact on other public authorities
  - assess the strategic importance of the procurement exercise
  - Where a procurement exercise crosses regional boundaries, a decision will need to be made on which region will lead a co-ordinated response.

#### Meet to plan the branch strategy

The regional officer and branch should arrange an early meeting involving all the relevant union stewards and branch officers to plan and implement a branch strategy. In some cases eg a shared services project, it will be necessary to consider how to involve all the UNISON branches likely to be directly affected. A decision will also need to be taken about the involvement of any other unions affected. The branch's strategy will be informed by a detailed consideration of the issues set out below.

### Checklist

- Involve all the relevant stewards and branch officers
- If the proposal directly affects more than one UNISON branch ensure all the affected branches work together to develop a strategy.
- Involve the other relevant unions
- Ensure your regional organiser is invited to the meeting

### Identify the issues

The meeting should identify and make an initial assessment of the main issues, considering them under the following headings.

### Proposed procurement

Even at the preliminary planning stage it is likely that internal or external reports have been written for elected members or strategic boards and the branch should ensure that it obtains copies. The branch should also identify how the key decisions will be taken and the timescales envisaged. And although the scope of many projects change during the procurement process you should try to identify which groups are likely to be directly and indirectly affected.

---

#### Checklist

- Identify the scope of the procurement exercise
  - Identify and obtain copies of all internal reports
  - Identify and obtain copies of all external (eg consultants) reports
  - Identify which members are likely to be directly and indirectly affected
  - Identify the decision making processes and timescales
- 

### What are the key drivers?

The branch strategy must be informed by a clear assessment and understanding of what is driving the proposed procurement. This analysis should determine the nature of the branch campaign and will clearly influence the effectiveness of any engagement.

The key drivers in any service review or major procurement exercise are likely to be one or a combination of the following:

- efficiency savings/budget cuts
  - ideological/political dogma
  - poor performing services
  - poor external assessment (eg CPA; DH; Ofsted)
  - national policy directive (eg PCT commissioner/provider split)
  - access to capital investment
  - regeneration/create local jobs
  - chief executive/senior manager(s)
- 

#### Checklist

- Make an assessment of the key drivers behind the procurement exercise and ensure that the branch strategy is shaped by these
- 

### Membership

A well organised union presence with high membership density and good steward cover will be important in helping the branch to achieve its objectives. The branch should carry out a mapping exercise of union membership and organisation in the affected areas. This need not be comprehensive at this stage but should aim to address any immediate shortcomings and ensure that there is a union presence from the outset. It should be seen as the first important step in developing a comprehensive recruitment and organising campaign in the affected areas.

---

#### Checklist

- Carry out a mapping exercise of UNISON membership and density in the areas directly and indirectly affected including steward numbers, location and occupational coverage
  - Ensure there is a union presence in the areas affected
  - Identify other unions' membership and organisation
  - Plan the development of a recruitment and organising campaign
- 

### Branch priorities

The implications of a major procurement exercise, particularly where it could lead to a Strategic Service Delivery Partnership (SSDP) or outsourced shared services will be far reaching and will therefore need to be prioritised by the branch. To be effective the branch will need to identify other priorities (eg pay and grading reviews; member representation) and how the proposed procurement exercise is likely to impact or influence these.

---

#### Checklist

- Examine the branch's other priorities and agree how these will be resourced and managed during the procurement exercise.
  - Consider potential supportive action that members might take including industrial action at all stages. This will be particularly relevant where the union hasn't been allowed to engage in the process.
- 

### Resources and training

The branch will need to make an assessment of the information, skills, training and support it will need to influence the proposals and how these can be accessed. The list is likely to include:

- guidance and advice – UNISON materials available from UNISON head office or national service groups

- company information – company profiles; information on potential bidders and management consultants available from the Private Companies Unit or the Bargaining Support Unit at head office
- external expertise – UNISON endorsed and recommended external advisers who can be used to provide an analysis of the potential impact of any proposals; longer term support; or act as an employer funded ‘critical friend’<sup>1</sup> working directly to the union locally (contact your RO for further information).
- experience/knowledge of similar issues arising elsewhere (eg neighbouring branches)
- finance including possible sources outside the branch eg regional pool; General Political Fund (GPF)
- paid release for branch officers including backfill and regional support
- branch and UNISON knowledge and expertise
- available union training modules and packages
- audit of branch officers and stewards who have undertaken training
- an assessment of training needs
- identify priorities for training (including basic and advanced)
- identify timescales and how the training will be delivered.

### Checklist

- **Audit and assess the skills, training and support the branch will require and how these can be accessed to enable the branch to successfully influence the proposals.**

### Communications

Members must be at the heart of any campaign particularly the development of a service improvement plan or in-house bid. They should be involved in all the key decisions affecting their jobs, and the action planned by the branch, and kept regularly informed. Good communications will be essential to achieving these aims.

The branch should draw up a communications plan, considering how best to use the variety of communication tools available, including a branch newsletter; web site, members’ meetings; and the council and local media. It should ensure the plan addresses the needs of different target audiences including stewards, members, managers, local politicians, user organisations, and community groups

<sup>1</sup> A critical friend is an external, independent body that reviews the process. A small number of employers have funded or part funded external support (eg APSE best value consultancy) to assist the branch to engage more effectively in the procurement process

UNISON should ensure that the process remains a key part of a political decision-making process. There is always a danger that the procurement process will simply become a technical process with local politicians in key governance roles (eg as councillors or non executive members of health bodies) marginalised until a decision is required on whether to award a contract.

### Checklist

- **Draw up a branch communications plan identifying the key audiences.**

### Branch strategy

Once the issues set out in these checklists have been fully considered the branch should be in position to agree its key aims and objectives and the strategy for achieving these.

Consider whether a short intensive workshop facilitated by the region or an external organisation might assist. Some branches have held very successful workshops to explore a report and proposals in more detail as part of the process of developing the branch strategy. It is also important to bear in mind that a major procurement exercise will usually continue for many months and in some cases years. In order to be effective the branch strategy will need to make significant demands on branch and regional time and resources and will have to be managed effectively. This can best be done by designating a senior branch officer / steward with overall responsibility.

## C: Employment issues

### Introduction

At the start of any service review or procurement exercise the Branch will need to look closely at the potential impact on members' terms and conditions and employment. And as we shall see, the employment implications will also need to be revisited at each stage of the procurement process.

### Summary of key issues for UNISON branches:

- 1 **Why should we get involved?** Branches must try to influence the employment model and employment issues at the earliest possible stage in order to secure the best possible outcome for members.
- 2 **What will happen if we don't?** If the service is outsourced the public authority is likely to opt to provide the basic minimum TUPE protection and the minimum pension arrangements for transferred staff and new starters. Unless it is specified as an option to potential bidders at an early stage, once the formal procurement process begins it will be too late to secure better protection through a commitment to employee secondment or a TUPE plus arrangement, with a good pension scheme for new starters. There have been instances where union branches have delayed discussing the employment issues, preferring instead to put all their energy into campaigning against outsourcing only to discover later that they have missed the opportunity to influence the employment model.
- 3 **What can happen if we do?** Branches will be at their strongest and most influential in the earlier stages of the process. Members and non members are more likely to support a union campaign that focuses strongly on protecting pay, conditions and pensions. A good employment package will benefit members and enhance the credibility of the union making the recruitment and retention of members easier. It will also make it more difficult for an external provider to make savings at the expense of the workforce and could also make a decision to retain services in-house with a service improvement plan more likely.
- 4 **How can we be involved?** Ensure the employment issues are a central feature of the branch strategy. Use the information in this guide to draw up a timeline and checklist to make sure the branch intervenes at the right points. Lobby senior managers, councillors and non executive board members about the employment issues. The union has a wealth of information and knowledge of the employment issues which should be used.
- 5 **What do we need to do?** Make sure the branch meets at an early stage to plan its strategy and that the employment issues are high on the agenda.

As the delivery of public services has become increasingly fragmented the different types of arrangements for employment relationships have become more complex.

UNISON has successfully campaigned to strengthen the protection of members by negotiating agreements and changes in the law. These have been designed both to protect members and ensure private companies do not win contracts by cutting pay and conditions of employment.

The UNISON '*Organising Guide to Transfers of Employment 2008*' is the 'one stop shop' for the information and advice a branch will need when dealing with transfers, from the start to the finish. It also refers to possible alternatives to transfer. As well as giving general information and organising advice, the guide provides access to the specific pieces of advice and policy produced by UNISON for each of the union's main sectors. [www.unison.org.uk/acrobat/PCU\\_Organising\\_guide.pdf](http://www.unison.org.uk/acrobat/PCU_Organising_guide.pdf)

It is vital that the branch fully understand the various models and protections available at the service review and pre-procurement stages as these will be central to the strategy the branch adopts.

For example if the services under review are highly labour intensive, the costs and savings profile is likely to be very different to a project that proposes sharing high value capital assets across a number of public authorities. The costs of the alternative employment models will clearly affect the financial / business case for pursuing a particular option. For example if all transferred staff and new starters are given the option to join a comparable final salary pension scheme that is likely to strengthen the financial case for an improved in-house option.

The main employment options that a branch should be aware of are briefly as follows:

#### **Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)**

TUPE safeguards employees' rights when the business in which they are employed changes hands. The TUPE Regulations provide a range of legal safeguards including:

- terms and conditions of employment
- previous employment rights
- protection against dismissal for any reason connected with the transfer
- accrued pension rights
- collective agreements
- union recognition
- information and consultation rights.

## TUPE Plus

Many UNISON branches have built on the basic protections provided for by TUPE, enhancing and extending these rights. Examples would be to automatically apply TUPE terms and conditions to all new starters or to automatically apply any nationally agreed pay increases (eg NHS Agenda for Change) for the whole length of the contract.

## Codes of practice on workforce matters

New starters taken on after a transfer are not covered by TUPE and are often employed on worse pay and conditions. This creates a two-tier workforce. As a result of UNISON pressure a number of codes and protocols have been introduced to ensure that new starters receive “fair and reasonable terms and conditions which are overall no less favourable than those of transferred employees.” These codes and protocols cover many staff in the NHS, local government, education, police, and probation services. Although there are differences in content and scope they also cover all parts of the Great Britain, but not Northern Ireland. Some services are currently not covered by the codes (eg higher education and FE colleges in England) and UNISON is continuing to campaign for these to be covered. The union is also pressing for better monitoring of how the codes and protocols are working in practice.

## Pensions

Local government employees outsourced under TUPE are covered by the Government's 'Fair Deal on Public Service Pensions'. In the LGPS the contractor has to either conclude an Admission Agreement so that transferring staff retain the right to remain in the LGPS while undertaking work on the outsourced service, or to put transferred staff in a pension scheme certified as 'broadly comparable' by the Government's Actuary Department (GAD). Other public service employees outsourced to the private sector cannot stay in their scheme unless they are seconded. In this case they have the right to join a 'broadly comparable' pension scheme certified by GAD.

Anyone who is transferred into a broadly comparable pension scheme should also have the option to transfer their past service in their public service scheme to their new scheme on a 'bulk transfer basis'. That means they should get day for day service or equivalent value in their new scheme if they decide to transfer their past service.

New starters must also be offered an opportunity to join a pension scheme, and these will range from a good quality final salary scheme, to a defined contribution scheme with a matching employer contribution of up to 6%. It also possible for

admission agreements in the LGPS to be open to new employers taken on by the contractor to do work related to the outsourced service. Further information on pensions on transfer is available from UNISON's website at [www.unison.org.uk/pensions](http://www.unison.org.uk/pensions)

## Alternatives to transfer

Even where a service is outsourced there are alternatives to transfer and these include:

### a) Secondment agreement

This involves staff opting not to transfer under TUPE but to remain instead with their existing employer and to be seconded to the new service provider to carry out work on the outsourced contract. In the case of Liverpool Direct, a joint venture company (JVC) formed between Liverpool City Council and BT; new staff are recruited by the city council and then seconded to the JVC. However, they remain city council employees. Some public authorities have argued that secondment is unlawful and that TUPE automatically applies. However most observers and UNISON's legal advisers agree that secondment, where employees are given a clear option whether or not to transfer under TUPE, is perfectly legal. Secondment clearly has a number of strong advantages over TUPE.

### b) Retention of employment (RoE)

The RoE model applies to NHS PFI schemes in England. Its scope is also limited to ancillary staff. It is a secondment type arrangement for catering, cleaning, portering, laundry, and security staff and employees must be given the option whether or not to transfer under TUPE. However RoE does not cover supervisors and estates staff who normally transfer under TUPE.

(Note: These paragraphs reflect the current understanding of secondment and retention of employment (as at Oct 2008). However the law is frequently changing around this subject, so please check the UNISON website for the latest information.)

## Key action points for UNISON branches

- Use the UNISON Organising Guide to Transfers of Employment 2008 to identify the different employment models and protections available.
- Ensure you fully understand the key stages in the procurement process where the employment model can be influenced and has to be referred to (eg OJEU notice)
- Where a TUPE model is used ensure the relevant code of practice on workforce matters is also implemented.
- Raise the branch's preferred employment model with the employer at the earliest possible stage in the process.

This is the point at which a concession on for example secondment is most likely. Ideally you should try to secure a commitment to your preferred employment model in the service transformation and procurement agreement or the authority's corporate procurement policy.

- Assess the equality impact of the various employment models on the proposed procurement exercise to assess whether any disadvantaged groups are likely to be adversely affected
-

## D: The public sector equality duty and equality impact assessment

All public bodies are required by law to promote equality of opportunity and eliminate discrimination for service users and staff, rather than wait for individuals to complain. This gives UNISON negotiators powerful tools to influence the procurement process and to fight privatisation and cuts in services. UNISON has produced a comprehensive Guide "Public Sector Equality Duties" as part of the union's strategy to make sure the duties stick. It can be downloaded at: [www.unison.org.uk/file/16965\\_Equality\\_Guidance.pdf](http://www.unison.org.uk/file/16965_Equality_Guidance.pdf) There are specific gender duties, but the duties apply as much to race and disability. Public authorities are required to have an equality scheme(s) and should consult and involve affected groups about these.

### Summary of key issues for UNISON branches:

- Why should we get involved? Public bodies are required by law to ensure their procurement policies and practices comply with their equality duties. There is strong evidence that the procurement process and privatisation undermines equality in the workplace. The public sector equality duties give UNISON branches a powerful tool to fight the damaging effects of privatisation and cuts.
- What will happen if we don't? Research suggests that without pressure from UNISON public authorities will ignore the negative equality implications of procurement and outsourcing and will not carry out equality impact assessments or consult staff and trade unions. Already disadvantaged groups of members are likely to lose out.
- What can happen if we do? We will be more successful in retaining services in-house and protecting the important gains we have made in tackling discrimination and ensuring equality of opportunity and fairness in the workplace. In Northern Ireland in particular UNISON has used the equality laws to win a series of significant victories for greater equality.
- How can we be involved? Ensure that equality is high on the agenda and is a central plank of the branch's strategy. Use the public sector equality duties to require consultation with staff and the union and to require an equality impact assessment to be carried out at the beginning of the process. If a full procurement exercise is carried out a further EIA should be carried out before the contract is signed. Have a timeline and checklist to make sure you intervene at the right points in the process. Lobby senior managers, councillors and non executive board members about the equality issues and build alliances with equality groups. The union has a wealth of information and knowledge of the equality issues (see [www.unison.org.uk](http://www.unison.org.uk) for further details)

- What do we need to do? Make sure the branch meets at an early stage to plan its strategy and that the equality issues are high on the agenda.

### Equality impact assessment

Equality impact assessments (EIAs) play a key role in the implementation of the duties and they are a legal requirement for authorities covered by specific duties. They aim to:

- ensure no groups are disadvantaged on equality grounds by an authority's decisions or activities
- indicate where public authorities can promote equality of opportunity.

Where a public authority looks at a new proposal or an existing policy it has to consider whether it would increase inequalities between men and women, different community groups, or for disabled people in the workforce or the wider community. To make a judgement authorities are expected to look at a lot of different information.

Examples include gathering and analysing statistics, consulting staff and looking at costs. If authorities find that their proposal could make things worse for some groups they have to find a way to remove or minimise the impact.

In fact the duties go much further in requiring the employer not just to remove any negative impacts, but to act to enhance and promote equality.

When assessments identify negative impact or a missed opportunity to promote equal opportunities, the public authority must have due regard to the need to modify the policy or practice.

The duties support UNISON's work in a number of ways. For example public authorities must ensure that their procurement policies and practices comply with the equality duties. Outsourcing and cuts can and do undermine equality in the workplace and communities. That is one reason why branches must put pressure on authorities to develop approaches to procurement which:

- favour the option that most fully complies with the requirements of the equality duties, specifically the option to retain services in-house
- ask contractors questions about its equality policies and practices
- include equality criteria in options appraisal and tender evaluation
- make it clear that the contractor is responsible for meeting the general disability and gender duties in the delivery of services which are outsourced.

### Carrying out an equality impact assessment

Where a public authority is proposing to carry out a services review or a procurement exercise the branch should ensure that the authority carries out an equality impact assessment (EIA). Although it should be emphasised that it is the employer's responsibility to carry out the EIA it is very important that the branch is fully consulted and involved in the exercise. The branch may also wish to press for the scope of the EIA to be extended to cover age; sexual orientation; gender reassignment and religion/belief.

### Preliminary and full assessment

A preliminary 'screening' will be useful to decide if a full impact assessment is needed. The authority should look at the aims of the proposal and any evidence that would point to a potential impact on equality. The screening should look at whether the proposal is a major one in terms of scale or significance; or if minor whether it is still likely to have a major impact on equalities. If the results of the preliminary screen indicate a likely negative impact on equalities a full EIA should follow. This will involve:

- analysing available data and research
- consulting relevant groups
- assessing the potential impact
- considering measures which might mitigate any adverse impact and / or alternative policies
- arriving at a decision on the way forward
- publishing the results of the impact assessment
- arranging the future monitoring of the actual impact of the policy.

An authority may find that further research or consultation is necessary especially if it is likely to lead to a different conclusion.

### Case study... Equality duties and equal pay

A council is planning a commissioning exercise to privatise a big part of the social care directorate. The real reason behind this is to avoid applying a single status equal pay agreement to many low paid women workers and may be a breach of their statutory equality duty. An EIA would highlight this.

### Case study... Equality duties and efficiency savings

The police authority wants to axe a number of community support officers in poorer parts of the area to save money. A significant proportion of the employees are from black communities. This proposal would have a detrimental effect on the local economy, and may have a negative effect on

black service users as racial attacks are likely to increase. The public authority may be breaching the Race Equality Duty.

### Case study... Equality duties and contracting out shared services

Your PCT has good policies on equality and employs a number of disabled staff. They plan to move their payroll, IT and HR services to a shared services partnership based 30 miles away. This will have a major negative effect on disabled staff because local transport services aren't accessible to the new site and there is limited parking for disabled people at the new site, and many of the disabled staff 'at risk' can't manage the additional travelling time required to re-locate. The public authority may be in breach of their statutory Disability Equality Duty.

**NOTE:** The new Equality and Human Rights Commission can issue an enforcement notice if an authority fails to comply with its statutory equality duties

### Key action points for UNISON branches

- ensure that branch officers and stewards are briefed on the Public Sector Equality Duties (see [www.unison.org.uk/file/16965\\_Equality\\_Guidance.pdf](http://www.unison.org.uk/file/16965_Equality_Guidance.pdf))
- ensure that the public authority has equality schemes in place and they are working effectively (eg monitoring arrangements are in place)
- ask the public authority to carry out a preliminary screen and if appropriate a full equality impact assessment at the pre procurement stage
- ensure the branch is fully involved in the process and seeks to influence the criteria used
- consult with staff, service users, and community organisations and build alliances
- ensure that if a full procurement exercise goes ahead that the equalities issues are addressed at the key stages in the process including in meetings with contractors
- carry out a full EIA before the contract is signed.

The following is a useful extract from the NJC local government services handbook on a recommended approach to carrying out an equality impact assessment

## Extract Part 4 – NJC for Local Government Services (England & Wales)

### Carrying out an Equality Impact Assessment

#### Key stages and questions

The EIA has three stages:

#### Stage 1 – Scope of the assessment

- What are the main aims and objectives of the proposal?
- How does the policy/proposed change fit in with the authority's objectives?
- Which group/groups of employees are affected by this proposal?

#### Stage 2 – Assessment of impact

- What information on the likely impact of the proposal is available from the current data?
- What are the views of the key stakeholders?
- How is it likely to affect the target equality groups?
- Is there any evidence that this proposal will have a different impact on any of the target equality groups?
- In what way?

#### Stage 3 – Decisions and recommendations

- Is there an adverse impact on any of the target groups?
- If so, can the proposal be changed to remove the impact?
- Can the negative consequences be counter balanced by other measures?
- If not, are there alternative measures that would achieve the objectives without an adverse impact?
- If not, can the proposed changes be justified on the grounds that they are intended to promote equality of opportunity?
- If yes, for what reasons?
- Could the proposal lead to unlawful direct discrimination? If yes, you must abandon it straightaway and look for different ways of achieving your policy: direct discrimination can never be justified. Reject the proposal.
- Could the proposal lead to unlawful indirect discrimination? If yes, you should look at different ways of achieving your aims. If you decide the potential for indirectly discriminating against some groups is justifiable, you should make sure your reasons have nothing to do with race, gender, disability, sexual orientation, religion or belief, age or main occupational group/part time staff. You would be well advised to seek legal advice on the question of justifiability. This is a difficult area of law.
- Agree and publish/formally record decision on proposal/policy with justification (if required), including the relative weight given to the evidence and the reasons for the decision.

- Make arrangements for jointly monitoring and evaluating the policy and its impact as part of regular audits.

## 5 / Stage 2: moves towards procurement

In this section we will cover:  
A: service reviews and improvement plans  
B: options appraisal, in-house bids and business cases.

### **A: Service reviews and improvement plans**

#### **Introduction**

A fundamental part of any commissioning or procurement decision is the rationale which underpins that decision. Prior to the commencement of any procurement exercise there should be an explanation of the reasoning which led to the decision. Good practice and 'best value' would dictate that the decision to procure is based on a full review of service/activity and an options appraisal. This is intended to form part of the challenge process by which existing provision is subjected to a "root and branch" review to determine (a) the need for the service; (b) the best method of providing the service and; (c) who should provide the service. The fact that in many cases this is the weakest aspect of the decision made by a 'public authority' to procure externally and often cloaked in a spurious objectivity, means that it can be effectively challenged by a well organised and informed UNISON branch.

It is vital to remember that there is no legislative requirement either in local government, the police and probation services, or in health to go to the market (compulsory competitive tendering was abolished a long time ago). Therefore all the drivers are based on policy and/or the perceived needs of the service (eg investment, IT, customer focus, and management capacity). In local government, councils are still bound by the statutory duty of best value and whilst the requirement to fundamentally review all functions has now been dropped, the statutory duty to secure continuous improvement by reference to a combination of economy, efficiency and effectiveness still applies.

The Department of Communities and Local Government (CLG) statutory guidance on creating strong, prosperous communities issued in July 2008 (England) states that in terms of their commissioning role:

*"Local authorities, for their own services (including those externally provided) should:*

- regularly and rigorously assess and review the competitiveness of those services
- against similar services provided by other statutory bodies, local authorities or other service providers

- where these services are found to be underperforming in comparison with others they should reevaluate the need and priorities for that service
- where service improvement is unlikely to be forthcoming within a reasonable period of time or unlikely to match what could be provided by alternative providers, local authorities should seek new supply arrangements through, wherever practicable, fair and open competition.”

As you can see while there is an emphasis on the contestability of services, there is no automatic presumption that services should be outsourced. Indeed the first test is to review competitiveness and address underperformance whether services are delivered in-house or externally. There is no requirement to go out to competition. The duty of best value as it applies in Scotland and Wales equally does not stress the need for competition or outsourcing.

Similarly in the competencies set out by the Department of Health for world class commissioning while there is an emphasis on PCTs using their commissioning role to shape services it is about using *“their investment power to influence improvement, choice and service design through new or existing providers to secure the desired outcomes and quality, effectively shaping their market and increasing local choice of provision.”* Again the key emphasis should be on improvement which should be the starting point for effective trade union challenge and engagement.

---

### Summary of key issues for UNISON branches:

- 1 Why should we get involved?** The involvement of UNISON branches in service reviews is vital to ensure that the case for in-house improvement can be effectively put and that the wider interests of UNISON members are safeguarded.
- 2 What will happen if we don't?** Failure to be involved in service reviews and service improvement can mean that (a) in-house service improvement is not properly considered; (b) where it is considered, service improvements are ill-thought out and lack the support of UNISON's members and: (c) service reviews lead to a procurement option to outsource services.
- 3 What will happen if we do?** UNISON branches can help in shaping future service delivery and service improvement ensuring that UNISON members and service users are fully involved in the process and that decisions that potentially impact upon jobs and terms and conditions are not taken without full and proper consultation and negotiation.
- 4 How can we be involved?** Where a public authority sets out a strategy or policy covering service reviews and the involvement of the staff and trade unions, UNISON branches can get involved in the service review process.

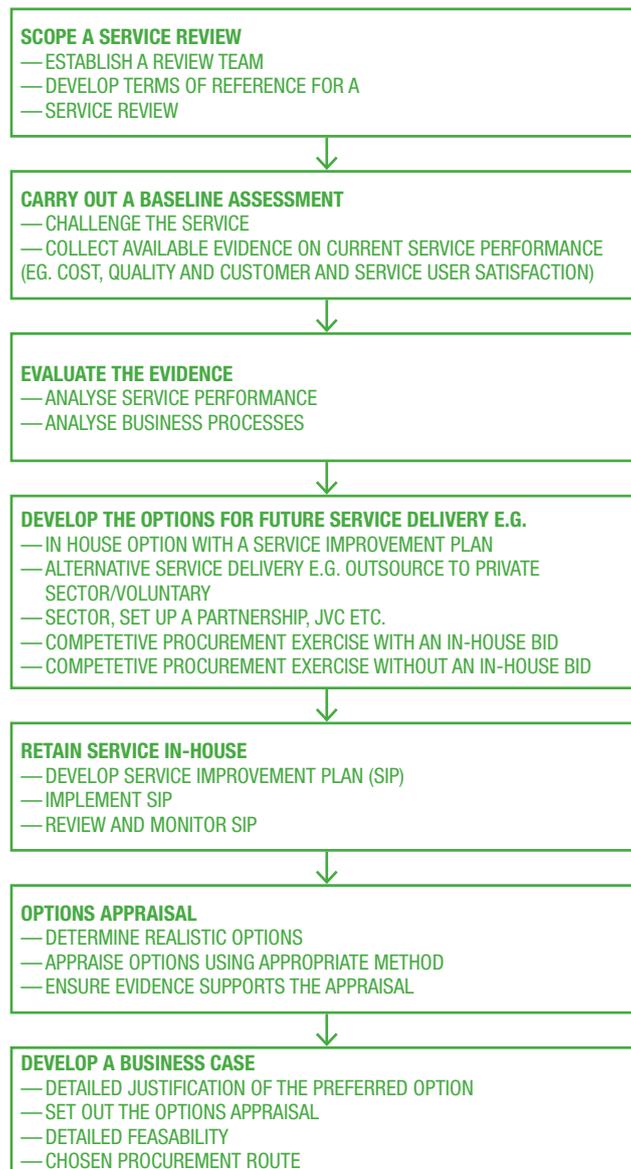
### 5 What remedies can we use if we are refused involvement?

Under S.138 of the Local Government and Public Involvement in Health Act (2007) (England and Wales only), local authorities (but not Police authorities) have a duty to involve “representatives of local persons in the exercise of their functions” and this includes “those who work for the authority and in the local area”. Similarly, the community planning duty under Section 15 of the Local Government in Scotland Act 2003 requires local authorities to consult with community bodies with regard to planning public services in their areas, which can include trade unions. UNISON can use the statutory duty to insist that it is fully involved as a representative of the workforce. NHS guidance on staff involvement “Better decisions, better care” was issued in October 2003 to promote and implement staff involvement through partnership working with staff and their representatives. Policy guidance like this can also be used to promote trade union involvement in a review process.

---

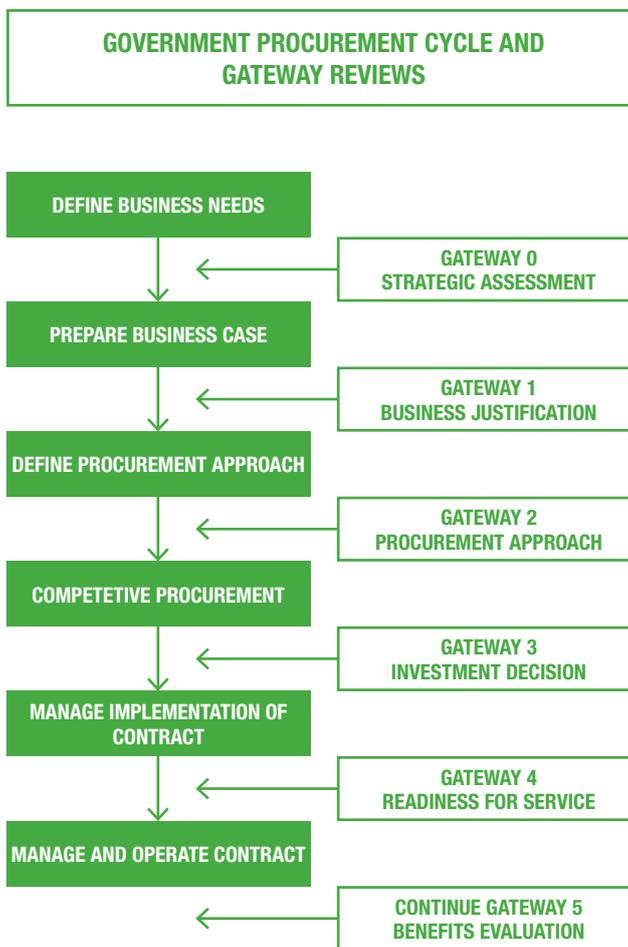
### Diagram 3 – from service review to business case

Diagram 3 sets out the process which should normally be followed from carrying out a service review through to options appraisal and the development of a business case for a procurement option. It should be noted that the stages may vary depending upon the scope and nature of the service/function being reviewed.



In Section 2 we explained the OGC gateway process. Here is the point at which you can begin to use the gateway process.

**Diagram 4**  
**Office for Government Commerce (OGC) Gateway**  
**Process: Gateway 0 – strategic assessment**



## Key issues for UNISON on the gateway intervention stage – using a service review to carry out a strategic assessment

The OGC is an independent office of HM Treasury established to help government to deliver best value from its spending. It works with public sector organisations and provides policy standards and guidance on best practice in procurement. It has defined a series of procurement gateways for major procurement exercises which is a useful way of assessing whether a proposal and the subsequent procurement exercise is fit for purpose. The stages of the gateway process (see ‘Developing a Business case’ Section 5) provides useful intervention points for UNISON branches to challenge a procurement process whether or not a public authority is using the gateway methodology. The pre-stage gateway concerns a strategic assessment to confirm the approach being adopted which can readily be equated to the service review process and rationale. UNISON can use this to argue that a full service review should take place before a decision is taken to proceed to a full blown procurement exercise.

### Key action points for UNISON branches:

- make sure that you are aware at an early enough stage of any proposals that may lead to outsourcing
- ensure that you have access to the relevant documentation supporting any decision to procure services externally
- where a transformation and procurement agreement has been negotiated with the relevant public authority, ensure that you are effectively engaged in the service review process. Where no branch agreement exists, insist that you are fully engaged in the service review process
- where a decision to procure has been taken without a proper review, use the legislative and policy framework to argue for a full review of the service area in accordance with best value principles
- where a decision to procure externally has been determined on the advice of consultants and/or an internal options appraisal, commission an independent review of the process and report your findings to the public authority and where appropriate the media
- lobby local councillors if the decision is being made by a council or executive/non-executive members of health trusts/PCTs to put UNISON’s case for a full review of services
- ensure that UNISON members in the affected services are aware of any proposals to outsource services.

### The use of management consultants

One of the main issues facing UNISON branches concerns the use by ‘public authorities’ of management consultants to build up the rationale

for outsourcing public services. It is not uncommon for authorities to hide behind conclusions reached by management consultants that are based on flimsy evidence or a pre-determined approach. It is vitally important that UNISON branches challenge the assumptions underpinning management consultants’ assessments. Their reviews often fail to engage with the staff delivering a service or service users; can utilise market intelligence and performance data which is unreferenced; and use options appraisal methods that are heavily weighted in favour of one particular outcome.

Management consultants are used in a number of different environments and for different kinds of procurement and commissioning. Some of those are illustrated below:

- **PFI/PPP/LIFT projects** – Large financial, technical and business consultancies including many of the major accountancy firms like PWC, KPMG provide project management, procurement and financial support on schemes. Financial support is available through the Treasury to support this work.
- **Strategic service delivery partnerships (SSDPs)** – similar to PFI/PPP schemes but local authorities and other ‘public authorities’ have to finance all of the costs themselves.
- **Framework for procuring external support for commissioners (FESC): PCT commissioning** – FESC is a framework contract managed by the NHS which provides management consultancy support to PCTs to support their commissioning role under the “world class commissioning” agenda. The list of FESC consultants includes the likes of BUPA who are providing support to the Hillingdon PCT to help it commission services and Humana Europe a U.S.-based health-benefits company offering consultancy support to PCTs. The list of consultants can be found at [www.dh.gov.uk/en/Procurementandproposals/Procurement/FESC/index.htm](http://www.dh.gov.uk/en/Procurementandproposals/Procurement/FESC/index.htm)
- Building Schools for the Future (BSF) – partnerships for schools the quango responsible for delivering the BSF programme has set up framework contracts for advisors to local authorities to help them to choose the private sector partner(s) to deliver their BSF programmes. The five frameworks cover technical support, project and programme management, legal support, financial support and education support. The list of consultants can be found at [www.partnershipsforschools.org.uk/programme/BSF\\_Frameworks.jsp](http://www.partnershipsforschools.org.uk/programme/BSF_Frameworks.jsp)
- Efficiency reviews – major consultancy and accountancy firms are brought in to carry out efficiency reviews for ‘public authorities’ designed to deliver greater efficiencies through for example business process re-engineering, procurement and

greater use of ICT in service delivery. An example of such an approach is Salford City Council which engaged KPMG to support their corporate efficiency review.

While management consultants all too often play a negative and pre-determined role, if they are properly used and managed well they can sometimes play a positive role bringing missing expertise to the table. The branch should arrange to meet with any management consultants appointed and make an assessment of the role they are expected to play. Ensure you have an opportunity to analyse and comment on any reports produced before they are considered by councillors/board members, the project board or formally published.

In addition the UNISON branch and/or the public authority (particularly an overview and scrutiny committee) may wish to appoint their own external consultants or advisors. Where this happens it is important to be absolutely clear on the role and the tasks that the consultant is required to undertake, such as:

- **critical friend** – offer an objective third party appraisal of plans actions and recommendations made at any stage from pre-procurement through to contract award
- **service appraisal/improvement** – offers an objective appraisal of the in-house service and makes recommendations for improvement to pre-empt a move towards active procurement
- **project support or advisor** – gives technical and practical advice on what in-house services need to do to prepare effectively for inclusion in a tendering process.

In these and other roles consultants can be used to offer support and bring skills to the authority team for an entire procurement-related process or just for a specific task within it and if used well can add a legitimacy to the unions' preferred approach.

### Key action points for UNISON branches:

- identify at an early stage in the process which management consultants are being engaged by the 'public authority'
- seek an 'open access' approach by the authority so that UNISON has full disclosure of documents/reports produced by management consultants and is able to critique the assumptions and rationale used to support the consultants case
- consider asking the authority to engage an independent consultant as a 'critical friend' to review and comment on the work of management consultants in order to provide more independent advice to the authority and the union

- if the 'public authority' will not support the 'critical friend' approach, the branch should consider engaging an external expert to critique the work of management consultants.

### The purpose of service reviews

Not all public procurement decisions are based on the outcome of service reviews but where outsourcing is threatened, UNISON branches should always argue that a fundamental service review should be carried out first. By effectively engaging in the service review process, UNISON can put the case for an in-house improvement plan and ensure that staff views are taken into account as part of the review process. Service reviews are a management tool, but should do a number of things:

- challenge the basis on which a service is provided
- collect baseline information on costs and performance
- analyse all business processes to ensure the most efficient and effective means of service delivery
- collect market intelligence and benchmarking information about how other similar services in the public, private or voluntary sectors are provided
- take into account the views of staff, trade unions and service users.

The outcome of a service review could involve changes to working and employment practices, staff numbers, roles and duties, methods of service delivery. UNISON branches need to be aware of the implications of this approach in engaging in a service review process.

The scope and nature of service reviews will vary widely depending on the political context as discussed in section 2. Service review is a very powerful tool in examining current performance and identifying how to secure improvement in service delivery. If used properly it can provide the means for a UNISON branch to actively engage to promote an alternative to outsourcing services. While UNISON branches will not be resourced to become experts in service reviews it is important to understand the steps that should be involved, have a copy of the review plan or timescales and ask for copies of all documents and reports produced in relation to the review.

The main steps are as follows:

#### 1 Establishing a frame of reference

What are you trying to do?

This relates to the objectives of the exercise and should be clearly established at the beginning. Objectives could range from gathering information with a view to establishing a baseline view of how well the 'public authority' is performing, through to seeking to ensure

that services are operating at optimum efficiency, through to specifically trying to identify areas of activity to reduce in an attempt to balance the budget.

At what level are you trying to do it?

This relates to outcomes, outputs and inputs (eg an example of an outcome could be “reduction in the mortality rates in hospitals”, an output could be “the number of patients treated” and an input could be “the number of nurses per ward”). A service review will need to collect evidence that appropriate arrangements are in place at the appropriate level to ensure that best practice is being followed. The focus should be on outcomes, but it is also important for instance, to demonstrate that services provide value for money and meet other corporate objectives.

What outcomes do you expect?

At its most general level this will usually be the achievement of the ‘public authority’s’ policy objectives at minimum cost to the public. In practical detail this simple statement masks a host of potentially competing imperatives. The tension between service costs, service quality and public expectation can only be resolved through the effective balance of economy, efficiency and effectiveness. The more specific the outcomes at the outset of an exercise the more likely it is that the exercise will be successful eg “to ensure that a modern customer services centre is operational by xyz (date)”.

## 2 Collecting baseline service information

The next stage is to collect baseline data on the current service which includes:

- What does the service do?
- Why does it do it?
- How much does it cost?
- How many people does it employ including those that are brought in on a temporary basis through an employment agency or as consultants?
- How does the service gauge whether it has done what it says it is going to do?

## 3 Evaluating the evidence

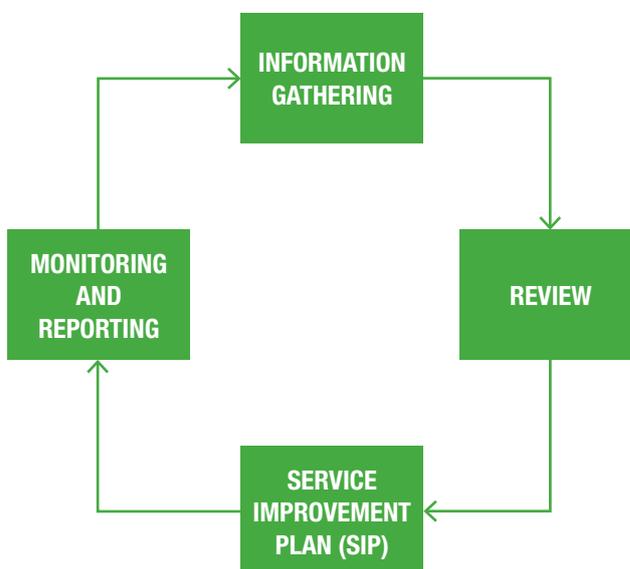
The next stage involves an analysis of what the evidence tells us about how the service is performing.

- Collection and use of performance data
- Can the service demonstrate that it contributes to the delivery of the public authority’s overall corporate policy objectives/outcomes?
- Does the service set SMART (Specific, Measurable, Achievable, Realistic and Time bound) targets based on accurate baseline data covering both costs (inputs) and required service deliverables (outputs)
- Are these regularly reviewed and updated?

- Does the service publish Performance Indicators?
- Are these national PIs?
- Are they local PIs and if so how are they derived?
- Does the service benchmark itself against other providers?
- Do these benchmarks cover costs as well as service outcomes?
- If the service does not benchmark itself against others can it offer a reasonable explanation as to why not?
- Analysis of business processes
- Is the service able to describe its main business processes in a way that is clearly understandable – this might be in diagrammatic form where relevant?
- Does the service benchmark its processes against other providers?
- What does the service do with the information it collects?
- uses it for internal service planning
- reports it to councillors/executive and non-executive members of PCTs and senior managers to aid strategic planning
- publishes it to ensure public accountability.

## Continual improvement

Does the service follow a robust cyclical service improvement model such as the one shown below?



Can the service demonstrate continuous improvement over the last three years in terms of economy, efficiency and effectiveness to reflect the balance between the three elements required at a strategic level? Evidence will include:

- increased outputs
- improved outcomes
- meeting short term targets and moving towards long term targets
- demonstrable service impact
- efficiency savings.

### Views of service users and staff

What are the views of service users expressed through customer care systems and community organisations?

What are the views of staff and trade unions and their commitment to service improvement?

What are the implications of options for jobs, terms and conditions?

### Corporate policies and priorities

How does the service contribute towards improving sustainable development?

What is the contribution of the service to equalities, diversity and community wellbeing?

## Key action points for UNISON branches:

- in all circumstances where procurement is proposed and services have not been reviewed, put the case for carrying out a service review in accordance with the best value principles of continuous improvement
- ensure that you are aware of service review techniques and consider training UNISON stewards to take part in reviews (eg Business Process Reengineering)
- get members involved in a service review. They are best placed to identify weaknesses and problems and suggest ways services can be improved
- make sure that UNISON representatives are fully involved in the review process, receive all documentation and reports and are also involved in any subsequent options appraisal
- ensure that participation does not compromise the ability of UNISON to put its case effectively – make sure that proper protocols are in place at the outset of a review
- communicate effectively with all staff affected by a review and ensure that their views are taken into account
- Remember that UNISON's policy is to support service improvement process as a tool to keep services in-house and avoid the active procurement stage.

At the end of a service review process there are a number of possible outcomes:

- 1 The service meets the necessary performance standards and requirements of the service users and the public authority and an in-house service improvement plan is put in place to drive continuous improvement in the service until the next review. This approach further avoids a costly and resource hungry procurement exercise.
- 2 The analysis shows that there is a weakness in service performance and further action is considered. This could involve:
  - retention of the current service in-house supported by a three-year service improvement plan
  - procurement exercise with an in-house bid
  - procurement exercise without an in-house bid.

Where the outcome of the review points to service weakness, an options appraisal would normally be carried out. Firstly however, the authority should consider the development of a service improvement plan (SIP). Service improvement should be the first step before any further procurement options are considered unless there are other circumstances that would prevent such an approach eg the service is not viable without access to external investment. This should however, have been identified as part of the service review process.

## Service improvement plans (SIP)

Service Improvement Plans (SIPs) have a vital role in providing evidence for, and substantiating in-house provision. They should combine a vision for the service with strategy and a programme, which sets the course for the service over a three-year period. The SIP must convey to local authority elected members, executive and non-executive members of PCTs, service users, and staff and inspection bodies that an in-house option has clarity and is sustainable. A SIP is in effect a commitment to improve the quality of the service and sets out the activities and action required to achieve improvement. It is vital that UNISON members play an active role in shaping and developing the SIP. The union should harness the knowledge and expertise of members through regular meetings and working groups.

It is also a tool to hold management accountable for progress, to build staff support, facilitate wider community engagement and enable scrutiny to review and assess the improvement programme. Table 1 below shows the scope of a SIP.

**Table 1 – The scope of a service improvement plan**

Scope	Identify services and functions in scope of the improvement plan
Priorities for improvement	Identify each of the improvement priorities in relation to operational systems, management practice and organisational structures.
Objectives	Ensure the aims and purpose of each improvement are clearly stated based on an understanding of the cause/effect of performance weaknesses and/or opportunities for improvements.
Results expected	Identify the planned impact, outputs and outcomes of the improvements.
Period covered	It is essential that SIPs cover a 2 or 3-year improvement programme.
Management of change	Application of Business Process Re-engineering and how service standards will be maintained in a period of reorganisation.
Action to be taken	Specify what action is required to implement each proposal.
Resources and investment required	Financial costs of improvements, changes in use of assets including equipment & buildings.
Training, staff recruitment/redeployment	Identify human resource changes needed to support implementation.
Corporate action	Change required at corporate level to ensure successful implementation of improvements and achievement of wider benefits.
Staff/trade union involvement and consultation procedures	Agreement on involvement of staff and trade unions in service improvement plan process and reporting progress/issues at employer/union meetings.
Responsibility and management accountability	Elected/board member responsibilities together with officers, or manager's responsible including names/posts and contact details.
Timetable	Dates when proposals will be commenced and completed.
Monitoring and reporting progress	Regular reporting of progress to users, elected/board members, corporate management team and staff.
Scrutiny review	Review on annual or six-monthly basis.

Source: European Services Strategy Unit, 2008. Commissioning and Procurement Toolkit

The principles involved in putting together a SIP as outlined above will also apply where the outcome of an options appraisal is that an in-house option is the preferred approach.

A good SIP should include clear objectives and tasks with measures of output and outcomes and defined responsibilities. Table 2 below shows an extract from a SIP action plan for a local authority building cleaning service. The SIP should be reviewed at regular intervals to ensure that it is being properly implemented and where appropriate revised and updated to reflect any changed circumstances. UNISON branches should ensure that they are involved in monitoring and reviewing SIPs.

**Table 2 – extract from a SIP action plan**

<b>Objective Two: To pro-actively manage customer relationships to ensure customer engagement in the nature and quality of cleaning services provision.</b>				
<b>Task</b>	<b>Approach</b>	<b>Output</b>	<b>Outcome</b>	<b>Owner</b>
Establish a streamlined service level agreement (SLA) process that incorporates Performance Indicators that have been agreed with the customer as a measurement of quality, satisfaction and value for money.	Using the knowledge and experience of the operational team and the feedback from customers' to-date, develop a front page user friendly summary for consultation with customers. Draft PIs for discussion that could be appropriate to existing customers (especially head teachers) and amend as a result of consultation.	User friendly SLA with more individual customer summary and technical appendices as appropriate. Customer related Performance Indicators that are jointly agreed for managing and improving the building cleaning service	Customers that are informed and engaged in the provision of an ancillary service that may have an impact on their own area of provision. Shared information that enables the customer to form an objective view of the cleaning service. An opportunity to discuss extending the SLA time period and commitment required to make the improvements sustainable for both parties.	AN other
Establish a communication plan that ensures a two way exchange of service information that is useful to the customer, develops the cleaning service and ensures a quality profile for building cleaning services within the authority.	Operational team to review customer communication methods to-date and feedback received from customers on communication. Think of new activities that can be implemented with minimum resource requirements but make a significant impact upon the perception of customers.	Communication plan with clear task allocation and targets to measure successful implementation and outcomes.	Improved profile of building cleaning services within the authority and greater customer knowledge of the nature and benefits of a quality cleaning service on their own operation.	AN other

---

### Key action points for UNISON branches:

- ensure that UNISON and its members are involved in the development of a SIP and that the agreed actions are communicated effectively to members
  - where the SIP will involve changes to staff working practices and/or terms and conditions ensure that this is subject to proper consultation and negotiation in accordance with agreed procedures
  - ensure that UNISON is involved in monitoring and reviewing the outputs and outcomes of the SIP
  - where a successful SIP is put in place make sure that the lessons learned from the process are incorporated into the branch strategy and information and intelligence is fed back to the regional office of UNISON so that the success can be publicised and learning opportunities for UNISON maximised.
-

## B: Options appraisal, in-house bids and business cases

### Introduction

As we have seen, a service review may lead to the implementation of a service improvement plan (SIP) and the continuation of in-house provision. It may also have involved an appraisal of the options for future service delivery using the evidence collected as part of the review.

However, where a procurement option is preferred by the authority a more detailed options appraisal and business case should be developed. In many cases (but not always) this is done with the assistance of external consultants or advisors. It is also possible that the public authority could choose to move to a formal options appraisal and business case without having conducted a service review using the principles and tools set out in Service Reviews and Improvement Plans above, or ask an external consultant to carry out the review without formal stakeholder involvement.

An options appraisal may lead to the continuation of in-house provision under a SIP, or it may be one of a number of procurement options considered at the next stage in terms of developing a business case. The in-house option would then become one of the options considered as part of a competitive process under the EU Procurement Directives and would be required to submit a bid or be asked to work in partnership with another provider in the private or voluntary sectors to submit a bid.

In any event, this is a critical phase of the process before a formal procurement exercise is undertaken. At this stage UNISON branches may have the opportunity to effectively challenge a flawed process (e.g. where an options appraisal and business case have not been developed), or to influence the outcome of the process in order to secure the interests of UNISON's membership.

### Summary of key issues for UNISON branches:

- 1 **Why should we get involved?** It is vitally important that UNISON branches are involved in the options appraisal process. This is twofold, firstly to ensure that there is no bias in the approach adopted which should be properly evidenced and secondly, to ensure that the in-house option is given equal weighting and consideration with other potential procurement options. It may also be necessary for UNISON branches to undertake a critique of the appraisal process and the business case justification, in order to influence the public authority before a final decision about procurement is taken.
- 2 **What will happen if we don't?** The options appraisal and business case is used as the basis for a procurement decision. If the UNISON branch is not involved at this stage it is likely that the public authority will move to the next stage of procurement.
- 3 **What will happen if we do?** If UNISON branches are involved in options appraisal and the business case stage, they will need to consider the degree of practical engagement in the process. UNISON should not put itself in a position of providing a justification for outsourcing based on participation in a process and should remain independent and critical at all times. However, options appraisal and business case development follows on from the service review approach and UNISON branches can have a positive impact on the outcome by ensuring that the union and its members' views are properly taken into account.
- 4 **How can we be involved?** As per the section on negotiating a service transformation and procurement agreement, this would normally set out the rights and responsibilities of the union and their involvement in the process. It should also cover rights of access to information that forms the basis of an options appraisal and business case. Where an in-house option is recommended or where there is to be an in-house bid, UNISON branches should be involved in working alongside management to support the in-house bid and in negotiating any changes that are likely to impact on the workforce and UNISON members.
- 5 **What remedies can we use if we are refused involvement?** There are few if any effective legal remedies if trade union involvement is not permitted. However, UNISON can seek to challenge the process. For instance under S.138 of the Local Government and Public Involvement in Health Act 2007 (England and Wales only), local authorities (but not police authorities) have a duty to involve "representatives of local persons in the exercise of their functions" this includes "those who work for the authority". Where appropriate try to get the issue referred to for instance a local authority overview and scrutiny committee. UNISON can also challenge the process if it appears to be in breach of the statutory equality duty imposed on public authorities and/or if it contravenes any statutory guidance on workforce involvement (eg best value guidance). UNISON can lobby councillors and executive and non-executive members of health bodies and promote their case through the media. If all else fails the use of the Alternative Disputes Resolution (ADR) procedure, which is part of the Code of Practice on Workforce Matters (see P.32), or appropriate industrial action can be considered in consultation with the membership and the regional office.

## OGC gateway process: gateway 1 business justification

### Key issues for UNISON on the gateway intervention stage – challenging the options appraisal and business case

This first stage review of a procurement project can provide an excellent opportunity for UNISON to challenge the business assumptions underpinning any proposed outsourcing or competition. Where UNISON has secured a protocol on disclosure of information and effective engagement (see *Negotiating a transformation and procurement agreement*) it can access important information to challenge an options appraisal and business case for outsourcing before a formal procurement process has commenced. This stage occurs at the first review under the OGC gateway procedure (see *Developing a Business Case*).

#### Options appraisal

The term 'options appraisal' is used to cover a range of decision making techniques designed to assess competing approaches. In procurement an 'options appraisal' is used to weigh up the different approaches to whether to 'make, buy or partner' for future service delivery. This includes in-house service delivery together with other external options. Remember that an options appraisal is a 'method' not a 'science'. It is a way of weighting and scoring the procurement options identified by reference to the available evidence. The weighting and scoring can be very subjective and will determine the relative outcome of an options appraisal.

It is important to understand that an options appraisal can form part of a service review (see *Service Reviews and Improvement Plans*) in which the options for the future delivery of the service are evaluated at the end of a review. But in many cases where a service review has not been carried out, an options appraisal will be undertaken separately (sometimes with the assistance of external consultants) or as part of developing a business case for a procurement option.

Some public authorities may select a 'poorly performing' service for procurement without a full service review and/or options appraisal. They may also consider transfer of the service to an arms-length organisation, company or trust or they may consider ways of 'deconstructing' the service into separate parts and transferring them or procuring them separately.

The options appraisal exercise should be concerned with the issues of whether an alternative means of procurement is likely to lead to improvement and should not concentrate solely on cost. In some cases the commissioning body may believe it is reasonable to look at how a private sector partner can add value to in-house provision.

There are four principles that should be taken into account when assessing the options. These are:

- that each service is different and no option should be ruled in or out before being appraised
- no option is automatically better than any other. The main question should be which option will achieve highest quality and wider community benefits on a cost effective basis? Where possible cost should be assessed on a "whole life" basis.
- even when an option is chosen, there will still be further choices. These will include factors such as the type of competition and the selection of a contractor.
- any decisions must be based on evidence from the service review on costs, quality, scope for continuous improvement and the fit with the 'public authority's' wider objectives.

These should lead to a number of questions being asked. For example:

- What has evidence from our consultation told us about the current service?
- How does the service match up against other providers and can we identify reasons for the difference or gaps?
- Can we identify continuous improvement in service provision?
- How do our commissioning arrangements differ from those in the upper "quartile"?
- What options exist in the long and medium term for service delivery?
- What implications do the options have on existing stakeholders, in particular staff, and structures?

#### Different approaches to options appraisal

Any decision making tool such as an options appraisal is intended to support a process – it does not provide answers. Judgements will still have to be made about the relative benefits or otherwise of a particular option having taken all relevant information into account and such judgements should be open to scrutiny and challenge. There are broadly six main approaches to options appraisal.

Technique	Principles
<b>Weeding out</b>	Weeding out is normally done as part of an initial scoping exercise and is based on asking a series of questions against which each option is assessed such as “Is it legally possible?” “Can it deliver the necessary improvement?” “Is it supported by politicians and the local community?” From this it is possible to eliminate options which fail key tests at an early stage of a process.
<b>Strategic Questions</b>	Another approach is to build option assessment around key, or strategic, questions. The options are compared against pre-determined criteria that enable the review team to select and rank ideas or solutions. This can be done in stages to ensure that different issues are taken into account. The first stage looks at the positive and negative impacts of each option, the risks involved and the long-term implications. The intention is that the review team would reach a consensus about the relative merits or otherwise of the main options. The second stage would look in more detail at the remaining options to assess whether for instance the option meets service delivery requirements, would have appropriate governance arrangements in place, the relationship with the service provider and the management of risk. Each option is then scored against key criteria set by the review group which are normally weighted to indicate their relative importance.
<b>Key factors</b>	This is a variant of the strategic questions approach but is based on the public authority setting out corporately the ‘key factors’ that will be used to assess options for all service reviews. These factors are again scored and weighted to determine a preferred option.
<b>Flow charts</b>	Also called “decision trees”. This as it implies involves producing a flow chart for each option with the implications set out from the initial policy choice through to implementation.
<b>Key decision clusters</b>	This is a more complex variation of the key factors approach. It is based on observations about how strategic decision makers actually operate. In most strategic decisions there are three clusters of sub-factors that influence the final choice. They are normally “value for money”, “policies and objectives” and “acceptability” with a number of sub-factors linked to each cluster. Stage 1 involves determining the appropriate sub-factors. Stage 2 involves weighting the clusters and the sub-factors according to their relative importance. Stage 3 involves scoring each of the sub-factors on a scale for example from + 5 to – 5. The scores and weightings are then calculated to produce a total score for each option. The option with the highest score is the best option and the option with the lowest score is the worst option. To use this approach those involved need to be properly trained to use the technique and to work as part of a team.
<b>Cost-benefit analysis</b>	This is arguably the most sophisticated approach to options appraisal and is described in the Treasury ‘Green Book’. It is used to analyse the cost of undertaking a task or project and the benefits that are likely to arise from it. It is most commonly associated with a method of assessing investment projects in the public sector such as PFI/PPP

Source: Best value: Volume 2 – making choices, a practical guide to best value, procurement and competitiveness by Michael Hughes, Inlogov (Institute of Local Government Studies) for the Scottish Executive (Government)

Options Appraisal Criteria	Weighting %
Strategic fit with Cultural Strategy's desired outcomes	10%
Scope for development	5%
Procurement considerations including avoiding additional set up costs	5%
Governance arrangements and community leadership	10%
Financial benefits/disadvantages	8%
Impact upon future resourcing levels	7%
Orientated towards community engagement	8%
Potential to attract additional investment	7%
Synergy with other Council functions and activities	6%
Ability to demonstrate continuous improvement through performance management	8%
Quality of Employment	10%
Ability to positively address diversity and equality	10%
Flexibility and adaptability to meet changing service demands, legislative requirements, social and demographic trends etc.	8%

Options	Risks (- score)	Neutral (0 score)	Benefits (+ score)	Weighted score
Leaving cultural services provision as it is.				
Bringing all cultural services together within the Council.				
Bringing all cultural services together within the Council but continue with a Sports and Leisure Trust.				
Creating a culture trust encompassing some but not all cultural services, leaving the remainder within the Council.				
Creating an all-encompassing culture trust (including the sport and leisure Trust contract)				
Creating a hybrid trust.				
Contracting out some or all of the Council's cultural services provision.				
Entering into a PPP, including a PFI option				
Creating a culture trust encompassing some but not all cultural services, continuing with the sport and leisure Trust and leaving the remainder within the Council				

Score	
-2	Option is likely to lead to associated consequential risk/dis-benefits to the Council and/or its community
-1	Option is likely to lead to deterioration of current position or involves significant risk or additional set up cost
0	Option would retain current position but is neutral in terms of potential for improvement
1	Option would retain current position but provides better potential for outcome measurement/evidence
2	Option would have potential to improve current position
3	Option would have potential to significantly improve current position

## Options Appraisal

An example of an options appraisal criteria and scoring method using a scored and weighted approach for a local authority cultural services review is shown on the previous page. In this example the options appraisal criteria against which the options will be assessed are established first and a relative weighting applied depending upon the importance of the criteria to the local authority.

The range of identified options are then appraised using the agreed criteria. Each of the options are scored according to their risks and benefits against the appraisal criteria which would then result in a score from – to a + for each of the factors being applied. The scores are then totalled and netted off to give a final score for each option. The weighting factor is then applied to each score to give the weighted overall score. The option or options with the highest overall scores will then be taken forward. Where there is more than one option, a further stage of appraisal may take place to determine the final preferred option.

It is important to understand that the criteria chosen and the relative weightings given to each factor will determine the outcome of the options appraisal. Each judgement should be capable of being evidenced to show that it has been arrived at in a rational way and that there is no discernable bias in the judgement and the scores allocated. If Appraisal criteria such as the impact on staff and equality and diversity are given low overall weightings this will be reflected in the final weighted scores and could be to the detriment of in-house options.

## Implementation

After options appraisal and final recommendations the public authority will need to consider how to implement the changes recommended. A vital part of effective implementation of change will be the involvement of staff and their representatives (as key stakeholders) in discussions about how the authority will implement changes, and in the implementation of the changes themselves (see Service Improvement Plans above). An option appraisal should also form part of any business case for outsourcing a service.

### Key action points for UNISON branches:

- UNISON branches should seek to influence the options appraisal criteria and weighting by requesting a copy of the draft criteria and scoring and
  - objecting to any criteria that is considered prejudiced or inappropriate
  - proposing additional or alternative criteria
  - objecting to any weighting that is considered prejudiced or inappropriate
  - checking and suggesting alternative scoring methods.
- UNISON branches should ensure that they are involved in the options appraisal process to both challenge any dubious scoring and in order to promote the branch strategy.

- lobbying members executive/non-executive directors of health boards and chief officers if UNISON concerns are not being acted upon.

## In-house options/bids

UNISON branches should always ensure that the case for an in-house option is properly evaluated as part of an options appraisal process. In many instances where an options appraisal has been carried out by external consultants the benefits of in-house improvement are undervalued in favour of other perceived benefits that a preferred external provider can bring eg investment in IT infrastructure, management capacity, access to wider markets, regeneration and employment. Public authorities often assess other options against an “in-house” option that is treated as a standstill or “do nothing” option (ie status quo). This approach condemns the in-house option to fail before the process even begins.

Remember that many of the benefits associated with outsourcing options can equally be secured by an in-house service and that where there is limited access to skills, investment and resources these can often be addressed by the in-house service working in tandem with another service provider. For instance the supply and installation of “state of the art” IT infrastructure can be achieved with the in-house team working in partnership with a private supplier and implementing business process changes internally.

There are a number of possible alternatives:

- reconfiguring the in-house team to meet the requirements of the service review and options appraisal
- in-house team working in partnership with other providers to access skills and /or build capacity
- in-house team working with other providers to access wider markets, investment etc
- shared services model – in-house team working in partnership with another public body or bodies to provide services.

Some of the opportunities for joint working

in the public services are as follows:

- working across organisational boundaries to provide integrated services (eg pooling resources with other authorities, transferring or delegating functions, or developing a single provider of integrated services)
- developing a wider range of approaches to fit particular circumstances
- joint committees and boards
- joint contracts with third parties
- joint support services

- delegate functions and second or loan staff more effectively
- making better use of public-sector assets (eg exploiting their potential for one stop-shop working).

### Improved in-house service

This is not the same as ‘maintaining the status quo’; even the ‘best’ service can usually be made more efficient or more effective. As time passes what counts as ‘best’ will change as people’s expectations change.

The improved in-house option is likely to follow from evidence that some, or all, of the following factors prevail:

- the in-house team is already delivering economy, efficiency and effectiveness at levels that match both local needs and external comparators
- the in-house team has the capacity and capability to make the improvements necessary to meet and sustain performance at levels that will meet the authority’s future targets
- there is currently no market, or no appropriate market, for the service or activity
- the risk of failure, or the impact of failure, is so high that the authority has to maintain a high level of control over the activity. Risks are managed better within the public authority
- the activity is so central, or core, to the purpose of the authority that any other option would seriously question the authority’s ability to function as an organisation
- the potential economies of scale, scope, or potential for investment, offered by other options are outweighed by the transaction and process costs of implementing those options
- the public authority has, or can generate, sufficient funds to meet future investment requirements
- additionally, the (improved) in-house approach may be seen as a temporary solution while the public authority prepares for the introduction of an alternative approach such as a partnership.

Sometimes public authorities might choose to develop a new in-house solution in response to a service review, or contractor or market failure. The evidence that would support such an option includes:

- existing service providers have consistently, or seriously, failed to meet the authority’s requirements
- the authority agrees to take over responsibility for service provision from another public sector organisation as a result of its decision to choose an alternative service delivery option
- a review has identified the need for a new service, or a gap in existing provision, for which there is a clear need.

### Implementation

Implementation of an improved in-house option is not necessarily easy. Changes in systems, staffing arrangements, and relationships with service users will all take time to embed and services must still be delivered. The authority must ensure that it can manage the improved service and can meet the targets set for it. Changes to job descriptions and requirements will have to be negotiated as will any redeployment or redundancy. Some of the issues that will require attention in delivering an improved in-house service are:

- measures to delegate accountability for achievement of targets and implementation of improvements to operational managers
- ensuring that new service standards and improvement targets can be achieved without using competition against service providers to ‘prove’ the in-house team’s ability
- maintaining service standards and improved performance
- ensuring that the in-house service provision keeps up with, or exceeds, the performance of alternative suppliers
- monitoring and controlling service performance.

### Key action points for UNISON branches:

- Put the case to the ‘public authority’ for the in-house option to be considered before a decision to procure the service through competition is made. Only if the in-house service is then unable to meet the targets and actions set for it as part of a SIP after being given a reasonable time to improve should a competition take place.
- Where a decision is taken by a public authority to follow a procurement route ensure that a fully resourced in-house bid will be considered as part of the procurement process.
- Work effectively with the management of the in-house bid team to put together a tender.
- Ensure that all staff and UNISON members are fully informed about any potential procurement exercise and the implications of the in-house bid.
- Ensure that appropriate skills are available to support the in-house bid including where appropriate engaging consultancy support for the in-house team.
- While there is a requirement for a client/contractor split during a procurement exercise to ensure transparency and probity ensure that the in-house service has the opportunity as the current service provider to influence the service specification.
- Where a ‘public authority’ refuses to support an in-house bid, consult members on support for industrial action to ensure that an in-house bid is part of the process.

## Developing a business case

At the conclusion of the options appraisal process where a major procurement decision is likely to be made, an Outline Business Case (OBC) should be developed to support the preferred option. In any event prior to a decision to procure a service externally there should always be a detailed business case following on from the review of a service and options appraisal. In cases where an in-house option is preferred this is more normally referred to as a service improvement plan (SIP). For all major strategic procurements from PFI to BSF and Strategic Service Delivery Partnerships (SSDPs), the Office of Government Commerce (OGC) gateway process recommends that a business case or justification is made before moving to the next stage of procurement. It is important to remember that the OBC will outline the potential benefits of pursuing a particular option and that if the process progresses through to implementation these alleged benefits should be measured as part of the contract monitoring arrangements.

A business case for a procurement option should contain the following elements:

- a description of the proposal, why it should be done and the implications of not doing it
  - the scope of the proposal and what benefits are likely to accrue to the 'public authority'
  - project objectives including SMART targets
  - the options appraisal
  - the proposed solution, its feasibility, a summary of the main benefits, who is responsible for them and how they will be realised
  - identification of the key risks impacting on the project and how they are proposed to be managed
  - the key dependencies affecting the outcome of a project
  - affordability
  - analysis of costs and phasing of expenditure
  - stakeholder engagement – who are the key stakeholders and how will they be involved throughout the project (this should include staff, trade unions and service users)
  - change control procedures – how will changes in personnel, scope or objectives be handled?
  - the critical success factors
  - the procurement procedures/route proposed
  - the impact of the proposal on the workforce.
- It is only where a business case has been approved by the relevant authority that a procurement exercise should commence. In many cases involving the outsourcing of public services, the business case justification is one of the weakest parts of the whole process or does not exist.

The OGC gateway process states that:

*"The project initiation process produces a justification for the project based on business needs and*

*an assessment of the project's likely costs and potential for success. This first OGC gateway review comes after the strategic business case has been prepared and before any development proposal goes before a project board, executive authority or similar group for authority to proceed."*

## Key action points for UNISON branches:

- Make sure that you are aware of when a business case is being brought forward for approval. Use the agreements you have negotiated to access information on any proposal included in the business case.
- Where a business case/justification has not been provided challenge the public authority to provide one.
- Ensure that in accordance with gateway principles any business case is subjected to effective scrutiny. In local authorities this should not just involve the executive or cabinet, but should be fully considered by overview and scrutiny committees. In PCTs the case should be made to the PCT board and UNISON should lobby board members about the proposals.
- Ask the 'public authority' to engage an independent body or 'critical friend' to review the business case and make recommendations. Where the 'public authority' refuses to do so, consider engaging an independent third party or consultant to carry out such a review and publicise the findings.
- Ensure that staff and UNISON members are fully aware of the proposals in the business case and bring pressure to bear on the 'public authority' to take into account the views of staff.
- Where the proposals impact upon service users and the wider community, publicise the implications including any findings of an independent review commissioned by UNISON and mobilise support amongst service users and community groups.
- Work jointly with other public sector unions to oppose any outsourcing proposals and to lobby elected members and executive/non-executive members of PCTs.
- Contact Labour Link where appropriate.
- Put the case for the in-house alternative to be properly considered or at worst to be included in any procurement exercise.
- Use the local press and media to publicise the implications of the business case for services.
- Mobilise UNISON members for a possible dispute to oppose the next stages of procurement.

## 6 / Stage 3: active procurement

### The procurement process

#### Introduction

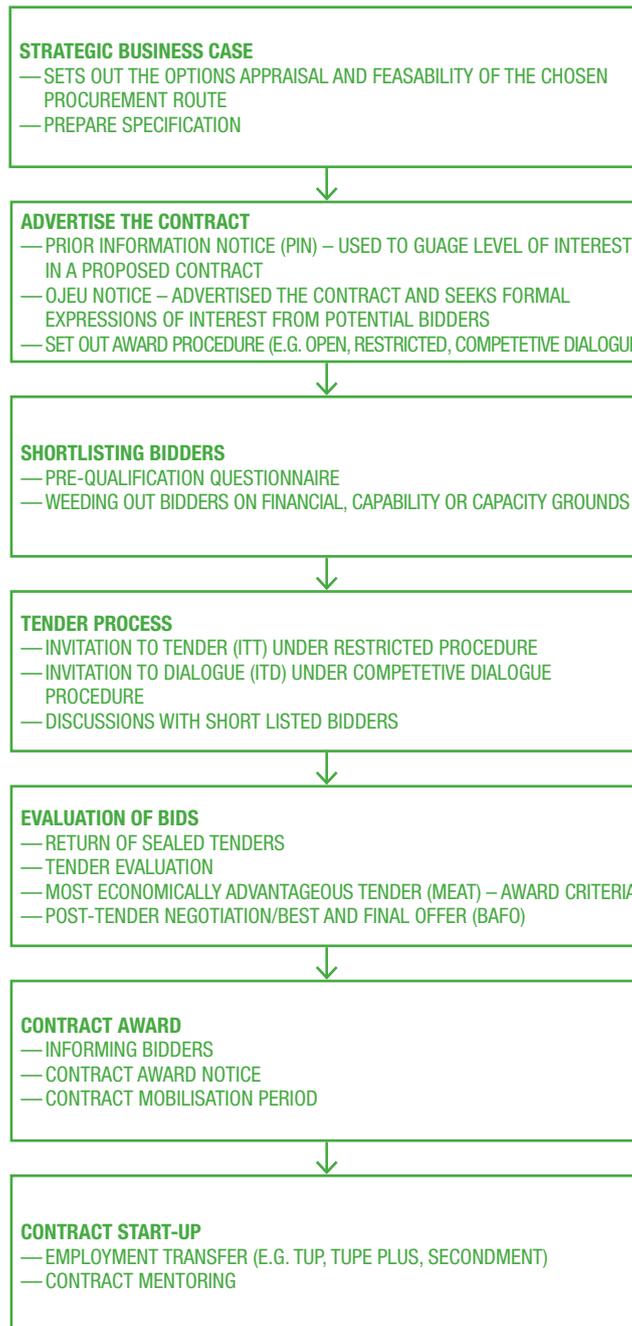
The active procurement stage commences when a public authority has taken a decision to go to the market and to use competition to choose a service provider or to buy other works and goods. It can apply to individual services and activities (eg tendering a grounds maintenance service) or to whole departments or functions (eg corporate and support services including administration, finance and business support, payroll and revenue, IT, human resources, customer services, facilities etc). It normally commences with a formal advert in the Official Journal of the European Union (OJEU). There are minimum timescales set out in the EU Procurement Directive and the subsequent regulations and the procurement phase itself can take up to six months from advert to receipt of tenders. In the case of more complex procurements the timescales are often much longer from inception to award and the post-tender return phase including negotiations with preferred bidders can often be protracted. While it is possible to complete a procurement process for a complex procurement in about nine months this can often extend to two years or more depending upon the nature of the procurement. Often major infrastructure procurement such as PFI/PPP can take many years to completion.

### Summary of key issues for UNISON branches:

- 1 **Why should we get involved?** The active procurement phase is a formal rules based process which can ultimately lead to the outsourcing of services. It is important that UNISON branches are involved in the process in order to ensure that members' employment conditions including pension rights are protected under the workforce code of practice and that where there is an in-house bid it is properly supported and resourced.
- 2 **What will happen if we don't?** If UNISON branches are not actively involved this could impact adversely on the outcome of a procurement exercise for the membership which could mean limited commitment to in-house bids and the minimum employment protection under TUPE.
- 3 **What will happen if we do?** UNISON involvement can ensure that there is a successful in-house bid or that employment models such as secondment/retained employment are adopted as preferred options in the bids. It can also ensure that where services are outsourced and staff transfer TUPE plus arrangements apply.
- 4 **How can we be involved?** Trade union agreements with public authorities can set out the terms under which UNISON branches are involved in the procurement process. The terms of confidentiality agreements with the trade unions can include rights of access to information, involvement and engagement with bidders and participation in the process itself including evaluation.
- 5 **What remedies can we use if we are refused involvement?** Again the key remedies available are contained in statutory provisions such as S.138 of the LGPIH Act 2007 (England) and codes of practice governing staff involvement and workforce matters. UNISON branches may also be able to use provisions in freedom of information legislation to access information where this is pertinent to their needs and is not deemed to be exempted. Where UNISON branches are prohibited from involvement they can consider using the alternative disputes resolution (ADR) process in the codes of practice on workforce matters and/or consider industrial action where appropriate in consultation with the membership and the regional office.

## Diagram 5 – the active procurement phase

Diagram 5 sets out the key stages of a procurement exercise under the EU procurement rules. A procurement exercise has defined stages and whilst these may vary depending upon the nature of the procurement and the procedure followed under EU law, it will always broadly follow the process set out in the diagram.



## Types of procurement

Procurement is generally split into three types:

- services: delivery of services and management consultancy
- works: buildings, infrastructure and regeneration
- supplies: goods, food/produce, equipment.

And the procurement method will usually include one of the following:

- provision of single or group of services – contract for delivery of one or more services, usually for five to seven years
- partnership contracts (strategic service delivery partnerships) – 10-12 year contracts usually centred on ICT and related or ‘back office’ services
- management consultancy and legal, financial and technical advice – wide variety of consultancy tendered from approved select list, invitation or by advertisement, normally under contract EU thresholds
- framework agreements (for consultancy and technical/professional services) an agreement with a supplier(s) to provide specific advice/projects or call-offs over a fixed period (this is for maximum four years under EU regulations). Only the framework agreement is tendered, all the subsequent projects or “call-offs” are allocated by agreement or a mini competition according to the terms of the framework agreement
- commissioning - spot contracts – where a community care package for an individual or small number of people is allocated to a private or voluntary sector provider. Transfer of staff unlikely because no economic entity to transfer
- commissioning – block contracts (with or without in-house bids) – community care packages are combined into a larger contract for tendering purposes
- PFI, PPP, LIFT and BSF projects – long term design, build, finance and operate contracts and establishment of a special purpose company in which the private sector has a majority holding
- joint commissioning or public sector consortia – between two or more local authorities and/or public bodies (eg health) to jointly tender a service.

Within the types and methods there are two general types of contract, a standard fixed price contract where bids are submitted, evaluated and awarded on a fixed price basis and the negotiated and preferred bidder process where bidders submit proposals which are evaluated and a preferred bidder selected with one kept in reserve. Detailed negotiations are held between the public authority, bidder and advisers to produce the final proposals against which the public authority approves and awards the contract.

## Key action points for UNISON branches:

- make sure that you are aware at an early stage of the procurement method that is going to be used as this will affect the process and the opportunities for intervention
- ensure that you have access to the relevant documentation supporting the decision to procure services externally and by the particular method chosen
- where a decision to procure has been taken without a proper review of the service, use the legislative and policy framework to argue for a full review of the service area in accordance with best value principles prior to moving into the procurement process
- lobby decision makers if the procurement decision (and or method) is inappropriate and put UNISON's case for an alternative process eg in house service improvement plan.

The way in which public sector organisations are able to purchase goods, works and services is governed by legislation. This legislation falls into two main categories:

- European Union (EU) procurement legislation
- United Kingdom (UK) procurement legislation.

In addition to this legislation each public authority will also have its own standing orders and financial regulations that must be complied with.

While it isn't necessary to know all the rules and regulations in detail it is important to understand the basic impact of key legislation and when it will become applicable within the procurement process. For example the Transfer of Undertakings Regulations (that apply to the transfer of staff from one organisation to another) are not simply considered at the point of transfer but should be part of an organisations statement of principles, noting support of the legislation and the anticipated approach (eg TUPE plus or secondment) if such a transfer should become possible. Summary information that sets out the legislation that is likely to be relevant within procurement activities is referred to again in sections of this document as appropriate and a full list is shown at section 8 – Procurement and the Law.

## Overview of the procurement process

In simple terms the procurement process (or active procurement element) goes through the following steps each of which will be more or less complex dependent upon the scale of the contract and the nature of the service to be provided.

- advertising the contract
- engaging and selecting suppliers
- preparing the specification and contract documents

- invitation to tender/negotiate
- evaluating bids
- selecting the preferred bidder
- awarding the contract.

Once a decision has been made to use the procurement process ideally a procurement action plan should be developed by the contracting public authority. It is important that the plan is in proportion to the level of procurement to be undertaken. For example development of a service improvement plan with the in-house provider could use a working group to develop the appropriate plan, whereas a strategic service delivery partnership would require full project management arrangements. The plan should confirm the procurement method and the requirements that go with this and then set out the process that will be applied to acquire the goods/services.

Such a plan should set out:

- the chosen approach with all tasks and deliverables identified in enough detail to allow progress to be tracked and managed
- timescales that are realistic and identify any opportunities for streamlining the process and running activities in parallel
- the skills and resource requirements to support the procurement process, and a plan to acquire any additional support if it is required
- consideration of whether specialist advisors (procurement, legal, human resources etc) will be required, and when
- how the specification will be developed, in particular how stakeholders or their representatives are to be involved in the development. (note – if delivery of the service is to be via the in-house team the service should still be specified to an appropriate degree using a service level agreement or trading agreement)
- the evaluation stages required, the overall evaluation criteria and the evaluation process -it should ensure that the evaluation strategy is acceptable to stakeholders and compliant with EU procurement rules.

### Key action points for UNISON branches:

- ask for evidence in support of the decision to procure externally. If it doesn't exist then object and demand an in-house service review if this has not been undertaken. If evidence does exist, consider if it is possible to challenge any part of it sufficiently to halt the process
- if you cannot halt the procurement demand a proper planned process that uses the input of representatives on working groups
- get on the working group, and/or appropriate project task group for the procurement plan. Make

- sure you get UNISON training and support when dealing with technical/complex documents
  - question timescales and the ability to deliver to the plan without jeopardising the quality of the service or the in house team's ability to respond to any requirements
  - be prepared in advance for each step of the process in order to be able to raise issues at the earliest point possible preferably having discussed them with members and shop stewards first
  - check out opinions at a senior level on whether it is too late to revisit the option to not go to the market and to develop an alternative in house approach
  - lobby the appropriate elected members or NHS board members who will be scrutinising the plan when you think an issue has been overlooked or that UNISON views are not being adequately represented
  - ask UNISON head office, the region and other branches for outcomes of previous procurements that UNISON has been involved in. Are there any issues from these that are relevant to this procurement plan?
  - make sure that the members know what is going on. Communicate and hold regular meetings
  - make sure that service users are being effectively consulted.
  - share information with the branch committee and work closely with the regional office who need to be directly involved (See Section 4B – Developing a branch strategy).
- Key issues for UNISON on confidentiality agreements can be found on P.16

## Advertising the contract

### Introduction

Contracts that are subject to EU procurement rules must be advertised by way of an OJEU notice (an example of the key information contained in an OJEU/contract notice is shown at Appendix 1). These notices are in a standardised format. It is important to understand that if the public authority wishes later in the contract award to rely on the inclusion of workforce matters or social and environmental issues (which it should) these matters must be mentioned in the OJEU notice – not in detail as this is covered elsewhere in the tender process, but they must be referenced in the notice.

Where the total value of the proposed procurement does not exceed the EU thresholds, there is no requirement to follow the detailed procedures but there is still a requirement for a fair and transparent process and the relevant EU principles such as non-discrimination and transparency must be complied with in all public sector procurements, whatever the size, value or nature of the contract.

Although the EU prescribes numerous rules and regulations there is a level of freedom allowed in what procedure a public authority will follow in the award of a contract. Once the OJEU notice has stated what procedure the awarding body (the public authority) will follow they are not allowed to then change to a different procedure.

There are four main award procedures:

### The open procedure

All interested parties must be allowed to submit a tender in response to the contracting authority's OJEU notice (only those meeting the contracting authority's selection criteria, if there are any, will be entitled to have their tender assessed).

### The restricted procedure

Within the restricted procedure interested parties may 'express an interest' in tendering for the contract. However only those meeting the contracting authority's selection criteria will actually be invited to do so.

### The negotiated procedure

The negotiated procedure is usually used for more complex or strategic procurement such as PFI/SSP. Under the negotiated procedure the awarding authority using the selection criteria will select a minimum number of potential contractors to invite to negotiate with them with a view to awarding the contract.

Concerns with regard to the transparency of a negotiation with a single supplier after bids had been evaluated led to the European Union introducing the competitive dialogue procedure under the consolidated EU Procurement Directive 2004/18/EC (See section 8 – Procurement and the Law). The competitive dialogue procedure introduces discussions with shortlisted bidders at a much earlier stage of the procurement process prior to the evaluation of bids and has effectively replaced the negotiated procedure for complex procurements.

### The competitive dialogue

The competitive dialogue procedure is a relatively new procedure that allows tenderers' input during the procurement process, with the aim of defining the specification. The idea behind the procedure is that it will allow the contractor and the awarding body the opportunity for a dialogue to better determine what is required under the contract to help prevent problems with complex contractual arrangements, such as the complexities within PFI schemes or strategic service delivery partnerships (SSDPs). There are some concerns that the competitive dialogue procedure, being an open process with dialogue between different bidders may give rise to complaints

from unsuccessful contractors about fairness and transparency. It may also mean that contractors use their commercial skills to 'up the value' of the eventual contact by expanding the specification beyond that original envisaged by the awarding body. It is important therefore to ensure that UNISON is engaged and consulted as part of the project arrangements for any strategic partnership type of procurement and is able to ensure that no advantage is given to private sector suppliers that could be to the detriment of public service, their users and employees.

### Key action points for UNISON branches:

- challenge the decision to use the chosen procurement route if this is likely to disadvantage an in-house option or impact on the preferred employment options
  - ensure that reference to TUPE, other workforce matters and social and environmental issues are clearly made in the OJEU notice
  - if appropriate (eg for a PFI, SSP, BSF process) is there is a confirmed and viable business case in place to support the procurement? And has UNISON carried out an analysis and critique of the business case?
  - obtain a copy of the draft OBC and/or business case for the project and assess its implications
  - has a draft specification has been prepared and agreed by all appropriate stakeholders?
  - has the minimum criteria for selection of bidders been agreed by all appropriate stakeholders?
  - is the award criteria and weighting established and agreed by all appropriate parties?
- If the answer is no to the three points immediately above then lobby decision-makers for information and changes. Branches should try to ensure that OJEU notices:
- limit and specify the scope or range of services rather than an all-inclusive list
  - inform interested parties that an in-house bid is planned
  - state which assets (equipment, land, buildings, intellectual capital) are included or excluded
  - inform potential bidders about the broad employment arrangements such as for example secondment to a joint venture company, the application of the best value code of practice on workforce matters and TUPE Plus agreements for staff transfers
  - state whether variant bids with alternative proposals will be considered
  - extend standard evaluation criteria to include community well-being, social inclusion, quality employment, vision and added value to assess bids.

## Selecting the supplier

### Introduction

It is important to understand that suppliers do not have to be limited to companies within the private sector. In fact under the commissioning role (described in Section 2 – The politics behind commissioning and procurement) the public sector is expected to encourage new supplier groups (eg voluntary service organisations and social enterprises). Options here could include

- working with other authorities as partners as direct suppliers or in a joint procurement exercise
- partnering with organisations such as voluntary or community groups to deliver specific aspects of the service (Note: UNISON is supportive of the role of community and voluntary sector organisations play in providing niche services, but would be concerned about their capacity to deliver mainstream services as a single provider and therefore being seen as a substitute for public sector provision)
- partnering with small and medium enterprises (SMEs) to deliver specific aspects of the service.

While the status quo in-house option will have been rejected if a procurement process is underway, this does not mean that the in-house service should not be considered as a supplier and given the opportunity to submit a bid based on an improved service delivery. Other In house options could include:

- establishing a new authority owned company to deliver goods and services
- public sector partnerships that could include other public sector organisations.

It is also possible to postpone the decision to procure and instead undertake a limited market test to establish interest and ideas on how the service could be delivered.

In theory, ceasing to provide a service should be considered as an option but this is usually politically, economically and socially implausible. This is only a realistic option if the public authority does not have a statutory duty to provide the service, if there is little or no demand for the service, if the costs of provision outweigh the overall benefits of provision, and/or there are other comparable externally provided services available at reasonable cost to service users and where this will not undermine the public authority's broader social policy and community well-being objectives.

### Prior information notices (PINs)

A process called the publication of prior information notices (PINs) can be used when a contract is valued

above specified EU thresholds. The purpose of a PIN is to alert the market to forthcoming contract requirements and allow potential suppliers to respond, expressing an interest in bidding for the contract. This supplier feedback is sometimes used to inform the development of the specification as well as the selection process prior to the invitation to tender stage. This is often referred to as 'soft market testing'.

Information in the PIN should be broad enough to allow for contract development at a later date but should also be precise enough to avoid sending mixed, contradictory or misleading messages to the market.

Supplier engagement via PINs or indeed any other methodology must not be used to conduct negotiations nor must it be used to discriminate for or against any particular supplier. Therefore any such contact must be undertaken carefully ensuring probity and that any communication is shared with all the suppliers concerned as appropriate. In-house services should be aware of PINs and included in the sharing of any information arising from them.

PINs should be published as early as possible after the start of the financial year and must be published at least 52 days and not more than 12 months before the date of publishing a Contract Notice. This means that they are a useful early warning system within those public authorities with poor communication and relationships with services and/or UNISON.

### Key action points for UNISON branches:

- lobby decision makers and seek to postpone the procurement process and (soft) market test until UNISON has been fully consulted on the proposals
- be aware of PINs. In a situation of poor communication within the public authority this may be the first early indication of use of the procurement process for UNISON and the service staff
- ensure that the publication process enables other public sector bodies to be aware of the opportunity to support an in house process
- establish the in-house team's ability to proceed with a bid as a single supplier and if appropriate start early discussions on preferred options to partner with another public authority with the branch committee
- be aware of any potentially inappropriate overtures to specific suppliers that may imply favouritism. Highlight concerns via procurement planning groups and other decision makers as necessary
- ensure that the in-house team are being kept advised of any supplier contact and feedback via the PIN process

- use the PIN process (via the in house service) to raise queries and gather information about the intended procurement process.

## Pre qualification process

A pre-qualification questionnaire (PQQ) is a method used for selecting potential suppliers to be invited to tender. Use of a PQQ is intended to add objectivity and consistency to the process (an example of the main information that can be obtained through a PQQ is shown at Appendix 2). The PQQ is issued to organisations/contractors who have responded to the OJEU notice (see 'Advertising the contract' above).

PQQs may only be used in the restricted, negotiated and competitive dialogue where the procurement is subject to the EU procurement regulations. They are useful in getting a good level of detail about potential suppliers and therefore a good start to assessing the competition to the in-house service.

The pre-qualification process may be used to enable interested bidders to establish whether they can satisfy the selection criteria specified for participating in a specific procurement and can therefore be useful in ensuring that only genuinely able suppliers submit a tender at a later stage.

Completed PQQs should be evaluated by the appropriate procurement working group or project team and this evaluation must be undertaken in a manner which is fair and non-discriminatory.

The PQQ should ask for details on:

- organisation – identity and ownership, background, principal activities, organisational chart, contractor/subcontractor approach, professional/commercial affiliations, legal issues (contract disputes in last three years)
- finance – copies of two annual reports and audited accounts, turnover in the activity being tendered
- capability – skills and experience of key staff, specialist knowledge, experience of different employment models, experience and track record – principal activities and experience, type and range of service provided, whether the service being tendered is a core activity, examples of joint or consortia work with other contractors (if relevant) and proportion of services routinely subcontracted. It should also ask questions about compliance with race equality regulations, evidence of any findings of discrimination and the corporate approach to promoting equal opportunities

- capacity – number of staff in each service area, the amount of work in hand and availability of resources, quality accreditation, evidence of staff training and development programmes.

Pre-qualification questionnaires, specifications, selection and bid evaluation criteria should also aim to mainstream sustainable development issues such as:

- reducing whole life costs
- building regional and local production and supply chains and support for the local economy
- minimising waste by optimising material use, recycling and use of renewable energy
- design for durability, adaptability and re-use
- use products from legal and sustainably managed sources
- use low maintenance building materials and install high-efficiency heating, water, air conditioning and other appliances.

As well as the PQQ there is a process called the preliminary invitation to negotiate (PITN). This is used in conjunction with a PQQ in more complex contracts such as partnership projects eg Building Schools for the Future programmes. The PITN provides more scope than a PQQ to obtain information about the applicant to allow an assessment to be made of its approach, capability and suitability to be invited to tender. It is normally a two stage process with the authority assessing bidders written responses to the questions in the PITN which are designed to assess the quality of proposals, affordability and acceptability of the contractors financial, environmental, partnership and related proposals. The second stage will normally be a presentation/interview after which an evaluation panel set up by the public authority may revise the assessment of the written responses. As with the PQQ the public authority will be seeking specific concise responses to the project rather than general company information and can set space limits for each question. The public authority should expressly state that it might disclose detailed information relating to bidders responses to the PITN questions to elected members, officers, employees, trade unions and advisers.

If there is limited response to the OJEU Notice the public authority will be under pressure to revise the project either by adding services or functions which might be more 'attractive' to the private sector or by 'deconstructing' the project into smaller parts in the hope that the private sector will bid for individual sections. UNISON branches should argue that if there is no significant interest then the public authority should be bold enough to retain the in-house service because no external market exists.

## OGC gateway process: gateway 3 – confirm procurement method and sources of supply

### Key issues for UNISON on the gateway intervention stage – influencing supplier selection:

This is a very important stage in terms of who the potential bidders are. Any in-house team will also need to complete the PQQ and short listing stage so UNISON branches need to ensure (a) that the in-house team is included on any eventual short list and (b) that potential bidders that have poor employment records and trade union bargaining arrangements; poor financial and service delivery track records are weeded out at this stage.

### Key action points for UNISON branches:

- be aware of the PQQ process and support its use as this will give you access to useful information on potential bidders
- ensure that UNISON is represented on the relevant working party or project group in order to access full information
- use the process (and information) to raise queries and concerns re potential suppliers or the ability of the market place to deliver
- be aware of any opportunity for inappropriate 'favouritism' to external suppliers – if you see any, report it
- if there is limited response and pressure to make the process more inviting then branches should ensure that the authority takes account of:
  - adding functions or dividing up the work does not have a negative impact on service integration, users and staff
  - the likely increased transaction costs of several smaller contracts
  - the effect on corporate policies
  - the revised proposals are subject to further consultation with service users, staff and trade unions.

## Invitation to tender and evaluation of bids

### Introduction

A contracting public authority must invite a minimum of five suppliers to tender under the open and the restricted procedure and a minimum of three suppliers to negotiate under the competitive dialogue procedure which has replaced the negotiated procedure with prior advertisement. In all circumstances the public authority is expected to ensure that a sufficient number is invited to tender to ensure a genuine competition. While a minimum of three bidders is expected this isn't always achievable and the public authority will be under pressure to go back to the market to stimulate further competition this is likely to cause complaints from bidders.

### Invitation to tender

The invitation to tender (ITT) or invitation to dialogue (ITD) (this procedure replaces the invitation to negotiate procedure (ITN) under the negotiated procedure – see competitive dialogue above) is the key client document used by those invited to tender to prepare their bids or proposals. It should contain:

- the aims and objectives of the service or project
- scope of the service or project
- performance framework with standards and targets
- required outcomes and outputs (and inputs and service delivery processes where these are material to the quality of service)
- quality plan (identify all the critical quality aspects of the work and define mechanisms by which they will be introduced, achieved and monitored)
- method statements (the bidder must explain how they will organise, staff and operate particular parts of the contract)
- employment model and application of the relevant code of practice on workforce matters and TUPE Plus agreements
- meeting race equality objectives such as implementing the authority's race equality scheme, consultation with potential users, monitoring change in the use of the service by ethnicity of users and training staff in the awareness of religious and cultural traditions of users
- contract conditions (the legal requirements and conditions under which the contractor must operate the contract)
- payment mechanism (for PPP/PFI projects)
- consultation and participation of services users and community organisations
- evaluation criteria
- the council's corporate policies including sustainable development, employment and social objectives
- health and safety requirements.

## Key action points for UNISON branches:

- if there are less than three bidders take the opportunity to lobby for the abandonment of the process and support for the in-house option
- ensure UNISON access to the information on potential bidders and to the tender documentation
- ensure that the UNISON branch puts forward its own comments on the ITT/ITN/ITD. If needed engage external expert help to assist with this through the regional office
- make sure that the ITT/ITN/ITD sets out clearly the relationship with any in-house options and where partnering (through for example a joint venture company) is proposed that employment models such as 'secondment/retained employment' or 'carve out' are clearly set out as one of the preferred bidding options.

## Tender clarification

Once tenders have been received, there may need to be further contact with suppliers before they can be fully evaluated. Clarification is a documented exchange with suppliers to clarify aspects of a tender and correct any apparent error.

Clarification of tenders should not be confused with post tender negotiation or dialogue which is a process available after the receipt of formal bids, but before the letting of the contract, which looks to further improve the bid in order to secure better value for money for the contracting authority.

All clarifications must be shared with all suppliers that have tendered.

## Compliance with tender/contract conditions

The invitation to tender should have included the standard terms and conditions of contract. All proposals received must be subject to rigorous evaluation to ensure that they are fully compliant with the terms and conditions of contract and terms of tender.

Proposals from suppliers to vary any aspect of the terms and conditions of contract can be considered but in order to do this the clauses that can be varied must be clearly identified in the original invitation to tender.

If suppliers have submitted bids containing their own terms and conditions, then it should be confirmed in writing that these will not be accepted and that bids will only be considered on the basis of the public authority's own terms and conditions.

## Quality/price evaluation matrix

Contract award decisions should be made on the basis of the most economical advantageous tender (MEAT), having regard to a range of contract related criteria including technical, qualitative, financial, social and environmental considerations as applicable. UNISON will want to have input into the criteria that are used to influence the contract award. It is important that contracts are not awarded on low price alone (see P55 – Awarding a Contract).

The quality/price matrix allows bids to be evaluated taking account of the award criteria applicable to the contract in question and ranks tenders in order of most economical advantageous tender.

## Shortlisting of bidders

The following criteria cannot be taken into account in the selection of contractors:

- the conduct of contractors in industrial disputes
- the contractors country of origin
- the contractors sources of financial support
- the political affiliations or interests of the contractor or their involvement in any other area of government policy
- the use (or non-use) by contractors of technical or professional services provided by the local authority under the Building Act 1984
- whether the terms of any sub-contract with individuals treat them as independent contractors or not. (Section 17 of the Local Government Act 1988).

Public authorities are able to include employment requirements such as training and recruitment in contracts to contribute to achieving best value. For example a public authority could include a contract clause requiring the employment of long-term unemployed people so long as it could demonstrate that this contributed to best value.

## Selection of bidders

The assessment of bids or tenders will be via three key steps

- desktop evaluation of PQQ and PITN
- interview by selection/evaluation panel
- evaluation report.

The main evaluation criteria permitted by EU procurement regulations are:

- price
- period for completion
- running costs
- profitability
- technical merit
- delivery date
- cost effectiveness
- quality

- aesthetic and functional characteristics
- after sales service
- technical assistance.

Further evaluation criteria that can be used within the main headings above are:

- vision and innovation
- partnership working
- service and community needs
- management practice
- equity, equalities and diversity
- information and communications
- technology innovation
- technical/design assessment
- risk management
- impact on service users
- asset management
- community well-being and the local economy
- employment, training and human resource proposals
- financial assessment
- corporate impact on the authority
- development and investment
- governance proposals
- sustainable development
- social and organisational impact
- production and supply chains
- equality and social justice impact
- environmental impact
- contribution to regional strategies
- democratic accountability and participation
- change management proposals
- transformation strategies
- Added value.

The employment criteria should include an assessment of:

- the contractors ability to recruit and retain an adequately skilled and experienced staff
- proposals for the implementation of equalities and diversity policies and practices for service users and staff
- the contractor's commitment and ability to implement the code of practice on workforce matters which will be a condition of contract.

### Key issue for UNISON branches on evaluation methodology

The evaluation of price and quality is a key element of the process and like options appraisal methodology is based on a weighting and scoring model. The factors that are included in the evaluation model will play an important part in determining who the short listed or successful bidders are. Weighting and scoring can potentially discriminate against in-house bids where appropriate factors are not taken into account. UNISON branches

will need to ensure that they are able to influence the evaluation criteria being used to determine the successful bidder.

### (g) Tender evaluation criteria and methodology

When tenders are submitted to a public authority they will be subject to tender evaluation. The evaluation is normally undertaken by a panel set up by the public authority. While it is not normal practice for the trade unions to be involved in tender evaluation, there are many examples of where the trade unions have been involved either as observers or to look specifically at bidders proposal in relation to employment matters. It is common for union representatives to meet with bidders in advance of tender submission.

Tender evaluation should be undertaken in accordance with criteria and a methodology agreed in advance (see (f) above) and notified to the bidders in advance. An evaluation methodology will depend upon the complexity or otherwise of the procurement exercise but should enable the public authority to objectively determine which bid offers the best value for money overall by addressing:

- conformity with conditions for participation (mandatory requirements) – a “yes/no” or “met/not met” response
- the degree to which the bid meets qualitative criteria
- whole life costs (i.e. the systematic consideration of all costs associated with a procurement which can include initial capital and procurement costs, opportunity costs and future costs shown as net present value – that is the point at which a bid is evaluated)
- the level of risk associated with selecting a particular bid.

Criteria should be listed (in order of priority) in the tender documents (usually the specification). An evaluation methodology is usually weighted to reflect the degree of importance of the criteria for assessing the bids. There are a number of reasons that tenders can be rejected at this stage of the process. Some of the main reasons are shown in the box below.

### Tender evaluation – The ‘knock outs’

- abnormally low tenders
- non-compliance with the codes of practice on workforce matters
- technical incapacity as set out in method statements
- bankruptcy
- non payment of taxes, social security contributions and so forth.

**(h) Abnormally low tenders**

If a public authority regards a tender for a service, goods or capital works to be abnormally low it can reject the tender but must first request further information about the elements which it considers to be abnormally low in writing from the bidder. This may cover the economics of the construction method, manufacturing process of services provided; the technical solutions and any exceptionally favourable conditions available to the tenderer; the originality of the work, supplies or services proposed by the tenderer; compliance with employment protection and working conditions; and possibility of tenderer obtaining state aid. Where, it is established that the tender is abnormally low because the tendered has obtained state aid the public authority must give the tenderer a time limit to prove that this was granted legally. If the tender is rejected in these circumstances the rejecting authority must inform the European Commission.

**(i) Best and final offer (BAFO)**

This is often used in PPP/PFI projects when there has been a second stage within short listing following evaluation, clarification and negotiation of bids.

**(j) Contract standstill period**

Following evaluation of all proposals and prior to completing the contract award, all suppliers must be notified and debriefed on the intention to award the contract. This debrief must be undertaken incorporating the mandatory 10 day standstill period (also referred to as the alcatel standstill period). This allows tenderers the opportunity to forward a complaint regarding the contract award process and have it considered prior to the final award being formalised.

**(k) Securing and recording efficiencies**

Where value for money efficiencies have been secured as a result of the procurement process these should be recorded. All efficiencies should be backed up by supporting documentation for future reference and audit. Potential areas of efficiency or benefit could be:

- reduction in cost
- cost avoidance
- added value
- process changes
- savings against budget
- sustainability benefits
- risk reduction.

It is important to test whether or not the benefits claimed for the procurement process and outcomes are in fact realised. In certain circumstances this will be important information that can be used to illustrate where a private sector supplier has failed

to do that which it claimed, particularly if an in house supplier was denied the opportunity to make improvements. This information can be used when working on future service reviews and when arguing against the use of the procurement process.

**OGC gateway process: gateway 3 – confirm investment decision**

**Key issue for UNISON on the gateway intervention stage – tenders and evaluation of bidders**

This is another stage at which UNISON branches should ensure that trade union objectives in procurement are secured. This will be a vitally important stage where an in-house bid is being considered as part of a procurement exercise. While the law precludes discrimination in favour of one supplier or another, UNISON needs to ensure that the in-house bid is given every opportunity to succeed. This could be by way of influencing the tender documentation so that there is a 'level playing field' for the in-house bid or ensuring that evaluation criteria are not weighted against the in-house option. Where there is no in-house bid UNISON needs to ensure that employment options including secondment/retained employment and/or carve out are properly considered in the tendering process.

This is also a stage where UNISON can be engaged in a dialogue with potential bidders to clarify bidder's intentions with regard to employment matters such as secondment and TUPE.

**Key action points for UNISON branches:**

**Trade union role in evaluation:**

- where a corporate procurement agreement has been reached this should give access to bids (sometimes in full but excluding financial information or sometimes only the employment related section of the bids)
- confidentiality agreements: local authorities, contractors and/or their advisers usually require that branch officials and staff members can only gain access to bid documents by signing a confidentiality agreement. As long as this does not inhibit the branch producing their own analysis of the bids for circulation to elected members and staff there is little to be lost by the union agreeing to sign an agreement
- draw together stewards from the affected services to get frontline views of the contractor's proposals.

**Meeting with bidders**

Preparation is essential:

- understand the scope of the meeting as part of the procurement process and always ensure that more than one representative attends meetings

- prepare for the meeting by dividing up the questions and deciding whether and to what extent you will present the branch position
- have a list of questions and demands including where relevant the TUPE transfer and protection proposals. Refer to the UNISON Private Contractor Unit guide – “Organising Guide to transfers of Employment 2008”
- request written confirmation of any agreements and responses to questions, which have not been answered at the meeting.

## Contract award and implementation

### Introduction

Following the receipt of tenders each bid must be compared in a fair and equitable manner. All tenders must be evaluated on the basis of the contract award criteria published in either the Contract Notice or Invitation to Tender documentation (see Tender evaluation criteria and methodology above).

It is not permissible to introduce any new criteria at this stage, nor is it possible to re-evaluate any information that was specified in the selection criteria. The responsibilities of any procurement working group or project board that has been set up to deliver the procurement /project plan will have been defined when the group was established and this should have addressed the process of tender evaluation. Tender evaluation should be a combined responsibility of the project board so as to draw on the expertise of all of the stakeholders that are involved in the process, including procurement, user representative, financial, legal, etc.

### OGC gateway process: gateway 4 – to confirm readiness for service

#### Key issue for UNISON on the gateway intervention stage – award of contract

This stage of the process precedes the start of the contract and where a decision has been made to award a contract to an external supplier, UNISON will need to ensure that the employment terms and conditions secured under the tender (secondment, TUPE plus) are fully and properly implemented before the start of the contract so that no ambiguity can exist in terms of any transfer of responsibilities. UNISON branches also need to ensure that they are in a position to retain and organize membership with the new employer.

### Awarding a contract

Public authorities do not have to award contracts simply based on the lowest price. Under the now abolished compulsory competitive tendering (CCT) processes local authorities were encouraged to look at the lowest price and had to justify going beyond this. However the EU procurement rules allow for the award criteria in two ways:

- lowest price, ie the lowest priced tender wins where no other element of the tender may be taken into account or
- the most economically advantageous tender (MEAT). Where the award criterion is MEAT, the contracting authority may take into account factors other than or in addition to price, like quality, technical merit and running costs. MEAT allows a contracting authority to balance the requirements, for example, of price and quality which in certain cases may achieve best value for money.

Unless a contract is for a supply of simple goods (eg stationery) that can be reasonably well specified without too much variation, it is of critical importance that the contract award process takes into account the quality issues and that adequate weighting is given to quality in the scoring so that quality can outperform price if this is appropriate. Given that all service provision must be meeting corporate aims and values then an evaluation process that does not include quality should be vigorously challenged.

### A tenderer's right to information

When a tenderer is excluded at any stage of the tender process it may write to the public authority requesting a debrief. The public authority is obliged to respond to the supplier within 15 days of the written request, providing reasons why it was unsuccessful and, if the supplier has submitted a compliant tender, also the characteristics and relative advantages of the successful tenderer and the name of the successful tenderer.

UK government guidance also recommends the introduction of a standstill period between the notification of the decision on contract award to tenderers and the actual conclusion of the contract. This is to allow tenderers the opportunity to challenge a public authority's decision and to ask for the decision to be set aside, if found to be unlawful.

### Risks of non-compliance

If a tenderer thinks that its rights under the public procurement rules have been infringed, it has two main courses of action open to it. It may pursue a legal action in the High Court (or the Court of Session in Scotland) against the contracting authority concerned. It may also make a complaint to the European

Commission. Injunctions, orders to set aside a contracting authority's decision and damages are only available to the tenderer under the legal action route.

Therefore awarding public authorities need to be:

- open and transparent – allow tenderers to understand what is going to be done and how it will be done
- objective and ensure equal treatment of tenderers – allow all bidders a fair and equal chance of winning the contract
- consistent – do what they say they are going to.

### Supplier debrief

Supplier debriefing is an integral part of a quality approach to procurement, based on continuous improvement principles and linked with establishing sound communication and good working relationships. Debriefing should be offered to suppliers not selected to tender or where the tenderer was not awarded the contract in procurement both above and below the prescribed EU thresholds. Debriefs should be constructive and open in order to assist improvement and facilitating a competitive market and they can benefit both the procurer and the supplier.

### (f) Contract award documentation

Following successful conclusion of the 10 day mandatory standstill period, the award process can be completed by issuing the appropriate contract agreements.

A good contract should set out the obligations of the parties in a way that is:

- clear
- complete
- concise
- unambiguous.

The contract also forms the foundation for a productive relationship built on communication and trust. The foundations for contract management are laid in the stages before contract award, including the procurement process.

These formal contract aspects form the framework around which a good relationship can grow. If the contract is poorly constructed, it will be much more difficult to make the relationship a success.

### (g) Contract award notice

A contract award notice must be sent to OJEU for all contracts that are subject to the provisions of the Public Procurement Directives, as well as those contracts for the provision of Part B services where the value exceeds the OJEU threshold. (The Public Contracts Regulations 2006 provide a list of Part B services – see the Office of Government Commerce website for details - [www.ogc.gov.uk](http://www.ogc.gov.uk)).

The contract award notice must not be issued for contracts that are subject to the provisions of the EU procurement regulations until after the mandatory 10 day standstill period has passed without challenge.

The contract award notice shall be sent to OJEU no later than 48 days after the award or conclusion of the contract.

## Key action points for UNISON branches:

### TUPE Plus

The TUPE regulations offer a basic level of protection for staff transferring from one employer to another but the protection is limited to the time of transfer.

UNISON branches involved in negotiating employee transfers can build on the basic protections afforded under TUPE to negotiate transfer terms that enhance and extend these rights – known as a TUPE-plus agreement. Such agreements also seek to provide rights for workers who do not have protection under the TUPE Regulations, such as new starters who join the organisation after the transfer. Many UNISON branches have negotiated TUPE plus agreements which apply to the whole length of the contract and extend to cover new starters. (See Private Contractor Unit – Organising Guide to transfers of Employment 2008)

[www.unison.org.uk/acrobat/PCU\\_Organising\\_guide.pdf](http://www.unison.org.uk/acrobat/PCU_Organising_guide.pdf)

Over the past 15 years tens of thousands of staff have been transferred from public sector bodies to private contractors. Most of these will have had their pay and conditions protected when they transferred under TUPE. However, newer staff taken on after the transfer usually face less favourable pay and conditions. This creates a two-tier workforce with colleagues working alongside each other doing the same jobs but on different terms and conditions.

As a result of UNISON's pressure, the government has recognised the need to address the inequities of a two-tier workforce. A number of codes and protocols have, therefore, been introduced for this purpose.

Branches need to ensure that where appropriate, the necessary reference to an agreement or code of practice is included in the transfer contract documentation. Do not assume that employers will include the codes and protocols into the documentation or that they will be enacted. UNISON has experience of a number of transfers where it has become clear after the transfer has been concluded that the terms of the relevant codes of practice have been ignored. UNISON has worked hard to influence the government to introduce employment protection measures that will end two tier pay and conditions in outsourced services. These protections will only be effective if they are policed to make sure they are being followed. Ensuring that the provisions of the relevant codes of practice are written into all contract and tender documents will prevent companies from undercutting the tender bids from the contractors that do want to observe the codes.

- Always check that compliance with the appropriate code or protocol has been written into the contract documentation along with guidance on how it will be implemented. Indeed, as this guide shows it is vital to make reference to the workforce issues, including TUPE, TUPE Plus and seconded as appropriate from the outset and throughout the procurement process.
- Be pro-active. Don't wait until the statutory consultation kicks in before trying to get information about the proposed transfer.
- Check references to TUPE, TUPE Plus and workforce codes of practice in human resource strategies, resource strategies and service plans. Do they exist and are they adequate?
- Be mindful of TUPE implications within service reviews, service improvement plans, approaches to procurement, ie well before any possible point of transfer.
- Ensure UNISON membership on any working party relating to TUPE within your organisation.

UNISON has produced a number of guides to TUPE and these are available from service groups. Branches negotiating TUPE transfers should also seek advice from their regional officer.

Stay involved to maintain and build an effective trade union organisation post-transfer, including organising new starters.

---

## 7 / Stage 4: post procurement

### Monitor and review performance – learning the lessons and reviewing the strategy

#### Introduction

Much of the debate about commissioning and procurement is focussed on the extent to which competition and contestability have delivered the promised benefits including better services and value for money. Despite the absence of any compelling evidence the competition model would appear to be in the ascendancy and the scale of outsourcing growing. Recent research claims the public services outsourcing market is worth almost £80bn a year and is set to grow to £100bn by 2012.

One of the problems we face is the secrecy that often surrounds the management and monitoring of contracts once they are awarded. As a result poor overall performance is often hidden.

It is vital that UNISON branches play an active role in ensuring that effective monitoring arrangements are put in place and are implemented. These should cover both service delivery and performance issues, and workforce matters.

Effective monitoring will help branches to protect members and services. In the case of poorly performing contracts, monitoring will help branches to get the evidence it needs to campaign successfully to bring services back in-house. The information gained from monitoring contracts will also enable the union to influence the wider public policy agenda and debate.

#### Summary of key issues for UNISON branches:

**1 Why should we get involved?** According to the Audit Commission, post contract monitoring and review of performance is often one of the weakest elements of the procurement process. Yet implementing new forms of service delivery following a contract award is the most important aspect of the whole process if services are going to be delivered in accordance with the requirements of the contract and in order to ensure continuity of service provision. There is also the need to ensure that lessons learned through involvement in a procurement process are effectively built into the branch strategy for the future. It is also important that information on what works and

does not work and on the performance of contracts is fed back to UNISON at a regional and national level in order that this can be used to build UNISON's capacity to support branches and to campaign against outsourcing.

- 2 What will happen if we don't?** Changes implemented after contract has been awarded or poor performance, can adversely affect UNISON members if not properly monitored by UNISON branches. This can impact upon UNISON members who have transferred to a new service provider or where an employee secondment arrangement has been put in place. It can also have implications for members where an in-house option is implemented or where other services retained by the public authority are affected by the new arrangements eg where support services are outsourced but other front-line services remain in-house.
- 3 What will happen if we do?** UNISON branches can ensure that where services are outsourced following a procurement exercise that public authorities review and monitor performance in order that services are delivered to users and communities to the highest quality standards and that that contractors do not make changes to the employment terms and conditions of the workforce which breach the agreements reached or the terms of the contract.
- 4 How can we be involved?** Where an in-house service or improvement plan is implemented, UNISON branches can be involved as part of the review and implementation team. UNISON branches can also ensure that post-implementation monitoring of the contract is properly carried out by local authority overview and scrutiny committees and by PCT / health boards, area/neighbourhood forums and local strategic partnerships (LSPs). The branch can also make full use of the provisions of Freedom of Information legislation.
- 5 What do we need to do?** Ensure that the branch strategy includes adequate provision for post-contract monitoring and review and that trade union agreements with public authorities about engagement include provision for UNISON to be involved in the post implementation phase and where this involves in-house services they are effectively involved in the implementation of service improvements. Ensure there is a proper dialogue with members in the affected areas.

## OGC gateway process 5 – to confirm the “in service” benefits

### Key issue for UNISON branches in relation to the gateway process – contract monitoring and evaluation

Before the commencement of a contract UNISON branches should ensure that proper monitoring arrangements are in place proportionate to the contract in question and that there is effective scrutiny of outputs and outcomes agreed under the contract. In local authorities a key role can be played by overview and scrutiny bodies and local involvement networks (LINKs), but similar arrangements should also be put in place within PCT/health commissioners to ensure proper and effective monitoring of performance.

### Monitoring in-house services

- Where a service improvement plan (SIP) has been implemented following discussions with the union and a decision taken not to put the service out to tender the branch will want to ensure it is successful. Arrangements for monitoring and reviewing the implementation of the SIP should be agreed with the employer. This may be undertaken under the auspices of a departmental or employer wide JCC. A successful SIP will benefit service users and staff and undermine the case for competition and outsourcing
- Where an in-house bid is successful in a competitive tendering exercise it will normally be subject to the same monitoring regime and requirements as that envisaged for an outsourced service. The branch will want to ensure that the in-house service is successful and should agree arrangements for the union to be involved in the monitoring

### Contract management

Contract management is the process designed to ensure that both parties to a contract fully meet their respective obligations to deliver the services required and provide value for money. Having organised effective contract arrangements, all the benefits designed could be lost if the contract is not properly managed. It is important not to “let and forget”.

A well drafted output specification is fundamental to the development of a robust contract

The output specification is one of the key contractual documents and will appear as a schedule to the final contract. It is the basis through which the authority defines the services and outputs

that it requires from the service provider for the term of the contract (or service agreement)

The ITT and ITN should have clearly set out the responsibilities of the client and contractor for the organisation and management of monitoring, the performance management framework (and the scope of Key Performance Indicators if used), race and equality compliance, systems for receiving, recording and investigating complaints, user and community involvement in monitoring, and scrutiny arrangements for assessing contract performance.

Even where the procurement process has been robust, problems may arise in a number of areas once the contract has been implemented. It is important that the organisation and management of monitoring is fully effective so that these are picked up.

The following problems are just a sample of the problems that could emerge even following a well managed procurement process.

- corporate policies may not be fully implemented by contractors
- corporate impact is more substantial and costly than anticipated
- higher than anticipated transaction and monitoring costs
- service performance does not meet the required standards
- the contractor has a high turnover of staff
- equalities for users and/or staff are not mainstreamed
- high cost of contract termination
- the contractor imposes price increases, particularly for non-specified work
- The public authority has reduced control and flexibility
- the contractor fails to achieve the required environmental performance standards.

These are the sorts of issues that will be picked up by effective contract monitoring.

### Monitoring the workforce issues

Branches should obviously ensure there is effective monitoring of the workforce related issues, including TUPE, any secondment arrangements, and implementation of the relevant two-tier workforce code.

Use the codes of practice on workforce matters and agreements in operation that seek to protect the terms and conditions and pensions of staff working for private contractors on public service contracts. There may be other local agreements that build on these.

UNISON research has shown that there is a dearth of evidence from public authorities and UNISON branches to indicate whether the

codes of practice and agreements are effective. Exemptions, exclusions in the scope of the codes, and the refusal of some contractors to apply the relevant code exacerbate the situation.

As we have seen branches should ensure that workforce matters are included in all service contracts – and this should be done before the ITN is issued. Equally important, branches should ensure that the public authority is committed in practice to monitor workforce codes and agreements. This means:

- identifying the responsibilities and resources for workforce monitoring in the preparation of the ITN
- costing workforce monitoring over the contract period and including this in the financial analysis in the appraisal of options and bids
- including workforce monitoring as a standard item on joint consultative committee and negotiating committee (JCC / JNC) agendas
- ensuring workforce monitoring is included in the remit of scrutiny panels and other relevant committees.

### Freedom of information

Branches should ideally seek to agree arrangements with the public authority for the disclosure of information that is necessary to carry out effective monitoring of the contract. We have already referred to the role and importance of information and confidentiality agreements. These are designed to maximise the disclosure of information to enable the union to fully engage in the process and negotiate on behalf of members, while at the same time protecting the commercial interests of the parties and not damaging the competitive process. However after the contract has been signed the branch will want a much less restrictive confidentiality agreement to enable both effective monitoring but also, where appropriate, public campaigning and lobbying if things are going wrong.

Employing authorities will sometimes refuse to provide information outside the scope of an information and confidentiality agreement on the grounds of commercial confidentiality. However in a commercial environment it is the timing of the disclosure that is of critical importance. So the Information Commissioner (who regulates and enforces the Freedom of Information regulations) basically advises that circumstances change, and whilst for example it may be reasonable to refuse to publish a final business case (FBC) before contracts have been signed, it would be unreasonable to refuse to publish the FBC say one month after contract signature.

Branches should make use of Freedom of Information legislation and further information can be obtained from the UNISON guide to negotiating and campaigning with the Freedom of Information Acts [www.unison.org.uk/acrobat/B1959.pdf](http://www.unison.org.uk/acrobat/B1959.pdf)

### Key action points for UNISON branches:

- Agree a branch strategy for prioritising and monitoring the contract. This should give a high priority to monitoring both the workforce and performance issues. The strategy should include steps to provide appropriate training to those branch representatives who will have a key contract monitoring role.
- Seek to agree arrangements with the public authority and contractor including facilities and access to information to enable the union to effectively monitor the workforce and performance issues. This will include time off, training, and access to reports on contract performance at service/ business level and subordinate performance metrics.
- Monitor contract changes and whether the contract is sufficiently flexible to accommodate change while providing proper financial safeguards for the public authority and proper consultation and protections for staff, trade unions and service users. A criticism of longer term contracts is that when a public authority wishes to make a change to meet a changing service need the contractor will often impose significant extra costs.
- The contract should define the service levels and terms under which a service is provided. Managing service delivery means ensuring that what has been agreed is delivered. It is not just about whether the service is being delivered to agreed levels or volumes, but the quality of service must also be assessed.
- Quality measures (metrics) have to be created to allow measurement of quality even where this is difficult.
- A key part of assessing the service provided is the agreed baseline, or level from which service levels will be measured. Be clear about these. Other ways of assessing performance include benchmarking or comparing performance and pricing data across different organisations or services.
- Monitor whether promises of new investment to regenerate areas and communities, and the creation of new jobs materialise.
- The fulfilment of the contract may be threatened by several kinds of risk, some within the control of the provider and others outside it. Identifying and controlling risk is a vital part of managing it. Branches should ensure they understand how the agreed risks have either been retained or transferred and monitor how risk is managed.
- Be aware of the importance of contract administration. This includes contract maintenance and change control, charges and cost monitoring, ordering and payment procedures, management reporting. Clear procedures should exist and be understood – i.e. who does what, when and how. Contract documentation must accurately reflect the arrangements and be carefully controlled.
- Management reporting procedures control what information is passed to management about the service. The branch should try to ensure that this is as comprehensive as possible providing an overview of all aspects of the service, rather than solely reporting exceptions to normal service. However, branch representatives will also need to identify

- and prioritise the key areas they wish to monitor most closely. Otherwise branches could drown in a mass of figures and paperwork that obscures their main concerns
- Drivers for change during the contract period can come from a range of both internal and external sources. These should be monitored by branches. Change can have implications for the workforce, service users, value for money or the scope of the contract. We have seen evidence of reduced performance targets where contractors have been struggling to meet those set out in the contract. In some cases additional services have been added to the contract to make it more profitable.
  - Highlight and press for effective contract management and resources. Having sufficient resources and expertise to effectively manage a contract is frequently identified as a key issue for public authorities. UNISON believes that this is a serious flaw in the commissioning model. Public authorities often find themselves bereft of the necessary expertise to properly judge performance (or when things go wrong to bring services back in-house). In many cases the resources devoted to managing the contract are pared to an absolute minimum. This is what is often meant by the jargon 'thin client' or 'intelligent client'. In a recent report the Audit Commission saw this as a problem and recommended that councils "invest in sufficient client-side management capacity, recognising that both adequate resources and the right mix of skills are required"
  - Communicate with members and ask them to report problems to the designated branch officer or steward. Carry out simple staff and member surveys. Using members in this way will ensure the union remains visible and will help to build up intelligence and information on the performance of the contract.

### **Building UNISON organisation**

Once a contract has been awarded the branch will need to focus much of its attention on the crucially important task of building union organisation and membership. Good communications and the active involvement of members throughout the process will boost confidence in the union, lay the foundations for strong organisation, and will make membership recruitment and retention easier even where a contract is outsourced. Further information on this is contained in the Organising Guide to Transfers of Employment 2008 (UNISON).

## 8 / Procurement and the law

The paragraphs below give a short summary of information relating to legislation that directs or impacts upon Procurement in the UK (see also: Section 4 Public Sector Equality Duties and Codes of Practice on Workforce Matters).

### European Union (EU) Procurement

#### Directive 2004/18/EC

The purpose of these directives is to set out the law on public procurement. The intention is to open up the public procurement market and ensure the free movement of goods and services within the European Union. The rules apply to purchases that are above set monetary thresholds. Where the regulations apply contracts must be advertised in the Official Journal of the EU and specific procurement rules are set out that must be followed. Failure to do so can result in legal action being taken up to and including the use of the European Court of Justice (ECJ).

#### Public Contracts Regulations 2006

These regulations implement the (EU) Procurement Directive 2004/18/EC in the UK. More specifically it covers amongst other more technical details:

- technical specifications
- procedures leading to the award of a public contract
- Selection of economic operators
- The award of a public contract
- Specialised contracts (eg design contests, public works contracts, housing schemes)
- matters relating to a public contract (eg obligations in respect of tax, environmental protection, employment protection and working conditions).

Other legislation and statute that impacts on the way in which public authorities conduct commissioning and procurement are:

#### Competition Act 1998

An Act to make provision about competition and the abuse of a dominant position in the market; to confer powers in relation to investigations conducted in connection with Article 85 or 86 of the treaty establishing the European Community; to amend the Fair Trading Act 1973 in relation to information which may be required in connection with investigations under that Act; to make provision with respect

to the meaning of “supply of services” in the Fair Trading Act 1973; and for connected purposes.

#### Local Government (Best Value) Act 1999

Local authorities are under an obligation to secure ‘Best Value’ for council taxpayers. This means they have to ensure that the services they provide are of a good quality and that they provide value for money. The Best Value duty applies to all authorities in England and Wales.

Best Value is a framework for the planning, delivery and continuous improvement of local authority services. The stated purpose is to establish a culture of good management in local government for the delivery of efficient, effective and economic services that meet the users’ needs.

Under Best Value, each local authority has a duty to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”. This improvement involves consideration of costs, making the most of money spent, and making sure that services meet the needs of communities and authorities’ priorities. The Act and subsequent guidance introduced the concept of functional/ service reviews using the ‘four C’s’ framework of challenge, compare, consult and compete.

The amended duty of best value is now contained within The Local Government and Public Involvement in Health Act 2007.

#### Local Government in Scotland Act 2003

An Act of the Scottish Parliament covering the way in which local authorities discharge their functions and the local provision of certain public services. It gives local authorities power to do things which they consider will advance well-being and covers the duty to secure best value defined as “continuous improvement in the performance of the authority’s functions”.

#### Local Government Act 2000 Part 1 Power of Well-being

Part 1 of the Local Government Act 2000 introduced a power for local authorities to promote economic,

social and environmental well-being of their areas. This is an important provision which links to the role of local authorities in commissioning and procurement.

**Local Government Act 2003 Sections 101 and 102: Contracting-out: staff transfer matters, including pensions**

The sections confer new powers on the secretary of state, the National Assembly for Wales and Scottish ministers to require best value authorities in England, Wales or Scotland, when engaged in contracting-out exercises, to deal with staff matters in accordance with directions. Section 101 also requires authorities to have regard to guidance on staff matters issued by the secretary of state, the National Assembly for Wales or Scottish ministers. The background to this is the commitment made, as part of a package of workforce measures, following the review of best value, to legislate to make statutory within local government the provisions in the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector and the Annex to it, A Fair Deal for Staff Pensions (this is available on the Cabinet Office website at: [www.cabinet-office.gov.uk/civilservice/2000/tupe/stafftransfers.pdf](http://www.cabinet-office.gov.uk/civilservice/2000/tupe/stafftransfers.pdf)). It is intended to use the direction making powers to ensure that contracting exercises are conducted either on the basis that TUPE will apply or, in circumstances where TUPE does not apply, that staff involved should be treated no less favourably than had the Regulations applied, unless there are exceptional circumstances, and that transferees will be offered either retention of the Local Government Pension Scheme (LGPS) or a broadly comparable scheme.

**The Local Government and Public Involvement in Health Act 2007 (LGPIH)**

This act covers large areas of the work of public sector and health organisations.

Items more specific to procurement are:

- co-operation of English authorities with local partners
- the duty to involve (which replaces the duty to consult under the LGA 1999)
- local area agreements and community strategies
- overview and scrutiny committees
- best value duties and the power of Welsh ministers to modify enactments obstructing best value
- constitution of the Audit Commission
- Auditor General for Wales and Auditors.

New statutory guidance under the Act has been issued by CLG in July 2008 Creating strong, prosperous, safe communities that covers:

- the commissioning role of local authorities
- mixed economy of service delivery
- fair and open competition.

**World class commissioning**

The NHS world class commissioning programme only applies in England and not in Wales, Scotland or Northern Ireland. It is not enshrined in legislation, but is rather a centrally directed policy initiative by the Department of Health. World class commissioning has four main elements: a vision for world class commissioning; a set of commissioning competencies; an assurance system to deliver outcomes; and a support and development framework. While world class commissioning does not require compulsory competition, where procurement is used the EU consolidated procurement directive, the public contract regulations and the Competition Act will apply.

### **Delivering a shared responsibility (Wales)**

Under the LGPIH Act 2007 the National Assembly for Wales can modify provisions in legislation relating to best value. 'Delivering a shared responsibility' in Wales sets out a new approach to performance improvement and community planning which redefines the duty of best value in Wales to encompass wider improvements to social, economic and environmental well-being and the sustainability and equity of public services.

### **Freedom of Information Act 2000 & Freedom of Information (Scotland) Act 2002**

These acts set out rights of access to information for organisations and individuals. In terms of procurement there is a general right of access to information about all public contracts and procurement activity held by public authorities, regardless of the identity of the requester. Of course there are exemptions to this and if information is denied then it is reasonable to establish the reason for this, check if this is acceptable with an expert and if not to then formally request an internal review of the decision. If the withholding of information is considered unreasonable under the act then there is a further right of appeal to the information commissioner's office.

### **The Transfer of Undertakings (Protection of Employment) Regulations 2006**

These regulations came into force for transfers taking place on or after 6th April 2006. They replace the original TUPE regulations of 1981 that were introduced to safeguard employee's rights when the business in which they are currently employed changes hands. Further information regarding the use of these regulations to the benefit of the in house workforce is available in the appropriate sections of this guidance.

---

### **Key action points for UNISON branches:**

- Make sure you know if EU procurement rules apply to the procurement being undertaken and if so why, ie challenge the reasons for using this process.
  - Make sure that the statutory code of practice on workforce matters issued under S. 101/102 of the Local Government Act 2003 (and equivalent provisions in Scotland and the NHS) and TUPE is taken into account from the very beginning of any decision made to procure via the open market.
  - Develop a branch strategy for the best use of the Freedom of Information Act to access any information that you believe exists that has not been shared with UNISON or the service employees.
  - Remember service reviews and service improvement come first. There is no legislation that says a public authority must procure its services via the private sector.
-



## 9 / Appendices

### Appendix 1 – contract notice/OJEU notice

#### Introduction

A contract notice is the official notice that must be published in OJEU, calling for requests from prospective providers to participate in a procurement. Further information on contract notices can be accessed at the link below:

[www.buy4wales.co.uk/PRP/phase2/procurementaboveojeuthreshold/ojeucontractnotice.html](http://www.buy4wales.co.uk/PRP/phase2/procurementaboveojeuthreshold/ojeucontractnotice.html).

Contract notices do not need to be published for call-off contracts made against framework agreements. The table below lists the main information that is required to be included in a contract notice.

The title of the contract which is being issued by the public authority
The value of the tender
The regions where the services/supplies/works are to be delivered
Section I: contracting authority
Name, addresses and contact points – the name and address of the public authority, together with further contact details so that any supplier interested in finding out more about the contract award can get in touch if required.
Type of contracting authority – whether it is a local authority or health body or central government department
Section II: object of the contract
Type of contract– Whether the contract is a ‘works’, ‘supplies’ or ‘services’ contract. If the requirement covers a combination of type of contract, the type to be selected is that which represents the largest proportion of the overall value of the business.
Main site or location of works/place of delivery/place of performance – the location where the contract is to be performed/delivered.
Whether the notice involves the creation of a contract, framework agreement or dynamic purchasing system
Whether variants will be accepted – by allowing variants, suppliers will be allowed to submit an alternative proposal in addition to a standard bid. Variant bids can sometimes include proposals which may provide some added value in meeting the requirements of the public authority.
Total quantity or scope – details outlining the intended scope and estimated value of the procurement. The following text could be used to qualify the quantity if it cannot be guaranteed “It is estimated that the total potential value for orders could be between..... over the term of the contract/framework”.
Duration of the contract – the date(s) applicable to the contract as appropriate. Frameworks should only exceed four years in exceptional circumstances, which will require justification
Section III: legal, economic, financial and technical information
Deposits and guarantees required – details of any deposits, guarantees or performance bonds that will be required under the contract (eg parent company guarantees may be requested).
Main financing/payment arrangement – the form of financing required or any payment mechanisms that may apply (eg staged payments).
Section IV: procedure

Type of procedure – the selected procedure, (open, restricted, competitive dialogue etc.) together with any justification as necessary. Substantive justification is required for selecting an accelerated procedure.
Limitations on the number of operators – details regarding the anticipated number of providers to be involved in the procurement and refer to the PQQ as being the method for choosing those providers.
Award criteria – the basis on which the contract/framework will be awarded. In the case of most economically advantageous tender, indicate that the criteria will be issued with the invitation to tender document as this allows more time for the details to be finalised.
Time limit for receipt of tenders or requests to participate – the applicable deadline, ensuring that it is reasonable given the complexity of the procurement and taking account of whether a PIN has been issued. The deadline for receipt of requests to participate can be used as the deadline for suppliers to pre-qualify if the restricted procedure is used.
Minimum time frame during which the tenderer must maintain the tender – it is recommended that tenderers should maintain their tenders for 120 days, unless the evaluation and award can be completed in a shorter timescale.
Section V: complementary information
Body responsible for appeal/mediation procedures
Lodging of appeals – This requires information on deadlines for lodging of appeals.
Date of dispatch of this notice – The date on which the notice was sent for publication in the OJEU

## Appendix 2 – Pre-qualification questionnaire

A pre-qualification questionnaire (PQQ) is used as a basis for shortlisting suitable prospective tenderers/bidders and weeding out unsuitable applicants. A PQQ usually follows a standard format and under EU procurement law is used to assess the economic and financial standing of bidders, and their capability and capacity for undertaking the contract in question. The PQQ does not preclude public authorities from seeking further information from potential bidders relating to other matters such as compliance with statutory equalities duties, workforce matters or community benefits, but it should be noted that if such factors are used as the basis for shortlisting bidders it is much more difficult to then bring these factors into play later in the tendering process such as tender evaluation if the public authority has already used this at the shortlisting stage to assess the competence of prospective tenderers.

An important tactical consideration is whether to use additional factors to weed out unsuitable bidders at an early stage of the process or to determine this matter at a later stage of the tendering process. This can include the potential bidders approach to workforce matters and the provision of community benefits as part of the contract.

The PQQ has a number of sections.

### Section 1 – introduction and background

This will include guidance on completing the questionnaire; information on the date and time place and to whom that the questionnaire has to be returned; background to the procurement exercise; a requirement to keep information confidential; and a requirement to comply with the Freedom of Information Act and to specify any reasons why information provided as part of the PQQ is confidential and should not be disclosed under the FOIA

### Section 2 – basic information about the contracting organisation

This section of the PQQ will include:

- the name of the contracting organisation
- the address to which correspondence should be sent
- the name of person applying on behalf of the organisation; contact details
- the registered address of the organisation
- the status of the organisation (whether it is a sole trader, partnership, private limited company, public limited company or other)
- the date of incorporation
- whether the organisation is an affiliate or subsidiary of another organisation or holding organisation
- the current total number of personnel regularly and permanently employed by the organisation broken down by type.

### Section 3 – economic and financial standing

This section of the PQQ will include: the organisation's turnover in the last two years; the organisation's net profit (or loss) after tax in the last two years; at least one of the following:

- a copy of the organisation's most recent audited accounts (for the last two years if this period applies)
- a statement of turnover, profit and loss account and cash flow for the most recent year of trading
- a statement of cash flow forecast for the current year and a bank letter outlining the current cash and credit position.

### Section 4 – capability and capacity

This section of the PQQ includes: details of any contracts awarded to the organisation by any clients during the last three years for similar work and/or goods to that which the procurement relates to including dates of award and contract duration and the contract value; details of the organisation's top five customers, by annual contract value; details of at least three clients from whom professional/technical references may be sought (the

references provided must be for recent work that is similar to that which the procurement relates to and the clients must have agreed to act as a referee prior to submitting the questionnaire); whether the organisation operates in accordance with a formally implemented quality assurance system and details of the system; the minimum level of indemnity cover required for the procurement (employers liability, public liability, professional liability); details of the organisation's documented and implemented health and safety policy; and details of any formal environmental management system such as ISO 14001 or equivalent;

### **Section 5 – other information**

This section of the PQQ can include: the capability to trade using corporate purchasing cards; any other information that would enable the public authority to make a judgement as to whether the contracting organisation are able to compete for the contract which could include previous track record, employment and workforce matters and equalities.

### **Section 6 – declaration**

This section of the PQQ should certify that the organisation:

- has not been convicted of nor are currently under investigation for any acts of conspiracy, corruption, bribery, fraud, money laundering, such acts as defined by the relevant UK law, nor any other offence within the meaning of Article 45(1) of the Public Sector Directive
- is not bankrupt nor have had a receiving order or administration order or bankruptcy restrictions order made against them nor are in the process of or about to commence any composition or arrangement with or for the benefit of our creditors or, if registered as a partnership under Scots law have not been granted a trust deed or is subject of a petition for sequestration of our estate
- has not, nor are about to, be subject of a resolution or order for winding up, nor have has a receiver, manager or administrator
- have not been convicted of a criminal offence relating to the conduct of the business or (being an individual) not been guilty of grave misconduct in the course of its business
- have fulfilled obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established and/or the United Kingdom
- have not been found guilty of serious misrepresentation in providing any information under Regulation 23 of the Public Contract Regulations 2006
- have not suffered a deduction for liquidated or ascertained damages in respect of any contract nor had a contract cancelled, or not renewed, for failure to perform nor been the subject of a claim (contractual or otherwise) based upon a failure of quality in design, work, materials or services within the last three years
- none of the senior personnel of the organisation have been involved (in a similar position) in any company which has gone into insolvent liquidation, voluntary arrangement, receivership or administration or been declared bankrupt
- the organisation complies with the requirements of the Race Relations Act 1976, the Sex Discrimination Act 1975, the Equal Pay Act 1970 and the Disability Discrimination Act 1995.

### Appendix 3 – sources and further information

- 1 UNISON Northern – Commissioning and Procurement Toolkit (local government and health) written by the European Services Strategy Unit (ESSC).
- 2 Best Value: Making Choices - A Manager's Guide to the Strategic Framework for Best Value, Procurement and Competitiveness (Vol 1 & 2) – Michael Hughes for the Scottish Executive/ Government (2001).
- 3 Towards a future for Public Employment – Association for Public Service Excellence (APSE) [www.apse.org.uk/membership/publications.html](http://www.apse.org.uk/membership/publications.html)
- 4 The competitiveness continuum – An APSE Discussion document (August 2007).  
E: publication [www.apse.org.uk/membership/pdfs/e-publications/Competitiveness%20continuum-Aug07.pdf](http://www.apse.org.uk/membership/pdfs/e-publications/Competitiveness%20continuum-Aug07.pdf)
- 5 UNISON 'Organising Guide to Transfers of Employment 2008'  
[www.unison.org.uk/acrobat/PCU\\_Organising\\_guide.pdf](http://www.unison.org.uk/acrobat/PCU_Organising_guide.pdf)
- 6 UNISON Guide "Public Sector Equality Duties"  
[www.unison.org.uk/file/16965\\_Equality\\_Guidance.pdf](http://www.unison.org.uk/file/16965_Equality_Guidance.pdf)
- 7 UNISON and the Campaign for Freedom of Information guide to Negotiating and Campaigning with the Freedom of Information Acts [www.unison.org.uk/acrobat/B1959.pdf](http://www.unison.org.uk/acrobat/B1959.pdf)
- 8 UNISON "A guide to the organising of health services and suing scrutiny to challenge it"
- 9 Creating Strong, safe and Prosperous Communities – Statutory Guidance under the Local Government and Public Involvement in Health Act 2007 (July 2008)  
[www.communities.gov.uk/publications/localgovernment/strongsafeprosperous](http://www.communities.gov.uk/publications/localgovernment/strongsafeprosperous)
- 10 Staff Involvement – better decisions, better care – Guidance from the Department of Health (2003)  
[www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4071622](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4071622)
- 11 Shaping the future – UNISON's vision for public services – Positively Public@unison.co.uk
- 12 Audit Commission report 'For Better For Worse' (January 2008) an examination of Strategic Service Delivery Partnerships in local government. [www.audit-commission.gov.uk/reports/NATIONAL-REPORT.asp?CategoryID=ENGLISH^576^SUBJECT^488^REPORTS-AND-DATA^AC-REPORTS&ProdID=2EC60F18-BDC2-4faf-98AC-2E495B8B6CBD](http://www.audit-commission.gov.uk/reports/NATIONAL-REPORT.asp?CategoryID=ENGLISH^576^SUBJECT^488^REPORTS-AND-DATA^AC-REPORTS&ProdID=2EC60F18-BDC2-4faf-98AC-2E495B8B6CBD)
- 13 The rise of the "public services industry" a report for UNISON by Paul Gosling (September 2008)
- 14 Review of the Public Services Industry by DeAnne Julius for the Department of Business, Enterprise and Regulatory Reform (July 2008)
- 15 World Class Commissioning Competencies (December 2007) – [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_080958](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_080958)
- 16 Public Sector outsourcing: The big picture to 2012 by KableDirect (September 2008)  
[www.kable.co.uk](http://www.kable.co.uk)
- 17 "Unintended Consequences: How the efficiency agenda erodes local public services and a new public benefit model to restore them" – New Economics Foundation (2008)  
[www.neweconomics.org/gen/](http://www.neweconomics.org/gen/)
- 18 Touchstone Pamphlet – Rethinking Public Service (TUC)
- 19 Contestability and Competition in local Public Services – Cardiff University Business School on behalf of the Audit Commission (2007).

## Appendix 4 – Useful websites/contacts

Office of Public Sector Information  
[www.opsi.gov.uk](http://www.opsi.gov.uk)

Department of Health  
[www.dh.gov.uk/en/procurementandproposals](http://www.dh.gov.uk/en/procurementandproposals)

Department of Health, World Class Commissioning  
[www.dh.gov.uk/en/managingyourorganisation/commissioning/worldclasscommissioning/index.htm](http://www.dh.gov.uk/en/managingyourorganisation/commissioning/worldclasscommissioning/index.htm)

Office for Government Commerce  
[www.ogc.gov.uk/procurementpolicyandapplicationofeurulespecificapplicationissues.asp](http://www.ogc.gov.uk/procurementpolicyandapplicationofeurulespecificapplicationissues.asp)

Welsh Assembly Government, Delivering a shared responsibility  
[new.wales.gov.uk/topics/localgovernment/publications/sharedresponsibility/?lang=en](http://new.wales.gov.uk/topics/localgovernment/publications/sharedresponsibility/?lang=en)

Scottish Government, Public Services Reform  
[www.scotland.gov.uk/Topics/Government/PublicServiceReform](http://www.scotland.gov.uk/Topics/Government/PublicServiceReform)

UNISON positively public  
[www.unison.org.uk/positivelypublic/index.asp](http://www.unison.org.uk/positivelypublic/index.asp)

Association for Public Service Excellence  
[www.apse.org.uk/](http://www.apse.org.uk/)

European Services Strategy Unit (ESSU)  
[www.european-services-strategy.org.uk/](http://www.european-services-strategy.org.uk/)

An ESSU resource on outsourcing in the U.K. public sector  
[www.european-services-strategy.org.uk/outsourcing-library](http://www.european-services-strategy.org.uk/outsourcing-library)

## Glossary of acronyms

ADR – alternative disputes resolution procedure  
LGPS – Local Government Pension Fund  
APSE – Association for Public Service Excellence  
LIFT – NHS local improvement finance trust  
BAFO – best and final offer  
MEAT – most economically advantageous tender  
BE – black and minority ethnic  
NPM – new public management  
BSF – Building Schools for the Future  
OJEU – Official Journal of the European Union  
CAA – comprehensive area assessment (England only from 2009)  
OGC – Office of Government Commerce  
CPA – comprehensive performance assessment (England)  
OBC – outline business case  
CCT – compulsory competitive tendering  
PCT – primary care trust  
CVS – community and voluntary sector  
PI – performance indicator  
DCLG – Department of Communities and Local Government  
PITN – preliminary invitation to negotiate  
EU – European Union  
PIN – prior information notice  
ESSU – European Services Strategy Unit  
PQQ – pre-qualification questionnaire  
FBC – final business case  
PFI – private finance initiative  
FESC – framework for procuring external support for commissioning (NHS – England)  
PPP – Public Private Partnership  
GPF – General Political Fund  
PIs – performance indicators  
ITT – invitation to tender  
SMART – performance targets that are specific, measurable, achievable, realistic and time bound  
ITN – invitation to negotiate  
SSP/SSP – strategic service delivery partnership  
IFS – Institute of Fiscal Studies  
SIP – service improvement plan  
JCC – joint consultative committee  
SBC – strategic business case  
JNC – joint negotiating committee  
SMEs – small and medium enterprises  
JVC – joint venture company  
SFT – Scottish Futures Trust  
KPI – key performance indicator  
TUC – Trades Union Congress  
LGPIH Act – Local Government and Public Involvement in Health Act 2007  
TUPE – Transfer of Undertakings (Protection of Employment) Regulations 2006







