Procurement process checklist

Introduction

This checklist is intended to provide UNISON branches with a quick reference document through the procurement process. Much greater detail on the successive stages are set out in UNISON’s How your Branch can Stop Outsourcing and Protect Members and TUPE Branch Guidance, as well as a host of service group specific advice highlighted at the back of this document.

However the checklist gives an overview of the typical procurement stages and the actions that it is useful for the branch to consider at each step in order to maximise the opportunity to:

- Present a case for averting putting a service out to tender;
- Submit a well resourced in-house bid;
- Influence the criteria for selecting the winning bid;
- Protect terms and conditions for staff affected by any resulting transfer of employment;
- Build the union’s strength and influence within any new employer.

Rather than reacting to each step as it unfolds, the most advantageous outcomes are likely to be achieved if an agreement can be reached in advance with the employer for the procedure to be followed in handling the whole process. Therefore, UNISON’s model procurement agreement seeks to provide a template for agreeing union involvement in many of the decisions outlined in this checklist and ease the union’s ability to exert influence.

Though this checklist is written with the intention of assisting branches in dealing with the essentials of what can form a daunting task, large scale procurement exercises in particular will need close co-operation with the UNISON region to decide on what goals are feasible and the strategy for their achievement.

This document is set out to apply across the UK as far as possible, but differences in its use within devolved arrangements are highlighted at the end of the checklist.
# PRE-PROCUREMENT

## Service review

**Key steps**
- Assessment of service standards and costs of specified set of existing services
- Recommendation on whether alternative methods of delivery need to be considered

**UNISON branch action**
- Seek input to the terms of the review and conclusions drawn from evidence
- Challenge any exaggeration of service flaws and delivery costs
- Challenge any dubious benchmarks against which standards and costs are judged
- Seek input of views among members working in the service under review

## Options appraisal

**Key steps**
- Assessment of feasible options for alternative methods of service delivery
- Analysis of costs and benefits of each option to arrive at recommendation with supporting business case

**UNISON branch action**
- Seek input to the terms of the appraisal and conclusions drawn from the evidence
- Ensure appraisal carries no assumption of need to put services out to tender and a properly resourced improvement plan for current in-house services is considered as an option – UNISON’s [The Case for In House Services](#) offers supporting arguments
- If appropriate, ensure improvement plan considers provision of services by other parts of the organisation or through co-operation with other public sector bodies, in accordance with public contract regulation definitions for public sector exemption from the regulations
- Ensure costs and benefits of options for putting service out to tender take account of the costs caused by fragmentation of services, such as loss of integration and flexibility of in-house provision (appendix shows service group specific research on outsourcing impact)
- Demand a thorough business case to justify any recommendation to put a service out to tender
- Seek an equality impact assessment as part of judging the proposed options
| Active Procurement
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<tr>
<td><strong>Key steps</strong></td>
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<td>- If a decision is made to put a service out to tender, a contract notice (possibly preceded by a prior information notice) is published in the Official Journal of the European Union for high value contracts and Contracts Finder for lower valued contracts (see Procurement Regulations Summary for threshold limits)</td>
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<tr>
<td>- The procurement process is chosen from available options (see regulations summary)</td>
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<td>- The selection criteria for defining organisations eligible to bid and the criteria for awarding the contract are specified</td>
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**UNISON branch action**
- Seek input to decision on the procurement process selected and the criteria specified for selection and award
- Challenge any specification that discriminates against in-house bids through such factors as short bidding timescales or unreasonably high turnover thresholds
- Seek selection criteria that emphasise consideration of experience in public services and adoption of fair work practices, including Living Wage payment and secure forms of employment (see model procurement agreement for full list of practices)
- Seek award criteria that go beyond solely price to assess quality in terms that play to strength of in-house provision, such as ability to provide services that co-ordinate with the wider organisation and adapt to circumstances without major cost revisions,
- Seek in-house bid and / or publication of contract in a way that maximises awareness among other public sector bodies of the opportunity to make a bid
- Recruit and organise staff faced with threat of outsourcing

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<td><strong>Key steps</strong></td>
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<td>- Submitting organisations are evaluated against the selection criteria to test their capacity to meet the contract</td>
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<td>- Bids are tested against the weighted award criteria and the winning bid is selected</td>
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**UNISON branch action**
- Seek input to evaluation of organisations against selection and award criteria, which may include participation in interviews of bidders
- If no adequate bids are received, argue for reversion to in-house provision under procurement regulation exemptions for award without notice
- Demand excessively low-cost bids are investigated in line with procurement regulations
- Seek checks on mandatory and discretionary grounds for excluding an organisation (see model agreement for listing of ground for exclusion and contact Bargaining Support on bsg@unison.co.uk for further information)
- Obtain information on bidding organisations through regional access to UNISON's Private Contractors Database and Community Database
- Seek assurances from bidders on long-term maintenance of recognition agreement if recognition in place (contact Bargaining Support on bsg@unison.co.uk for checking of UNISON Bargaining Agreements Library if unsure of whether recognition is in place) or willingness to sign recognition agreement (model agreement available here) where not already in place

### POST PROCUREMENT

#### Transfer of service provision

**Key steps**
- Assessment of whether TUPE applies to transfer of employees to new provider
- If TUPE applies, application of requirements to inform and consult affected employees

**UNISON branch action**
- Assess whether any grounds to challenge if employer argues that TUPE does not apply (see TUPE Branch Guidance)
- If TUPE does not apply by law, argue case for application of TUPE principles to public Sector bodies under the Cabinet Office Statement of Principles (see TUPE Branch Guidance)
- If TUPE applies, argue for commencement of information and consultation rights at earliest opportunity
- Seek clarity on “measures” put forward by new employer to ensure compliance with TUPE rights
- Seek TUPE Plus agreement for maximum enhancement of employment rights (see model procurement policy for possible content of such an agreement)
- To fulfil any agreement on continuation of DOCAS “check-off” arrangements for UNISON members, ensure provision of details in format needed by new payroll department
- Begin building relationship with new employer that sets the framework for developing maximum union strength, including:
  - Bargaining arrangements that include a local forum that provides access for full-time officials, branch stewards and officers from across the contracting authority
  - Agreement to allow union access to induction process / new starters list for recruitment purposes, as well as general access for full time officials and branch officers to recruit new members and talk to existing members
  - Where there is an existing national agreement, facility time arrangements that allow for local stewards to attend regional or national forums
## Monitoring

### Key steps

- Assessment of service delivery standards over duration of contract

### UNISON branch action

- Highlight issues in service delivery with a view to raising failures as a factor in contract renewal or an optional extension of the contract
- Ensure union maintains monitoring of continued compliance with TUPE regulations
- Maintain regular union contact with transferred members and seek activists to build union’s strength in the new employer
Application within devolved arrangements

Scotland
In Scotland, some of the actions set out in this checklist as a matter for bargaining are statutory entitlements – for a full outline of the procedures that apply in Scotland see the UNISON Scotland Procurement Briefing.

Northern Ireland
In Northern Ireland, UNISON utilises a centralised, regional approach to procurement in order to ensure that universal expertise is available to members and branches from the earliest possible stage. Members and branches in Northern Ireland should contact the Area Organiser and/or Regional Organiser in the first instance before seeking to engage employers in reviewing their existing procurement policies. For further information relating to procurement in Northern Ireland contact John Patrick Clayton - j.clayton@unison.co.uk.
Appendix 1 - Further information

UNISON's procurement web page is at
https://www.unison.org.uk/get-help/knowledge/contracts/procurement/

UNISON's general guides on the procurement process and reports on damage to services caused by outsourcing
How Your Branch Can Stop Outsourcing and Protect Members
TUPE Branch Guidance
Cross service group report showing how low cost bids can be based on lowering staff terms and conditions
The Case for In-House Services

UNISON's service group guides on the procurement process and reports on damage to services caused by outsourcing

Health
Resisting Privatisation in the NHS
Damage to cleaning services caused by outsourcing

Higher education
Privatisation and Shared Services in Higher Education

Local government
Securing in House Services
Negotiating a Procurement Agreement
Ethical Procurement
Use of Key Performance Indicators
Equalities in Procurement
Think Twice
Best Value Update (England and Wales)
Branch Guide to Council Finances and Privatisation
Insourcing Update

Police
Stop Police Privatisation

Community
Ethical Procurement and the Living Wage