

Why smarter procurement means better outsourcing

As "UK Plc" tightens its belt, and the threat of cost cutting looms over nearly all public sector services and many private sector organisations, talk has once again turned to whether 'outsourcing' is the panacea to at least some of the UK's economic ills.

But, customers in both the public and private sector are more experienced at doing outsourcings now and many know first hand that:

- outsourcing is not a quick fix – it takes time and money to get the procurement process and contract right and additional time before any benefits are achieved; and
- it is costly and disruptive if it goes wrong. Getting it wrong often means bad relations with the supplier, a failure to achieve expected cost savings and/or service improvements, additional costs or worsening service in some cases, loss of control over that part of the business and wasted management time and expense in trying to rectify the problems.

So, how do customers make sure they get it right, and in particular how can they get it right and run an effective procurement process when resources are tight?

The answer is smarter procurement. It is key to forward plan, to run a streamlined, tailored process which ensures advisors are involved at the right stages and documentation is specific to the deal, to keep the initiative with the suppliers and to ensure that the deal at the end works for both the customer and the supplier. While it is true this may be easier said than done, here are some suggestions on how to move towards this holy grail.

DEAL SPECIFIC DOCUMENTATION:

The goal: Tailored, coherent documentation which has the same themes running from the initial RFI right through to final contract.

The reality: "The Blue Peter effect" – the commercial teams and advisors (both consultants and lawyers) drafting documentation using "one they prepared earlier". Documentation is disjointed and fails to reflect the deal actually being discussed.

From a customer's perspective, it is key you get the documentation right from the start and keep it updated and amended as more information comes to light:

- Ask the right questions: RFI's must be created specifically for the deal. By asking the right questions - i.e. those tailored to the specific deal rather than those from a precedent, you should receive back the right information from the supplier;

- The RFP or ITT should clearly set out your current position and what you need to achieve as a result of the outsourcing: by clearly setting out the starting point and the required outcomes, the suppliers can provide a response which gives you a clear idea of what they can offer and allows you to differentiate between them;
- Analyse the responses: one of the lessons which can be learnt from the recent BSKyB v EDS case is for customers to closely analyse the responses they receive back from suppliers. You should discuss the information with the supplier, ask how their bid responses were formed and require evidence to back up the statements made. While in theory you may have a legal remedy if you rely on a negligent or fraudulent false statement in a supplier's response, the reality is that it is far better to get it right upfront and ensure that information provided by both sides is correct. Also, you should think about what you are saying to, and hearing back from, the supplier – try to avoid running a process which encourages the suppliers to say what they think you want to hear. For example, you should try to avoid making statements about the contract to the market which set unrealistic deadlines or goals. You and the supplier will be pressurised into including these unachievable goals in the contract and are setting yourselves up for contract failure and dispute;
- Keep the documents up to date and document the process: as you enter into each stage of the procurement process you will enter into specific negotiations with the bidders. By amending the documentation to reflect new information which becomes available and sharpening the procurement process to keep it aligned with the deal currently being agreed, you are putting in place the information needed to agree a contract which truly reflects the deal. As part of this, it is important that suppliers stand by key statements made pre-contract. Seek to include important statements or documents into the contract and document the down-select process so that you can demonstrate that you relied on a supplier's representations in the selection;
- The contract should reflect the deal. This means tailoring the contract to the deal, not just using a precedent from a previous deal. Having crafted the procurement documents to ensure the correct information is both given and received from the supplier it is important that this follows through into the contract itself. A thread should run from the RFI, through the RFP/ITT into the supplier's bid offers and through to the contract. The procurement process should draw out key issues for negotiation and pave the way for a contract to be agreed, based on the information produced and risk allocation agreed during that process.

DON'T UNDERESTIMATE THE IMPORTANCE OF DUE DILIGENCE

When resources and time are tight, it is hard to carry out a full due diligence and preparation process. However, failure to do so could cost more time and money in the long run. Insufficient preparation can lead to:

- a heavy reliance on assumptions – both customers and supplier will make assumptions during the procurement process, for example about legacy estates, transferring assets, future needs of the customer's business, supply chains and volumes. These are needed to commence the process. However, it is important that sufficient due diligence is undertaken to stress-test these assumptions. It is inevitable that some assumptions will remain in the contract. However, by final offer stage, and certainly by contract, it is important that as many assumptions as possible have been proved and incorporated into the contract, either as part of the service documentation, financial model or as clear supplier obligations or customer dependencies, or that sensible work-arounds have been agreed. Deals that fail tend to be those where assumptions have not been fully tested.
- customers losing the initiative in the procurement process. If you have not done sufficient due diligence on your own estate and supply chain to understand the risks and issues which may arise, it will be difficult to agree with the supplier up-front how to manage these risks. Likewise, if you do not fully understand what you

want at the start there is a risk you will be led through the process by the suppliers rather than maintaining the initiative yourself. If you have a desire for innovation and transformation, it is important that you take the right advice (whether internal or external) to know what this should look like, as only then can you properly evaluate the various supplier responses and understand which provides the solution your business needs.

The need to cut costs is likely to remain a top priority for many organisations over the next few years and undoubtedly outsourcing can be an effective way to achieve this. Good outsourcing can deliver cost savings and service improvements. However, the key to achieving a good outsourcing relationship is a good procurement process. The challenge organisations now face is therefore to run efficient, cost effective procurement processes which allow sufficient time and resources for the project to be properly planned and implemented up-front. Failure to do this could jeopardise the very cost savings you are trying to achieve.

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