

Unite guide for members

Public Procurement in the UK



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General Secretary Len McCluskey

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Unite House
128 Theobald's Road
Holborn
London WC1X 8TN
Tel: 020 7611 2500

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■ INTRODUCTION

A key element of the union's manufacturing policy is aimed at ensuring that UK workers and companies benefit from the significant sums of money spent and invested by government departments on an annual basis. This process is known as procurement.

This introduction to procurement is designed to give workplace representatives some background information into the processes involved, the regulations and how the union can help its members play their part in securing a fair share of this pot. The guide includes both successes but also the pitfalls from which the union and employers should learn.

In a global economy, controlled by the markets rather than by nation states, it is important that unions as major stakeholders in industry play a full part in campaigning for UK taxpayers' money to be spent effectively and to ensure that maximum benefit for UK workers is gained from government contracts.

Simon Dubbins

Director of Research & International

■ WHAT IS PROCUREMENT?

The value of public procurement in the UK today stands at £140 billion each year, manufacturing accounts for one third of this total¹. Procurement is described as ‘the process of acquiring goods, works and services, covering both acquisitions from third parties and from in-house providers’². This procedure is designed to cover the life span of the process, from the identification of a need, through to the end of the awarded services contract, or end of the useful life of an asset or the completion of a building project.

In the UK the most significant parameter in the public procurement process is that of ‘obtaining best value for money’. The way to achieve this and the regulation that provides for this goal indicates that it is the tendering bid that offers ‘the optimum combination of whole life costs and benefits to meet the customer’s requirements’³. This does not mean the lowest price wins the contract. It means an assessment is required regarding the ongoing revenue/ resource costs, as well as the initial capital outlay and how jobs that have a social capital also benefit the UK economy.

The Office of Government Commerce (OGC) was created to work with the various agencies involved in the procurement process to improve their capability and capacity. Procurement practice is significantly more developed and sophisticated in the UK than in other European countries. The present government is fully committed to the concept of procurement for public services in the UK and in the wider global economy. The Procurement process has a very high profile in the UK and is supported extensively by all government departments, in particular the Treasury.

All public services rely on government departments, agencies and other bodies purchasing goods, works and services. When conducted efficiently procurement can make a vital economic contribution to the delivery of public services in the UK and the UK economy. This means departments are able to achieve their core objectives in providing services to the public while managing fiscal prudence in their budgets. If the procurement process is not used in an effective way departments could find that they do not have the required goods and services in place when needed and the public could suffer from lack of services or poor or non-existent delivery.

¹The Scope for using Social Clauses in Public Procurement, a report for the Manufacturing Forum, Executive Summary, July 2006.

²National Procurement Strategy for Local Government 2003, p17.

³ibid

Government is focused on the long term benefits to the UK economy of savings generated via the procurement process. The long term sustainability of improvements in value for money depends on improving the procurement capability of government departments. This long term goal rests in the hands of government. The Kelly Report 2003⁴ indicated that there is a potentially wider economic aspect to procurement in the UK. This includes improved capacity planning on the back of government contracts, more effective competition for government contracts and action plans to reinforce the UK government's commitment to public procurement.

■ WHY DO WE NEED A PROCUREMENT POLICY?

In the past, previous governments delegated procurement responsibilities to departments without any common framework within which they should operate. This led to a lack of consistency and there was a wide variation between the best and worst practices, with different departments paying significantly different prices for the same goods or services.

There was no common process for managing large, complex procurement projects and there was no arrangement for managing suppliers. There were no common systems for recording purchases and there were no set targets for improving value for money or service delivery. There were also concerns about the costs of bidding for contracts.

Arms length government investment can be done on a piecemeal basis that is neither supportive nor practical for industry. Government policy can have an impact on the lack of procurement in industry which then, in turn, impacts on strategic investment. The transport industry is a prime example of this. Successive governments have allowed the transport manufacturing industry to fall into decline. When an announcement is made that government are going to pay for 1,000 new carriages to be built for rail operators, the lack of a procurement strategy means there is no train manufacturer in the UK with the capacity to build the train carriages required.

⁴OGC Report to the Chancellor of the Exchequer-Increasing Competition and Improving Long-term Capacity Planning in the Government Market Place, December 2003.

■ THE PROCUREMENT PROCESS

European Union procurement legislation

Under European legislation, public sector contracts issued by government bodies, local authorities and utility companies to a value of £100,000 for services and supplies or £4 million for works, must be advertised throughout Europe in the Official Journal of the European Union (OJEU). The aim is to ensure that public sector contracts are exposed to the largest group of prospective tenders. The public market across Europe is worth in excess of €1,500 billion per annum, representing 16% of European Union gross domestic product⁵.

Public procurement law is designed to open up the European Union's public procurement market to competition, to prevent protectionist 'buy national' policies and to promote the free movement of goods and services. The Public Sector Consolidated Procurement Directive⁶ is a single directive, which replaces three previous EU directives covering the procurement of goods, works and services. The new directive aims to clarify, modernise and simplify the provisions of the existing directives and specifically to consolidate the three directives in relation to the awarding of contracts for goods, works and services into a single document.

The Alcatel Case

The regulations also allow for contractors to challenge what they see as wrongful award decisions. In 1998, the European Court of Justice issued a landmark ruling, known as the Alcatel case. It said that national courts in European Union member states must, in all cases, be able to review and set aside award decisions on procurement contracts subject to European Union procurement directives, within a defined timescale⁷.

Framework Agreements

The directive defines a framework agreement as an agreement with suppliers, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and quantity⁸.

⁵Internal Markey Strategy, Priorities 2003 – 2006, May 2003.

⁶Effective from 31st January 2006.

⁷For further information see www.qub.ac.uk/po/standstill.pdf

⁸OGC Guidance on Framework Agreements in the new Procurement Regulations, p.3.

The agreement sets out terms and conditions under which specific purchases, (called call-offs, which means an individual contract), can be made throughout the term of the agreement. There are now strict rules that govern these agreements, this includes for example, that they must not exceed four years unless in exceptional circumstances and the terms of the framework must be determined at the outset.

The benefit of this type of agreement is that, because authorities are not tied to the agreements they are free to use framework agreements when they provide value for money, but to go elsewhere if they do not. Another important point is that contracts can be awarded without the need to re-advertise and re-apply the selection and award criteria from the outset. The regulations also provide for a 'mini-competition'¹⁰ to be used as an alternative way of making call-offs under the framework agreement.

Competitive Dialogue

These regulations have also introduced a procedure known as 'competitive dialogue'. The procedure is only available in limited circumstances for the procurement of particularly complex contracts, for example Private Finance Initiatives (PFI) and Public Private Partnerships. The idea is that it allows for the input of all those who are involved in the tender process. The bidders are able to discuss all aspects of the contract with the contracting authority and once solutions have been agreed then tenders are invited to bid based on their own individual solutions.

This is particularly true of large PFI contracts in the health sector and PPP's in the education sector. This is where a large number of contractors will be tendering for certain parts of the overall service, and the bidding process could be complex and protracted. This change will enable the different sections to liaise with the contracting authority to clarify exactly what the specification is and how a tenderer can achieve a successful bid through pragmatic planning and strategy.

The main advantage of the process is that it should be lawful in more situations than the negotiated procedure without advertisement. This means there is less chance of a contract awarded under the competitive dialogue procedure needing to be set aside, this is because the tender will already be responsive to the specifications required by the contractor.

⁹Ibid p.5.

¹⁰Ibid p.6.

E-procurement

In an effort to modernise the procurement process the regulations are placing more emphasis on the use of e procurement. The benefits of this system are shorter minimum time scales when contract notices are sent electronically and contracting authorities can also detail their own procurement activities on the web site known as 'buyer profile'. This system should give prospective tenderers plenty of time to prepare in advance of contracts being formally publicised.

There are also facilities for electronic auctions. These however have detailed rules that must be strictly adhered to. The provision allows for an initial paper assessment of bids on the basis of all the required criteria before the quantifiable aspects of bids such as the price are updated in the e-auction itself.

■ EXAMPLES OF POSITIVE PROCUREMENT STRATEGY

The Defence Industrial Strategy

The UK defence industry enjoys a special relationship with the UK government. It is clear that although there are significant projects that can be offered to tenders abroad there are strategic defence contracts that are awarded to UK companies. The Defence Industrial Strategy document came about as a response to a situation whereby the government, the companies themselves and the workers in those companies came to a tripartite resolution to plan a long term strategy to enable the government to get the defence products that it needed and the UK defence sector to have a long term plan of work.

This plan has enabled UK companies to invest in its products, plan for the future in a strategic way and ensure that its workforce enjoys job security, training and development and the economic security that long term contracts can bring to a workforce.

An example of this is the production of the Hawk, the last advanced jet trainer (AJT) to be produced exclusively in the UK. Trade unions involved in the campaign to retain production of the Hawk in the UK lobbied government extensively to ensure they awarded the contract to a UK company. This also ensured that all the trade unions, workers and the company were united in their commitment to production of the jet trainer.

The UK government considered awarding the contract to Italy and the worst case scenario could have seen the Royal Air Force flying Italian made jets. The awarding of the contract to a UK company showed the world that the government believed in UK companies and their ability to produce an excellent product. Within a couple of weeks of the company signing the contract to produce the Hawk the Indian government contracted a huge order to buy them too. This scenario proved to be a watershed in defence procurement. This led to the Defence Industrial Strategy which received full commitment from all the stakeholders involved.

Heathrow Terminal 5

The construction of Heathrow Terminal 5 was a huge programme of work with over 60 separate contractors and comprises of 16 major projects and 147 sub-projects on a site of 260 hectares. The complexity and the logistics of such an operation could have proved overwhelming. British Airports Authority (BAA), the commissioner involved in the procurement process recognised that the size and intricacy of the project needed an overall strategy to ensure that the project could be constructed on time and within budget.

The outcome of this was the Major Projects Agreement (MPA). This agreement laid out the specifics of the work required and involved every occupational group working on the project in a multi-union agreement. This encompassed all existing national agreements for workers within the construction sector, and included enhanced pay rates and terms and conditions for all the workers on the site. BAA recognised very early on that the only way the project was going to have a positive outcome was with the involvement of the various trade unions and a commitment from all the stakeholders involved to work together to achieve the common objective of completing the project on time and within budget.

The project is seen as an exemplary model of large scale construction procurement process, involving all of the supply chain and small and medium sized enterprises. The health and safety record proved to be excellent, there were very few industrial relations problems, the time scale finished ahead of time and parts of the project were completed well within the original budget forecast.

The Major Projects Agreement also produced excellent results regarding performance and productivity. In a survey of the major employers involved in the construction of the project, 57% said there had been an increase in productivity and performance due to the implementation of the Major Projects Agreement¹¹.

¹¹Baker Mallett, A Study of the Implementation of the Major Projects Agreement on the BAA Terminal 5 Programme, page 12.

Where it can go wrong

There are situations where a company fails to deliver the product or has insufficient control of production so that time scales over run. Under these circumstances the huge government investment needed to continue with the contract is placed in jeopardy. This can have major repercussions for the workforce, the company and the supply chain.

Alstom

In June 2003 Alstom announced it had been awarded a £100m contract to supply trains for London Underground's Jubilee Line. 24 hours after this news Alstom announced plans to stop making trains at its Washwood Heath factory in Birmingham, whilst "key resources" would continue to be supplied in the UK, assembly of the rolling stock was carried out elsewhere in Europe.

By September 2004, 150 years of train building at Washwood Heath in Birmingham had come to an end, with the company deciding to concentrate instead on train maintenance and renovation. The decision to close the plant was taken because there was to be a five month gap between the ending of Pendolino production and the start of the train build contract for London Underground. As a consequence the tube trains were built in Spain.

At the time, Malcolm Cowling, Alstom's UK communications director, claimed, "We have made the decision to refocus the business into renovation and maintenance because there is no new work coming in from the UK rail industry". This statement shows how UK procurement is key to retaining jobs in the UK even when the company is foreign owned. At the time this was happening there was no government procurement strategy and Alstom workers bore the brunt of the historical peaks and troughs of the awarding of government contracts.

Alexander Dennis

UK bus manufacturer, Alexander Dennis lost out in a procurement contract bid to build school buses for the UK market. The contract went to a company based in Turkey. The company submitted the cheapest bid for the contract. The buses were built and assembled in Turkey then shipped to the UK. The bid for the contract was viewed by the commissioning authority on a lowest cost basis only. This was clearly in breach of the essence of the EU procurement rules regarding 'best value bids'. As a consequence, no strategic or logistical reference was made of the need to ensure quality assurance and no arrangements could be put in place for the future maintenance and repair of the vehicles. This is a prime example of where the long term costs involved in any procurement contract need to be explored fully and assessed pragmatically.

■ POSITIVE AND NEGATIVE ASPECTS OF THE PROCUREMENT PROCESS

Positive aspects

- Successful procurement initiatives can save the UK government and the UK tax payer a significant amount of public money and reduce public sector wastage.
- Procurement industrial strategies mean long term planning and specific goals are created with government and the other stakeholders involved and working together. This secures workers jobs and ensures they have long term economic security.
- Trade unions have a huge role to play in the lobbying process and the awarding of government contracts. This in turn builds positive, dynamic relationships with government ministers, select committees and the chief executive officer's of national companies.
- Procurement provides trade union members with an opportunity to become more active in the long term strategic goals of their employer – the Defence Industrial Strategy has shown this to be a positive experience.
- Large multi-national companies can encourage small and medium sized enterprises within their supply chain to become more confident and adept at working with procurement contracts.
- The procurement process allows UK companies to show their products and capabilities to a much wider audience, especially countries within the European Union.
- The long term strategic planning involved in the procurement process can have a positive effect on skills and training, enabling workers to re-train or up-skill to add to their commercial development.
- Procurement projects are often very good examples of best practice health and safety working arrangements. The Heathrow Terminal 5 project had no recorded injuries under the Major Projects Agreement.
- Procurement contracts can encourage supply chain purchases from smaller UK companies. This ensures that UK workers are benefiting from government procurement right through the supply chain.
- The procurement process is recognised as being beneficial for productivity and performance in UK companies and in turn for the UK economy.

Negative Aspects

- Highly regulated and bureaucratic procedures mean it can be difficult for UK companies to win UK government contracts.
- There is no advice or guidance from government for procuring authorities to 'buy local'.
- There is very little support for small and medium sized enterprises to win procurement contracts in the UK and in Europe.
- To win big government contracts UK companies may need to engage in extensive and expensive lobbying procedures.
- Protectionist strategies are employed extensively by other European Union countries to protect their industrial base.
- Unite believes government has not yet grasped the implications of the 'level playing field' in Europe and does not see the benefits to the Exchequer of 'buying local'.
- Unite believes that UK Trade and Industry (UKTI) focus too much on foreign direct investment into the UK at the expense of assisting and advising UK companies to win procurement contracts abroad.
- Large scale procurement contracts can be incredibly complex arrangements which could deter many capable UK companies from bidding leaving the way open to foreign companies.

■ THE LOBBYING PROCESS AND GOVERNMENT INFLUENCE

It is clear that the lobbying process is very important in the pursuit of procurement contracts. Unite has an extensive knowledge and experience of lobbying and has an influential, high profile position within the British and European Parliaments, the Scottish Parliament and the Welsh Assembly.

Unite has the largest trade union group in both Westminster and Brussels. The union's group of MP's is organised into sub-groups representing the interests of all sectors of the union. Amongst this group there are ministers and members who have the ability to make significant decisions relating to any industrial problems or wider global issues that union members may have. There is also a group in the House of Lords who work with the union on parliamentary issues that affect our members.

The linkage to all of this is the union's Political Unit. This unit is instrumental in ensuring that members' voices are heard by those people that have been elected to run the country, works extensively with government on parliamentary issues. The Political Unit assists National Officers with key campaigns they are running that take forward both local and global strategic issues affecting members' jobs and livelihoods.

Workplace representatives who are involved in the procurement process in their company, and who want more information about the union's parliamentary groups should contact their Regional Officer. They will then be able to find out what the Political Unit can do to assist their members and their employer.





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