

## Myths in Procurement

<b>Question</b>	<b>REALITY</b>
Do I have to comply with EU rules, just to be safe?	<p>This is nothing to do with being safe. The Public Contract Regulations (EU Rules) are part of UK law so Yes – you have to comply with the EU Regulations.</p> <p>However the Public Contract Regulations make provision for a procurement process that is proportionate to the value and risk of the procurement you are undertaking so don't assume that the process you adopt cannot be tailored to meet the requirements of your organisation.</p>
Can I still spot purchase?	<p>Yes you can but from a commercial perspective a spot price will usually be the most expensive method of purchasing which may be why your Procurement isn't keen on you spot purchasing. If you do spot purchase you should also have in mind a strategy to convert your spot spend to a contract if you can.</p> <p>If using spot purchasing you need to ensure you comply with sections 109 and 110 of the Public Contracts Regulations 2015. You also need to consider the whole of the council's commercial relationship with a provider to ensure you do not exceed the £625 000 threshold for spot purchasing.</p> <p>From a commercial perspective, it is usually the case that the more guaranteed the volume, the cheaper the cost will be which is why you usually find that a Block contract is cheaper than a Framework is cheaper than Spot. However if you don't use all of your Block then it makes the unit cost of the Block expensive. In short you need the right model for the right circumstances.</p>
I already know what I want, am I just going through the motions?	You need to develop the specification for the contract with the people using the services as you need to make sure that the end product is what will meet their needs/aspirations

Shouldn't specifications be developed in backrooms by procurement experts?	Good specifications are usually developed collaboratively with commissioners, procurers, providers, and people who are using the services all contributing.
The Market acts as one	I need to understand the different drivers for different providers and groups of providers and I need to have real conversations with the providers in my local area and the wider market.
<p>Can I talk to providers during the process?</p> <p>Do I have to use rigid specs</p>	<p>Yes and no. Your ability to talk to providers changes during the contracting process. You can (and the Public Contract Regulations 2015 encourage) dialogue with the market regarding strategic objectives and specifications prior to any formal procurement commencing. However you should endeavour to talk to a range of Providers (maybe advertise an opportunity for 'talks') and not just one or two. You should ensure that the Providers that you talk to all have the same information. Crucially, having spoken to Providers you must not write a specification that only the Provider/s you have spoken to can deliver.</p> <p>Once the formal procurement process commences all <b>informal</b> 'talking' must stop.</p> <p>Once the contract is awarded talking with the successful Provider is sensible to maintain relationships and ensure the contract is delivered in accordance with the specification.</p>
Can I make changes to my specification and or contract post award to reflect changing need and budget?	<p>Yes and No</p> <p>It is likely that you will need to make changes to your specification and or contract during the life of the contract (this is recognised in the Public Contract Regulations 2015). Where you need to exercise caution is where the changes you wish to make are considered to be so far removed from the original specification and or contract as to be deemed a 'material change' If a change is 'material' then it is not acceptable to make these changes and a new procurement will be required.</p> <p>Your procurement and Legal advisors should be able to help you with the application of 'material change'.</p>

Can we still give grants?	Yes you can, and many local authorities still do. However you need to understand that a grant is really 'a gift without conditions' which suggests minimal control by the grant giver over what is delivered, how it is delivered etc. If the grant giver wants more control and wants to influence the specification then this is probably a 'contract for services' and a grant is not appropriate.
Is it all about price?	No but it isn't about quality at all costs either. Council's simply cannot afford gold plated service regardless of cost. Good commissioning/procurement is about securing the appropriate quality at a price your organisation can afford
Can I pay for services for different cohorts of vulnerabilities/disabilities at different rates or must all client groups have the same flat rate	Yes you can pay different rates but it doesn't automatically mean that you should. This is a specification issue based on the needs of the individual client groups and your knowledge of the market. You need to be clear about what you need and don't assume that different client groups demand different rates. What are the differences that it is legitimate to pay for?
Procurement has nothing to do with Elected Members	Elected Members must respond to the needs of their constituents, they need to know about how services are procured.
Do we have to follow legal advice	We need to be legal savvy and talk to legal early in the procurement process instead of bringing them a finished product to assess. It is ok to challenge the legal advice you receive but ultimately if something goes wrong then it is the lawyers that will fight the battle so you need to consider carefully the Legal position.
Do we have to be risk averse?	We need to be risk savvy and consider risk regularly. It is not unusual for organisations to want to pass all risks onto the Provider however each risk that is passed will probably attract a cost so the price you pay for the service will increase. Take a considered assessment of each identified risk and decide where it is best managed.
We can't be creative/flexible with service contracts.	Good service contracts are creative and flexible.
We can't tender for in-house contracts; Commissioning = outsourcing	In-house services can be tendered but commissioning should not equal outsourcing. Good commissioning is about finding the best value provider regardless of whether they are internal or external to the organisation. Procurement may refer to this as the 'make or buy' decision which is an integral part of your initial options appraisal.
Procurement comes at the end of the Commissioning cycle	Procurement expertise is integral to the whole Commissioning cycle and should be engaged at the point that initial options are being considered.

Procurement is all about transaction and process

Procurement is a cycle very similar to the Commissioning cycle. Procurement is interested in the whole life cycle from the initial identification of need through to the point where there is no longer a need. Transaction and process is part of this procurement cycle but added value procurement comes from market knowledge, consideration of options, negotiation, transformation, commercial contract management and generally having the right conversation at the right time.