



Joint Improvement Team – Scottish Procurement Directorate

Social Care Procurement

National Survey Report

September 2009

1. INTRODUCTION

1.1 This survey forms part of the programme of activity on ‘Good practice in Social Care Procurement’ being co-ordinated by the Joint Improvement Team (JIT) and Scottish Procurement Directorate (SPD). It was commissioned by the ‘Good Practice in Social Care Procurement Reference Group and developed by the JIT/SPD with support from COSLA, service providers, local authorities, regulators, service user groups and carers representatives, Scotland Excel and various Government departments. The survey was designed to obtain information about social care procurement and related policy issues, to identify good practice in relation to each stage of the procurement process and to seek views about current activity. The findings of the survey will inform the development of good practice guidance.

1.2 Copies of the survey were sent to Directors of Social Work in each local authority for completion by mid-July 2009. Responses were received from twenty-two of the thirty-two Scottish local authorities. A representative sample of private and voluntary sector service providers was invited to complete a parallel survey. Responses were received from thirty-seven service providers. A list of respondents is included at Annex A.

1.3 This report sets out the findings of the survey. It is divided into a number of sections, as follows:

- Procurement policy and procedures
- Analysis and planning
- Tendering and contracting
- Review
- Key issues for improvement
- Conclusions

1.4 The report summarises the responses of Councils and service providers to each survey question.

2. POLICY AND PROCEDURES

2.1 Councils were asked if they have generic procurement policies and procedures and/or specific policies and procedures governing social care procurement. As shown in the table below, all Councils confirmed that they have generic procurement policies and procedures. The majority of Councils confirmed that they also have specific policies and procedures governing social care.

Policies and procedures in place	% (N)
Generic Council policies	100% (22)
Social care procurement policies	73% (16) with a further policy in development

2.2 Councils were asked how well their policies and procedures reflect specific issues concerning social care procurement. A number of Councils commented that their generic procurement policies and procedures do not reflect the specific issues relating to social care and, in particular, take limited account of the need for service continuity for people who use social care and support services and the personalisation agenda. Several Councils commented that their standing orders make specific provision for social care contracts. Councils gave examples of specific policies and procedures governing social care procurement and local guidance on service user involvement.

2.3 Councils were asked if information about their procurement policies, procedures and requirements is made available to potential service providers and/or service users and carers and, if so, how. The responses to this question indicate that specific tender opportunities are routinely publicised on Councils' websites or on Public Contracts Scotland and that Councils' generic procurement policies and procedures are made available to potential service providers. The extent to which Councils' social care procurement policies and procedures are made available is less clear, although Councils referred to the sharing of information through service user and provider forums. Councils described how information relating to specific tender exercises is communicated to service users and providers. For example one Council produced an easy read 'story board' leaflet for service users and carers affected by a recent tender exercise.

2.4 Service providers were asked if they are aware of Councils' social care procurement policies and procedures and, if so, how helpful they are. The majority of service providers said that they have not had sight of Councils' social care procurement policies and procedures, although the responses indicated a greater awareness of and involvement in the development of Councils' commissioning strategies. Service providers noted that Councils sometimes included information on the reasons for going to tender within the tender documentation. Service providers commented that they have little opportunity to influence or contribute to Councils' social care procurement policies and procedures. They noted that if service providers had more information about Councils' policies and plans, they would be able to shape and develop their organisations to meet future social care demands.

2.5 Service providers were asked for their views on the provision of information by Councils to service users and carers on their procurement policies and procedures. Service providers commented that information was provided to service users and carers in relation to particular procurement exercises but not in relation to Councils' procurement policies and procedures.

2.6 Councils were asked to provide additional information on their social care procurement policies and procedures and to identify good practice and any proposals for improvement. Issues identified by Councils included:

- a lack of clarity around the application of procurement rules to 'Part B' social care contracts;
- the time taken and resources needed to devise, process, assess and implement tenders;
- how to ensure a level playing field for small service providers;
- the development of outcome based service specifications;
- the conflict between central procurement policy and guidance and social care procurement;
- how to assess quality in tender evaluations, avoiding over-reliance on written submissions;
- how to better engage with service users;
- the use of appropriate procurement approaches to support personalisation;
- strengthening links with service providers;
- greater awareness and dissemination of the benefits of tendering;
- inconsistency in the approach taken within Councils and across Scotland.

Councils proposed greater use of framework agreements as an area for improvement.

2.7 Councils provided varied examples of good practice, relating to:

- service user involvement in tender exercises;
- the use of framework agreements;
- future-proofing new services;
- building trust and fostering better working relations with service providers;
- the delivery of training for social work and procurement staff and service providers;
- the assessment of quality in tender evaluations;
- contract management and review;
- collaborative procurement arrangements.

2.8 Service providers were asked to provide additional information on Councils' social care procurement policies and procedures and to identify good practice and any proposals for improvement. Issues identified by service users included:

- inconsistency in the approach taken within Councils and across Scotland;
- poor procurement practice;
- the time and resource needed to participate in tender exercises;
- procurement processes can work against smaller, specialist organizations;

- tenderers are asked to work to very tight timescales but Councils do not observe their own deadlines;
- tenderers are asked to provide a great deal of information, some of which is not relevant to the service in question;
- a lack of consultation with operational staff;
- a lack of consultation with service users and carers;
- inadequate assessment of quality with over-reliance on written submissions;
- short (often 3 year) contracts which do not encourage service improvement, service change or innovation;
- the transfer of a whole service at the same time without sufficient lead in times;
- a lack of support for the incoming provider to manage staff transfers under TUPE;
- unrealistic and unfair contract terms, including financial penalties;
- a lack of understanding of the social care market;
- the need for a greater focus on outcomes for service users;
- a lack of partnership between service providers and local authorities;
- the need to develop links between local authorities and health partners;
- greater clarity about the desired outcome before a procurement process is initiated;
- the need for a clear understanding of what procurement processes are appropriate for the particular kind of service;
- the need for national guidance on social care procurement and for central guidance to recognise the distinct nature of social care procurement (for example, *Best Practice Indicators for Public Procurement in Scotland* defines ‘service’ as ‘the provision of an intangible product such as care or refuse collection’;
- in some instances decisions are taken by Council staff who do not appear to understand the service in question;
- practice in relation to the use and availability of direct payments.

2.9 Service providers gave a number of examples of good practice:

- information days at which Councils clarify how the procurement process will work and answer queries;
- dialogue between Councils and service providers which results in changes to the way in which a procurement exercise is run;
- close co-operation between the Council and service providers to manage the transition of care packages in a staged way;
- the use of framework agreements.

3. ANALYSIS AND PLANNING

3.1 Councils were asked to indicate what type of analysis they carry out in preparation for each procurement exercise and which elements would benefit from national guidance and local staff training. The results are shown in the table below. As can be seen, the responses indicated broad use of the different types of analysis. A majority of Councils stated that there was a need for national guidance and/or local staff training in the following areas: market analysis; gap analysis of providers; analysis of outcome measures; personalisation, service user choice and control and risk and impact analysis.

Type of analysis	Analysis Completed (N)	Guidance/Training Needed (N)
Market analysis	16	14
Gap analysis of providers	14	15
Evaluation of strengths/weaknesses	16	9
Quality/care standards evaluation	18	9
Analysis of outcome measures	15	12
Personalisation, service user choice & control	17	13
Option appraisal	20	9
Cost benefit analysis	18	10
Risk and impact analysis	16	12
Contract type evaluation	21	7
Service user and carer views	19	10
Service provider views	19	7
Evaluation of inspection reports by regulators	20	6
Evaluation of benefits of different contract types	18	10

3.2 Service providers were asked for their views on the analysis and planning undertaken by Councils prior to a procurement exercise. Responses to this question were mixed. Some service providers said that they see little evidence of analysis and planning prior to a procurement exercise and pointed to service specifications which fail to reflect the needs of service users and which are subsequently changed and re-issued. Where Councils do undertake analysis and planning, service providers' input is not welcomed. Reference was made to tender documentation which 'has clearly been prepared by officials with no understanding of the cost of providing care of an acceptable quality'. One service provider commented that its expertise and involvement in designing housing or other accommodation-based schemes could have contributed to significant savings to the Council. A further service provider commented that the involvement of organisations in planning the future provision of services requires careful planning by the Council to avoid those organisations gaining a competitive advantage and added that 'this is a symptom of the mistrust that is being fostered between providers and purchasers, and amongst providers that used to work together to share practice and ideas'. Service providers did, however, give a number of examples of good practice involving research, analysis and innovation and the involvement of service providers in analysis and planning via provider forums.

3.3 Councils were asked to indicate which procurement routes they have used to procure social care services. The results are shown in the table below. In addition, Councils also indicated use of the National Care Home Contract and ‘competitive negotiation’. As can be seen, the majority of Councils (77%) indicated that they use the open procedure in their procurement of social care services. Under the open procedure, all service providers who express an interest in delivering the service are invited to submit bids and all bids assessed by the Council; there is no pre-qualification stage. Use of the open procedure can therefore require service providers and the Council to devote greater resources to the procurement than, for example, use of the restricted procedure.

3.4 The majority of Councils (77%) also indicated that they use the restricted procedure in their procurement of social care services. A significant number of Councils indicated that they use framework agreements. Half of the Councils indicated that they use direct non-competitive negotiation. Over a third of the Councils indicated that they use partnering arrangements. One Council has used the competitive dialogue procedure; a further Council is planning to use competitive dialogue in the future.

Procurement Routes	% (N)
Open competitive tender	77 (17)
Restricted tender	77 (17)
Competitive dialogue	5 (1) (plus 1 planned)
Framework agreement	59 (13)
Partnering arrangement	36 (8)
Direct non-competitive negotiation	50 (11)

3.5 Councils were also asked to indicate which procurement routes they have used for which care groups and service types. Responses to this part of the survey were incomplete and the results are therefore not included in this report. However, analysis of the responses received indicates that the open and restricted procedures are used to procure services for all care groups and service types. Framework agreements are similarly used to procure services for all care groups and service types. Partnering arrangements are more common in the commissioning of criminal justice services and services for children and families. The competitive dialogue procedure has been used to procure care home(s).

3.6 Councils were asked their reasons for choosing different procurement routes. Most Councils indicated that decisions on the most appropriate procurement route are taken on a case by case basis, taking into account service requirements and analysis of the market. Councils indicated that the following factors are taken into consideration:

- the needs of service users;
- client and/or service risk analysis;
- personalisation/client choice;
- the duration of the contract and its estimated value;
- legal obligations to tender;

- the size of the market (Councils pointed to the fact that in some areas of Scotland the market is limited by geography/rurality);
- the availability of funding;
- the highly specialised nature of some services;
- the operation of an approved providers list or equivalent;
- the potential for innovation;
- strategic re-alignment of services;
- urgency.

Case study: one Council operates a Restricted Standing List (RSL) of care providers which meet minimum standards. If there are sufficient providers on the list for the relevant care group and service type, a tender will be run from the RSL; otherwise it may be appropriate to go to open tender. Open tender is also used to open up the marketplace to new providers, for example where existing providers are operating at full capacity, or to introduce new methods/initiative to the service area in an attempt to improve best practice. A negotiated tender would be used where a specialised service is required and there is only one appropriate service provider. There is a presumption under Social Work Services policy that contracts will be renewed where existing services can demonstrate Best Value following completion of service reviews. However, the Department reserves the right to tender in appropriate circumstances, including where service reviews prove unsatisfactory. The Council's Rules of Procedure for Social Work Services include guidance on whether tendering or continuation of a rolling contract is justifiable. Tendering is conducted on a case by case basis, taking account of the impact on service users and carers, costs, quality considerations and the availability of alternatives. It is for individual Care Teams to decide, based on all available information and guidance, whether tendering is an appropriate route for existing or new services.

3.7 Councils were asked on what basis they decide to provide services in-house, award contracts directly or tender services. Councils indicated that these decisions are based on the need to secure Best Value, taking into account the timing, cost and nature of the requirement and the availability of resources and expertise. Councils indicated that the following factors are taken into consideration:

- the needs of service users;
- continuity of service;
- client and/or service risk analysis;
- legal obligations to tender;
- standing orders and financial regulations;
- national audit toolkit;
- market capacity;
- geographic location;
- inspection information;
- the cost of the tender process itself;
- the existence of a specific partnership with a service provider;
- available options if a tender exercise has not resulted in the award of a contract.

3.8 Councils were asked what arrangements they make, when planning a procurement exercise, to communicate with and involve service users, carers and service providers. A number of Councils provided examples of service user and carer involvement, through focus groups, in development of their commissioning strategy and planning for specific procurement exercises. In relation to specific procurement exercises, Councils commented that the timing and level of communication with service users and carers depends on the extent of potential service change. Councils indicated that methods of communicating with service users vary, depending on the size of the procurement exercise. For large scale projects, it may be appropriate to convene meetings, publish information leaflets and correspond with service users in writing. There is greater opportunity within smaller projects for direct contact with service users and their carers. Examples were given of service user involvement in: designing services and defining the Council's approach to the requirement; contributing to the development of service specifications; submitting questions for use in provider interviews where undertaken as part of the tender exercise; and developing evaluation criteria. Examples were also given of service user involvement in decision making, for example through attendance at provider interviews/open days and involvement on evaluation panels. Councils also provided examples of service provider involvement in strategic planning groups and consultation through provider forums. Only one example was provided of provider involvement in the development of proposals for individual contracts.

3.9 Service providers were asked for their views on the way in which Councils planning a procurement exercise communicate with and involve service users and carers. Service providers said that in general, communication with service users about specific procurement exercises was extremely poor. Where service users did receive information, it was often misleading, inappropriate or in an unsuitable format, contributing to service users' anxiety.

3.10 Service providers were asked for their views on the way in which Councils planning a procurement exercise communicate with the incumbent service provider and potential tenderers. One respondent commented that the organisation received wholly inadequate information when the Council tendered a service which it was currently providing. The organisation had no information to pass on to its staff and was 'not allowed' to discuss the implications of the procurement exercise with service users or their families. Other respondents noted that they received no warning from the Council that they would be approached by other service providers seeking details of their staffing structure, salary scales and costs to allow them to plan for transfer of staff under TUPE. Service providers noted that information is not always provided at the same time to service providers and service users and their carers.

3.11 Service providers commented that the level of information provided to potential tenderers varies. Some respondents commented on the effective communication of information to service providers through open days and provider forums. However, they noted that information is not always clear and is occasionally not consistent with the information provided in subsequent tender documentation.

3.12 Councils were asked to provide additional information on the analysis and planning they undertake prior to a procurement exercise and to identify good practice and any proposals for improvement. Issues/areas for improvement identified by Councils included:

- the extent to which services should be exposed to market forces;
- the involvement of service users and carers in the procurement process;
- the impact of direct payments;
- the use of approved providers' lists (or equivalent);
- how to ensure a level playing field for small service providers;
- the ongoing relationship with providers who are also potential tenderers;
- better links to Community Planning Partnership;
- the potential for collaborative procurement;
- how to include feedback from monitoring previous contracts in planning cycle;
- the need for skills development.

3.13 Councils provided a number of examples of good practice in relation to analysis and planning, including:

- the development of commissioning strategies and specific policies and procedures for social care procurement;
- the establishment of planning groups and provider forums;
- the provision of training for provider organisations on tendering;
- links to Community Planning Partnership/Single Outcome Agreement;
- joint commissioning with Health partners;
- the development and use of risk assessment tools.

3.14 Service providers were also asked to identify issues/areas for improvement and examples of good practice in relation to care sector analysis and planning for specific procurement exercises. Issues/areas for improvement identified by service providers included:

- consideration of the potential implications for service providers and service users and their carers;
- greater accountability for decisions;
- clearer link to values and national care standards;
- focus on outcomes for service users;
- better planning for TUPE;
- assessment of TUPE costs (financial and the cost to service users who lose skilled and known staff);
- advance notice of procurement exercises and more realistic timescales (short timescales mean service providers generally have little or no opportunity to explore working in partnerships or consortia for more effective service provision);
- greater involvement of service users;
- a lack of clarity around the involvement of health partners in decision-making;

- recognition that Councils should work in partnership with service providers;
- Council staff costs in preparing tender exercises and evaluating bids.

3.15 Service providers gave a number of examples of good practice, including:

- a ‘consultative and supportive’ approach to procurement by one Council which has met with service providers to discuss what future services would make a difference to the lives of the people they support;
- use of a DVD, as part of the tender documentation, outlining the Council’s aspirations for the service;
- the involvement of service users and their families;
- open days which serve to establish relationships and clarify procurement processes.

4. TENDERING AND CONTRACTING

4.1 Councils were asked to indicate where they routinely advertise contract opportunities. The results are shown in the table below. A majority of Councils indicated that they advertise contract opportunities on their own websites, on the national portal (Public Contracts Scotland) and in the Official Journal of the European Union (OJEU). The fact that so many Councils advertise contract opportunities in the OJEU is interesting because there is no legal requirement to advertise social care contracts in the Official Journal although many contracting authorities choose to do so on a voluntary basis.

	% (N)
Council website	73 (16)
National portal	82 (18)
Local newspapers	41 (9)
National newspapers	32 (7)
European Journal	77 (17)
Professional journals	36 (8)
Organisations on Approved Provider List	41 (9)
Other/s (please specify below)	
European website	5 (1)

4.2 Councils were asked how they ensure that information provided to service providers pre, during and post tender is accessible and good quality. Councils noted that significant resources were devoted to ensuring that tender documentation is fit for purpose and, for example, conforms to the plain English guidelines; standard templates are used. A number of Councils commented that tender documentation is developed in consultation with legal advisers and colleagues in finance and HR; consultation also takes place with colleagues in other Councils. Tender documentation routinely includes a comprehensive service specification together with additional information, for example sample user profiles and evaluation criteria. Councils commented that tender documentation is reviewed and updated in response to feedback from service providers, for example through post-tender surveys of providers.

4.3 Councils commented that the use of e-tendering ensures that information, including any correction or clarification during the tender phase, is accessible to all potential service providers. Alternatively, bidders conferences may be held to respond to queries and ensure that all potential providers receive the relevant information. Councils confirmed that they offer feedback to unsuccessful tenderers either in writing or face to face.

4.4 Service providers were asked for their views on the accessibility, level and quality of information provided by Councils pre, during and post tender. Service providers indicated that the accessibility, level and quality of information vary. For example, service providers may have been involved in planning for a procurement exercise, in which case they are familiar with the Council's plans. Other service providers may not be aware that their service is being tendered until the contract is advertised. The same variation applies to the accessibility, level and quality of information provided in tender documentation, clarification and feedback. Service providers pointed to examples of tender documentation containing inaccurate information and the use of inappropriate terminology, for example reference to 'units of delivery' or 'lots'. Respondents commented that information in tender documentation tends to be legalistic and difficult to understand.

4.5 Councils were asked to describe how they promote personalisation and good outcomes within the procurement process. Councils referred to the need for processes to be 'person centred' and designed to identify flexible, responsive solutions to suit the needs of individual clients. Councils commented that service specifications are increasingly outcome based and describe the Council's expectations regarding personalisation; providers' proposals for meeting service users' needs are then evaluated as part of the tender exercise. Councils noted that service user involvement, contract management and service review all contribute to the delivery of good outcomes for service users. Reference was made to a pilot personalisation scheme operating in one Council area. Commissioning staff are represented on the steering group for the pilot scheme to ensure that any impact on procurement processes is identified and can be addressed.

4.6 Councils gave further examples of the promotion of personalisation and good outcomes through:

- planning to maintain a sufficient provider base to facilitate client choice of provider;
- the use of framework agreements to provide greater flexibility;
- the preparation of sample care/support plans or case examples.

4.7 Councils were asked how and when service users are informed about a tender exercise affecting their service. Councils commented that communication with service users varies according to the situation and depends on how personal and intensive the intervention of the particular service is for service users and how and when users may be affected by a tender exercise.

Councils noted that service users might be informed in the following ways:

- through their representation on the procurement planning team;
- through their involvement in development of the service specification and/or representation on the evaluation panel;
- through service user consultation;
- in person, by social workers or their existing providers;
- by letter and/or story board publications.

In some circumstances, services are developed without prior knowledge of the service users, for example homelessness services.

4.8 Service providers were asked for their views on how and when service users are informed about a tendering exercise. The majority of service providers said that, in their experience, service users were informed only when a tendering exercise was complete and typically by letter/newsletter. Service providers noted the high level of anxiety experienced by service users during a tendering exercise. The fact that service users were often not informed about tendering exercises meant that they were unaware of the choice/alternatives available to them.

4.9 Councils noted that the timing of any communication with service users is critical. Early communication can raise expectations or anxieties; communication after the event is clearly unacceptable. Tender exercises are typically conducted over a number of months. Councils commented on the need for there to be a level of certainty about the process and timescale before information is disseminated to service users and their carers.

4.10 Councils were asked how they took account of and planned for TUPE issues within the tendering process. The responses to this question indicate a variation in practice across Councils. In terms of planning, Councils referred to the need for the Council and tenderers to seek legal advice on the application of TUPE. One Council stated that the potential cost implications are taken into account at the planning stage. A further Council commented that time is allocated within the implementation phase to allow for the TUPE process.

4.11 Some Councils invite tenderers to assess TUPE related costs but otherwise have no role in providing advice or facilitating the exchange of information. Other Councils assess whether TUPE applies and state their understanding in the tender documentation (making it clear that it is for tenderers to make their own decisions); bids are then evaluated on a like for like basis. A number of Councils in Scotland have no experience of TUPE in this context.

4.12 Councils commented on the now more frequent use of contract clauses which require service providers to make available information needed by an incoming provider for TUPE purposes at the tender stage (rather than 14 days before any staff transfers, as required by the TUPE legislation). One Council also referred to the use of review clauses which allow tenderers to vary or withdraw their bids in the event that TUPE information is not forthcoming or is incomplete.

4.13 Service providers were asked for their views on the way in which Councils plan for TUPE issues. Service providers confirmed that practice varies considerably across Councils, with some Councils offering no advice on the implications on TUPE and no support, whereas other Councils do offer advice and facilitate the exchange of information. A number of respondents commented that Councils often appear not to know if TUPE will apply. Service providers commented that some Councils do not allow any post-award adjustment of the tender price to take account of TUPE liabilities, considerably increasing the level of risk for tenderers. Other service providers commented on the significant resource required post-award to obtain staffing information and manage staff transfers.

4.14 Councils were asked to provide information about their experience of involving service users directly in tender evaluation. Again, experience appears to vary. In some Council areas, service users are consulted on aspects of the tenders received and attend provider interviews/presentations; however, they are not involved directly in tender evaluation. In at least one instance, this is because the Council believes that it has a duty to procure services in accordance with the law and that the decision on selection must sit clearly with the Council. Councils further commented that some service users may be unwilling to take part, may fail to understand the process and/or lack objectivity.

4.15 However, in other Council areas service users have been involved directly in tender evaluation, although respondents acknowledge that this is not always appropriate. According to one Council, the inclusion of service users has ensured that their views are captured within the evaluation process and 'the right decision is made'.

4.16 Service providers were asked what experience they have of service user and/or carer involvement in tender evaluation. Service providers commented that practice varies: in some instances, service users have been told that they cannot be involved in interviewing service providers because they would be biased; other service users have been more involved in the tender process. Service providers said that often when service users are involved in interviewing service providers, they have no formal input and their views are not taken into account in the scoring of bids.

4.17 Councils were asked to indicate what criteria and weightings are used to evaluate the quality and costs of tenders. Councils indicated that evaluation criteria and the quality/cost ratio vary according to the type of service being tendered; criteria and weightings are agreed in advance and published at the point of tender. Councils indicated use of the following selection and award criteria:

Selection criteria (assessment of service providers' suitability in principle to deliver the service taking account of capability and experience)

- track record (relevant experience and expertise);
- policies and procedures;
- Care Commission reports;
- references from agencies for whom similar services have been provided;
- evaluations and action plans from service user engagement and consultation;
- staff qualifications;
- staff training and development planning;

- financial standing.

Award criteria (assessment of service providers' bids to deliver the service in question)

- understanding of service requirements;
- achieving outcomes for service users;
- demonstration of an appropriate value base for service user and for services to be provided;
- implementation proposals (service design and model of care);
- deliverability of service;
- staffing structures and how these have been calculated to meet the complex needs of the propose service user group;
- partnership working;
- service improvement/development;
- key challenges in service provision;
- monitoring and evaluation;
- cost.

4.18 Councils noted that tenderers were typically asked to submit written method statements and financial statements and to deliver presentations and/or attend interviews. One Council noted that, in relation to cost, it seeks a unit price that is standard across all tenderers in order to allow meaningful comparison. If that is not possible, the Council looks at the likely cost over the contract life.

Case study: recent court judgments have led one Council to review its practice in order to differentiate the selection and award stages of tender exercises. Information regarding prospective tenderers' economic and financial standing and technical capability is required to be assessed at the selection stage and not at the award stage. Accordingly, the Council has revised its pre-qualification questionnaire (PQQ) and is in the process of revising its invitation to tender (ITT) documentation. In light of the court judgments, the Council recognises that it has to be more explicit about its evaluation methods.

4.19 Responses to this question revealed considerable variation in the quality/cost ratios used by Councils. The majority of Councils indicated that greater emphasis is placed on quality than cost, particularly where cost is less of an issue for example because there is a fixed budget for the service. In the main, ratios used varied from 80% quality, 20% price to 60% quality, 40% price. However, in certain circumstances the quality/cost ration may be reversed. For example, a tender for stairlifts was conducted on the basis of 30% quality, 70% cost as the equipment met manufacturing quality standards. One Council pointed to the use of pre-determined benchmarks in respect of quality criteria. Any tender which does not meet all of the benchmarks is rejected.

Example quality/cost ratios used:

- 60% quality, 40% cost (written submissions 50% quality, 50% cost; interviews 70% quality, 30% cost);
- 60% quality (comprising service delivery 21%, turning policy into practice 12%, achieving outcomes for service users 12%, service development plan 9%, key challenges in service provision 6%), 40% cost.

4.20 Councils were asked to indicate what difficulties they have experienced in relation to their role and functions in tender exercises. Councils identified the following difficulties:

- the need for re-tendering where the Council is satisfied with the quality of the existing service and is confident that it provides Best Value;
- the potential for tendering to lead to increased costs which the Council cannot then fund;
- joint purchasing – different procurement practice within health and between Councils;
- how to manage the outcome of a tender exercise, taking account of local sensitivities;
- low response rates to tender exercises;
- service providers sometimes fail to understand the constraints of providing services in remote areas;
- the impact on third sector organisations if the service they deliver is re-tendered, the contract is awarded to another organisation and funding which they are dependent on is withdrawn;
- service providers sometimes submit tenders without fully understanding the implications/obligations;
- certain features of corporate procurement processes are unsuitable for use in social care procurement;
- EU legislation does not sit well with social care procurement, for example the use of terminology such as ‘lots’;
- the development of social care appropriate tender documentation has involved significant use of staff time;
- current budget restrictions have impacted on the final decision-making process;
- service providers sometimes fail to demonstrate adequately how services will be delivered;
- a lack of resources can extend timescales and hamper effective communication;
- the use of direct payments by outgoing service providers to maintain business;
- a lack of understanding of the procurement process within community care;
- e-tendering processes are not fully accessible, resulting in greater use of paper processes than is desirable;
- the use of e-auctions in social care procurement;
- establishing and evaluating award criteria relating to quality;
- championing procurement to non-procurement staff;
- dealing with the implications of abandoned tender processes;
- ensuring a smooth handover and avoiding any slippage in the handover date when a service transfers to a new provider;
- the time required for the evaluation of tender documents and providing feedback, where requested by unsuccessful tenderers;
- development of a tender process and documentation which recognise the complexity of the service being tendered for;
- tender exercises are time consuming and costly for both provider organisations and the Council;

- some provider organisations do not view tendering as a cost-effective way for them to do business with a local authority and prefer to do business with local authorities who will enter into partnership agreements;
- tenders submitted by organisations which employ consultants to provide tender responses can lack operational input;
- smaller organisations, particularly community based organisations, can have difficulty competing with the larger providers with the result that over time, tendering may lead to a vast reduction in locally provided services;
- submissions from provider organisations may on occasion miss vital documentation necessary for a full evaluation of their tender;
- substantial resistance from service providers, service users and lobby groups to the re-tendering of existing services and consequent changes in service delivery;
- concerns about market capacity to sustain the delivery and quality of reconfigured services at an affordable cost;
- the length of time the tender process can take has resulted in some bidders withdrawing.

4.21 Service providers were asked to indicate what difficulties they have experienced in relation to their involvement in tender exercises. Service providers identified the following difficulties:

- poorly planned procurement exercises, with insufficient information given to service providers and unclear processes;
- very tight timescales which do not take account of the resource and time required for preparing tenders (smaller organisations, in particular, are under pressure to prepare a tender within the time allowed whilst continuing to run the business);
- the level of disruption caused to service users and their families by re-tendering services;
- inability to safely deliver service at the level of funding outlined as the upper ceiling;
- inconsistency in approach taken between Councils, for different service types and even within individual procurement exercises;
- the application of TUPE;
- a lack of clarity about the call-off arrangements under framework agreements;
- poor/insufficient feedback post-award;
- inconsistencies in how bids are evaluated and the scoring process;
- changes made to the service specification mid-process;
- breakdown in relationships between service providers which have now become ‘competitors’;
- pressure to reduce contracted rates in order to secure the contract;
- a lack of accurate information on the true cost of care;
- the disproportionate amount of information required of service providers, for example in PQQ exercises and Councils require this information in slightly different formats.

4.22 Service providers were asked to describe the impact of tendering processes on their organisation and staff. In the main, responses to this question indicate that tendering has a negative impact on service providers and staff. Respondents commented that procurement exercises are destabilising for staff and services and that staff feel demoralised, anxious and unsettled. They pointed to the considerable amount of time and effort required to prepare tenders and the high level of stress experienced by those involved. They also noted the potential financial costs, for example if legal advice is sought on the application of TUPE. One respondent commented that organisations feel pressure to ‘pare costs to the bone’ and this impacts on staff conditions and the provision of training. Tendering exercises affect organisations’ ability to plan on a long-term basis and to focus on strategic development of services. However, other respondents commented that tendering has had a positive impact on their organisations because of the potential for growth.

4.23 Councils were asked to provide additional information in relation to social care tendering and to identify good practice and any proposals for improvement. Issues identified by Councils included:

- clarification of the circumstances where tendering must take place and circumstances where exemptions can be applied, and how to factor in the need for service continuity and consistency;
- the potential for contracts to be extended at the Council’s discretion;
- how to deal with an increase in price ceilings when a service is tendered;
- the need for national guidance on ‘reserved services’ i.e. secure child placements;
- media perception of social care contracting is very negative;
- the need for greater information exchange between Councils;
- the greater use of framework agreements and collaboration with neighbouring authorities;
- the need for better communication with providers and service users, particularly in relation to re-tendering exercises;
- recognition that social care contracting does not fit neatly with mainstream procurement and that there is a tension between national best practice indicators for procurement and the delivery of good outcomes for service users.
- in smaller local authorities, the tendering/outsourcing of service provision does not result in the efficiencies seen in larger local authorities;
- the provision of services by non-locally based service providers could have significantly detrimental side effects on the local economy;
- use of the restricted procedure in tendering exercises for social care services is more appropriate than the open procedure;
- e-tendering processes specifically formulated for social care would be useful;
- social care services should not be re-tendered simply to comply with procurement regulations; national guidance is needed to ensure a more consistent, appropriate approach for a complex market;
- the need for training for non-procurement staff on procurement requirements and processes and for service providers on the submission of good quality bids;
- the involvement of service users in the tendering and implementation process;

- the planned guidance needs to consider the risks of re-tendering, for example the risk that any new services are more costly and of a lower quality than current services and risks to people that use services in terms of continuity, quality and choice
- the potential for greater use of e-tendering to reduce paperwork;
- the impact of personalisation on social care tendering;
- the development of a whole life cost approach to commissioning and contracting;
- the DVD 'My life is not a three year contract' (facilitated by Sense Scotland Staff) delivers a power message from service users/carers and should be widely available for procurement staff.

4.24 Councils provided varied examples of good practice relating to:

- robust stakeholder and client consultation;
- plans to improve the exchange of information on tendering between Councils at regular regional meetings;
- the use of framework agreements
- the appropriate use of 'quality' award criteria and weightings to address some of the criticisms of competitive tendering in this context;
- the use of a bidders' briefing day to allow bidders and the Council to understand more fully the requirements from both a service user and provider perspective;
- social care procurement strategies that take into account the duty of care, service quality and maintenance of the local social care market;
- application of the principles of the Scottish Procurement Regulations to social care contracts, even though not legally required, to guarantee an appropriate, fair and rigorous procurement process;
- establishment of an Implementation Group with the new service provider, the Council and other stakeholders to ensure that the handover to the new provider meets timescales and to avoid any negative implications for service users;
- the development of outcome focussed contracts.

4.25 Service providers were asked to provide additional information in relation to social care tendering and to identify good practice and any proposals for improvement. Issues identified by service providers included:

- the use of tendering by Councils to cut costs;
- the focus on cost rather than quality;
- the application of unrealistic ceiling costs;
- the use of Care Commission gradings (often disregarded);
- procurement personnel can lack knowledge and experience of the care sector;
- the difficulty in defining and measuring quality;
- a lack of consultation with service users;
- the failure to adjust procurement procedures and processes for social care;
- some tender exercises are conducted via the e-portal or a paper submission with no face-to-face probing of suppliers;
- the variation in procurement practices for apparently similar categories of service provision across the Country;

- procurement processes need to be person centred, fully involving the individual and family (where appropriate);
- the need for greater clarification about the application of TUPE;
- the need for guidance on re-tendering;
- contracts focus on local authority control rather than giving service users control over the delivery of their service;
- greater use of framework agreements;
- greater recognition of the significant investment in time, money and resource involved in responding to a tender;
- greater emphasis on partnership working;
- tender documentation should clearly indicate the volume of work;
- greater understanding of social care markets;
- meaningful involvement of service users in evaluating bids.

4.26 Service providers gave a number of examples of good practice relating to:

- the involvement of service users;
- the use of Care Commission gradings;
- the provision of information on TUPE;
- managing the transfer of services to new providers.

4.27 Service providers were asked if they had worked with national or local government to identify training needs around tendering. The majority of respondents confirmed that this has not taken place. Service providers noted that some Councils have organised workshops on procurement for potential tenderers and have demonstrated e-tendering tools. Other providers reported that they have received no advice and support from Councils and have been told to engage consultants to increase their chances of winning tenders. Service providers referred to training and workshops conducted/supported by Community Care Providers Scotland and Scottish Care at Home and the United Kingdom Homecare Association.

4.28 Service providers were asked if they had used the Scottish Government's Single Point of Enquiry (SPoE), which gives providers advice and records concerns about public procurement. The majority of respondents confirmed that they have not used the SPoE, most adding that they were not previously aware of its existence. One respondent who has used the SPoE commented that the advice received by the organisation reflected the lack of clarity around the application of procurement rules to 'Part B' services and so was unsatisfactory, although this did not mean that the SPoE itself was unhelpful. Other respondents said that they preferred to approach the Council direct with any queries about specific procurement exercises. Service providers commented that they were reluctant to challenge a 'live' procurement exercise for fear of damaging their relationship with the Council.

4.29 Councils were asked to indicate their experience of using different types of social care contracts. The results are shown in the table below. It should be noted that in response to subsequent questions in the survey, Councils stated that there is considerable variation in how terms relating to the various contract types are interpreted.

Contract types and experience	Very positive (N)	Positive (N)	Neither positive/negative (N)	Negative (N)	Very negative (N)	Not used (N)
Spot contract	1	8	9	2		1
Call off contract	3	10	3	1		3
Block Contract	3	6	7	4		1
Cost & Volume	3	8	3			6
Letter of Agreement		9	7	3		2
Partnership Agreement	1	9	4			5
Framework Agreement	4	6	4			4
Other (specify)						
Small grants	1					
National contract	1					

Case study: one Council believes that establishing framework agreements has brought a number of advantages. The Council's supported living framework for more complex community care service users brings a significant proportion of business within a fully EU compliant contractual arrangement. Providers reported that they found the tender process relatively straightforward particularly as it permitted existing business to be imported, thus reducing disruption and anxiety for providers, their staff, and service users. The framework contains a process for selection of providers for new business. The Council has also undertaken a mini-competition involving providers on the framework to improve quality within an existing service. Part of this process involved giving service users an opportunity to post questions about their service directly to tenderers and responses were given a high weighting in the evaluation.

4.30 Service providers were asked to indicate their experience of the different contracts and agreements used by Councils. The results are shown in the table below.

Contract types and experience	Very positive (N)	Positive (N)	Neither pos/ neg (N)	Negative (N)	Very negative (N)	Not used (N)
Spot contract	3	11	14	1		1
Call off contract		4	9	1		8
Block Contract	5	5	6	5	1	2
Cost & Volume	1	6	3	3	1	7
Letter of Agreement		3	9	1	2	4
Partnership Agreement		2	5	2		7
Framework Agreement			10	4		4
Other (specify)		3				
Service level agreement	1					
No written contract				1		
Individual placement agreement			1			

4.31 Service providers were asked for their views on the above contractual arrangements. Service providers highlighted the following issues:

- written contracts are not always provided;
- the need for greater flexibility;
- contract duration (use of contracts which are renewed on an annual basis);
- the benefits of greater standardisation;
- the potential benefits of framework agreements;
- the one-sided nature of contracts;
- the difficulty of engaging staff on a formal basis when there is no guarantee of work.

4.32 Councils were asked how they identify the appropriate type and length of contract. Councils commented that the type and length of contract depends on the type and of the service and its anticipated duration and the availability of funding. In relation to contract type, Councils commented that call off/spot contracts are used where there is no certainty of demand, for example independent fostering services; block contracts are used where there is certainty of demand, for example respite care for adults with multiple disabilities. For certain services, it may be appropriate to use a combination of contract types. For example, a block contract may be used for housing support services which is then supplemented by a call off/spot contract.

4.33 In relation to contract duration, Councils commented that contracts may be awarded on an annual basis or could run for as long as 20 years, for example in the case of long term capital and partnership based contracts. Typical contract duration appears to be 3 years. An example was given of call off and cost and volume contracts which do not specify duration. Instead, the contracts are reviewed every 3 years and, if the review is satisfactory, the contracts 'roll forward' for a further 3 years.

4.34 Councils indicated that they take account of the following factors in deciding on contract type and duration:

- the needs of service users;
- service continuity/the need for stability in provision;
- whether it is a pilot project;
- market conditions;
- the corporate budget setting cycle;
- the financial benefits of different contract types and durations;
- legal requirements;
- an assessment of risks associated with the contract;
- an assessment of the costs of tendering;
- the development of good working relationships with service providers;
- the sustainability of the provider base.

4.35 Councils were asked for any further views about particular contractual arrangements. Councils recognised that most types of contract have advantages and disadvantages and commented that guidance on the use of the various contract types in particular situations would be beneficial, as would guidance on the use of approved provider lists. Councils further commented on the benefits of the national care home contract. One Council noted that the role of block contracts in the context of the personalisation agenda needs detailed review. A further Council stated its intention to develop a longer-term partnership approach to contracting in order to provide more certainty for service users, stabilise the market and reduce transaction costs.

4.36 Councils commented that the development of standard model contracts for social care services would improve consistency of provision and standards and avoid duplication of effort within Councils. Reference was made to the potential use of 'lifetime' contracts in one Council area.

4.37 Councils were asked how their contracts promote flexibility in services and good outcomes for service users and carers, including the level of flexibility given to service providers. Councils commented that outcomes for service users are covered in the service specification which forms part of the contract and in service users' care plans. The service provider is required to produce a personal plan that details at an operational level how staff interventions will deliver the more broadly defined outcomes or outputs of the care plan. Providers have discretion to apply professional judgment in translating the care plan into an agreeable personal plan. Outcomes are then measured through contract management and service user feedback. Councils noted the importance of involving service users in development of the service specification. Also noted was the fact that service users' needs can change during the lifetime of a contract and that this must be reflected in the contract.

4.38 A number of Councils provided specific examples of how their contracts promote flexibility in services and good outcomes for service users, for example:

- A contract for respite care at home which gives service users and their carers an allocation of respite care hours that are used as and when the service user requires.

The detailed arrangements are discussed directly with the service provider, which adjusts the service to meet the needs and preferences of the service user.

- Provision which allows service users to use ‘combinations’ of service providers to meet their specific needs. For example, a service user could use the Council’s in-house complex disability support service for specialist needs and a generic provider for more ‘everyday’ support.
- The establishment of overarching agreements with service providers with more than one service. Under the terms and conditions of the contract, service providers have the flexibility to move staff and funds across services where there is a fluctuating need.

4.39 Service providers were asked to indicate how well Council contracts promote flexibility in services and good outcomes for service users and carers. Responses to this question varied. Service providers commented that some contracts are over-prescriptive, with little scope for flexibility and creativity. Other contracts are briefer, more outcome-led and reflect a greater level of partnership and joint responsibility between the Council and service provider on supporting the service user. Service providers noted that service user and carer involvement in drawing up the service specification is essential in order to ensure good outcomes.

4.40 Service providers were asked for their views on the nature and level of discretion given in Council contracts to providers. Service providers commented that the level of discretion is variable and noted a correlation with the level of contract compliance monitoring undertaken by the Council (those which undertake rigorous monitoring generally allow limited or no discretion). Service providers said that in some areas, they have significant flexibility and, for example are able to provide a broad range of support at appropriate times. In other areas, service providers have significantly less discretion.

4.41 Councils were asked what links, if any, they have made with local direct payments policy and practice in specific procurement exercises. Most Councils referred to local direct payments policy and recognised the need to take account of direct payments in specific procurement exercises. A number of Councils acknowledged that the necessary links were not yet in place. One Council referred to a current commissioning/tender pilot exercise which is aimed specifically at linking the procurement process to direct payment policy.

4.42 Other Councils provided examples of the links made with local direct payments policy and practice in specific procurement exercises. For example, the significance of direct payments has been taken into account during the planning stages for a framework agreement for supported living services, with a view to service continuity if an existing provider is not accepted on the framework. One Council stated that where a tender exercise results in a change of service provider, service users are offered the choice of receiving services from the new provider or changing to direct payments. A further Council confirmed that the implications of direct payments are considered in each procurement strategy for individual services, prior to commencing the commissioning strategy.

4.43 Service providers were asked for their views on the links made with direct payments policy and practice in procurement exercises. Service providers said that the level of information for service users affected by a tendering exercise varied. Service providers noted that in one procurement exercise, the Council sent a letter to all service users to make them aware of their right to apply for direct payments. Service providers commented that the information made available by some Councils seems to focus on the potential difficulties for service users, for example the need for service users to become employers and to set up separate bank accounts.

4.44 Councils were asked what areas of service, if any, would benefit from the further development of national core contracts. Councils identified the following areas of service:

- care at home services;
- residential schools;
- fostering;
- secure accommodation for children;
- adult residential care;
- day care services for a range of client groups;
- aids and adaptations;
- OT equipment;
- telecare equipment;
- remote call handling centres.

4.45 One Council commented that a draft contract for residential schools has been produced and will shortly be issued to providers for consultation. Several Councils were not in favour of further development of national core contracts, for example because of the potential for national contracts to stifle innovation locally.

4.46 Service providers were asked what areas of service, if any, they thought would benefit from the further development of national core contracts. Some service providers said that a national contract for care at home and housing support services would provide greater consistency. However, concerns were expressed about the impact that a national contract would have on the flexibility of service delivery, local responsiveness and the personalisation of services.

4.47 Councils were asked to provide details of their usual practice, where there is a change of service provider following a re-tendering exercise, in relation to:

Informing people who will use those services directly about the transfer

Councils indicated that the following methods are used to inform service users about a change of service provider:

- written communication;
- personal contact from care managers/social worker/support staff;
- advocacy;
- introductory meeting with new managing staff;
- via existing provider/care team or new provider/care team;
- focus groups/meetings with service users.

Facilitating the service transfer to the successful tenderer

Councils indicated that service transfer to the successful tenderer can be facilitated by:

- holding discussions with the former and new provider;
- brokering the exchange of essential information;
- promoting collaborative working;
- funding some familiarisation for the new provider and any new staff;
- monitoring to ensure that there is no impact on service delivery.

Providing information to unsuccessful tenderers

Councils confirmed that information is provided to unsuccessful tenderers in writing and that detailed feedback is available on request.

Ensuring continuity of support staff as needed to service users

Councils indicated that continuity of support staff can be achieved through the application of TUPE. If TUPE does not apply, the option of direct payments can be explored. However, Councils noted that continuity cannot always be ensured, in which case the Council seeks to manage the transition to minimise concerns for service users and their families.

4.48 Service providers were asked to describe their experience of practice, where there is a change of service provider following a re-tendering exercise, in relation to:

Informing people who will use those services directly about the transfer

Service providers commented that where Councils have informed service users about the re-tendering exercise and involved them in the process, information about the transfer of the service to a new provider forms part of an ongoing communication strategy and is therefore effective. Where service users have not been made aware of the re-tendering exercise, information for service users about the transfer of their service to a new provider is invariably 'too little, too late'.

Facilitating the service transfer to the successful tenderer

Service providers commented that in some instances, the Council has successfully managed the transfer of the service to the successful tenderer and noted that this is achieved only where the Council allows sufficient time and devotes sufficient resources to the process. However, in other instances service transfer has been fragmented and confusing for the incoming and outgoing providers and service users.

Providing information to unsuccessful tenderers

Service providers commented that the provision of feedback to unsuccessful tenderers is generally satisfactory, although in some situations there is a lack of clarity over the evaluation methodology and scoring used by Councils.

Ensuring continuity of support staff as needed to service users

Service providers said that, in their experience, there has been little or no support from Councils to ensure continuity of support staff as needed to service users. It has fallen on service providers to ensure continuity of service staff wherever possible.

4.49 Councils were asked to describe the impact on service users and care services where there have been TUPE transfers as a result of a procurement process. Councils noted that, where TUPE applies and the majority of staff transfer to the new provider, the impact on service users and care services is minimal. One Council noted that in several cases staff decided to leave the industry, resulting in a change of carer. A further Council noted that the transfer of staff associated with a failing service resulted in delay in implementing the new service. In certain circumstances, the transfer of staff under TUPE has a positive impact on service users and care services. For example, in one Council area, the majority of staff chose to transfer to the new provider of tenancy support, resulting in an improved level of service to service users at lower cost.

4.50 A number of Councils did, however, note difficulties in the application of TUPE and that measures have had to be taken to avoid disruption to services where providers have failed to fully understand TUPE implications.

4.51 Service providers were asked to describe how TUPE transfers have impacted on service users and the care services provided by their organisation. Service providers said that TUPE transfers have led to:

- significant financial cost;
- anxiety and uncertainty for service users;
- disruption to services;
- anxiety and uncertainty for staff;
- significant resource cost (particularly senior management time);
- culture change for incoming staff.

4.52 Councils were asked to provide additional information in relation to social care contracting and to identify good practice and any proposals for improvement. Issues identified by Councils included:

- the need for guidance on the range of agreements appropriate to specific circumstances;
- the development of outcome focussed specifications;
- the importance and means of communicating information on the application of TUPE to service users;
- the development of processes to measure personal outcomes;
- how to improve elected members' understanding of social care contracting.

4.53 In relation to good practice, Councils commented on the use of framework agreements to provide a flexible, responsive and more streamlined mechanism for purchasing social care services and also noted the benefits of the national care home contract.

4.54 Service providers were asked to provide additional information in relation to social care contracting and to identify good practice and any proposals for improvement. Issues identified by service providers included:

- the benefits of including contract clauses requiring providers to release TUPE information at the request of the Council during tender exercises;
- the lack of written/signed contracts;
- consideration of a nationally agreed position on travel time and travel costs;
- consideration of a nationally agreed position on training costs;
- consideration of a nationally agreed 'minimum' rate for social care contracting;
- promotion of 'lifetime' contracts for people with enduring support needs.

4.55 Service providers suggested the following as examples of good practice.

- A Council which is forward thinking in its approach to supporting people and which actively encourages flexibility and creativity.
- A tender for care at home/housing support services for adults with mental health issues which was based on a single organisation providing a full package of care for an individual, allowing more flexible and creative ways of working.
- A Council which tendered on the basis of large geographical areas, allowing each provider to build and maintain sustainable infrastructure.

5. REVIEW

5.1 Councils were asked what arrangements they usually make for monitoring the contract and managing the Council's relationship with the service provider. Councils described a variety of arrangements, including:

- individual case reviews;
- providers' performance reviews;
- monthly/quarterly returns;
- spot check by the Council and/or provider;
- individual service user and carer feedback;
- feedback from staff;
- feedback from care managers;
- review of Care Commission inspection reports and action plans;
- review of complaints;
- regular provider meetings;
- ongoing operational dialogue.

5.2 Councils confirmed that the frequency of monitoring and monitoring requirements vary depending on the nature of the contract and the service being delivered. Although monitoring requirements are normally stated in the contract, monitoring activity may increase if issues arise requiring more intense monitoring, for example a complaint about service delivery. One Council commented on the need for monitoring to be proportionate, based on an assessment of risk. A number of Councils stated that contract monitoring frameworks/tools have been developed in order to ensure a consistent approach to contract monitoring. Most Councils confirmed that contracts are monitored by dedicated contracts officers/quality assurance officers.

5.3 Councils were asked how, in their social care monitoring and review of service performance, they:

Monitor provider performance against the service specifications and contract requirements

Councils indicated that they monitor provider performance against the service specifications and contract requirements through:

- written returns/self-assessment by providers;
- monitoring visits;
- service reviews;
- feedback from service users, Council staff and providers;
- regular meetings with providers;
- monitoring complaints.

Take account of the views of, and outcomes for, service users

Councils indicated that they take account of the views of, and outcomes for, service users through:

- feedback from service users and carers (via focus groups and use of questionnaires)
- service reviews;
- individual case reviews;
- examination of care plans and other records relating to service user outcomes;
- visits;
- monitoring complaints.

Take account of Care Commission inspection reports

All Councils indicated that they take account of Care Commission inspection reports as part of contract monitoring/service review although one Council indicated that delays in publication of the reports can limit their usefulness. Councils indicated that, where appropriate, they also attend Care Commission feedback sessions. In some instances, regular meetings with Care Commission staff also take place.

Use service reviews to inform development of procurement policy, practice and skills

Councils indicated that service reviews are used to inform the development of procurement policy, practice and skills. For example, service reviews are used to examine the effectiveness of models/design of services and to identify opportunities for service development. This in turn can lead to the development of more relevant service specifications and influence future procurement exercises.

Use service reviews to inform the development of commissioning strategies

Councils indicated that service reviews are used to inform the development of commissioning strategies. For example, service reviews take account of the strategic fit of the service with commissioning priorities; any information or trends emerging from service review are reflected in the commissioning strategy.

5.4 Councils were asked what issues there are (if any) concerning duplication between contract monitoring and review, and inspection and other work by regulators. Councils noted that contract monitoring and review should be proportionate and should take account of other work by regulators. Potential duplication with Care Commission inspection reports is typically addressed through regular meetings between Councils and the Care Commission at which information about monitoring arrangements is shared. Councils acknowledged that service providers can be frustrated by apparent duplication. However, there are differences in the information and level of detail collected. Care Commission inspections focus on service provision and the level of customer satisfaction, whereas Councils focus on contract compliance and providers' commitment to continuous service improvement. One Council expressed the view that the Care Commission's reluctance to share information is as much an issue as duplication and that the Commission's reports are often out of date by the time they are published.

5.5 Councils were asked to provide additional information in relation to reviews within social care procurement and to identify good practice and any issues/proposals for improvement. Issues/proposals for improvement identified by Councils included:

- how to maximise the information/data from the national care home database;
- how to ensure that information generated by individual service user/carer reviews informs decisions about service development and links into the commissioning cycle;
- one Council has suggested to the Care Commission that, to avoid duplication, users of a service should be asked to complete one survey annually and the results shared with the Council, regulators and service provider.

Case study: one Council aims to develop an annual contract performance report which will summarise the level of monitoring activity, identify whether themes are emerging, review the effectiveness of the existing monitoring processes and report on providers' evaluation of the Council's contract monitoring practice.

5.6 Councils provided a number of examples of good practice in relation to review, including:

- use of the Scottish Recovery Indicator model which helps mental health service providers to evaluate their service in a recovery focussed way and which relies to a large extent on service user input;
- development and use of a contract monitoring framework which is flexible and encompasses a person-centred approach and which involves service users, social workers/care managers, other professionals and regulators.

5.7 Service providers were asked for their views on contract monitoring and review and confirmed that practice varies considerably between Councils. Some service providers commented that contract monitoring focuses more on finance than outcomes. Service providers expressed concern about the level of duplication between contract monitoring undertaken by Councils and inspections carried out by the Care Commission. They noted that good contract monitoring helps to manage expectations and generally improves partnership working.

6. KEY ISSUES FOR IMPROVEMENT

6.1 Councils were asked to indicate which key issues about practice in the procurement of social care require attention and improvement. Councils identified the following issues:

- the development of appropriate strategies for different services;
- the application procurement rules to 'Part B' social care contracts;
- the dissemination of information on new legislation and/or caselaw;
- improved understanding of provider development and market management;
- how to restrict the extent to which affordability issues arise;
- the exchange (between Councils) of knowledge of service costs and quality linked to improved outcomes for service users;
- joint commissioning by the Council and NHS;
- the operation of different 'threshold' levels in EU Directives, SPD guidance and standing orders;
- procurement planning and communication of the procurement plan to potential providers;
- how to tailor procurement required practice to social care;
- the development of tendering which is flexible enough and proportionate to the scale and complexity of each procurement exercise;
- how to manage resources (whether procurement staff should be embedded in social work; the amount of senior officer time involved in procurement);
- greater use of electronic tendering, to minimise the burden on the Council and tenderers;
- greater recognition of procurement as a profession in its own right that can add value to the process rather than purely an administrative function;
- how to develop/monitor outcome focussed specifications;
- the impact on service users of changes in service delivery;
- the involvement of service users in procurement processes;
- issues around personalisation and supporting the market to develop responses to personalisation of social care services;
- the use of direct payments by unsuccessful providers to maintain business;
- greater consistency in approach within and between Councils;
- the dissemination of good practice examples;
- the potential for further national contracts.

6.2 Service providers were asked to indicate which key issues about current procurement practice require attention and improvement. Service providers identified the following issues:

- the necessity and purpose of tendering and re-tendering social care contracts;
- greater collaboration with providers and service users on tender development;
- better consultation with service users and carers;
- better information for providers at the start of the tender process;
- better signposting/training for providers unfamiliar with the tender process;
- the use of clear, consistent criteria for scoring bids;
- outcome-based specifications and contracts;

- the use of e-auctions;
- evaluation of bids on the basis of 'lowest price';
- the need for greater information on Councils' future procurement plans;
- greater consistency in approach between Councils;
- the skills of those doing the procurement and their understanding of social care;
- the transparency of decision-making;
- the expectation that the sector will collaborate and share good practice when in commercially competitive relationships;
- the potential for tendering to drive down costs below safe levels;
- the provision of training and support for voluntary organisations involved in the tendering process;
- greater recognition of the time and resources involved in tendering;
- the availability of TUPE information;
- the impact of large scale tender exercises on smaller, specialist services;
- deficiencies in how 'quality' is evaluated;
- the use of short notice/timescales for tenders;
- the need for greater standardisation of tender documentation;
- analysis of the cost of tender exercises.

6.3 Councils were asked to indicate in which areas of the procurement process the Council and/or its staff would benefit from further assistance. Councils identified the following areas:

- improved access to training on the development of outcome focussed specifications and contracts;
- guidance on agreement types applicable to different service arrangements;
- further guidance on how to identify when social care services can/should be exempt from tendering processes or where elements of these processes are not applicable;
- dissemination of information on new legislation and/or case law;
- guidance on service planning, tender construction and tender evaluation;
- guidance on joint commissioning with health partners;
- guidance on balancing best value against service user outcomes/outputs;
- guidance on how to legally and better engage with service users and carers as part of the procurement process;
- legal support for the continued development of the National Care Home Contract;
- greater recognition and understanding by suppliers of tendering and re-tendering;
- skills development with regard to contract management.

6.4 Service providers were asked to indicate in which areas of the procurement process their organisations would benefit from receiving further assistance. Service providers identified the following areas:

- how to evidence quality and outcomes in tender documentation;
- the development of consortia bids;
- the application of TUPE.

6.5 Councils were asked to indicate which matters would benefit from:

National guidance

Councils indicated that the following areas would benefit from national guidance:

- the extent to which procurement legislation applies to social care services;
- the relationship between commissioning and procurement;
- step by step processes in tendering and specific options and processes for social care tendering;
- joint commissioning;
- the application of TUPE;
- alternative methods of gathering evidence through tendering that test actual service delivery as opposed to how well tenderers construct their bids;
- expectation of efficiency savings in social care contracts;
- guidance for legal services;
- evaluating outcome based tenders;
- ensuring continuity of service;
- monitoring services;
- ordinary residence/cross border placements (clarity required on processes);
- guidance and legislation across the UK and Ireland);
- locus of Scotland Excel, COSLA and JIT;
- guidance on procuring specialist services e.g. residential schools;
- guidance on interpretation of EU legislation in respect of frequency of tendering; requirements and contract duration for social care services;
- service user involvement;
- development of clear standard contract formats;
- developing the social care market.

Good practice information

Councils indicated that the following areas would benefit from good practice information and identified the need the need for a single point of reference:

- examples of outcome based service specifications;
- which tendering approach is relevant to which service type;
- scope to extend contract duration without re-tender;
- updates on case law and procurement updates;
- sharing of information between local authorities;
- market analysis;

- service user and carer consultation and/or involvement;
- the provision of feedback to unsuccessful tenderers;
- contract monitoring for service improvement;
- service transfer arrangements;
- procuring for personalisation.

Support materials

Councils indicated that the following areas would benefit from the development of support materials. Councils commented that all support materials should be available on line. One Council suggested that the SPD toolkit should be adapted for social care services.

- standard tender documentation;
- information on different types of contracts used and model social care contracts;
- operational framework for the procurement of social care;
- link to English and Welsh guidance;
- outcomes based monitoring tools.

6.6 Service providers were asked to indicate which matters would benefit from national guidance, good practice information and support materials. There was a degree of commonality between the responses from Councils and service providers to these questions. In addition, service providers identified the following matters:

- a recognition of the true cost of care;
- skills required by Council staff preparing and evaluating tenders;
- appropriate quality/cost ratios;
- disability equality impact assessments of procurement exercises;
- more rigorous assessment of whether companies can deliver quality services for the price bid;
- the link between local procurement plans and single outcome agreements;
- the development of consortia bids;
- the recommended content of tender packs;
- the use of e-auctions;
- the release of information by Councils about providers' pricing, policies and contractual arrangements under the Freedom of Information (Scotland) Act.

7. CONCLUSIONS

7.1 As explained in the introduction, the purpose of the survey was to obtain information about social care procurement and related policy issues, to identify good practice in relation to each stage of the procurement process and to seek views about current activity. We are very grateful to all respondents for their thoughtful and detailed contributions.

7.2 The survey responses have provided evidence of considerable variation in social care procurement policy and practice between local authorities in Scotland. Councils and service providers highlighted many of the same issues about current activity; all respondents identified a need for greater consistency. Respondents provided various examples of good practice and the JIT/SPD will now consider these examples further with a view to incorporating them in the guidance under development. Respondents also identified areas of difficulty which they consider should be addressed in national guidance. The JIT/SPD will now consider how to address these areas within the draft framework for guidance.

**JIT/SPD
September 2009**

Annex A

JIT -- SPD Social Care Procurement Programme -- Survey	
Organisations completing survey	
Local Authorities	Service Providers
Aberdeenshire	Abbotsford Nursing Home
Angus	Allan-Ross Nursing and Homecare
Argyll and Bute	Allied Healthcare
Clackmannanshire	Alpha Homecare
Dundee	Alzheimer Scotland
Dumfries and Galloway	Aspire Housing and Personal Development Services
East Lothian	Borders Caring Services
Edinburgh	Call-In Homecare
Fife	Care Services (Perth)
Glasgow	Carewatch (Grampian)
Inverclyde	Carewatch (Inverclyde, Ayrshire, Dunbartonshire, Argyll & Bute)
Midlothian	Carewatch (South Lanarkshire)
Moray	Community Integrated Care
North Ayrshire	Cornerstone
North Lanarkshire	Deaf Action
Orkney	Enable Scotland
Renfrewshire	Fair Deal
Shetland Islands	Glasgow East End Community Carers
South Lanarkshire	Glencairn House Care Home
Stirling	Gowrie Care Limited
West Dunbarton	Hansel Alliance
West Lothian	Highland Home Carers
	HRM Homecare Services
	Includem
	Inspire
	JPM Community Care Services
	Key Housing Association
	Lanarkshire Association for Mental Health (x 2)
	Leonard Cheshire Disability Scotland
	Penumbra
	Primecare Health
	Randolph Hill Group
	Richmond House
	Sense Scotland
	The Mungo Foundation
	Visibility